

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,

NAGPUR BENCH, NAGPUR

L.P.A. NO.284 OF 2009 IN
WRIT PETITION NO.2772 OF 2008 (D)

Balasaheb s/o. Bhanudas Waghmode,
Aged about 35 years, Occ. Service,
(Sub-Divisional Police Officer)
r/o. c/o. City Kotwali Police
Station, Akola, District Akola.

APPELLANT

// VERSUS //

1.Ramrao Dattuji Umbarkar,
Aged about Major, r/o.
Balwant Colony, Near
Shubhamkaroti Mangal
Karyalaya, Post Gandhinagar,
Akola, Tq. and District Akola.

2.The State Information
Commissioner, Ravi Bhawan,
Civil Lines, Nagpur.

RESPONDENTS

Mr.Palash Mohta, Advocate for the appellant.
None for the respondents.

CORAM : SUNIL B. SHUKRE &
AVINASH G. GHAROTE, JJ.

DATE : 20.1.2021.

ORAL JUDGMENT (Per Sunil B. Shukre, J) :

1. Heard Mr.Palash Mohta, learned Counsel for the appellant. None appears for the respondents.

2. Perused the impugned Judgment and also the order dated 6.11.2017 passed by the State Information Commissioner, Vidarbha Region, Nagpur, which constituted the cause of action for filing of the Writ Petition, in which the impugned Judgment has been passed.

3. The appellant has initially felt aggrieved by the parts of the impugned order dated 6.11.2017 passed by the State Information Commissioner i.e. respondent no.2, but now the grievance of the appellant is restricted to parts 2

and 3 of this order. The reason being that Part 1 of the order, which directed the appellant to supply information sought by respondent no.1 within three days from the date of receipt of order, has now been redressed with supply of the said information free of charge in compliance with Section 7(6) of the Right to Information Act, 2005, as seen from the communication dated 23.11.2007 issued by the appellant to respondent no.1. So now the dispute is restricted to the proposal for imposition of penalty of Rs.25,000/- upon the appellant and the direction given for initiating departmental action against him.

4. Mr.Palash Mohta, learned Counsel for the appellant submits that such punitive orders could be passed under Section 20 of the Right to Information Act, 2005 only when there is gross negligence, complete arbitrariness or some mala fide action on the part of the Information Officer in not giving the requisite information. In the present case, apart from the fact that respondent no.2 has not recorded any finding in this regard, there is also no material available on record which would show that the information was

withheld by the appellant deliberately with any mala fide intention or due to gross negligence on his part. Learned Counsel for the appellant, in order to substantiate his point of argument, has invited our attention to the efforts taken by the appellant in obtaining the information which was required to be supplied by him to respondent no.1.

5. On going through the communications issued by the appellant to his subordinate staff members, copies of which have been filed on record and which are of the dates 15.4.2006, 3.5.2006, 15.6.2006, 9.7.2006 and 21.2.2007, we find that there is great substance in the argument of learned Counsel for the appellant. These communications indeed show that the appellant had taken sincere efforts in laying his hands on the information sought by respondent no.1, but found himself helpless as the concerned clerks in-charge of the record room were unable to find the record of all the relevant proceedings which were sought by respondent no.1. There are a few more communications issued by appellant on 16.8.2006 and 9.12.2005 respectively to Assistant P.I., Police Welfare Department,

Akola and Superintendent of Police, Akola, both of which also show that the appellant had, all the while been making efforts for obtaining requisite information, but in vain. Such efforts would show that appellant was not negligent and acted in a bona fide way in the matter, and so no punitive action can be taken against him. It appears to us that these efforts of appellant have not been considered in any manner by respondent no.2. Perusal of the impugned order shows that respondent no.2 did not at all address the issue of deliberate withholding of information or acting in a mala-fide manner by the appellant in this case. These aspects of the matter have also not been considered by the learned Single Judge of this Court when he dismissed the petition by the Judgment dated 20.10.2008.

6. In the circumstances, the impugned Judgment as well as the impugned order cannot be sustained in the eye of law to the extent they direct and confirm the action of imposition of penalty and initiation of departmental inquiry against the appellant. In the result, the appeal is partly allowed.

The impugned Judgment and the impugned order are quashed and set aside to the extent of imposition of penalty and the direction for initiating of departmental action against the appellant.

JUDGE

JUDGE

[jaiswal]

Suraj
Jaiswal

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