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**IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.321 OF 2023**

Mr Pramod alias Sachin D. Kalokhe,
Aged 44 years, R/o House No. 268,
Manshebhat, Britona, Penha-de-Franca,
Bardez, Goa. Petitioner.

Versus

- 1 Public Information Officer, Village Panchayat Penha-De-Franca.
- 2 Block Development Officer-Bardez, First Appellate Authority, Government of Goa, Mapusa Bardez, Goa.
- 3 State Chief Information Commissioner, Second Appellate Authority, State Information Commission, Government of Goa, Kamat Tower, 7th Floor, Patto, Panaji Goa. Respondents.

Ms Apeksha Kalokhe, Advocate for the petitioner.
Mr Nikhil Pai and Mr Adithya Unni, Advocate for respondent no. 1.
Mr Prashil Arolkar, Addl. Govt. Advocate for respondent no.2.

CORAM:

BHARAT P. DESHPANDE, J

Dated :

13th September 2024.

ORAL JUDGMENT:

1. Rule.
2. Rule is made returnable forthwith.
3. Matter is taken up for final disposal at the admission stage with consent of the parties.

4. Heard Ms Kalokhe, learned counsel for the petitioner, Mr N. Pai, learned counsel for the respondent no.1 and Mr P. Arolkar, learned Addl. Govt. Advocate for respondent no.2

5. The short question which has been raised in the present petition is the action of the State Information Commission in only issuing warning to the Public Information Officer (PIO) and not following the procedure laid down in Section 20 of the Right to Information Act 2005.

6. Ms Kalokhe submits that petitioner filed an application under Right to Information Act and specifically under Section 7(1) on 28.9.2022 asking respondent no.1 to furnish information as mentioned in paragraph 1 of the said application. In all, four questions/queries were raised seeking information/documents from respondent no.1.

7. Ms Kalokhe submits that petitioner received a reply dated 11.10.2022 from respondent no.1 thereby answering all the four questions “information not available”.

8. Ms Kalokhe submits that petitioner then filed an appeal before the First Appellate Authority i.e respondent no. 2 against denial of information. The First Appellate Authority vide its order dated 17.11.2022 directed the respondent no.1/Public Information Officer to give information on or before 23.11.2024.

9. Ms Kalokhe submits that even this deadline was not adhered to. However part information was submitted vide letter dated 25.11.2022 thereby answering question nos. 1 and 4 whereas answer to question nos. 2 and 3 is again the same “information is not available on the official record.”

10. Petitioner being aggrieved by such part information and also delay in furnishing the information, filed Second Appeal before the State Information Commission. While deciding such appeal by the impugned order dated 18.5.2023, State Information Commission observed that information ought to have been given and “not available” is vague and such reply cannot be accepted in respect to Section 7(1) of the said Act.

11. Ms Kalokhe submits that the Second Appellate Authority observed that Public Information Officer committed irregularities and failed to follow the procedure prescribed under the Act, however instead proceeding under Section 20 of the said Act, Second Appellate Authority only observed to issue warning to the PIO and then dismissed the appeal.

12. Per contra, Mr Pai appearing for the respondent no.1 would submit that information was furnished with a delay of only 2 days and Second Appellate Authority has considered that there is no case made out for compensating the petitioner. He submits that Second Appellate Authority by observing that the warning would be sufficient

concluded that there is no need to proceed under Section 20 of the said Act.

13. Mr Pai submits that petitioner issued the information as per direction of the First Appellate Authority and therefore appeal has been rightly rejected.

14. Rival contentions fall for determination.

15. Provision under Section 7 of the Right to Information Act entitles a person to seek information from the concerned authority and authority who is responsible for furnishing such information is bound to provide it in a time bound manner. It is no doubt true that certain information could be exempted under Section 8 of the Act. PIO is also entitled to reject the application on certain grounds. However, the present matter would clearly go to show that the application was filed with regards to information of the panchayat member of ward no. 3 of the same Village Panchayat. Four questions were raised seeking documents/information. PIO vide his letter dated 11.10.2022 refused to handover such information on the ground that information is not available. Thus it is clear that PIO answered the queries raised by the petitioner and refused to handover information on the ground that such information is not available in his office. By this answer it is clear that PIO even failed to exercise jurisdiction under Section 6(3) of the said Act thereby transferring such application to PIO, who possesses such

information. Simply by saying that information is not available, cannot be answer of such queries.

16. It is matter of record that during the pendency of the appeal filed by the petitioner before the First Appellate Authority, a specific order was passed which is dated 17.11.2022 which reads thus:-

"The Appellant present in person. The Respondent are representation by Adv. V. Naik. The Respondents are directed to give information before 23rd Nov. 2022. The respondent are given final opportunity to give the information. Matter is disposed."

17. Roznama, which is produced from the First Appellate Authority, would go to show that though PIO appeared, failed to file any reply and was therefore directed to handover information.

18. It is matter of record that such information was not furnished to the petitioner on or before 23.11.2022. Letter along with information/documents was furnished to the petitioner on 25.11.2022. Here also information with regard to question nos.1 and 4 was furnished whereas information with regard to question nos. 2 and 3 was not furnished with clarification that such information is not available on the record.

19. It clearly goes to show that all four questions raised by the petitioner are in connection with residence/ residential house of the

panch member of Ward no.3 of the said village panchayat. However, question nos. 2 and 3 were again answered as information not available. PIO failed to disclose or even failed to exercise powers under Section 6(3) for transferring said application to the concerned PIO in whose possession such information is found to be available.

20. Petitioner being dissatisfied with this information provided in part and by delay of two days, filed an appeal before the State Information Commission. Reply was filed before the State Information Commission by respondent no.1 and thereafter said appeal was disposed of by the impugned order dated 18.5.2023.

21. Observations of the Second Appellate Authority in paragraph no. 16 reads thus:-

"16 In the given case, the RTI application dated 28/09/2022 was initially replied on 11/10/2022. In the said reply the PIO mechanically informed the Appellant that "Information is not available". In the said reply, the PIO neither cited exact provision of the Act to reject the request nor gave any reasoning as to why said information is not available. The word 'not available' is vague in as much as it does not suggest what efforts the PIO made to locate the information. It appears that the PIO without any reasonable verification replied the RTI application as "information not available". Such a vague reply cannot be accepted as a response under Section 7(1) of the Act. The PIO has committed irregularity and not followed the provision prescribed by the Act, therefore, I find it appropriate to warn the PIO, Shri. Suresh S. Fadte that he should deal with the RTI applications with due sanctity. However, this being the first lapse as is noted by the Commission, a lenient approach is adopted. The

PIO shall be diligent henceforth and deal with the application under the Act with caution and with the spirit and intent with which the Act is promulgated. With the above observation, appeal stands dismissed.

Proceedings closed.

Pronounced in the open court.

Notify the parties.”

22. It is clear from the above observation that the Second Appellate Authority found that the answers given by PIO are vague and it clearly shows that PIO committed irregularities. However, once it is found that information was available but not given, remedy available with the Appellate authority is as provided under Section 20 of the Act which reads thus:-

“20 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;

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.”

23. A careful reading of the above provision would go to show that the PIO without any reasonable cause refused to hand over the information or give incomplete or misleading information, he shall be imposed with the penalty of Rs.250/- for each day till application is received or information is furnished. Similarly, the Appellate

Authority is also empowered to direct the department to conduct disciplinary proceedings in case PIO is found to be negligent or refusing to give information without any reasonable cause.

24. In the present matter the Second Appellate Authority has clearly observed that the information was not provided without any reasonable cause. The only option with the concerned Second Appellate Authority is to proceed against the concerned PIO under Section 20 of the said Act. It is for the departmental authority to consider whether warning should be given to the concerned officer. The Second Appellate Court, in the present matter, encroached upon the powers of the Disciplinary Authority and issued a warning to the PIO which is not provided under the Act.

25. For the above disclosed reasons, a second appeal filed before the concerned authority is required to be remanded to the concerned authority only for the purpose of deciding said matter in accordance with Section 20 of the said Act. As far as observations on merits of the Second Appellate Authority are concerned, there is no need to interfere with it. However, dismissal of the said appeal by issuing warning, needs to be interfered with.

26. Accordingly, Second Appeal is remanded to the concerned authority only for the purpose of taking up the said proceeding in accordance with Section 20 of the said Act. For this purpose the

order of the Second Appellate Authority of issuing warning and dismissal of the Second Appeal is quashed and set aside.

27. Parties shall appear before the Second Appellate Authority on 30.9.2024 during the afternoon session. The Second Appellate Authority shall decide the matter with regards to penalty under Section 20 of the Act after hearing both the sides, preferably within a period of one month. Rule is made absolute in the above terms.

28. Petition stands disposed of accordingly.

BHARAT P. DESHPANDE, J.