

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

CRIMINAL WRIT PETITION NO.1484 OF 2019

Saudagar Mohammad Rafi,
Age-48 years, Occu:Chairman / Social Worker,
R/o-Mu. Po. Walandi,
Taluka Devni, District-Latur.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through its Chief Secretary,
Government of Maharashtra,
Mantralaya, Mumbai-400032,
- 2) The State Information Commission,
Through State Information Commissioner,
Having Bench at Aurangabad,
- 3) The Divisional Commissioner, Aurangabad,
Divisional Commissioner Office,
Taluka and District-Aurangabad,
- 4) The Collector, Latur,
Collector Office,
Taluka and District-Latur,
- 5) The Section Officer and Information Officer,
Urban Development Department,
Mantralaya, Mumbai – 400032,
- 6) The Deputy Collector,
Deputy Collector Office, Nilanga,
Taluka-Nilanga, District-Latur,
- 7) The Divisional Commissioner and
Regional Director, Municipal Administration,
Aurangabad, Taluka and District-Aurangabad,

8) First Appellate Officer and Chief Officer,
Nagar Panchayat Office,
Shirur Anantpal, District-Latur,

9) Public Information Officer,
Nagar Panchayat Shirur Anantpal,
Taluka-Shirur Anantpal,
District-Latur.

...RESPONDENTS

...
Mr.P.S. Magar Advocate for Petitioner.
Mr.R.D. Sanap, A.P.P. for Respondent Nos. 1 to 7.
Mr.T.M. Venjane Advocate for Respondent No.8 and 9.
...

**CORAM: SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATE OF RESERVING ORDER : 5th DECEMBER 2022

DATE OF PRONOUNCING ORDER : 17th JANUARY 2023

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. By invoking the constitutional powers of this Court, the petitioner, who is a social worker and Right to Information activist, prays that the respondents be directed to take action against the officers, staff under Sections 4, 7, 8 and 9 of the Maharashtra Public Records Act, 2005 (hereinafter referred to as "MPR Act") and also to register a criminal offence against the

officer and the staff responsible for the unavailability / purposely misplacing of the said record.

2. Heard learned Advocate appearing for the petitioner, learned APP Mr. Sanap appearing for respondent Nos. 1 to 7 and learned Advocate appearing for respondent Nos.8 and 9.

3. Learned Advocate for the petitioner submits that the petitioner sought information by application dated 16th February 2017 under the Right to Information Act, 2005 from respondent No.9 regarding the mobile towers in the area of Shirur Anantpal, Nagar Panchayat for the duration from 1st January 2014 to 16th February 2017. The information was not supplied by respondent No.9 and therefore, petitioner filed First Appeal dated 18th March 2017 before the appropriate authority. Even the Appeal was not heard, therefore, he gave letter to respondent No.8 on 24th April 2017 that some order be passed so that he can approach the higher authority. Even after the said letter, no order was passed and therefore, he issued notice on 25th May 2017 for taking action. Thereafter, the petitioner filed Second Appeal bearing No.3178 of 2017 on 10th July 2017, under Section 19(3) of the Right to Information Act. The Second Appeal was still pending when the petitioner preferred present Writ Petition. The

petitioner, in the meanwhile, made correspondence and respondent No.8 informed that no objection certificate or any other record regarding mobile tower during the tenure of then Gram Panchayat is not available. Letter was also given on 15th May 2018 to respondent No.8 that, as the record was not available in Shirur Anantpal Nagar Panchayat, action be taken under Section 4, 7, 8 and 9 of the MPR Act. The petitioner contends that time and again he is making applications and seeking information, however, it is not purposefully supplied. There is huge corruption under the pretext that mobile towers are erected. When information is sought from respondent Nos.1 to 8 and there is no response, it violates fundamental rights of the petitioner under Article 14 of the Constitution of India, hence the present Writ Petition.

4. Learned Advocate for the petitioner has taken us through various communications and applications made by the petitioner to various authorities i.e. respondents seeking information regarding the mobile towers, seeking copies of rent agreement etc. and it is stated that no information has been supplied. Learned Advocate for the petitioner relies on the decision of this Court at Principal Seat in ***Writ Petition No.6961 of 2012 decided on 27th February 2015 (Vivek Vishnupant Kulkarni***

vs. the State of Maharashtra and others), wherein it has been held that Section 9 of the MPR Act clearly mandates that whoever contravenes the provisions of Section 4 or Section 8 of the said Act, shall be liable to punish. It has been submitted that the information which was sought by the petitioner was in respect of public records and merely by saying that it is not available, nobody can shirk his or her responsibility, therefore, there is necessity to take criminal action against the erring officers / employees.

5. Learned APP has strongly objected the petition and submitted that it cannot be said that the record has been destroyed for unreasonable grounds and unless it is proved *prima facie*, no such directions can be issued.

6. Learned Advocate representing respondent Nos.8 and 9 has relied on the affidavit filed by Shri Ajinkya Haridas Randive, serving as Chief Officer, Nagar Panchayat, Shirur Anantpal, District-Latur. In his affidavit, the concerned officer has admitted that the petitioner had preferred said application under the provisions of Right to Information Act on 16th February 2017 and it was received by the Nagar Panchayat on 9th March 2018. Information was supplied to the petitioner by him on 20th March

2018. He states that the Nagar Panchayat was established on 24th February 2015 and there are towers of mobile companies in Nagar Panchayat area, however, the Nagar Panchayat has not issued no objection certificate nor had entered into any agreement. The record from Gram Panchayat is not available with the Nagar Panchayat. The record which is not available cannot be asked to be supplied. However, it is submitted that taxes have been recovered from the said mobile companies. It is also stated that in response to the applications issued by the petitioner, notice was given to the petitioner to remain present in the office of Nagar Panchayat, however, that notice was refused by the petitioner. Notice was also sent on the e-mail address of the petitioner to remain present, however petitioner did not attend the office of Nagar Panchayat. Petitioner is not resident of Shirur Anantpal and he has no concern with the affairs at Shirur Anantpal. Only to pressurize the Government Officers and to harass them, there is misuse of the Right to Information Act. In fact the informant is running weekly newspaper, namely, "*Jansamanyacha Kayada*" and he was also demanding money from the officers and employees of various Government offices for giving advertisement in the said news paper. Since the

Petition has been filed with ulterior motive, it deserves to be dismissed.

7. Learned Advocate for respondent Nos.8 and 9 has also brought to our notice that Second Appeal filed before the State Information Commissioner, Bench at Aurangabad came to be decided on 11th May 2020 and the learned Commissioner has upheld the decision of the first appellate authority, and also imposed cost of Rs.5,000/- to the information officer, Nagar Panchayat, Shirur Anantpal, District-Latur, which was imposed under Section 20(1) of the Right to Information Act.

8. At the outset, it is to be noted that there are two wings to the dispute, one is as regards not supplying the information to the petitioner in view of his application under the Right to Information Act, for which it appears that the Second Appeal was preferred and it has been decided. However, as regards the present petition is concerned, the petitioner is praying for criminal action to be taken under the MPR Act. There is no doubt that the information that was sought, was in respect of the public record as defined under the MPR Act. It would be convenient, to quote the provisions of Section 4, 7, 8 and 9 of the MPR Act, which reads thus:-

"4. No person shall take or cause to be taken out of the State of Maharashtra any public records without the prior approval of the State Government :

Provided that no such prior approval shall be required if any public records are taken or sent, out of the State of Maharashtra for any official purpose."

"7. (1) The records officer shall in the event of any unauthorised removal, destruction, defacement or alteration of any public records under his charge, forthwith take appropriate action for the recovery or restoration of such public records.

(2) The records officer shall submit a report in writing to the Director without any delay on any information about any unauthorised removal, destruction, defacement or alteration of any public records under his charge and about the action initiated by him and shall take action as he may deem necessary subject to the directions, if any, given by the Director.

(3) The records officer may seek assistance from any Government officer or any other person for the purpose of recovery or restoration of the public records and such officer or person shall render all assistance to the records officer."

"8. (1) Save as otherwise provided in any law for the time being in force, no public record shall be destroyed or otherwise disposed of except in such manner and subject to such conditions as may be prescribed.

(2) No record, which is more than hundred years old on the date of commencement of the Maharashtra Public Records Act, 2005, shall be destroyed except where in the opinion of the Director, it is so defaced or is in such condition that it cannot be put to any archival use.”

“9. Whoever contravenes any of the provisions of section 4 or section 8 shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to ten thousand rupees or with both.”

9. In ***Vivek Vishnupant Kulkarni vs. the State of Maharashtra and others*** (supra), it has been held by this Court that as per Section 9 of MPR Act, contravention of the provisions of Section 4 or 8 is made punishable. Section 4 of the MPR Act speaks about taking out public records without prior approval of the State Government. Here no such case is made out that anybody has taken out the public record without the approval of the State Government. Unless the facts are brought invoking the ingredients of the offence, directions to register offence cannot be issued. Further, Section 8 of the Act contemplates about destruction or otherwise dispose of the public record except in such manner and subject to such conditions as may be prescribed. Here, merely because the record is not available, we cannot jump to the conclusion that it

is destroyed or otherwise disposed of. The information that was supplied to the petitioner on 20th March 2018 would show that Nagar Panchayat, since its inception i.e. 24th February 2015, has not granted any permission for erection of mobile towers and has not entered into any agreement. The information that was called by the petitioner was from 1st January 2014 to 16th February 2017. If there was no occasion for grant of permission and entering into any agreement from 24th February 2015 till 16th February 2017, then question of supplying the copies of the same will not arise. The period prior to 24th February 2015 i.e. from 1st January 2014 relates to the Gram Panchayat and unless it is shown that the entire record has been handed over to the Nagar Panchayat authorities by the then Gram Panchayat; officers of the Nagar Panchayat cannot be held responsible for supply of those documents. Though the Right to Information Act may not be applicable to the mobile companies, however, the petitioner appears to have not made any correspondence with the mobile companies.

10. As regards non-supply of the information is concerned, action appears to have been taken and cost is also imposed, therefore, the respondents cannot be held responsible in any way for the action to be taken under Section 9 of the MPR Act.

Right to Information Act came into force to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority. However, this Act should not be misused by anybody.

11. We would like to reiterate that non-availability of the record with the Nagar Panchayat cannot be inferred as destruction of the record and therefore, this cannot be taken as a fit case to exercise constitutional powers of this Court to direct registration of the offence.

12. For the aforesaid reasons, the Writ Petition stands rejected.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE