

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.899 OF 2015

Col. (Retd.) Shri Anand G. Deshpande & Anr.] ... Petitioners
Versus
Shri Shrikant Gajanan Beni and Ors.] ... Respondents

Mr. A. B. Tajane for Petitioners.
Mr. Vivek Salunkhe for Respondent No.1.
Mrs. M. S. Bane, 'B' Panel Counsel for Respondent No.2.

CORAM :- M. S. SONAK, J.
DATE :- DECEMBER 09, 2015

P. C. :-

1. Rule.
2. With the consent of and at the request of learned Counsel for parties, Rule is made returnable forthwith.
3. The challenge in this petition is to the order dated 03/06/2014 made by the State Information Commissioner, imposing penalty of Rs.2,000/- upon the petitioner no.1 for having delayed impartment of information to the respondent no.1.
4. There is no dispute that there was delay of over 225 days in imparting information. Although, in the petition, the plea is taken that the provisions of Right To Information Act, 2005 9('RTI Act') do

not apply to the respondent no.2 institution, of which, the petitioner no.1 was the Public Information Officer (CIO), the said ground is not pressed at the time of final hearing. The petitioner no.1, in pursuance of show cause notice issue to him, filed a detailed response dated 02/05/2014 explaining the delay. The explanation is that the respondent no.1 keeps on filing proceedings against the respondent no.3 as well as the petitioners and the petitioners, instead of devoting time and energy to the activities of respondent no.3, are constantly required to attend to such proceedings. The petitioner no.1 has also pointed out that he is an ex-serviceman and is associated with the activities of respondent no.3 purely on voluntary basis. The petitioner no.1 has also submitted that respondent no.3 is required to undertake several social and cultural activities and the petitioner no.1 is quite involved in such activities. The petitioner no.1 has also submitted that the petitioner no.1 was not aware of the provisions of the RTI Act, 2005, including in particular the time schedule specified therein. The information has been ultimately furnished and the delay was for the reason set out in the explanation.

5. The State Information Commissioner, upon consideration of the explanation, has imposed penalty of Rs.2,000/- upon the petitioner no.1 by observing that the petitioner no.1 has not appreciated the seriousness of the RTI Act and the time schedule prescribed therein.

6. Mr. Vivek Salunkhe, learned Counsel for respondent no.1, has submitted that way back in the year 2008, the respondent no.3 was informed by the State Government that the respondent no.3 is covered under the provisions of RTI Act. At that stage, the petitioner no.1 was the office bearer of respondent no.3 and therefore, cannot disclaim knowledge. Mr. Salunkhe has pointed out that the information sought for by the respondent no.1 was necessary in the context of certain proceedings instituted by the respondent no.1 before this Court as well as before some other authorities. The delay in furnish of the information was deliberate and therefore, the penalty has been rightly imposed. Mr. Salunkhe relied upon the decision of this Court in the case of **Mr. Johnson B. Fernandes Vs. The Goa State Information Commission and Anr.**¹, wherein this Court refused to interfere with the order of penalty upon being satisfied that there was delay in furnish of information and that reasonable opportunity of being heard was offered in the matter.

7. Having heard the learned Counsel for parties and perused the record, the decision of the State Information Commissioner to impose penalty cannot be faulted. This is because the delay in this case is of 225 days. The explanation, can, in the facts and circumstances of the present case, be considered for the purposes of mitigation and determination of the quantum of penalty. This Court, in the case of **Johnson** (*supra*), had declined to interfere with the order imposing penalty, when delay was admitted and the reasonable opportunity of being heard was furnished to the petitioner no.10.

¹ 2012 (1) ALL MR 186

8. However, imposition of penalty of Rs.2,000/- in the facts and circumstances of the present case, is not at all warranted. It is to be noted that the respondent no.3 is a public library and the petitioner no.1 is an ex-serviceman who has been voluntarily offering his services. True, in this case, there has been substantial delay in the matter of furnish of information. However, this is not a case where penalty of Rs.2,000/- was required to be imposed upon the petitioner no.1. The explanation furnished, though not sufficient for the purpose of avoiding penalty, was surely, sufficient as the same disclosed several mitigating circumstances. Perhaps, the State Information Commissioner intended to make a point that the provisions of RTI Act and the time schedule therein need to be respected and not treated with casualness. For this purpose, at least in the facts and circumstances of the present case, it would be appropriate if symbolic penalty of Rs.100/- is imposed upon the petitioner no.1.

9. Accordingly, Rule is partly made absolute in this petition. The award of penalty is not interfered with. However, the amount of penalty is reduced to Rs.100/- (Rupees One Hundred Only). The same to be paid to the State Government, as directed in the impugned order, within a period of four weeks from today.

10. In the facts and circumstances of the case, there shall be no order as to costs.

(M. S. SONAK, J.)