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HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 353 of 2015

- S.K. Shrivastava S/o Late J.L. Shrivastava, Aged About 63 Years Retired Deputy Director, Department Of Fisheries, R/o Dr. A.K. Verma, Doctors Colony, Saraswati, Nagar, Pratap Chowk, P.S. Civil Lines Bilaspur (C.G.) Civil And Revenue District Bilaspur (C.G.)

---- Petitioner

Versus

1. State Information Commissioner Chhattisgarh Office Of The State Information Commission, Nirmal Chhaya Bhawan, Meera Datar Road, Shankar Nagar, Raipur (C.G.)
2. Joint Director Fisheries Cum First Appellate Authority Under The Provisions Of Right To Information Act 2005, Directorate Of Fisheries, Near Railway Crossing, Telibandha, Raipur (C.G.)
3. Deputy Director, Fisheries - Cum - Chief Executive Officer, Fish Farmer Development Authority/Public Information Officer, Department Of Fisheries, District Durg (C.G.)
4. Inderchand Soni Social Worker R/o Jawahar Chowk, Durg, District Durg (C.G.)

---- Respondent

For Petitioner : Shri Rishikant Mahobia, Advocate.
For Respondent No.1 : Shri S.S. Tekchandani, Advocate.
For Respondent No.4 : Shri Avinash Chand Sahu, Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

04/11/2015

1. The petitioner, a retired Deputy Director in the Department of Fisheries, having been retired on 31.7.2011, has preferred this writ petition under Article 226 of the Constitution of India challenging the order passed by the Second Appellate Authority i.e. the State Information Commission

under the Right to Information Act, 2005 (henceforth 'the Act') whereby the State Information Commission (for short 'the Commission') has imposed penalty of Rs.5,000/- and also directed to pay compensation of Rs.500/- to respondent No.4 together with all the required information.

2. Facts of the matter, briefly stated, are that respondent No.4, a social worker, moved an application under Section 6 of the Act seeking information in respect of one Fisheries Extension Worker (FEW) on 28.12.2010. The petitioner refused to provide the required information on the ground that the information sought for pertains to individual fisheries extension worker and no public interest is involved in providing the information, therefore, the same cannot be provided in view of the provisions contained in Section 8(1) of the Act. Respondent No.4 preferred First Appeal under Section 19 of the Act, which was disposed of on 11.3.2011 directing the petitioner to provide information. The petitioner thereafter informed respondent No.4 that he is required to deposit Rs.6/-, as required fee for the information. Respondent No.4 preferred second appeal before the Commission, which in turn passed an order on 1.10.2011 directing the petitioner to provide the required information and at the same time imposing penalty of Rs.5,000/- and cost of Rs.500/- payable to the complainant/respondent No.4. Against this order, the petitioner preferred a writ petition bearing WPC No.1034/2012, which was partly allowed and the matter was remitted back to the Commission to pass fresh order on the issue of imposition of penalty after affording opportunity of hearing to the petitioner. The present impugned order has been passed in view of this Court's order in the earlier writ petition.
3. The only reason assigned by the Commission for imposing penalty and cost is that despite the order by the first appellate authority, the petitioner failed to provide information. However, perusal of the documents would make it explicit that after the order passed by the first appellate authority, the petitioner directed respondent No.4 to deposit

the required fee so that information could be provided to him. Instead of paying fee, respondent No.4 preferred second appeal, which was earlier allowed and thereafter petitioner's writ petition was partly allowed remanding the matter. It is to be seen that the petitioner has never refused to provide information by passing any order. Instead he wanted to comply with the order provided respondent No.4 pays the requisite fee.

4. At this stage, learned counsel appearing for the Commission would argue that on the date when the first appellate authority passed the order, 30 days time had already elapsed and since the order passed by the petitioner as PIO was already set aside by the first appellate authority and thus, the required information was not provided within 30 days from the date of application, in view of sub-section (6) of Section 7, the petitioner was obliged to provide information free of cost. Having not done so and instead asking respondent No.4 to pay the fee, he has violated the law, therefore, imposition of penalty is fully justified.

5. Learned counsel for respondent No.4 would support the arguments raised by learned counsel for the Commission.

6. Section 6 of the Act makes a provision for dealing with a request for obtaining information whereas Section 7 provides for disposal of request. It says, the PIO has to provide information within 30 days of the receipt of request on payment of such fee as may be prescribed or reject the request for any of the reasons specified in Sections 8 & 9. Sub-section (6) provides that notwithstanding anything contained in sub-section (5), the person making request for the information shall be provided the information free of cost where a public authority fails to comply with the time limits specified in sub-section (1).

7. A careful reading of the provisions contained in Section 7 makes it clear that the stage of providing information free of cost would occasion only when the PIO fails to pass any order disposing of the application by

rejecting the same within 30 days or in other words, when the PIO fails to take up application for taking decision in the matter within 30 days, he has to provide information free of cost, but in case where the PIO has passed an order within 30 days rejecting the application and the first appellate authority set aside the order and directs providing of information, occasion for providing information free of cost would not arise. It would be different if the first appellate authority itself directs the PIO to provide information free of cost. But in the case in hand, the first appellate authority has not directed the petitioner to provide information free of cost. Once the application is considered and disposed of under Section 7, applicability of outer limit of 30 days would have no application and any further action in the matter has to be decided in terms of the order passed by the first or second appellate authority.

8. In the considered opinion of this Court, respondent No.4 having not deposited the requisite fee when the same was demanded from him after the order passed by the first appellate authority, it cannot be said that it was the petitioner alone who was responsible for causing delay. Instead of depositing Rs.6/-, respondent No.4 incurred more expenses by preferring second appeal before the second appellate authority. Therefore, respondent No.4 himself was not in dire need of the information but he was trying to settle scores with the petitioner because the petitioner had rejected his application at the first instance.

9. For the foregoing, the impugned order imposing penalty of Rs.5,000/- and cost of Rs.500/- on the petitioner is set aside.

10. The writ petition is accordingly allowed to the aforesaid extent.

Sd/-
Judge
(Prashant Kumar Mishra)