

Received on : 17/09/2020
Registered on : 19/09/2020
Decided on : 12/10/2020
Duration : 00-Y 00-M 25-D
Exh.No. : 6

**BEFORE THE FIRST APPELLATE AUTHORITY AT NASHIK UNDER
RIGHT TO INFORMATION ACT, 2005 & DISTRICT JUDGE-1
NASHIK**

Misc. RTI Application No. 1/2020 in Appeal No.4/2020

Digambar Hari Nikam }
Assistant Superintendent } **..Applicant**
District & Sessions Court }
Nashik }

Versus

Mahendra Dattatryya Mandale }
The Information Officer-cum- }
Registrar, } **..Respondent**
District & Sessions Court }
Nashik }

ORAL JUDGMENT

(Delivered on 12th day of October, 2020)

1. This is a petition under section 20 of Right to Information Act, 2005 (*here-in-after for short referred as "the act"*) seeking action against the respondent who allegedly, without reasonable cause, malafidely and persistently did not follow the directions of furnishing information.
2. Briefly stated the factual matrix necessary of of present petition is as under :-

The petitioner had sought certain information as follows :-

- (i) Notice of O.No. आस्था/३४/खानिचौ/७३९/१९ dtd. 01.11.2019,
- (ii) Reply thereto dated 04.11.2019 and
- (iii) Copy of office Note and order causing issuance of Notice (supra) or decision if any arrived at.

3. Initially, it was refused on 18.01.2020 by the respondent. The said order was impugned in appeal No. 4 of 2020, wherein impugned order was quashed and set aside on 29.02.2020 and directions to furnish the information sought for forthwith were issued. However, till date the respondent did not furnish. Hence, this petition.

4. In response to show-cause-notice, the respondent has justified his inaction and submitted that, soon after getting the copy of order, he addressed letter to the Personal Assistant (*in short "P.A."*) of The Hon'ble Principal District Judge (*in short "Hon'ble PDJ"*), who, in turn did not furnish the information. It is alleged that, the Hon'ble PDJ had told the P.A. not to furnish the information.

5. Upon the above facts, following points together with my findings emerged for determination :-

Points

(1) Whether the respondent without reasonable cause, persistently failed to furnish the information directed to be furnished under section 19 of the Act?

(2) What order?

Findings

..Yes

.. As per Final order

REASONS

6. Both the parties were heard at length in person. Former has submitted that, despite issuance of directions in appeal filed under section 19 of the Act, the respondent has malafidely erred in discharging his obligation and committed utter disobedience and disregarded the directions of Appellate Court, warranting recommendation of initiation of disciplinary action together with penalty.

7. The respondent has reiterated the say and endeavored to shoulder responsibility upon the P.A. of Hon'ble PDJ to whom he had addressed one letter seeking information. He has also submitted that, the Hon'ble PDJ has informed him that the information being confidential, could not be furnished.

8. Before dwelling upon factual scenario, it would be opposite on my part to bear in mind provisions of Section 20 of the Act. Section 20 in the Act speaks as under :-

20. Penalties.—

(1) Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause, refused to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall impose a penalty of two hundred and fifty rupees each day till application is received or information is furnished, so however, the total amount of such

penalty shall not exceed twenty-five thousand rupees:(Underline added)

Provided that the Central Public Information Officer or the State Public Information Officer, as the case may be, shall be given a reasonable opportunity of being heard before any penalty is imposed on him:

Provided further that the burden of proving that he acted reasonably and diligently shall be on the Central Public Information Officer or the State Public Information Officer, as the case may be.

(2) Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause and persistently, failed to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall recommend for disciplinary action against the Central Public Information Officer or the State Public Information Officer, as the case may be, under the service rules applicable to him. (Underline added)

9. The plain reading of the above section makes it crystal clear, since the word “as the case may be” emphasizes and imply to infer that it includes the First Appellate Court before whom the appeal is /was subjudice or who has decided the same. Otherwise, the very object of incorporation of this section would be meaningless since it could be dark gray area, especially when the respondent has/had not preferred second appeal. In other words, in absence of second appeal or appeal before whom the State Information Officer could not have jurisdiction to invoke powers under section 20 of the Act.

10. The basic object of the Right to Information Act is to empower the citizens, to promote transparency and accountability in the working of the Government, to contain corruption, and to enhance people's participation in democratic process, thereby making our democracy work for the people in a real sense. It goes without saying that an informed citizen is better equipped to keep necessary vigil on the instruments of governance and make the Government more accountable to the governed. The act is a big step towards making the citizen informed about the activities of the Government of Administration.

11. An intention of legislature is not to set the respondent though found guilty of malafide or persistent failure to follow the directions of first Appellate Court causing furnishing of information sought by the petitioner, shall let unpunished.

12. The RTI Act has overriding effect *vis-a-vis* other laws. It implies that, if any of the provisions of the RTI Act are not consistent with any other law for the time being in-force including the Official Secrets Act, 1923, the provisions of the RTI Act would have effect.

13. It is the defence that, on the very next day, the respondent had addressed one letter allegedly acknowledged by the P.A. of Hon'ble PDJ, Nashik and sought the record on 03.03.2020. On going through the photo copy of office copy of said letter, it does not reveal even an acknowledgment of P.A. of Hon'ble PDJ as alleged. Thus, the respondent has patently belied in this regard.

14. Secondly, the respondent has not disclosed the name of P.A. of the Hon'ble PDJ, Nashik, notwithstanding day to day he used to visit him/her and had every occasion to see each other. It reveals that, he has intentionally avoided to name the P.A. In absence of an acknowledgment, he is accusing him/her. This speaks volumes about genuineness thereof.

15. Thirdly, it is amazing to note that, till date more than 227 days have been lapsed from adjudication of First Appeal. Also, the respondent has kept this petition in abeyance for 3 days from 17.09.2020 to 19.02.2020. Even after appearing in this matter in response to the notice, till date he had no endeavor to obey the directions of this Court dtd. 29.02.2020 in First Appeal No. 4/2020, especially when the said decision is not given challenge in the Second Appeal. Needless to say that the findings reached to its finality way back.

16. The respondent did not disclose as to why despite having multiple opportunities on every day he did not bring the factual scenario to the notice of Hon'ble PDJ, Nashik, or why he did not address a single letter to the Hon'ble PDJ. On the contrary, he dare to accused the Hon'ble PDJ of refusing to furnish the information directed under the garb of confidentiality.

17. In view of above, I come to the irresistible conclusion that, the respondent without reasonable cause since beginning malafidely and persistently failed to follow the directions of Appeal No. 4/2020 dtd.29.02.2020, to which he was/is bound to follow. Also, he has

committed intentional Disobedience, warranting penalty and recommendation qua initiation of Disciplinary Action.

18. Coming to quantum of penalty, an Exercise of calculation reveals that, for 227 days the respondent has failed to furnish the information. Per day, the permissible penalty is Rs.250/- which come to Rs. 56,500/-. However, there is rider upon levy of maximum penalty which shall not exceed Rs.25,000/-. Accordingly, I endorse my findings against point no.1 in the affirmative. and inclined to pass the following order :-

ORDER

Petition Stands allowed as under :-

1. The respondent, Mahendra Dattatraya Mandale, Registrar & Public Information Officer of District & Sessions Court, Nashik shall pay penalty of Rs.25,000/- (Rs.Twenty Five thousands) from his pocket within 3 days for committing persistent failure to furnish information since 29.02.2020, under Section 20 of the Right to Information Act, 2005.
2. Copy of order be referred to The Superintendent of Cash & Finance Section, District & Sessions Court, Nashik for recovery of amount of penalty, if respondent fails to deposit within 3 (three) days from today.
3. An amount of Rs.20,000/- (Rs.Twenty thousands) shall be paid to the petitioner towards compensation.
4. The Hon'ble Principal District Judge, Nashik being Disciplinary Authority, is recommended to initiate Disciplinary Action against respondent Mahendra Dattatraya Mandale, Registrar & Public Information Officer of District & Sessions Court, Nashik under The Maharashtra Civil Services Rules, applicable to him.

5. Copy of this order be referred to The Honb'le Principal District Judge, Nashik, for information and necessary action discussed supra.
6. Entry of this order be taken in the Service Book of respondent Mahendra Dattatraya Mandale, Registrar & Public Information Officer of District & Sessions Court, Nashik.

Sd/-xxxxxx

(Vikas S. Kulkarni)
Appellate Authority under Right
to Information Act, 2005
& District Judge-1, Nashik

Date: 12.10.2020