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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.164 OF 2024

SHABA RAMA DESSAI

... PETITIONER

Versus

GOA STATE INFORMATION COMMISSION
AND 3 ORS

... RESPONDENTS

Mr. Tarun Rebello, Advocate for the Petitioner.

Mr. Manish Salkar, Government Advocate for the Respondents No.2,
3 and 4.

CORAM:- AVINASH G. GHAROTE, J.

DATED :- 6th March, 2024

P.C.

1. Mr. Tarun Rebello, learned counsel for the Petitioner challenges the order dated 08.11.2023 passed by the State Information Commissioner whereby the appeal filed by the Petitioner has been dismissed on the ground that inspite of inspection, such record was not traceable on account of which, since the information was not available, it was impossible to provide it. Further direction has been passed that incase in the future the information becomes available, the Public Information Officer (PIO) would be duty bound to furnish the same to the Petitioner.

2. It is contended by the learned Counsel for the petitioner that the statement as contained in the affidavit dated 03.10.2023 by the PIO, which has been relied by the State Information Commission for

passing the Impugned order regarding calling upon the Petitioner also to inspect the record to his satisfaction is incorrect and therefore, on this ground the order needs to be set aside.

3. It is also contended that the record could be reconstructed and the direction to that effect could also be given. Mr. Manish Salkar, learned Government Advocate for the Respondent Nos. 2,3 and 4 opposes the contention on the ground that there is no power under the Right to Information Act (RTI Act) with the PIO or the State Information Commission, to direct reconstruction of the record and since the information was not traceable the directions as given by the State Information Commission were correct.

4. The position that the record in respect of the information sought, is not traceable is reflected in the affidavit dated 03.10.2023 by the PIO, who is also holding additional charge as the Custodian of Evacuee property. Since an allegation is being made that this is not the case, it was necessary for the Petitioner, to have placed some material on record to enable this Court, to take a view contrary to what has been taken in the order impugned, however, that is not the case. No material has been brought to my notice regarding the incorrectness of the position in the affidavit regarding non-traceability of the information sought.

5. It is also contended that the Petitioner was never called upon to

inspect the record to his satisfaction. However, what is material to note is that though this statement is contained in para 3 of the affidavit dated 03.10.2023, no counter-statement has been made before the State Information Commissioner and this is a plea coming here for the first time which obviously cannot be entertained.

6. Insofar as the contention that the record could be reconstructed, Mr. Rebello, learned counsel for the Petitioner has been unable to point out any provision of the RTI Act which confers any such power upon the State Information Commission to issue such directions. That apart, the plea of reconstruction is based, not upon a certified copy of the relevant material, but a xerox copy, considering which, in absence of any authenticity of the xerox copy, even presuming that such a direction could be issued, the same was not permissible. I, therefore, do not see any reason to interfere in the impugned order passed by the learned State Information Commission in appeal. Needless to say, that as and when the information becomes available, the same would be supplied to the Petitioner at the cost of the PIO.

AVINASH G. GHAROTE, J.