

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 4009 OF 2017

PETITIONER : Narendra Kashinath Lonkar,
aged about 54 years, Occ. Service,
(Presently working as Deputy Collector
(General), Collector Office, Wardha)
R/o. Plot NO. 241, Near Trikonai Maidan,
Hanuman Nagar, Nagpur.

...VERSUS...

RESPONDENTS:

1. The Learned State Information Commissioner,
State Information Commission, Nagpur
Bench, Nagpur, Administrative Building No.2,
Civil Lines, Nagpur.
2. Suresh Shalikram Durugkar, aged about Major
occ. Social Worker, R/o. Chandrashekhar
Ward, Near Baba Bhawan, Shrinagar, Gondia
Tah. and Dist. Gondia.
3. Divisional Commissioner, Nagpur Division,
Nagpur.
4. Collector, Gondia.

Shri S.S.Ghate, Advocate for petitioner
Shri A.S.Fulzele, Addl. GP for respondent nos.1, 3 and 4
None for respondent No.2

CORAM : AVINASH G. GHAROTE, J.
DATE : 11/02/2021.

1] Heard Mr. Ghate, learned Counsel for the petitioner, Mr. A.S.Fulzele, learned Addl. G.P for the respondent nos.1, 3 and 4. None appears for the respondent no.2, though served.

2] Rule. Rule made returnable forthwith.

3] The respondent no.2, on 1/2/2016, had initiated proceedings under Section 18 (1) of the R.T.I. Act bearing Complaint No.42/2016, whereby it was prayed to direct the defaulting officers to pay him compensation of Rs.5,00,000/-. The matter was fixed on 6/5/2016, on which date, the PIO as well as the first Appellate Authority were absent, due to which it was adjourned to 23/6/2016, on which date the PIO and the authorized representative Mr. Kiramkar of the first Appellate Authority/petitioner were present. The respondent no.1, noting that Appeal No.411/2013 filed by respondent no.2, was allowed on 28/10/2014 by the respondent no.1, whereby the supply of the balance information was directed to be done within eight days

without costs and noting the absence of the PIO as well as the first Appellate Authority, in Appeal No. 411/2013 issued a show-cause-notice and they were directed to submit their explanation within 30 days. By the impugned order dated 23/6/2016, passed in Complaint No. 42/2016, the respondent no.1 noted that the petitioner, was absent on seven occasions, namely, 21/8/2014, 25/9/2014, 28/10/2014, 23/9/2015, 16/10/2015, 6/5/2016 and 23/6/2016. The impugned order further notes that the Collector, Gondia, was telephonically intimated about the absence, upon which, the petitioner, who then was working with the office of the Divisional Commissioner, Nagpur had appeared and had sought time, which though granted, the petitioner did not appear thereafter, the respondent no.1, rendered a finding, that the petitioner was adamant, had a negative attitude and had defied the order of the Commission, due to which the time of the Commission was wasted and therefore granted compensation of Rs.25,000/- under Section 19 (8) (b) of the R.T.I. Act by the order dated 23/6/2016 and further directed initiation of a disciplinary enquiry against the petitioner, for violation of Section 19 (6) of the R.T.I. Act, for having not decided the appeal, within 45 days from the date of its filing. It

is this order dated 23/6/2016, which is impugned in the present petition.

4] Mr. Ghate, learned Counsel for the petitioner, submits, that the impugned order, is violative on account of non-consideration of material facts. He submits that the present petitioner, came to be appointed as the first Appellate Authority under the R.T.I. Act, on 17/4/2015 and till 16/4/2015, Mr. Anant Walaskar was holding the charge of R.D.C., Gondia as well as first Appellate Authority under the R.T.I. Act and therefore, could not be held personally responsible, for the communication dated 7/11/2012 or the order passed on 31/2/2013 or for that matter, absence on 28/10/2014.

5] Mr. Ghate, learned Counsel for the petitioner further submits that the subsequent absence of the petitioner, also stood explained, in as much as on two occasions, when the matter was fixed on 28/10/2014, 23/9/2015 and 6/5/2016, the notice of appearance, was received after the date fixed for appearance. He further submits that the absence of the petitioner, on 16/10/2015,

also stood explained, as the petitioner, was preoccupied in the arrangements for the tour of the Hon'ble Chief Minister in Gondia District on 17/10/2015. He further submits that on 23/3/2016, the petitioner had deputed Mr. Kiramkar, who was present in the office of the respondent no.1. He therefore submits that there was no reason or cause for the respondent no.1 to record a finding, that the petitioner was adamant and the absence was intentional. By inviting my attention to the provisions of Section 20 (2) of the R.T.I. Act, he submits that a disciplinary action, can only be recommended against the Central Public Information Officer or the State Public Information Officer, as the case may be, under the Service Rules applicable to him and not against the first Appellate Authority and the impugned order, in so far as it directs disciplinary enquiry against the first Appellate Authority is clearly without jurisdiction. He further submits that Appeal No.411/2013, was finally decided on 28/10/2014, on which date, the petitioner was not the first Appellate Authority at all and therefore, the impugned order, which directs initiation of an enquiry for having violated the mandate of Section 19 (6) of the R.T.I. Act, was clearly untenable.

6] Learned Additional Government Pleader Mr. Fulzele for the respondent nos.1, 3 and 4 has supported the impugned order. None appears for the respondent no.2, though served.

7] It is material to note that the petitioner came to be appointed as a first Appellate Authority on 17/4/2015, which position is not disputed by the learned Additional Government Pleader. It is also not disputed that Appeal No.18/2013, came to be dismissed on 13/1/2013 and Second Appeal No.411/2013 came to be decided on 28/10/2014, all of which was before the petitioner took charge as the Resident Deputy Collector, Gondia and the first Appellate Authority on 17/4/2015. Thus, finding of the respondent no.1 in the impugned order, that the petitioner as an Appellate Authority, did not decide the appeal as filed by the respondent no.2, within a period of 45 days, as per the mandate of Section 19 (6) of the R.T.I. Act, is clearly without any substance, whatsoever for the reason, that the petitioner, was not holding the office of the first Appellate Authority on 13/1/2013 when Appeal No.18/2013 was decided, nor he was holding the office of the first Appellate Authority on 28/10/2014, when Second Appeal No.411/2013 came

to be decided. Thus, the respondent no.1, could not fasten the blame of non decision of the appeal within the statutory period, upon the petitioner, which is the only reason, for issuing direction no.2 as contained in the impugned order dated 23/6/2016. The said direction, therefore on this ground alone cannot be sustained in law and is liable to be quashed and set aside on this count. In this view of the matter, there is no need to consider the other arguments as canvassed by Mr. Ghate, learned counsel for the petitioner.

8] In the result, the petition succeeds. The impugned order, dated 23/6/2016, in so far as it directs initiation of an enquiry against the present petitioner, vide direction no.2, as contained therein, is hereby quashed and set aside. Rule accordingly. No order as to costs.

JUDGE