

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.6466 OF 2021

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First Appellate Authority

Shri. Dinesh Chandel

..Petitioner

Versus

State Information Commission

(Konkan Division) and Anr.

..Respondents

Ms. Geetanjali T. Dutta, for the Petitioner.

Mr. C. D. Mali, AGP for the Respondent No.1.

Mr. Onkar Warange, for the Respondent No.2.

CORAM : NITIN W. SAMBRE, J.

DATE : 15th JUNE, 2022

P.C.

1. Heard.

2. The respondent No.2 moved under the provisions of Right to Information Act, 2005 (for short "RTI Act") on 17th July, 2018 seeking certain information in regard to the record of a Co-operative Housing Society. It appears that since the said information was not supplied, the respondent No.2 was prompted to prefer First Appeal before the petitioner, who was at the relevant time manning the post. The appeal was preferred on 17th August, 2018 against the order of Information Officer dated 27th July, 2018.

3. It appears that the said appeal was not decided within a statutory period. As a consequence, the respondent No.2 was required to move before the State Information Commissioner. The State Information Commissioner passed the order impugned dated 27th January, 2021, thereby directing the disciplinary action to be taken against the petitioner for not deciding the appeal of the respondent No.2 preferred on 17th August, 2018 within the statutory period. As such, this petition.

4. The contentions of the counsel for the petitioner, who was manning the post of First Appellate Authority are, even if the appeal was preferred on 17th August, 2018 questioning the order of the Information Officer dated 27th July, 2018, the said First Appeal was not placed before him by his subordinate officials. It is further claimed that the petitioner was under transfer from his existing office to the office at Dombivali by virtue of transfer order dated 31st May, 2019. As a consequence, the First Appeal preferred by the respondent No.2 was not decided within the statutory period. It is claimed that the State Information Commissioner has passed the order impugned, before which though the notice was ordered against the post of the petitioner, same was served on his office address where he was posted before transfer dated 31st May, 2019 and as such, neither he was having notice about hearing of

the proceedings before the State Information Commissioner nor the show-cause notice.

5. As such, it is claimed that the order impugned passed by the State Information Commissioner is in violation of the principles of natural justice.

6. Counsel for the respondent No.2 though concedes the position that the petitioner appears to have been not served with the notice of hearing in the proceedings which led to the passing of the impugned order, however, submits that there is no sufficient explanation coming forth from the petitioner for not deciding the First Appeal within the statutory period. It is further urged that even today the entire set of documents which were sought to be issued/provided under the provisions of RTI Act are not made available but for 171 pages. As such, according to him, the Court may pass appropriate order in the matters.

7. I have considered the aforesaid submissions.

8. The fact that the petitioner was under transfer vide transfer order dated 31st May, 2019. The petitioner was earlier posted in the office of Mira Road, from where he appears to have been transferred to Dombivali. The fact remains that the Second Appellate Authority i.e. the

State Information Commissioner while dealing with the appeal of the respondent No.2 though has caused notice, the same does not appear to have been served or received by the petitioner personally. As such, same was addressed to the post which the petitioner was occupying before his transfer on May, 2019.

9. As such, the fact that the impugned order thereby initiation of disciplinary against the petitioner appears to have been passed without notice or offering hearing to the petitioner by the Second Appellate Authority.

10. In that view of the matter, the order impugned passed by the State Information Commissioner to the extent of directing disciplinary action against the petitioner is hereby quashed and set aside. The statement made by the petitioner that he shall appear before the State Information Commissioner (Second Appellate Authority) on 1st July, 2022 along with explanation for not passing the order on the First Appeal of the respondent No.2 is accepted as an undertaking.

11. The explanation so tendered on 1st July, 2022 be accepted in the aforesaid second appeal. The Second Appellate Authority i.e. State Information Commissioner shall decide the second appeal in accordance with law

after considering the explanation of the petitioner and also offering opportunity of hearing.

12. Needless to clarify that it shall be open for the respondent No.2 to object the explanation tendered by the petitioner before the Second Appellate Authority.

13. It shall be open to the respondent No.2 to canvass her claim that the entire record which she has sought under the provisions of RTI Act was not made available till this date.

14. With the above observations, the petition stands partly allowed.

[NITIN W. SAMBRE, J.]