

State of Gujarat and anr. Vs. Pandya Vipulkumar Dineshchandra and anr.

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Court : Gujarat

Decided On : Sep-02-2008

Reported in : AIR2009Guj12

Judge : Jayant Patel, J.

Acts : [Right to Information Act \(RTI\), 2005](#)

Appeal No. : Spl. Civil Appln. Nos. 9723 and 9724 of 2008

Appellant : State of Gujarat and anr.

Respondent : Pandya Vipulkumar Dineshchandra and anr.

Advocate for Def. : N.V. Anjaria and; R.C. Jani, Advs.

Advocate for Pet/Ap. : Govt. Pleader,; Bhavika Kotecha, AGP and; Parikh, AG

Judgement :

ORDER

Jayant Patel, J.

1. Rule. Mr. Jani learned Counsel waives service of notice of rule for private respondent, and Mr. Anjariya learned, counsel waives service of notice of rule for the Chief Information Commissioner.

2. With the consent of the learned Counsel appearing for both the sides, the matter is finally heard today.

3. The only question to be considered, is whether the Chief Information commissioner, after recording conclusion that the information is to be provided, and certain informations were wrong, could exercise power for directing transferring authority to revoke the transfer order or not?

4. The facts of the case appear to be that certain informations were demanded under Right to Information Act 2005 (hereinafter referred to as the 'Act'). The matter was processed at different level, and ultimately, the order came to be passed by the respondent No. 2, Chief Information Commissioner in Complaint No. 701 of 06-07 where he concluded as under:

Having regard to the above, the Commission observed that the source of information, that is, the transfer order of the complainant dated 30-1 -2004 is itself based on incorrect, false and misleading information concerning the instructions of the Government. No such instructions were issued by the Government. The Government itself has raised this issue with the Director, CMSO in these circumstances the Commission decides that the source of information be corrected, the respondents to direct the Director, CMSO to ensure that the incorrect and misleading transfer order is revoked as expeditiously as possible, but within 15 days from the receipt of this order and to take appropriate measures to ensure compliance to the rules and proceedings governing the non-transferable cadre to which the complainant belongs.

5. Neither learned Counsel for the private respondent No. 1, nor learned Counsel for the respondent No. 2 Chief Information Commissioner are in a position to show any source of power for giving such direction for revocation of the transfer order. It deserves to be recorded that the power of the Chief Information Commissioner is creation of the statute, and his power is restricted to the Provisions of the Act. He has power to direct for supplying of the information, and he may in some cases, if the informations are not correctly supplied, proceed to direct for correction of such information, and to supply the same. However, his power would end there, and it would not further exceed for adjudication of the rights amongst the parties based

on such information. Such powers for adjudication of the rights inter se amongst party on the basis of such information are not available to him. The aforesaid is apparent from the object and the provisions of the Act. Reference may also be made to the decision of this Court in case of Gokalbhai Nanbhai Patel v. Chief Information Commissioner and Ors. reported at 2007 (3) GLH 352 : AIR 2008 Guj 2.

6. Mr. Anjariya learned Counsel for the Chief Information Commissioner attempted to support the order for directing revocation of the transfer order, since the Chief information Commissioner was of the view that the information was incorrect and wrong and therefore the basis of the transfer order was non-existence.

7. In my view, even if, such is the position, then also the authority of the Chief Information Commissioner would end by making observation that the information was incorrect or otherwise, but thereafter he could not proceed for adjudication of the further rights of the parties, as to whether transfer order could be passed by the concerned Government authority or not. The said step can be said as exceeding exercise of the power beyond the scope of the Act. Hence, the attempt of Mr. Anjariya learned Counsel for the Chief Information Commissioner cannot be countenanced.

8. Hence, the only conclusion is that the Chief Information Commissioner has no power to adjudicate rights of the parties based on the information, may be for the transfer order passed by the Government authority or otherwise. Hence, the aforesaid portion for direction to revoke transfer order, can be said as wholly without jurisdiction, and also ultra virus to the power of the Chief Information Commissioner.

The other part of the order pertaining to the information, and its correctness or otherwise, is not subject-matter of the present petitions nor the same is challenged in the present petitions.

9. In view of the above, the impugned order passed by the Chief Information Commissioner, so far as it relates to direct the authority to revoke transfer order, and further direction to report accordingly concerning thereto, is quashed and set

aside. Rule made absolute to the aforesaid extent. No order as to costs. Direct service is permitted.

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