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Court : Mumbai Aurangabad

Decided On : Nov-29-2013

Judge : S.S. Shinde

Appeal No. : Writ Petition No.2173 of 2013

Appellant : Mahendra

Respondent : The State Information Commissioner and Another

Judgement :

1. Heard learned Counsel appearing for the petitioner.
2. This writ petition takes exception to the order passed by the State Information Officer, Nashik dated 27/03/2012 in Appeal No. 31/2011.
3. It is the case of the petitioner that, respondent No. 2 herein, filed application and sought certain information from the office of the petitioner under the Right to Information Act, 2005 (for short, "said Act") on 30/11/2010. After receipt of the said application immediately the petitioner on 13/12/2010 forwarded the said application/part of the said application to the concerned Talathi and Block Development Officer and instructed them to provide the information required by respondent No. 2 to enable him to provide the same to respondent No.2 and accordingly, informed in this regard to respondent No. 2.

It is further case of the petitioner that, respondent No. 2 in stead of filing first appeal before the first appellate authority, chosen wrong remedy and filed appeal before respondent No.1 by way of filing second appeal and prayed for issuance of necessary directions against the petitioner for providing the required information.

4. The petitioner herein, appeared in the said proceedings on 27/03/2012 and filed his reply stating therein that, information which is sought pertains to concerned Talathi and B.D.O., therefore, the petitioner is not responsible for not providing required information to respondent No. 2. It is further case of the petitioner that, first appellate authority i.e. Tahasildar, Chalisgaon on 23/03/2012 filed his say in the second appeal thereby denying first appeal filed by respondent No. 2 before him. It is further case of the petitioner that, respondent No.1 without considering submissions made by the petitioner as well as respondent No. 2, allowed the appeal of respondent No. 2 directing to provide required information by imposing heavy penalty.

5. The petitioner on 05/06/2012, after passing order, filed representation/application to respondent No.1 and prayed for review of the order dated 27/12/2012. It is the case of the petitioner that, till date said representation has not been considered/decided by respondent No.1.

6. This writ petition is filed being aggrieved by the judgment and order dated 27/03/2012 passed by respondent No.1.

7. Learned Counsel appearing for the petitioner submits that, in view of the provisions of subsection (5) of section 5 of the Right to Information Act, 2005, Talathi and B.D.O. should suppose to give information and for lapse/inaction on the part of Talathi or B.D.O., the present petitioner who is working as Naib Tahsildar, could not have been held responsible. It is further submitted that, petitioner who is holding post of Naib Tahsildar has to seek information from Talathi and B.D.O. and the petitioner cannot supply the information in his official capacity as Naib Tahsildar or office unless same information is received from Talathi or B.D.O. It is submitted that, respondent No.1 has not considered the effect of not availing remedy of first appeal by respondent No. 2. It is submitted that, the Tahsildar in his reply before respondent No.1 in second appeal has made

it clear that, no first appeal was filed by respondent No.2. It is submitted that, the petitioner has lost opportunity to put forth his contention before the first appellate authority since no first appeal was filed by respondent No.2. It is further submitted that, respondent No.1 has imposed penalty of Rs.25,000/which is not only exorbitant, but dehors the mandate of section 25 of the said Act. It is submitted that, requisite information sought by respondent No. 2 could not have been provided by the petitioner unless same is received from Talathi and B.D.O. Therefore, respondent No.1 should not have imposed penalty of Rs. 25,000/. Learned Counsel invited my attention to ExhibitB at page16 of the compilation of the writ petition i.e., extract from the Register maintained in respect of receiving application and furnishing information etc., under Right to Information Act. Relying upon the entry No. 133 of the said extract, the Counsel appearing for the petitioner submits that, application from respondent No. 2 was received on 30/11/2010 and same was forwarded to the Talathi and B.D.O. on 13/12/2010. It is submitted that, neither Talathi nor B.D.O., are held responsible by the second appellate authority and penalty is imposed upon the petitioner who is no way concerned or does not possess information as sought by respondent No. 2 by way of filing application on 30/11/2010. It is further submitted that, respondent No. 1 has not considered the provisions of section 5(4) and (5) of the said Act. It is submitted that, respondent No.1 has not granted reasonable opportunity of hearing to the petitioner under section 21 of the said Act before imposing heavy penalty. The Counsel appearing for the petitioner relying upon sub section (4) and (5) of Section 5 of the said Act submits that, in the facts of the present case, assistance was sought from Talathi in respect of information about revenue record and in respect of panchayat from B.D.O., in that case in view of mandate of aforesaid provisions, said officers are required to be treated as State Public Information Officer. The Counsel for the petitioner relying upon the extract from the Register maintained by the office under R.T.I. Act to receive application, forward the same to appropriate officer and further to supply information, submits that application was received on 30/10/2010 from respondent No. 2 and said was forwarded on very same date by the concerned Clerk of the office to the appropriate officers. Therefore, relying upon the grounds taken in the petition, the Counsel for the petitioner submits that, the petition deserves to be allowed.

8. Learned A.G.P. appearing for respondent No. 1 invited my attention to the reasons/observations of respondent No.1 in the impugned judgment and order and submits that, respondent No.1 has rightly imposed penalty of Rs.25,000/-. Therefore, this Court may not interfere in the impugned judgment and order.

9. I have given careful consideration to the submissions of the Counsel appearing for the petitioner and learned A.G.P., appearing for the State. With their able assistance perused the grounds taken in the petition, annexures thereto, impugned judgment and order by respondent No.1 and also relevant provisions of Right to Information Act, 2005. At the outset, it would be apt to reproduce herein below section 6 of the Right to Information Act, 2005 which reads thus :

"6. Request for obtaining information.

(1) A person, who desires to obtain any information under this Act, shall make a request in writing or through electronic means in English or Hindi or in the official language of the area in which the application is being made, accompanying such fee as may be prescribed, to

(a) the Central Public Information Officer or State Public Information Officer, as the case may be, of the concerned public authority;

(b) the Central Assistant Public Information Officer or State Assistant Public Information Officer, as the case may be, specifying the particulars of the information sought by him or her:

Provided that where such request cannot be made in writing, the Central Public Information Officer or State Public Information Officer, as the case may be, shall render all reasonable assistance to the person making the request orally to reduce the same in writing.

(2) An applicant making request for information shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him.

(3) Where an application is made to a public authority requesting for an information,

(i) which is held by another public authority; or

(ii) the subject matter of which is more closely connected with the functions of another public authority, the public authority, to which such application is made, shall transfer the application or such part of it as may be appropriate to that other public authority and inform the applicant immediately about such transfer:

Provided that the transfer of an application pursuant to this subsection shall be made as soon as practicable but in no case later than five days from the date of receipt of the application."

10. Upon careful perusal of Section 6 of the said Act, when any application is filed by the person who desires to obtain any information under the Right to Information Act, has to make request in writing or through electronic means in English or Hindi or in the official language of the area in which the application is being made, accompanying such fee as may be prescribed. In the facts of the present case, it is not in dispute that the office of the petitioner did receive application on 30/11/2010 from respondent No.2 praying therein, for seeking certain information. If such application is received, the public authority to which such application is made shall transfer the application or such part of it as may be appropriate to that other public authority and inform the applicant immediately about such transfer. In the facts of present case, as it is evident from the perusal of the extract from the Register maintained by the office of the petitioner that, the application was received on 30/11/2010. Learned Counsel appearing for the petitioner submitted that, the said application was forwarded to Talathi and B.D.O. on the same day, however the copy of relevant extract produced on record, in it's last column would show that, the said application was forwarded on 13/12/2010 to the Talathi of the concerned village and B.D.O. Panchayat Samiti. In this respect, proviso to section 6 of the said Act becomes relevant. Said proviso provided that, the transfer of an application pursuant to this sub section shall be made as soon as practicable but in no case later than five days from the date of receipt of the application. Therefore, in the facts of the present case as it is apparent that, though application

was received on 30/11/2010, same was not forwarded to the concerned Talathi or B.D.O., till 13/12/2010.

11. The contention of the Counsel for the petitioner that, respondent No. 2 did not avail remedy of first appeal, needs no consideration since respondent No.1 i.e, second appellate authority in respect of filing first appeal by respondent No. 2 in the impugned judgment has observed that, first appeal was filed by respondent No.2. Relevant observations in the impugned judgment reads thus :

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12. Though the Counsel appearing for the petitioner invited my attention to the contents of the say which was filed before respondent No.1 in support of his contention that, no first appeal was filed, however, in view of the observation of the second appellate authority in its impugned judgment, the first appeal was filed by respondent No.2. Any how, such disputed question of fact cannot be gone into in this writ petition. Even assuming that, first appeal was not filed by respondent No.2, in that case respondent No. 2 had lost opportunity of availing remedy of first appeal.

13. Another contention of the Counsel for the petitioner is that, B.D.O. and the concerned Talathi are responsible for furnishing information as sought by respondent No. 2 is concerned, the second appellate authority upon considering material placed on record has observed thus:

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(Underlines supplied).

14. Therefore, upon careful perusal of observations/reasons recorded by respondent No. 1, it appears that, even the petitioner could have furnished information as sought by respondent No.2. This finding recorded by the respondent No. 1 is based upon the material placed on record.

15. The contention of the petitioner that, since the petitioner was not responsible to supply information and in absence of fastening liability on the B.D.O., and Talathi,

no penalty could have been imposed upon the petitioner, deserves no consideration since penalty is imposed after recording finding that, even the petitioner could have supplied the said information, however, he tried to avoid to furnish such information as prayed by respondent No. 2 in his application dated 30/11/2010. It further appears that, not only that, the second appellate authority has adverted to the written documents/material placed on record, however, the petitioner was given opportunity to put forth his contention before the second appellate authority. Therefore, there is no substance in the contention that, the petitioner was not heard before imposing such penalty under section 25 of the said Act.

16. While considering the case in its entirety under extraordinary writ jurisdiction, in the light of discussion herein above, view taken by the second appellate authority i.e., respondent No.1 appears to be plausible, reasonable and in consonance with the material placed on record. No case is made out for interference in the impugned judgment and order. Writ Petition sans merit, hence rejected.

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