

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 898 of 2012

1. S.K.Shrivastava, S/o Lt. J.L. Shrivastava, age 61 years, Retired Deputy Director, Department of Fisheries, R/o Dr. A.K. Verma Doctors Colony Saraswati Nagar Pratap Chowk Distt. Bilaspur (CG)

---- Petitioner

Versus

1. State Information Commissioner, Chhattisgarh, office of the State Information Commission, Nirmal Chhaya Bhawan, Meera Datar Road, Shankar Nagar, Raipur
2. Joint Director Fisheries-cum- First Appellate Authority under the provisions of Right to Information Act, 2005, Directorate of Fisheries, Near Railway Crossing, Telibandha, Raipur (CG)
3. Deputy Director Fisheries-cum- Chief Executive Officer, Fish Farmer Development Authority / Public Information Officer, Department of Fisheries, District Durg (CG)
4. Inderchand Soni, Social Worker, R/o Jawahar Chowk, Durg, District Durg (CG)

---- Respondents

For Petitioner.

Mr. A.K. Prasad, Advocate with Mr. Rishi Mahobia, Advocate.

For Respondent No.1

Mr. S.S. Tekchandani, Advocate

For Respondent No.2 & 3

Mr. Gary Mukhopadhyaya, Govt. Adv.

For Respondent No.4.

Mr. Vikas Bhaskar, Advocate.

Hon'ble Shri Justice Pritinker Diwaker

Order On Board

16/10/2015

1. At the relevant time the petitioner was posted as the Public Information Officer & Deputy Director, Department of Fisheries, Govt. of C.G., Raipur. On 15.4.2011 respondent No.4, an information seeker, filed an application before the petitioner under the Right to Information Act, 2005 (henceforth 'the Act of 2005') seeking information in respect of application dated

14.8.2006 submitted by one Shri Rajendra Kumar Dubey under the Act of 2005. As the petitioner did not supply the entire information to respondent No.4, he had preferred an appeal before the first appellate authority which was allowed vide order dated 16.6.2011 directing the petitioner to supply information to the information seeker i.e. respondent No.4. After this order, the petitioner had supplied information to respondent No.4 which according to respondent No.4 was incomplete and therefore he had preferred second appeal before the State Information Commission Chhattisgarh, Raipur. The Commissioner vide order dated 17.11.2011 came to conclusion that despite there being order of the first appellate authority, incomplete information was given to the information seeker that too with a delay of 6-7 months and therefore the petitioner is liable to pay penalty of Rs.5,000/- as per provisions of Section 20 (1) of the Act of 2005. The petitioner has further been directed to pay Rs.1,000/- to respondent No.4 towards mental agony. It is this order which has been challenged by the petitioner in this writ petition.

2. Counsel for the petitioner submits that though the petitioner has raised various grounds to assail the order impugned but he is confining his argument to the extent that before passing the impugned order of penalty any opportunity of hearing has not been afforded to the petitioner. Though presence of the petitioner has been marked in the impugned order, but infact he was not present and even no notice was served on him before imposing penalty. He further submits that even after supply of requisite information respondent No.4 has preferred second appeal in which order impugned has been passed only after the retirement of petitioner. He further submits that the petitioner has acted reasonably and diligently and therefore delay in supplying relevant information to the information seeker cannot be attributed to him. He further submits that the petitioner stood

retired on 31.7.2011 and now it is difficult for him to pay penalty of Rs.5,000/- and Rs.1,000/- to respondent No.4 in as many as twelve cases. He further submits that respondent No.4 is habitual information seeker of District Durg and he has filed about 3000 applications under the Act of 2005 . Reliance is placed on the decision of the Division Bench of High Court of Delhi dated 29.3.2012 passed in LPA No.777/2010, parties being Anand Bhushan vs. R.A. Haritash.

3. On the other hand, supporting the impugned order it has been argued by Shri Tekchandani & Shri Bhaskar that the impugned order is strictly in accordance with law and there is no illegality or infirmity.
4. I have heard counsel for the parties and perused the impugned order.
5. The documents produced by both the parties go to show that whatever information was available with the petitioner, it was duly supplied to respondent No.4, but the respondent No.4 being dissatisfied with the same preferred an appeal before the first appellate authority. The first appellate authority accepting submission of respondent No.4, directed the petitioner to supply requisite information within the time frame provided under the law. However, as the petitioner had not supplied any information in writing to said Shri Rajendra Kumar Dubey, the same was communicated accordingly to respondent No.4. The petitioner in addition to making respondent No.4 aware of this fact also supplied a three page information to him but he did not feel satisfy with the same and preferred the second appeal before the State Information Commission. While passing the impugned order in the second appeal preferred by respondent No.4, the Commissioner held that as the complete information sought for by respondent No.4 was not made available to him and secondly the information so supplied was not within the period prescribed under the law,

the petitioner is liable to pay penalty of Rs.5,000/- in addition to Rs.1,000/- towards mental agony undergone by respondent No.4. Thus no malafide on the part of the petitioner is visible and whatever delay has occurred in supplying information to respondent No.4 was bonafide. The petitioner has tried its best to make the same available to respondent No.4 and at no point of time he had nurtured any malafide intention in not supplying information to respondent No.4 and therefore the petitioner should not be made liable to pay the penalty as has been ordered by respondent No.1.

6. In this view of the matter, the imposition of penalty by the impugned order appears to be too harsh and is required to be reduced to Rs.500/-. Order accordingly. In addition to this, the impugned order carrying a direction for the petitioner to pay Rs.1,000/- to respondent No.4 towards mental agony being an unjust one is also set aside.

7. With the observations and directions as above, the petition is disposed of.

Sd/-
(Pritinker Diwaker)
Judge

roshan/-