

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

WRIT PETITION NO.4765 OF 2017

Laxman Irba Waghmare
Aged about 57 years, Occ: Service
(Regional Deputy Commissioner Social
Welfare Department, Latur)
R/o Latur, Dist. Latur.

...PETITIONER

---VERSUS---

1. State Information Commissioner,
Amravati
2. Public Information Officer (Social Welfare
Officer Zilla Parishad Washim)
3. Gajanan Atmaram Dolarkar
Aged about adult, R/o Vasant Nagar, Tq.
Manora, Dist. Washim.

...RESPONDENTS

Shri Virendra Darne, Advocate for the petitioner.
Ms Aarti Singh, Advocate for respondent no.2.

CORAM : AMIT B. BORKAR, J.
DATED : 21st JUNE, 2022.

ORAL JUDGMENT :

1. **Rule.** Rule is made returnable forthwith.
2. By the present petition under Article 227 of the Constitution of India, the petitioner is challenging the order passed by the State Information Commissioner, exercising power under Section 19(3) of the Right to Information Act, 2005 (for short, "RTI Act")

imposing penalty of ₹3,000/- on the petitioner for non-supplying information within prescribed time of 45 days.

3. The petitioner was working as Regional Deputy Commissioner, Social Welfare Department, Latur. It appears that the respondent no.3 filed an application seeking information under RTI Act on 26.03.2013. Since the information was not supplied to the respondent no.3, he filed an appeal before petitioner, who was working as Regional Deputy Commissioner and First Appellate Authority under the RTI Act. The petitioner received an appeal on 27.06.2013. He decided the said appeal on 17.09.2013 directing the Public Information Officer to supply the information to the respondent no.3.

4. Aggrieved thereby, the respondent no.3 filed appeal before the State Information Commission which by impugned order dated 13.02.2017 imposed penalty of ₹3,000/- on the petitioner. The petitioner has therefore challenged the said order by way of present writ petition.

5. This Court on 25.07.2017, issued notice to the respondent no.3. Since the respondent no.3 failed to appear before this Court, on 09.02.2021, issued notice for final disposal. The office remark shows that respondent no.3 is served with this petition.

6. On 10.06.2022, none appeared for the respondent no.3 therefore matter was fixed for 14.06.2022. On that date also the respondent no.3 failed to appear either personally or through Advocate. Since notice was issued for final disposal, this Court is deciding the writ petition on merits.

7. I have carefully considered the impugned order. The State Information Commission in the impugned order has imposed penalty of ₹3,000/- without ascertaining whether the delay on the part of petitioner was intentional or not. The impugned order is passed without adjudicating whether delay was due to circumstances beyond control of the petitioner. Merely because there is delay on the part of First Appellate Authority that itself, without anything more, does not entitle the State Information Commission to impose punishment unless State Information Commission is of the opinion that the delay occurred was without reasonable cause and persistent default on the part of erring officer.

8. In the case of **Manohar s/o Manikrao Anchule Vs State of Maharashtra**¹, the Apex Court in paragraph 30 held as under:

“30.All the attributable defaults of a Central or State

¹ AIR (SC) 681

Public Information Officer have to be without any reasonable cause and persistently. In other words, besides finding that any of the stated defaults have been committed by such officer, the Commission has to further record its opinion that such default in relation to receiving of an application or not furnishing the information within the specified time was committed persistently and without a reasonable cause. Use of such language by the Legislature clearly shows that the expression 'shall' appearing before 'recommend' has to be read and construed as 'may'. There could be cases where there is reasonable cause shown and the officer is able to demonstrate that there was no persistent default on his part either in receiving the application or furnishing the requested information. In such circumstances, the law does not require recommendation for disciplinary proceedings to be made. It is not the legislative mandate that irrespective of the facts and circumstances of a given case, whether reasonable cause is shown or not, the Commission must recommend disciplinary action merely because the application was not responded to within 30 days. Every case has to be examined on its own facts. We would hasten to add here that wherever reasonable cause is not shown to the satisfaction of the Commission and the Commission is of the opinion that there is default in terms of the Section it must send the recommendation for disciplinary action in accordance with law to the

concerned authority. In such circumstances, it will have no choice but to send recommendatory report. The burden of forming an opinion in accordance with the provisions of Section 20(2) and principles of natural justice lies upon the Commission.”

9. It is true that the Apex Court was considering the initiation of departmental enquiry in the facts of the said case but the appellant was working as a Government officer and passing of such drastic order has consequences in the service record of such official. Therefore, it was expected from authorities under the RTI Act to adjudicate as to whether the delay on the part of authorities was without any reasonable cause or there was default to exercise power under the provisions of RTI Act. In absence of adjudication of reasonable excuse for delay, the impugned order cannot be sustained. I, therefore, pass the following order.

10. The impugned order dated 13.02.2017 passed in Appeal No.AM-1632/2014 by State Information Commissioner, Amravati is quashed and set aside.

11. Rule is made absolute in above terms. No costs. Pending civil application (s), if any, stand disposed of.

JUDGE

Wagh