

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

WRIT PETITION NO.15187 OF 2019

Laxman s/o Narsaya Bura
Age: 60 Yrs. Occ. Social Service,
R/o Bagade Mala, Balika Ashram
Road, near Dr. Sanjay Pund
Hospital, Ahmednagar, Tq. And
District Ahmednagar 414 001 = **PETITIONER**

VERSUS

1. The State of Maharashtra
Through its Principal Secretary
Mantralaya, Mumbai. 32.
2. The Chief State Information
Commissioner, Maharashtra State,
Near Administrative Building,
13th Floor, Mantralaya,
Mumbai.
- 2A The State Information Officer,
Nashik, Pinnacle Mall, 4th Floor,
Near Tryambak Naka Signal,
Nashik, Maharashtra – 422002.
- 2B The State Information Commissioner,
Nagpur, Administrative Bldg No.2,
Civil Lines, Nagpur,
Maharashtra 440001.
3. Joint District Registrar,
Ahmednagar (First Appellate Authority)
Parag Bldg. Collector office area,
Tq. And Dist. Aurangabad.
4. The Government Information Officer,
Joint Sub-Registrar, Ahmednagar-3,]
Parag Bldg. Collector office area,
Tq. And Dist. Aurangabad. = **RESPONDENTS**

Mr.Amol A.Kokad,Advocate for Petitioner;

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Mr.AA Jagatkar,AGP for Respondent Nos. 1 to 4.

CORAM : SMT. BHARATI H.DANGRE,J.

DATE : 25th January, 2022.

ORAL JUDGMENT:-

1. Rule. Rule made returnable forthwith.
Heard learned Counsel for petitioner and learned
AGP appearing for the respondents.

The grievance of the petitioner, in
nutshell, can be crystallized as under, -

On 31.3.2015 The petitioner preferred an
application to the Government Information Officer,
Joint Sub Registrar, Ahmednagar-3 (PIO), whereby he
sought information pertaining to registration of
all sale-deeds within the jurisdiction of the
authority pertaining to vacant land, agricultural
land, constructed houses, for the period commencing
from, 2006 to 31.3.2015. The details as to why that
information was sought need not be given since it
is not necessary to know for what purpose the
information is sought.

2. The PIO (Respondent No.4) communicated to
the petitioner, vide his communication dated
10.4.2015, with reference to his application, that

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the compilation from 2006 to 2015 is contained in 52 proceedings Book and each Register comprises of 100 pages, which would mean that the information is compiled in 5200 pages and by paying fees of Rs.2/- per page, he was directed to deposit an amount of Rs.10400/-. He was also informed that he can have inspection of the said documents as per his convenience and inform the date and time of inspection of the record so that record can be made available for inspection. Liberty is also granted to him to approach the appellate authority in case he was not satisfied with the information.

3. It is this communication, which is the bone of contention between the parties. As per the petitioner, this communication dated 10.4.2015 was received by him on 19.5.2015 and since it was received beyond the time prescribed, he is entitled to avail benefit of sub-section (6) of Section 7 of the Right to Information Act, 2005 (hereinafter referred to as the said Act). Counsel for the petitioner has also placed on record Outward Register from the office of Respondent No.4, which clearly manifest that the communication dated

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10.4.2015 is shown to have been dispatched in the Dispatch Register on dated 23.4.2015 by ordinary post.

4. Since the authority contemplated the amount to be deposited per page for the information that was required to be delivered, the petitioner preferred First Appeal before the first Appellate Authority, i.e. Joint District Registrar, Ahmednagar (Respondent No.3), agitating his grievance that the desired information is not supplied to him. He pleaded before the appellate authority that since the reply to his application is not received in time, he should be supplied the information free of charges. During pendency of proceedings, the Respondent No.4 addressed a letter dated 26.5.2015 to the petitioner to collect information by depositing requisite charges.

The appellate authority, by recording that supply of the documents, on deposit of charges, per page as decided by the the office of PIO on 23.4.2015, was justified, took note of the delay in dispatch of the letter, intimating the decision though upheld the order, after making comments on the letter being dispatched by the

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authority on 23.4.2015, recorded that it was belatedly received by the petitioner. Therefore, upholding the decision of Respondent No.4, directing the petitioner to pay requisite fee for delivering the information, the appeal came to be disposed off.

5. In Second Appeal being preferred to the State Information Commissioner, Nagpur, the Appellate Authority, allowed the appeal in the wake of its finding, that the letter issued by the PIO, seeking amount for supply of the information, is received by the appellant belatedly and, therefore, in terms of provisions of sub-section(6) of Section 7 of the Act, he is entitled for the information free of costs. However, since the information sought for is voluminous and considering its wide spread of the period for which the information is sought, it is directed that the appellant shall be permitted inspection of the information by fixing a date and on he marking 100 pages in the bulk of the documents, he shall be entitled to those documents free of costs as per Section 7(6) of the said Act. It is this order, which is assailed in

the present writ petition.

6. On perusal of the Scheme of the Right to Information Act, which is a revolutionary Act, creating a new regime to promote transparency in Government institutions, which set out the rules and procedure regarding citizen's right to secure access to information under the control of public authorities with a view to promote accountability in the working of every public authority. The enactment which has been looked upon as a game changer ensure transparency in the administration of the State functionary and procedure is prescribed by enactment to be followed in obtaining the information by any person.

Section 6 of the enactment is a provision about a request for obtaining the information and the manner in which such information shall be sought for and from whom it can be obtained. Section 7 prescribe the manner in which the authority, to whom an application is made under Section 5, will provide for the information. Section 7 contemplate information to be provided as expeditiously as possible and in any case within thirty days of receipt of the said request and it

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permit to either provide the information on payment of such fee, as may be prescribed or reject the request for any of the reasons specified under Sections 8 and 9. In the Scheme of the enactment, sub-section (5) of Section 7, prescribes that where access to information is to be provided in the printed or in any electronic format, the applicant shall, subject to the provisions of sub-section (6) pay such fee as may be prescribed. Sub-section (6) of Section 7, which begins with non-obstante clause and set out that, notwithstanding anything contained in sub-section (5), the person making the request for the information shall be provided the information free of charge where a public authority fails to comply with the time limits specified in sub-section (1).

7. Conjoint reading of Sections 6 and 7 with its various sub-sections would lead irresistible conclusion that on receipt of an application, seeking information, the same shall be provided by the Information Officer within thirty days of receipt of such request, which can either be declined/rejected or information can be provided on

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payment of such fee as may be prescribed. This contemplates a communication on the part of the Information officer to the applicant about the fees to be charged for providing such information. However, where there is failure to adhere to the said time limit as set out in sub-section (1) of Section 7, the information is to be provided free of charge. The question that arises for consideration in the facts of the present case is, therefore, whether there was failure on the part of the Information officer to supply the information to the petitioner within the time limit prescribed in sub-section (1) of Section 7, which could make him entitle for the information free of cost.

8. Perusal of the relevant dates would reveal that the application was preferred by the petitioner on 31.3.2015, seeking information and the decision upon the same application was meticulously required to be taken by Respondent No.4 which is dated 30th April, 2015. Before expiry of the said period, a communication is addressed to the petitioner by Respondent No.4 on 10.4.2015, intimating him about the charges to be

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deposited by him, in case he is desirous of obtaining the said information. The said letter came to be dispatched by the authority on 23.4.2015, period short of six days from the date of expiry of the period of thirty days, within which an intimation about payment of charges ought to have been received by the petitioner.

The letter dated 10.4.2015 from the Respondent No.4 (PIO) is received by the petitioner on 19.5.2015 and that is the reason which give rise to the claim of the the petitioner under sub-section (6) of Section 7 of the Act.

9. The Second Appellate Authority has rendered a finding to the effect that the letter has been received by the petitioner belatedly.

I do not see that this reasoning of the Appellate Authority would justify its decision to allow the appeal of the petitioner for the simple reason that sub-section (1) of Section 7 contemplates that on receipt of the request under Section 6, the Central Public Information Officer or the State Public Information Officer, as the case may be, as expeditiously as possible and in

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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.

On receipt of the request from the petitioner, the PIO preferred the first course to make the information available, and worked out the changes for obtaining the said information and vide his communication addressed to the petitioner, intimated him about the information being available, subject to payment of necessary charges, as worked out by him. He was also informed that he shall communicate the date and time of his convenience, so that the information can be made available to him. The petitioner was directed to deposit necessary fees/charges in the Govt. treasury, so as to avail the information as the information was made available by stating number of pages in which the information is available. The petitioner however failed to deposit the said amount and collect the information, as directed and seek benefit of the delay in receipt of the communication by him as unfortunately it was received by him on 19.5.2015.

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In any case, for the said reason, Respondent No.4 cannot be said to be at fault since looking to the information sought for which is in bulk, to trace the said information, it cannot be said that period of ten days is unjustified. However, though the letter is prepared by Respondent No.4 on 10.4.2015, its dispatch got postponed and the letter was dispatched only on 23.4.2015, necessarily causing delay in its receipt by the petitioner.

In fact, the communication which was addressed to the petitioner at his residence at Ahmednagar ought to have been received by him immediately since it was dispatched from the office of the Joint Registrar, who was also stationed in Ahmednagar, but since it was sent through ordinary post, it was delivered to him on 19.5.2015. In this case, it cannot be said that Respondent No.4 was at fault since it could have been well presumed that the letter could have been received by him at the most within three days since the destination was it was in the same city. However, the calculation go wrong at the instance of Respondent No.4 cannot be said to make the petitioner

entitled for all the documents free of costs. The appellate authority has wrongly arrived at a conclusion that the letter is obtained by him belatedly and, therefore, he is entitled to avail benefit of Section 7(6) of the Act.

10. The appellate authority has fallen in error in permitting part of the pages, i.e. 100 in numbers, free of costs. It is not understood on what basis the appellate authority granted this facility to the petitioner to avail 100 pages free of costs since the total number of pages, which are sought by him by his application under the Right to Information Act, are approximately 5200.

11. In the back-drop of the scheme of the Right to Information Act, time limit for providing the information assumes significance and, therefore, Section 7 of the Act which provide for disposal of the request, by sub-section (1) contemplate that on receipt of the request to supply information as demanded, the Information Officer shall, as expeditiously as possible and in any case within thirty days of the receipt of the

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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. Sub-section (6) of Section 7 which reads as under, -

“ Notwithstanding anything contained in sub-section (5), the person making request for the information shall be provided the information free of charge where a public authority fails to comply with the time limits specified in sub-section (1).”

Reading sub-section (1) and sub-section (6) of Section 7 conjointly would reveal that the Information officer shall supply the information sought for within the time framed of thirty days of the receipt of the request and he will either provide information on payment of fee as may be prescribed or reject the same. This indicate that he has to act promptly on the request and show his willingness to provide the information or he may reject the request on the grounds available to him. When he express his intention to provide the information, he shall set out the schedule of payment of fee which would enable the applicant to

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have access to the information. However, if a person is not provided the information within the time limits specified in sub-section (1), i.e. within period of thirty days of the receipt of the request, he shall be eligible to avail the information free of charge.

The scheme contained in section 7, therefore, contemplate utmost promptitude on the part of the Information officer and any delay or lethargy on his part would entitle the applicant seeking information to obtain it free of cost.

12. In the scenario of the present case, it cannot be said that the Respondent No.4/Government Information officer committed any lapse to make the information available as on receipt of the application dated 31.3.2015, within ten days, he was ready with the information subject to the charge being deposited by the applicant in availing the same. His promptness to make the information available, however, suffered a little set-back when the letter by him addressed to the petitioner came to be dispatched on 23.4.2015 which was received by the petitioner on 19.5.2015 and he dispatched the

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said letter by ordinary post. The petitioner cannot take benefit of the delay in dispatch of the said letter and the wording used in Section 7 cannot be construed in the present case to mean that the Respondent No.4 failed to comply with the time limit specified in sub-section (1) of Section 7, since it can be seen that he has disposed of the request of the petitioner within thirty days of the receipt of the request by showing his inclination to supply the information on payment of fee which was charged. There is no delay on his part to take decision either to supply the information or to reject the request and rather on the tenth day from the receipt of the request of the petitioner, he made his intention clear to make the information available sought by him on payment of necessary charges and thus, he has disposed of the request of the petitioner within the period stipulated under sub-section (1) of Section 7 and, therefore, the benefit, flowing from sub-section (6) of Section 7, which is sought to be drawn by the petitioner, is not available to him.

13. In the wake of the interpretation of sub-

section (6) of Section 7, sub-section (1) and sub-section (6) of Section 7 and applying the said provision in the case in hand, the second appellate authority has mis-construed the aforesaid provision and has wrongly recorded that the appellant is entitled for getting the copies free by taking recourse to sub-section (6) of Section 7. However, the authority further records that taking into account the nature of the information sought for and its magnitude as well as the period, it would be necessary that the appellant shall be allowed to provide inspection and he shall be given a right to choose information contained in 100 pages, which shall be made available to him free of cost under Section 7(6).

It is not clear as to under what provision of the Act, the petitioner is held entitled for the information contained in 100 pages free of cost. If the information is to be provided free of cost, it can be only done by invoking sub-section (6) of Section 7. When there is failure to adhere to the time limit prescribed under sub-section (1) of Section 7 and the half way procedure adopted by the appellate authority to provide 100

pages free of cost, do not fit into the scheme of the enactment. The petitioner is aggrieved by the said order as he is of the firm opinion that he is entitled for the entire information free of cost by invoking sub-section (6) of Section 7.

The approach of the appellate authority in passing the impugned order dated 8.1.2019 is outside the purview of the Right to Information Act and, therefore, the said order cannot be sustained. Resultantly, the impugned order is quashed and set aside. But, since it cannot justify its existence on the reasons contained therein, it is open for the petitioner to collect the information made available to him by Respondent No.4 by depositing necessary charges.

Necessarily by holding that the Respondent No.4 has disposed of the request of the petitioner within the period of thirty days, as contemplated under sub-section (1) of Section and, therefore, benefit of sub-section(6) of Section 7 cannot be availed by the petitioner and particularly in the light of the affidavit filed by the Respondent No.4 in the present writ petition, stating that the petitioner did not remain present

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to collect the information and, therefore, Respondent No.4 cannot be said to be at fault. Reserving liberty to the petitioner to avail the said documents/information, which are indicated to be available to him as per the letter of Respondent No.4, dated 10.4.2015, by depositing necessary charges, as determined by the Respondent No.4, the relief sought by him to get information free of cost is declined.

14. For the aforesaid reasons, the petitioner is not entitled to any relief as prayed by him and though the order of Respondent No.2 is set aside on account of erroneous interpretation of Section 7 of the Act, the petitioner is still held entitled for the information sought for, subject to compliance, as directed by the Government Information Officer on depositing the charges for obtaining the said information as determined by the Respondent No.4.

Rule is discharged.

(SMT. BHARATI H.DANGRE,J.)

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