

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 461 OF 2014

Smt. Ainul Attar .. Petitioner
vs.
Avinash M. Patil & Anr. .. Respondents

Mr. Kunal Bhanage i/b. Mr. Vasim Siddique i/b. Mr. S. Acharya for
Petitioner.
None for Respondents.

CORAM : M. S. SONAK, J.
DATE: 28 JANUARY 2015

P.C. :-

1] This petition is directed against the order dated 17 November 2012 made by the State Information Commission imposing upon the petitioner, an information officer, penalty of Rs.25,000/- under Section 20(1) of the Right to Information Act, 2005 ("said Act"). In the present case the respondent no. 1 applied for some information with regard to admissions made by the Board of Technical Education on 6 July 2010. The petitioner, as an information officer, on 14 July 2010 i.e. just one day after she received the respondent no. 1's application dated 6 July 2010 forwarded the request to the concerned officials. As there was no sufficient progress, the petitioner made enquiries and was informed that the Desk Officer on 16 August 2010 has once again sent reminders in the matter of information sought. In the meanwhile since the time limit prescribed under Section 7(1) of the said Act had expired, the respondent no. 1 instituted first appeal on 9 August 2010. On 10 December 2010 a reply was furnished to the respondent no. 1 expressing inability to furnish information, on the ground that the same was applied for in the question and answer form. On 9 December 2010 the respondent no. 1, was constrained to prefer a second appeal. On 14 March 2011, when the second appeal was taken up for

consideration, there was assurance recorded that information would be furnished. Accordingly, on 9 April 2011, the information applied for by the respondent no. 1 was furnished.

2] Thereafter, the petitioner was afforded opportunity to show cause as to why penalty be not imposed upon her under Section 20(1) of the said Act. This is because, in all there was unreasonable delay in furnish of information to the respondent no. 1. The petitioner submitted her reply to the show cause notice on 7 June 2012. In the reply, the petitioner did express her regrets but added that she was not personally responsible for delay. The petitioner pointed out that under the said Act, it is incumbent for the establishment of an independent section to deal with RIT queries. However, no such independent section has been established. Similarly several posts in this regard continue to remain vacant. For all these reasons, there is reasonable cause for the delay and accordingly a lenient view ought to be taken in the matter.

3] The Information Commission, upon consideration of the explanation furnished, has ruled that in this case there is a clear breach of provisions of Section 7(1) of the said Act, in as much as the information applied for was not supplied to the respondent no. 1, within a period of thirty days as prescribed therein. On this ground, the Information Commission has made the impugned order and imposed maximum penalty permissible under Section 20(1) of the said Act, namely, Rs.25,000/-/

4] The learned counsel for the petitioner submitted that in the present case, reasonable cause had been shown by the petitioner as to why the information sought for could not be furnished within the period prescribed under Section 7(1) of the said Act. In any

case, the learned counsel submitted that in order to exercise powers of imposition of penalty under Section 20, it has to be established that there was some malice or malafides involved in the refusal or delay in furnish of information. In the present case since there was no malice, malafides or mischief alleged, there was no warrant to impose the maximum penalty prescribed of Rs.25,000/-. The learned counsel also submitted that the difficulties expressed by the petitioner in her explanation, have not at all been considered by the Information Commissioner. For all these reasons, it was submitted that this Court ought to interfere with the impugned order and set aside the penalty imposed.

5] Despite notice, there is no appearance on behalf of the respondent no. 1. This Court, had already put the parties to notice that this petition shall be decided finally at the stage of admission.

6] The perusal of the records would indicate that there was indeed unreasonable delay in the matter of furnish of information to the respondent no. 1. The respondent no. 1 had applied for information on 6 July 2010, which information was furnished to him ultimately on 9 April 2011. This was only after the respondent no. 1 was required to file at least two appeals which are provided under the said Act. There is and there can be no dispute that information was ultimately supplied much beyond the period prescribed under sub section (1) of Section 7.

7] The perusal of the provisions contained in Section 20 of the said Act would indicate that penalty can be imposed in a situation where, without any reasonable cause, the State Public Information Officer, has refused to receive an application for information or has not furnished information within the time specified under sub section

(1) of Section 7 . Penalty can also be imposed where the State Public Information Officer malafidely denies the request for information or knowingly gives incorrect, incomplete or misleading information or destroys information which was the subject of the request or obstructs in any manner the furnishing of the information. The various causes for which penalties can be imposed are required to be read disjunctively. This is clear because the proposition 'or' has been employed between each of them. At the highest, it can be said that before imposing penalty, there is a duty to examine whether information was not furnished within the period prescribed under Section 7(1) for some reasonable cause. There is no requirement however, to establish malice, malafides or mischief in every case as a precondition to imposition of penalty.

8] In the present case although the petitioner has pointed out that on her part, she did on one two occasions remind the concerned officials that they ought to furnish the information, which could ultimately be made available to the respondent no.1, this by itself, is by no means sufficient. Ultimately, the said Act came to be enacted in order to ensure greater and more effective access to information. The said Act came to be enacted to set out a practical regime of right to information for the citizens to secure access to information under the control of public authorities, so that there is promotion of transparency and accountability in the working of the every public authority. If this is the objective of the said Act, the same cannot be frustrated by merely requiring a citizen to approach from table to table or to be satisfied with the explanation that from table to table information was applied for but was not available with the Public Information Officer, in order to furnish the same to the citizen. Accordingly, if a practical regime of right to information is to be put in place, then there is no scope to ordinarily accept such

kind of explanations.

9] Nevertheless, there is some merit in the contention of the petitioner that the appropriate government was required to establish an independent Right to Information Cell and for this purpose sanction and fill up posts which could man such a cell. Whilst it is true that the State Public Information Officer cannot merely shirk responsibility by pointing out that he or she had forwarded the request of the citizen to the concerned officials, nevertheless the points raised by the petitioner could not have been wholly ignored. The petitioner in the present case has expressed regrets at what has happened but at the same time made an earnest plea that she ought not to be held personally responsible for all that happened. There does not appear to be any consideration of this aspect in the impugned order.

10] Therefore, upon overall consideration of the facts and circumstances in this case, in my judgment, it would be appropriate if the penalty amount is reduced from Rs.25,000/- to Rs.7,500/-. Such penalty shall be paid by the petitioner to the respondent no. 1, within a period of four weeks from today. The head of the department to ensure that such payment is made by the petitioner without any delay.

11] Rule is made absolute to the aforesaid extent. The impugned order is modified by way of reduction of the penalty amount from Rs.25,000/- to Rs.7,500/-. There shall be no order as to costs in the present petition.

(M. S. SONAK, J.)