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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7380 OF 2013**

Sanjay Trimbak Salve

... Petitioner

Versus

The State Chief Information Commissioner and Ors.
Respondents

...

Mr. Avinash Fatangare for the petitioner.

Ms. Vaishali Nimbalkar, A.G.P. for respondent no. 2.

**CORAM : M.S. SONAK, J.
DATED : MARCH 09, 2015**

P.C.

Learned counsel for the petitioner states that the service is complete in the present matter.

2. This petition impugns the order dated 22nd July, 2013 made by the State Information Commissioner recommending initiation of disciplinary proceedings against the petitioner, in exercise of powers conferred by section 20(2) of Right to Information Act, 2005 (said Act).

3. Learned counsel for the petitioner made following

submissions in support of the petition :

(a) That by order dated 9th January, 2013, the State Information Commissioner had imposed upon the petitioner a fine of Rs.25,000/- in exercise of powers conferred by section 20(1) of the said Act. On the ground that there was no compliance with the principles of natural justice before the said order was made, the same was set aside by this court on 12th June, 2013 and matter was remanded for reconsideration. Upon remand, however, the State Information Commissioner has chosen to exercise powers under section 20(2) of the said Act which are undoubtedly harsher than the powers contained in section 20(1) of the said Act. There was no material on record to sustain such approach.

(b) In the impugned order, there is no finding that the petitioner has without reasonable cause and persistently denied the request for information. In the absence of such finding, there was no question of exercise of powers under sub section (2) of section 20 of the said Act.

(c) The information applied for in the present case relates to the years 1919 to 2011. Accordingly furnishing of such voluminous information would have involved

disproportionate diversion of the resources of the public Authority.

In this regard, learned counsel placed reliance upon section 8 of the Maharashtra Right to Information Act, 2002 which provides that this was to be a ground for refusal to supply information in certain cases.

4. In so far as third contention based upon section 8 of the Maharashtra Right to Information Act, 2002 is concerned, it is extremely doubtful as to whether any reference can be made to the provisions contained in the said Act consequent upon Right to Information Act, 2005 being brought into force. Nevertheless, proviso to sub clause (a) of section 8 provides that where request for information is rejected on the ground that volume of information is required to be retrieved or processed, would involve disproportionate diversion of the resources of a public authority, it shall be the duty of the Public Information Officer to render help as far as possible to the person seeking information to reframe the request in such a manner as may facilitate the supply of information. In the present case, information was applied for on or about 29th June, 2011, however, the same was neither furnished nor was any intimation sent that the same was being declined by relying upon the provisions in section 8 of the Maharashtra Act. Accordingly, there is no merit in the third contention raised.

5. In so far as first and second contentions are concerned, however, the learned counsel for the petitioner is right that the impugned order neither records the finding of persistency nor has it demonstrated that there was any change in the circumstances while making of the order dated 9th January, 2013 and the impugned order dated 22nd July, 2013. Although, this is the case where no reasonable cause has been shown for the denial of information, nevertheless, the circumstances were not such as to warrant exercise of powers under section 20(2) of the said Act. There was nothing on record which indicates that the petitioner has delayed or denied the information on any previous occasions so as to make out a case of persistency. There is also no material to indicate that in the present case itself, information was directed to be furnished and despite such direction, the same was denied so as to make out a case of persistency. Accordingly, the impugned order to the extent it directs initiation of disciplinary proceedings against the petitioner is liable to be substituted with a direction for payment of fine as contemplated by section 20(1) of Right to Information Act, 2005. In the earlier round, such fine imposed was maximum i.e. Rs.25,000/-.

6. Learned counsel for the petitioner upon taking instructions from the petitioner submits that he is prepared to pay some reasonable fine in the matter and further that he shall deal with the application under Right to Information Act with diligence, if and when any occasion arises for the same. In this view of the matter, it would be

appropriate if the petitioner is made liable to pay fine of Rs.15,000/-. The petitioner has in fact offered to pay such fine within a period of four weeks from today. Accordingly, the impugned order is modified. In terms of the modification, it shall not be necessary to hold any disciplinary proceedings against the petitioner. The petitioner shall however, within a period of four weeks from today, pay to respondent no. 3, fine in the amount of Rs.15,000/-, by way of demand draft in the name of respondent no. 3. Further, petitioner to file within a period of six weeks from today, compliance report in this court as well as with his present Head of the Department. In case, such fine amount is not paid within the period prescribed, it shall be open to the Head of the Department of the petitioner to deduct not merely Rs.15,000/- but Rs.25,000/- from the salary payable to the petitioner.

7. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

(M.S. Sonak,J.)