



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

Writ Petition No. 7827 of 2019

Vithoba Shingne ..vs.. State of Maharashtra, through it's Secretary, Department of Forest and Revenue and ors.]

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

None for the petitioner
Mr. S. B. Bissa, AGP for respondent nos. 1 to 3
Ms. Mitisha Kotecha, Advocate h/f Ms. Jaishree Junghare, Advocate for
respondent no. 4

CORAM : ANIL L. PANSARE J.

DATED : 25-06-2024

On 11-6-2024, following order was passed.

"The contention is that the petitioner, who is the then Public Information Officer, could not supply the information as sought by the respondent no.5 within time because the petitioner did not get necessary assistance from the respondent no.4. According to the petitioner, the information sought was relating to the administrative section and, therefore, he sought assistance of respondent no.4 to provide the information sought by the respondent no.5. The respondent no.4, however, did not furnish information within 30 days and took about 3 years to furnish the information and hence the information could not be provided within time.

Learned counsel for the petitioner has relied upon Sub Sections (4) and (5) of Section 5 of the Right To Information Act, 2005 to submit that once the assistance is sought from any other officer, the officer concerned is duty-bound to render all the assistance to the Public Information Officer and, therefore, for the purpose of contravention of provisions of the Act of 2005, the officer from whom the assistance was sought shall be treated as Public Information Officer.

Thus, it is the case of the petitioner that the Public Information Officer, in the present case, would be respondent no.4 and not the petitioner and,

therefore, he is not responsible for the contravention of the provisions of the Act of 2005.

Learned counsel appearing for the respondent no.4 seeks time to take instructions and make submissions on the aforesaid contention.

Stand over to 18.06.2024.”

2. The issue involved in the present petition has been dealt with by the High Court of Delhi in the case of ***Rakesh Kumar Gupta Vs. Central Information Commission and anr.*** [2021 SCC OnLine Del 3512] in following terms.

“16. In J.P. Agrawal v. Union of India (WP(C) 7232/2009, decided on 4th August, 2011) the Id. Single Judge has recognised that CPIOs/PIOs are not merely “post offices” and have a crucial responsibility in facilitating the purpose of the RTI Act. The court has held that:

“7.The Act having required the PIOs to "deal with" the request for information and to "render reasonable assistance" to the information seekers, cannot be said to have intended the PIOs to be merely Post Offices as the Petitioner would contend. The expression "deal with", in Karen Lambert v. London Borough of Southwark (2003) EWHC 2121 (Admin) was held to include everything right from receipt of the application till the issue of decision thereon. Under Section 6(1) and 7(1) of the RTI Act, it is the PIO to whom the application is submitted, and it is he who is responsible for ensuring that the information as sought is provided to the applicant within the statutory requirements of the Act. Section 5(4) is simply to strengthen the authority of the PIO within the department; if the PIO finds a default by those from whom he has sought information, the PIO is expected to recommend a remedial action to be taken. The RTI Act makes the PIO the pivot for enforcing the implementation of the Act.

8. Even otherwise, the very requirement of designation of a PIO entails vesting the responsibility for providing information on the said PIO. As has been

noticed above penalty has been imposed on the Petitioner not for the reason of delay which the Petitioner is attributing to Respondent No. 4 but for the reason of the Petitioner having acted merely as a Post Office, pushing the application for information received, to the Respondent No. 4 and forwarding the reply received from the Respondent No. 4 to the information seeker, without himself "dealing" with the application and/or "rendering any assistance" to the information seeker. The CIC has found that the information furnished by the Respondent No. 4 and/or his department and/or his administrative unit was not what was sought and that the Petitioner as PIO, without applying his mind merely forwarded the same to the information seeker. Again, as aforesaid the Petitioner has not been able to urge any ground on this aspect. The PIO is expected to apply his / her mind, duly analyze the material before him / her and then either disclose the information sought or give grounds for non-disclosure. A responsible officer cannot escape his responsibility by saying that he depends on the work of his subordinates. The PIO has to apply his own mind independently and take the appropriate decision and cannot blindly approve / forward what his subordinates have done.

*9. This Court in **Mujibur Rehman v. Central Information Commission** held that information seekers are to be furnished what they ask for and are not to be driven away through filibustering tactics and it is to ensure a culture of information disclosure that penalty provisions have been provided in the RTI Act. The Act has conferred the duty to ensure compliance on the PIO. This Court in **Vivek Mittal v. B.P. Srivastava** 2009 held that a PIO cannot escape his obligations and duties by stating that persons appointed under him had failed to collect documents and information; that the Act as framed casts obligation upon the PIO to ensure that the provisions of the Act are fully complied. Even otherwise, the settled position in law is that an officer entrusted with the duty is not to act mechanically. The Supreme Court as far back as in **Secretary, Haila Kandi Bar Association v. State of Assam** 1995 Supp. (3) SCC 736 reminded the*

highranking officers generally, not to mechanically forward the information collected through subordinates. The RTI Act has placed confidence in the objectivity of a person appointed as the PIO and when the PIO mechanically forwards the report of his subordinates, he betrays a casual approach shaking the confidence placed in him and duties the probative value of his position and the report.”

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18. Thus, under the RTI Act, the CPIOs have a solemn responsibility. Section 5(3) requires that every CPIO or SPIO shall deal with requests for information and ‘render reasonable assistance’ to the persons seeking information. CPIOs or SPIOs can seek assistance from higher/other officials in the organisation in order to enable them to furnish the information sought for the ‘proper discharge’ of their duties, as per Section 5(4). Such other officers from whom assistance may be sought would also be treated as CPIOs, under Section 5(5). CPIOs are thus expected to look into queries raised by the Applicants under the RTI Act, and fulfil an important responsibility while furnishing the said required information, in a fair, nonarbitrary and truthful manner. The organisation, as a whole, also has to cooperate in the functioning of the CPIOs.”

3. The High Court has considered other judgments as well and has held that PIO is responsible for ensuring that the information as sought is provided to the applicant within the statutory requirements of the Act. Section 5(4) of the Right to Information Act, 2005 (for short ‘RTI Act’) is simply to strengthen the authority of the PIO within the department; and if the PIO finds a default by those from whom he has sought information, he is expected to recommend a remedial action to be taken. The PIO is responsible for enforcing the implementation of the Act.

The High Court has further held that the Officer from whom assistance has been sought would be also treated as PIO in terms of Section 5(5). However, the prime responsibility is of the PIO to furnish the information as sought in terms of the provisions of the RTI Act.

4. I am in complete agreement with the aforesaid interpretation. Sub-section (1) of Section 5 of RTI Act makes it mandatory for every public authority to designate the CPIOs or SPIOs, as the case may be, in all administrative units or offices to provide information to persons requesting for the information under this Act. Sub-section (2) provides that such CPIOs or SPIOs may also be appointed at each sub-divisional level or other sub-district level. Sub-section (3) provides that every CPIO or SPIO, as the case may be, shall deal with the requests from persons seeking information and render reasonable assistance to the persons seeking such information.

5. Thus, the prime responsibility to implement the Act is upon the CPIO or SPIO. In the present case, it was the responsibility of the petitioner. If he has sought assistance of respondent no. 4, he ought to have ensured that such assistance is rendered within stipulated time. If the assisting officer has failed to adhere to his request, he was at liberty to recommend appropriate action against him. As such, the assisting officer on committing default will be also treated as PIO but the default would not shift the responsibility or duty of petitioner upon respondent no. 4. In other words, the designated Public Information Officer cannot be said to be relieved of his duty upon failure of assisting officer to furnish the information.

6. The appellate authority, in the present case, has not penalized the assisting officer and found that the responsibility of furnishing information was upon the petitioner and accordingly has imposed penalty. The order impugned appears to be in tune with the provisions of the Act.

7. I am, therefore, not inclined to entertain the petition. The petition is accordingly dismissed.

(Anil L. Pansare, J.)