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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1626 OF 2017

Vijay Kondayya Manthena

... Petitioner

Vs.

Public Information Officer and Ors.

... Respondents

Mr. S.G. Kudle for the Petitioner.

Mr. R.B. Parab for the Respondent No.5.

Mr. S.B. Gore, AGP for the Respondent No.4 – State.

Ms. Pratibha Shelake I/b. Mr. Sagar Patil for the Respondent No.1 and 2.

CORAM : A.S.OKA AND
M.S. SANKLECHA, JJ.

DATE : 12th MARCH 2019.

ORAL JUJGMENT (Per A.S. Oka, J.)

1 Rule. The learned counsel appearing for the first and second respondents as well as the learned counsel appearing for the fifth respondent waives service. The learned AGP waives service for the fourth respondent. Notice to third respondent is dispensed with. Forthwith taken up for final disposal.

2 The petitioners sought certain information by making an application to the first respondent under the Right to Information Act, 2005 (for short “RTI Act”). He had to carry the matter upto the second Appellate Authority by preferring an appeal under sub-section (3) of

section 19 of the RTI Act. By the order dated 24th August 2015, the second appellate authority allowed the appeal and directed the first respondent to furnish the requisite information which was available with him within a period of 60 days free of cost. The petitioner filed a complaint to the second Appellate Authority making a grievance about the non-compliance of the order dated 24th August 2015. By the impugned order dated 23rd December 2016, the complaint was disposed by the second Appellate Authority by holding that the first respondent has furnished the requisite information.

3 Perusal of the impugned order shows that on the basis of the complaint, a notice was issued to the first respondent. Apart from the fact that the first paragraph of second page of the impugned order records that certain information has not been furnished to the petitioner, only the finding recorded by the second Appellate Authority is that prima facie, requisite information has been furnished to the petitioner. The second Appellate Authority was called upon to decide whether there was compliance with its own order dated 24th August 2015. The complaint filed by the petitioner making a grievance about non-compliance could not have been dismissed only on the basis of a prima facie finding. In fact, after making due enquiry, after hearing the parties, the second Appellate Authority ought to have come to a final conclusion on the question whether its own order was complied with by the first respondent. Only by recording a prima facie finding, the complaint ought not to have been dismissed. Therefore, there is no option but to send back the matter to the second Appellate Authority.

4 We may also note here that notwithstanding the disposal of the petition, the first respondent is bound to comply with the direction contained in clause 2 of the order dated 28th January 2019.

5 Subject to what is observed above, we pass the following order :-

ORDER

- (i) The impugned order dated 23rd December 2016 passed by the third respondent is hereby quashed and set aside. The complaint filed by the petitioner is restored to the file of the third respondent;
- (ii) The third respondent after giving an opportunity of being heard to the parties and after making appropriate enquiry shall decide the complaint afresh in the light of the observations made in this judgment and order;
- (iii) The complaint shall be disposed of as expeditiously as possible and preferably within a period of three months from the date on which an authenticated copy of this order is produced by the petitioner in the office of the third respondent;
- (iv) Rule is made absolute on above terms.

(M.S. SANKLECHA, J.)

(A.S.OKA, J.)