

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

WRIT PETITION NO. 9144 OF 2012

Vilas s/o Ramrao Dighe
age 49 years, occup. govt.
service, r/of Hanumantgaon,
Taluka Rahata, Dist. Ahmednagar

Petitioner

versus

1. The State Information Commission,
Nashik Division, Nashik Division,
Nashik
2. The Appellate Authority/
Deputy Controller of Stamp,
Nashik Division, Nashik
3. The Joint District Registrar,
Class-I/ Stamp Collector,
Stamps Department,
Collector Office, Ahmednagar
4. Sayyad Nisar Maqbul,
age ____ years, occup. Editor,
Bhadaktya Jwala,
r/of main road, Rahuri,
Tq. Rahuri, Dist. Ahmednagar

Respondents

Mr. Pravin S. Dighe, Advocate for petitioner
Mr. N.B. Patil, AGP for respondents no. 1 to 3

CORAM: SUNIL P. DESHMUKH, J.
JANUARY 27, 2014

Oral judgment

1. Rule. Rule is made returnable forthwith and heard finally with consent of parties.
2. Petitioner being aggrieved by order dated 01-09-2012 of State Information Commission - Respondent no. 1 in appeal bearing No. RTI/2010/Appeal/CR/1109

filed by present respondent no.4 imposing penalty of ₹ 25,000/- in exercise of powers under section 20(1) of the Right to Information Act, 2005 (hereinafter, referred to as "The Act" for convenience), has approached this court questioning its propriety, legality and validity.

3. Mr. Dighe, learned Advocate appearing for petitioner submits that impugned order is unsustainable and it is in colourable exercise of powers as Section 20(1) of the Act does not authorize the State Information Commissioner to impose penalty on a person other than the State Information Officer. He points out that even otherwise the impugned order itself shows that the Joint District Registrar-Class I was appointed State Information Officer and since the incumbent was unavailable his charge had been given to the Deputy Collector. Under such circumstances, petitioner cannot be penalized which is beyond the prescription under section 20(1) of the Act.

4. Apart from above, he further points out that the order has been passed by one member State Commission which is not proper as two Division Benches of this Court have already held that the State Commission necessarily shall comprise Chairperson and one more member, relying on decision reported in *AIR 2012 Bombay 71, Public Information Officer and Another v/s Manohar Parikar and Another*, observing:

" Conjoint reading of sub-sections (1) to (4) of Section 15 of the RTI Act leaves no doubt in our mind that the State Information Commission has to be a multi member body. Sub section (2) in clear words states that the Commission shall consist of the State Information Commission and such number of State Information Commissioners, not exceeding ten, as may be deemed necessary. Though a discretion has been conferred on the State to

decide the number of State information Commissioners not exceeding ten, that does not mean that the State has discretion not to appoint even a single State Information Commissioner. Clauses (a) and (b) of sub section (2) of Section 15 of the RTI Act are joined by a conjunctive article "and". The conjunction "and" contemplates that the State Information Commission shall consist of at least two members. One State Chief Information Commissioner and at least one more State information Commissioner. We also note that the Government of Goa by its notification dated 2nd March 2006 has constituted Goa State Information Commission to consist of Chief Information Commissioner and one State Information Commissioner.

41. *We are in agreement with the view expressed by the Single Judge of the Himachal Pradesh High Court in Virendra Kumar v. P. S. Rana (AUE 2007 HP 63) (supra), and in particular para 15 thereof and by the Calcutta High Court in Tata Motors V. State of West Bengal (supra), that the State information Commissioner has to be a multi member body. "*

and the one reported in 2013 (4) *Mh. L. J.* 453, "**Goa Cricket Association and Another V/s State of Goa and others** observing;

"4. *As regards the first contention a Division Bench of this Court has already held in Public Information Officer and Another Vs. Manohar Parrikar and Anr. 2012 (1) Bom.C.R. 558 that the State Information Commissioner is a multi-member body and that the Commission cannot consist of only one member. The Commission must consist of State Chief Information Commissioner and at least one more State Information Commissioner. This Judgment is delivered by a co-ordinate bench of this Court and is binding on us. In Namita Sharma Vs. Union of India, (2013) 1 SCC 745, the Supreme Court has also taken the view that the State Information Commission is a multi-member body with judicial members. The contention urged by the learned counsel appearing for the petitioners*

is, therefore, required to be accepted. The impugned decision must accordingly be set aside on the basis of the law laid down by this Court in aforesaid decision of the Division Bench. "

5. Learned A.G.P. tried to resist, contending that the fact remains that the information pursuant to the Act has been supplied by petitioner and as such the order passed by the State Commission cannot be faulted with.

6. Be that as it may, the legal position appears to be that the State Commission shall necessarily comprise at least two members, a position as emerging from decisions rendered by two division benches of this court and further that the petitioner cannot be said to be the State information Officer as contemplated under section 20(1) of the Act which is an admitted position. Additionally, notice of the appeal before the Commissioner was issued to the State Information Officer i.e. in the present case Joint District Registrar-Class I and not to the petitioner who, as stated above, was not the State Information Officer. It appears to be an undisputed position that petitioner was not State information Officer.

7. In the original appeal petitioner had not been a party and the show cause notice purportedly came to be issued to him to which he has tendered explanation pointing out circumstances in which communications were issued as an administrative officer and not as State Information Officer. As such, it cannot be said that there was any application of mind while passing impugned order and the same has been passed without reference to the provisions of the Act.

8. On all aforesaid counts, the impugned order is unsustainable and deserves to be set aside. Accordingly, the impugned order dated 01-09-2012 of Respondent no. 1 in appeal bearing No. RTI/2010/Appeal/CR/1109 is quashed and set aside.

9. Rule is made absolute accordingly with no order as to costs.

SUNIL P. DESHMUKH, J.

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