

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/SPECIAL CIVIL APPLICATION NO. 6941 of 2020**

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SURESHCHANDRA MANEKLAL DHOLAKIYA

Versus

STATE OF GUJARAT

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Appearance:

MR AR THACKER(888) for the Petitioner(s) No. 1

SHIVANG A THACKER(7424) for the Petitioner(s) No. 1

G H VIRK(7392) for the Respondent(s) No. 2

MR DHAWAN JAYSWAL, AGP (1) for the Respondent(s) No. 1,2,3,4

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**CORAM: HONOURABLE MR. JUSTICE A.Y. KOGJE**

**Date : 10/09/2020**

**ORAL ORDER**

1. The present petition under Article 226 of the Constitution of India is filed seeking directions to the respondent authorities to provide information, details and documents demanded by the petitioner in his application dated 19.04.2018 under the Right to Information Act.

2. At the outset, considering the age of the petitioner being 87 years, notice came to be issued with a purpose that the information and documents required by the petitioner, if made available, then the same could be used by the petitioner in an ongoing litigation.

3. Learned advocate for the petitioner submitted that though the application was filed in the year 2018 giving specific details about the information and documents required, the Public Information officer and Mamlatdar, Bhachau had refused to entertain the application merely on the ground that the information, sought for, by the petitioner pertains to third party, and therefore, it is privilege information under Section 8(1)(d)

of the Right to Information Act.

4. Against such order of Public Information Officer, the petitioner had preferred First Appeal before the appellate authority and the appellate authority did not respond to the appeal within stipulated time, as a result, the petitioner had preferred Second Appeal before the State Information Commissioner. The State Information Commissioner had allowed the appeal and directed the respondent authorities to furnish information sought by the petitioner. In Paragraph – 3 of the order, the State Information Commissioner had also made drastic remarks against the authority for not supplying the required documents.

5. It is submitted that after the decision of the State Information Commissioner, still, the concerned authorities had taken altogether different stand and stated that now, the information, which is sought for, is not available i.e. how the order of the State Information Commissioner has not been complied.

6. Learned advocate for the petitioner submitted that the respondent authority i.e. Public Information Officer has taken contrary stand before the State Information Commissioner by submitting that he has no record to be produced before the State Information Commissioner, as the said record is destroyed and/or is not available. The only stand, which was taken before the State Information Commissioner was that the information pertains to third party could not be provided in view of Section 8(1)(d) of the Right to Information Act.

7. Learned AGP drew attention of this Court to the affidavit in reply of the respondent, wherein, in paragraph no.10, it is categorically stated that on account of the earthquake natural calamity, the area of Bhachau had faced considerable damage even to the government offices and hence, information was not available with the authority.

8. In rejoinder, learned advocate for the petitioner submits that this flip flop by the authorities for not providing the information cannot be accepted right from the beginning till the order passed by the State Information Commissioner. The only stand taken that the information, sought for, by the petitioner pertains to third party. Nowhere, the stand was taken that the information, as sought for, by the petitioner is destroyed in earthquake natural calamity.

9. Having heard learned advocate for the respective parties and having perused the documents on record, it appears that when the Public Information Officer has passed the order refusing to supply the information, as sought for, by the petitioner under the Right to Information Act, the ground of such rejection was that the information, as sought for, by the petitioner pertains to third party, and therefore, such information could not be furnished.

10. It appears that the petitioner, thereafter, preferred First Appeal before the appellate authority which has not taken up the appeal and disposed of within stipulated period, and therefore, the petitioner was constrained to file Second Appeal before the State Information Commissioner being Appeal No. 5262 of 2018. The said appeal came to be disposed of vide order dated 21.08.2019, wherein the directions were issued to furnish the information to the petitioner within a period of 20 days. In paragraph no.3 of the order, it is observed that the State Information Commissioner has expressed that on flimsy grounds, information has not been provided to the petitioner and such conduct of the authorities was severally criticized. It appears that pursuant to the directions, the petitioner had, once again, made an attempt to get the information as per the order of the State Information Commissioner and at that stage, the communication dated 05.09.2019 was issued, wherein

altogether different stand was taken to the effect that under the supervision of the Mamlatdar and Public Information Officer, a team had undertaken search of the record, however, such record was not available and the report of such team work was forwarded to the petitioner. Even from the affidavit now filed on behalf of the State, the stand of the non availability of the record is reiterated and such non availability of record is on account of natural calamity of earthquake in the year 2001.

11. The conflicting stand of the respondent authorities more particularly Public Information Officer, at the relevant time, before the State Information Commissioner that the information, as sought for, by the petitioner pertains to third party, and therefore, refused to give him. As against that stand, now, stand being taken that the record is not available cannot be accepted by the Court. At the first stage when the response was given to the petitioner by the Public Information Officer as well as State Information Commissioner about the information of third party, and therefore, not provided would be at the presumption that the respondent authorities had the record with them and after perusal of such record have found that the information sought for by the petitioner is missing, and thereafter, change their stand of no record being available. Therefore, the same cannot be accepted by this Court. Therefore, there is no hesitation in holding in aforesaid fact situation that the respondent authorities more particularly, Public Information Officer and Mamlatdar, Bhachau has acted in a callous manner as a result of which the petitioner had been deprived of from the right of Right to Information. As the fact itself provided for initiation of proceedings under Section 20 of the Right to Information Act, the Court is of the view that this is a fit case where the proceedings under Section 20 of the Right to Information Act needs to be initiated in view of non compliance of the order passed by the State Information Commissioner

as well as the casual manner in which the application of the petitioner to seek right to information under the Right to Information Act has been dealt with.

12. In view of the aforesaid, the matter is relegated back to the State Information commissioner to initiate proceedings under Section 20 of the Right to Information Act. The petition stands allowed to the aforesaid extent. Direct service is permitted. The petition stands disposed of accordingly.

CAROLINE/GIRISH

(A.Y. KOGJE, J)

