



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

Writ Petition (WP) No. 2957 of 2021

Rajesh S/o Tulsiram Bhagat

Versus

State Information Commission, Maharashtra State Nagpur Bench, Nagpur
through its Commissioner and others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri Mahesh I. Dhatrak, Advocate for the petitioner.

CORAM : ANIL S. KILOR, J.

DATED : 14th FEBRUARY, 2024.

Heard learned counsel for the petitioner.

None for the respondents, though served.

2. The order dated 8th February, 2021 passed by the respondent No.1 Commissioner, State Information Commission, Maharashtra State, Nagpur Bench, Nagpur directing to initiate disciplinary proceeding against the petitioner as a First Appellate Officer under the Right to Information Act, is under challenge on the ground that no such order can be passed against the First Appellate Authority. For this purpose learned counsel for the petitioner has placed

reliance upon the judgment of the Delhi High Court, delivered on 29th August, 2018 in L.P.A. No.369 of 2018 in a case of R.K. Jain vs. Union of India. In this Judgment para No.9 reads thus :

“ 9. From the above, it is clear that Section 19(1) makes a provision for filing of an appeal if a person is aggrieved by a decision or inaction of the CPIO. The Appellate Authority in sub-section (1) of Section 19 is classified as an officer senior in rank to the CPIO meaning thereby that under the scheme of RTI Act, the CPIO is a different authority or officer different from an Appellate Authority to whom an appeal lies under sub-Section (1) of Section 19. If the legislative intent, as can be made out on a combined reading of various provisions are taken note of, it would be seen that the legislature only proposes for taking action against CPIO, and not against any other authority like the Appellate Authority or officer to whom the appeal lies. That being so, the legislative intent was that the penal provisions are to be implemented or enforced only against the CPIO and not against any other authority like the senior ranking officer or the Appellate Authority who decides the appeal under Section 19(1). If this was not the legislative intention, the words appearing in Sections 19(1) and (2) would have been differently worded and the construction of the statutory provision would have been entirely different. If the argument canvassed by the petitioner was to be accepted then by that interpretation, we would be expanding the meaning of a CPIO and we would be adding something more into the definition of CPIO than the one as was conceived by the legislature. This is not permissible under law and when the CPIO is only indicated to be officer against whom penal action can be taken under Section 20, we cannot read into the said statutory provision anything more by supplying words or meaning which would enlarge the scope of the penal provisions under Section 20. That apart, the CPIO being custodian of the information or the documents sought for, is

primarily responsible under the scheme of the RTI Act to supply the information and in case of default or dereliction on his part, the penal action is to be invoked against him only. The Appellate Authority is not the custodian of the information or the document. It is only a statutory authority to take a decision on an appeal with regard the tenability or otherwise of the action of the CPIO and, therefore, there is a conscious omission in making the Appellate Authority liable for a penal action under Section 20 of the RTI Act and if that be the scheme of the Act and the legislative intention, we see no error in the order passed by the learned writ Court warranting reconsideration.”

3. Though the above judgment is not binding on this Court but since it has a persuasive value and further since I am agreeable with the view taken by the Single Bench of the Delhi High Court, I find substance in the submission of the learned counsel for the petitioner that the impugned order is illegal and liable to be quashed and set aside. Accordingly, I pass the following order.

- i. Writ petition is allowed;
- ii. The impugned order dated 8th February, 2021 passed by the respondent No.1 Commissioner, State Information Commission, Maharashtra State, Nagpur Bench, Nagpur is hereby quashed and set aside.

[ANIL S. KILOR, J.]