

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 899 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 properties held by all

the public servants posted in the Department of Fisheries, Durg. The petitioner has refused to give such information to him on the ground that disclosure of such information is exempted under Section 8 (1) (h) of the the Act of 2005. Feeling aggrieved by this order of petitioner, respondent No.4 preferred an appeal before the first appellate authority and the same was allowed vide order dated 16.6.2011 directing the petitioner to supply information to the information seeker i.e. respondent No.4, within time prescribed under the law. Being dissatisfied with the order of first appellate Court, respondent No.4 had preferred second appeal before the State Information Commission Chhattisgarh, Raipur. The Commissioner vide order dated 17.11.2011 came to conclusion that unnecessary delay was caused by the petitioner in supplying requisite information to the information seeker and therefore directed the petitioner to supply entire information free of cost. The Commissioner had also imposed penalty of Rs.10,000/- on the petitioner 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. He further submits that after the order of the first appellate authority dated 16.6.2011, the petitioner has supplied the information available with him to the information seeker free of cost. 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/- & Rs.500/- 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. Looking at the entire factual aspect of the case, since very inception the act of the petitioner in not supplying requisite information to respondent No.4 cannot be said to be illegal and contrary to law. Since the information sought for by the information seeker pertained to a person against whom an offence was already registered, the petitioner might have been under the impression as to the bar created by Section 8 (1) (h) of the Act of 2005 though based on a wrong notion, but the denial on his part cannot be termed as malafide. The petitioner has tried its best to make the information 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 etc. as has been ordered by respondent No.1. It would be relevant to note here that at the time of passing of the order impugned, the petitioner has already retired from service and in the efflux of time the relevant information sought for by respondent No.4 has already been supplied to him.

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/-