



Darshan Patil

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 303 OF 2018

Bar Council of Maharashtra
and Goa

...Petitioner

Versus

Central Information Commission
and Anr.

...Respondents

Mr Yogendra Rajgor, a/w Ms Meghna Gowalani, Mr Jagdish Rajgor, for the Petitioner.

CORAM M.S. Sonak &
Jitendra Jain, JJ.
DATED: 17 October 2024

PC:-

1. Heard Mr Yogendra Rajgor for the petitioner.
2. The respondents have been duly served. The 2nd respondent has also filed a reply affidavit in the matter.
3. The challenge in this petition is to the “adjunct” order dated 18 September 2017, in which the Central Information Commissioner has observed that the petitioner has not complied with the orders dated 17 May 2016 and 27 July 2017 by providing complete information as was directed. Further, the impugned order, after noting that there was more than 100 days delay in giving information partially, has imposed a penalty of Rs.25,000/- on the CPIO and also

recommended disciplinary action against him under Section 20(2) of the Right to Information Act, 2005 (“**RTI Act**”).

4. Mr Rajgor, learned counsel for the petitioner, submitted that most of the information applied for by the second respondent was furnished. He submitted that the only reason for the alleged three-year delay in Preliminary Case No. 163 of 2011 instituted by the second respondent could not be furnished.

5. He submitted that by resorting to the RTI Act, no such reasons could have been sought, and therefore, this is not a case for any non-compliance as was observed in the impugned “adjunct” order. He submitted that the delay was well explained, and the fact that most of the information sought was furnished has not been considered. Accordingly, he submitted that the impugned “adjunct” order warrants interference.

6. Despite service, the 2nd respondent was not present on the previous occasion, i.e., on 11 October 2024. Even today, the 2nd respondent is not present. Therefore, we have considered the affidavit in reply filed by him on 22 December 2017.

7. In the affidavit, the 2nd respondent has raised certain preliminary objections about the absence of cause of action and that this petition should have been filed on the Original Side. He has also submitted that the arguments about the 1st respondent exceeding the scope of its authority and jurisdiction by directing the petitioner to clarify the doubts/questions raised by the 2nd respondent in the letter

dated 13 July 2016 were misconceived. He has submitted that the doubts and clarification were in the context of incomplete information supplied by the petitioner. Finally, the 2nd respondent has referred to the provisions of Section 20(1) and 20(2) of the RTI Act and has submitted that all procedural safeguards were followed before imposing a penalty on the Secretary and directing disciplinary action. The 2nd respondent has also submitted that the delay was not explained; therefore, the penalty of Rs.25,000/- was correctly imposed on the petitioner.

8. We have considered the arguments advanced by Mr Rajgor and contentions raised by the 2nd respondent in the affidavit in reply. We have also perused materials on record. For the reasons indicated hereafter, we are inclined to interfere with the impugned “adjunct” order dated 18 September 2017.

9. The 2nd respondent, by his application dated 11 March 2013, applied to PIO/Secretary of Bar Council of Maharashtra and Goa for the following: -

“(a) The list of Disciplinary cases filed and pending under preliminary enquiry with cause of delay;

(b) Give particulars of allotment and disposal of preliminary enquiries of each member of Disciplinary Committee;

(c) Any limitation prescribed for disposal of Disciplinary Cases under preliminary enquiry;

(d) Please give the reasons for three years delay in the preliminary enquiry in Case No. 163 of 2011 filed by the Complainant.”

10. The record shows that the information sought in (a) and (b) was furnished to the 2nd respondent. The list and particulars relating to (a) and (b) are enclosed along with this petition. Accordingly, there could have been no grievance about furnishing information regarding (a) and (b) above.

11. Regarding the information at (c), the petitioner informed the second respondent that no limitation period was prescribed. Mr Rajgor submits that the Hon'ble Supreme Court only recently prescribed timelines for disposing of preliminary enquiries in disciplinary cases in the case of **K. Anjinappa vs. K.C. Krishna Reddy and Anr.**¹.

12. Regarding information under (d), we agree with Mr Rajgor that under the provisions of the RTI Act, there was no question of furnishing any reasons for the delay in the preliminary enquiry.

13. Section 2(f) of the RTI Act defines "information" as any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which a public authority can access under any other law for the time being in force. Therefore, the reasons for the alleged delay would not constitute "information" as defined under Section 2(f) of the RTI Act.

14. In **Khanapuram Gandaiah Vs. Administrative Officer and Others**², the Hon'ble Supreme Court has explained that the definition shows that an applicant under Section 6 of the RTI

¹ (2022) 17 Supreme Court Cases 625

² (2010) 2 Supreme Court Cases 1

Act can get any information which is already in existence and accessible to the public authority under law. The Court further held that no litigant can be allowed to seek information as to why and for what reasons the Judge had come to a particular decision or conclusion. A Judge is not bound to explain later on for what reasons he had come to such a conclusion.

15. The reasons, in many cases, would involve a subjective element. There may be disagreements on whether something constitutes reasons or, in any case, justifiable reasons. Therefore, the 2nd respondent could not have asked for reasons for the 3-year delay in disposing of the preliminary enquiry. In any event, he could have always applied for roznama and then tried to ascertain reasons for the alleged delay of the disposal of the enquiry.

16. Therefore, on the ground that such reasons were not furnished or because there was some delay in supplying the remaining information, the “adjunct” order imposing the penalty of Rs.25,000/- and ordering the disciplinary proceedings against the Secretary of the Petitioner could not have been made.

17. In response to the show cause notice issued to him, the Petitioner's secretary explained that there was no intention or default in not attending the proceedings because there was a bereavement, and the Secretary had to participate in obsequies on 17 May 2016. The Secretary also explained that his representative did attend the proceedings because he was required to proceed to his native place on account of the death of his aunt.

18. The above explanation was adequate but was not adequately considered by the Central Information Commission while passing the “adjunct” order. Before any orders imposing penalties or ordering disciplinary proceedings are issued, care must be taken to ascertain whether defaults were intentional and willful. The explanation offered must be at least considered. In all such matters, there is bound to be some lapse here and there. However, every lapse does not justify the imposition of penalties and directions for disciplinary proceedings.

19. For the above reasons, we quash and set aside the impugned “adjunct” order dated 18 September 2017.

20. The rule is made absolute in the above terms without any cost orders.

(Jitendra Jain, J)

(M.S. Sonak, J)