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IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

WRIT PETITION NO.143 OF 2014

Bhausahab s/o Damodhar Kakde
Age 49 years, Occu. Service,
R/o Zilla Parishad, P.W.D.,
Sub-Division, Parner,
District Ahmednagar

... PETITIONER

VERSUS

1. The State of Maharashtra
through Secretary,
State Information Commission Office,
13th Floor, New Administrative Building,
In front of Mantralaya, Mumbai – 32
2. The State Information Commission,
Bench at Nashik
(Copy of respondents No.1 and 2 to be
served on G.P., High Court of Bombay,
Bench at Aurangabad
3. The Chief Executive Officer,
The Zilla Parishad, Ahmednagar,
District Ahmednagar.
4. The Executive Engineer,
P.W.D., Zilla Parishad,
South-Division, Ahmednagar.

5. Sanjay s/o Gorakshnath Pathak,
Age major, Occu. Business,
R/o At Satwad, Post, Devrai,
Tq. Pathardi, District Ahmednagar. ... RESPONDENTS

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Shri V.P. Latange, Advocate for petitioners
Shri P.M. Kulkarni, A.G.P. for respondents No.1 and 2
Shri S.T. Shelke, Advocate for respondents No.3 and 4

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Shri B.S. Shinde, Advocate holding for
Shri R.B. Singare, Advocate for respondent No.5

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CORAM : R.G. AVACHAT, J.

Date of reserving judgment : 29th August, 2019

Date of pronouncing judgment : 1st October, 2019

J U D G M E N T :

. Rule. Rule returnable forthwith and heard finally with the consent of learned counsel appearing for the parties.

2. The challenge in this Writ Petition is to the order dated 16/7/2013, passed by the Commissioner, State Information Commission, at Nashik, in Appeal No.RMA-2010/Appeal/CR/1060/4455, whereby the petitioner/ Public Information Officer has been directed to pay sum of Rs.12,000/- towards penalty on account of failure to furnish requisite information to the respondent No.5 within the statutory time-frame.

FACTS:

3. The petitioner, at the relevant time, was serving as In-charge Deputy Engineer-cum-Public Information Officer, P.W.D, Zilla Parishad Sub-Division, Pathardi, District Ahmednagar. The respondent No.5 preferred the application dated 17/7/2010 to the

Block Development Officer (B.D.O.), Pathardi, asking for certain information. The information pertained to works done/ completed during the years 2007-2009 and building and construction work relating to Zilla Parishad School at Karanji for the period 2006-2008. The information sought for was as regards estimate of the work, valuation thereof, cash book, vouchers, Account Number etc.

4. The Block Development Officer forwarded the said application to the petitioner on the next day i.e. on 18/7/2010. The petitioner received the same on 29/7/2010. The petitioner, in turn, forwarded the application to the Sectional Engineer of the concerned Department, Zilla Parishad, P.W.D., Sub-division, Pathardi, District Ahmednagar. The respondent No.5 filed first appeal before the Block Development Officer. Since the Block Development Officer was not the appellate authority, the Block Development Officer, in turn, forwarded the appeal to the Executive Engineer, Zilla Parishad, P.W.D., South Division, Ahmednagar on 15/9/2010. The Executive Engineer informed the respondent No.5 that the hearing of the first appeal was scheduled for 16/10/2010 at 11.00 a.m. As scheduled, the respondent No.5 appeared before the Executive Engineer. He was furnished with

the information pertaining to the petitioner's Department, namely P.W.D. Since the other information pertained to the School Education Department, the application was already forwarded to the Education Department, Panchayat Samiti, Pathardi. Since the respondent No.5 did not get the information, relating to Zilla Parishad School at Karanji, he preferred second appeal to the State Commission.

5. The Commissioner, State Information Commission, during hearing of the second appeal, found the petitioner and the Block Development Officer to have failed to furnish the necessary information within time. The Commissioner found that there was 61 days delay in furnishing the information by the petitioner. The Commissioner was, therefore, pleased to call upon the petitioner and Block Education Officer to show cause as to why both of them be not directed to pay penalty at a rate of Rs.250/- per day for the period of 61 days delay.

6. The petitioner and the Block Education Officer, both furnished their respective explanations. The Commissioner was, thereafter, pleased to direct both of them to pay the penalty of Rs.250/- per day for 61 days delay. It was further directed that

since the amount of penalty shall not exceed Rs.25,000/-, the Executive Engineer was directed to ensure that the amount of penalty is equally shared by both - the petitioner and the Block Education Officer. The petitioner paid a sum of Rs.12,000/- towards penalty, and then challenged the order of the Commissioner so far as regards the petitioner is concerned.

7. Learned counsel for the petitioner would submit that, the concerned Section Officer caused somewhat delay in furnishing the information relating to P.W.D. Sub-Division, Pathardi. At the time of hearing of the first appeal, the respondent No.5 was furnished with the requisite information. The respondent No.5, in turn, gave in writing to have received the information and has no grievance therefor. Learned counsel for the petitioner meant to say that, the respondent No.5 preferred second appeal to the Commissioner as he was aggrieved of not having received the information from the Block Education Officer. In view of the learned counsel, the Information Commissioner, therefore, should not have passed the impugned order.

8. Learned counsel for the respondent No.5 submitted before this Court to have no grievance against the petitioner. The

learned A.G.P. supported the impugned order.

9. Section 6 of Right to Information Act, 2005 (for short, the Act) speaks about requests for obtaining information. Section 7 states about disposal of requests. For ready reference, Section 7 of the Act is reproduced below :-

7. (1) Subject to the proviso to sub-section (2) of section 5 or the proviso to sub-section (3) of section 6, the Central Public Information Officer or State Public Information Officer, as the case may be, on receipt of a request under section 6 shall, as expeditiously as possible, and in any case within thirty days of the receipt of the request, either provide the information on payment of such fee as may be prescribed or reject the request for any of the reasons specified in sections 8 and 9:

Provided that where the information sought for concerns the life or liberty of a person, the same shall be provided within forty-eight hours of the receipt of the request.

(2) If the Central Public Information Officer or State Public Information Officer, as the case may be, fails to give decision on the request for information within the period specified under sub-section (1), the Central Public Information Officer or State Public Information Officer, as the case may be, shall be deemed to have refused the request.

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(7) Before taking any decision under sub-section (1), the Central Public Information Officer or State Public Information Officer, as the case may be, shall take into consideration the representation made by a third party under section 11.

(8) Where a request has been rejected under sub-section (1), the Central Public Information Officer or State Public Information Officer, as the case may be, shall communicate to the person making the request,

(i)

(ii) the period within which an appeal against such rejection may be preferred; and

(iii)

(9)

Section 19 of the Act provides the right of appeal.

Section 19 reads thus :

19. (1) Any person who, does not receive a decision within the time specified in sub-section (1) or clause (a) of sub-section (3) of section 7, or is aggrieved by a decision of the Central Public Information Officer or State Public Information Officer, as the case may be, may within thirty days from the expiry of such period or from the receipt of such a decision prefer an appeal to such officer who is senior in rank to the Central Public Information Officer or State Public Information Officer as the case may be, in each public authority:

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(3)

4 to 10:-

Section 20 of the Act provides for penalties.

20. (1) Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause, refused to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or

misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall impose a penalty of two hundred and fifty rupees each day till application is received or information is furnished, so however, the total amount of such penalty shall not exceed twenty-five thousand rupees:

Provided that the Central Public Information Officer or the State Public Information Officer, as the case may be, shall be given a reasonable opportunity of being heard before any penalty is imposed on him:

Provided further that the burden of proving that he acted reasonably and diligently shall be on the Central Public Information Officer or the State Public Information Officer, as the case may be.

10. In response to the show-cause-notice issued by the Commissioner, the petitioner submitted his reply, stating therein that, the requisite information was furnished to the respondent No.5 on the day of hearing of the first appeal. The respondent No.5 gave in writing to have no complaint. The information pertaining to the Education Department was to be supplied by the Block Education Officer. The Education Officer was requested to furnish the necessary information.

11. The record indicates that, there was some delay on

the part of the petitioner to furnish the information relating to his sub-division. The delay was occasioned due to failure on the part of the concerned Sectional Engineer to furnish the necessary information. The respondent No.5 therefore, preferred first appeal to the Executive Engineer. The information pertaining to the petitioner's Department (P.W.D.) came to be furnished to the respondent No.5 on 16/10/2010 during hearing of the first appeal. On the same day, the respondent No.5 acknowledged in writing to have received the information. He further gave in writing to have no grievance relating to the information supplied by the P.W.D. Since the respondent No.5 did not receive the information relating to the Education Department, he preferred second appeal. The memo of appeal indicates that, he wanted to have the information pertaining to Zilla Parishad School at Karanji. It is not clear from the appeal memo as to whether the respondent No.5 had made any grievance as to delay in receipt of the information pertaining to the P.W.D., of which the petitioner was Public Information Officer. The decision in appeal does not indicate that the respondent No.5 did in fact have such grievance. The State Information Commission, however, found that there was delay in furnishing the information. It does not appear from the record that the delay in furnishing information was intentional or there was any negligence

on the part of the petitioner. The record indicates that, on receipt of the application, the petitioner forwarded it to the Sectional Engineer, Zilla Parishad, P.W.D., Sub-Division, Pathardi and asked for furnishing the requisite information.

12. From the record, it does not appear that the petitioner either acted unreasonably and in-diligently. Moreover, the respondent No.5, who wanted to have the information, did not have any grievance in relation to the information received from the petitioner somewhat late. In this factual backdrop, the information Commissioner should not have directed the petitioner to pay penalty.

13. In view of the aforesaid factual backdrop, the petition succeeds. The petition is allowed in terms of prayer clause (B). The amount of Rs.12,000/- (Rupees twelve thousand) paid by the petitioner as penalty, be refunded to him. Rule made absolute in above terms.

(R.G. AVACHAT)
JUDGE