

# Gujarat High Court

Nafis vs Commissioner on 19 April, 2011

Author: K.M.Thaker,&Nbsp;

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SCA/4430/2011 4 ORDER

IN

THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL

CIVIL APPLICATION No. 4430 of 2011

=====

NAFIS

AHMED M ISHFAQUE CHHIPA THE AHMEDABAD GUJRI ASSOCIATIO -  
Petitioner(s)

Versus

COMMISSIONER

- STATE INFORMATION COMMISSION & 2 - Respondent(s)

=====

Appearance

:

MS

UTPALA S BORA for

Petitioner(s) : 1, None for Respondent(s) : 1 -

3.

=====

CORAM

:

HONOURABLE

MR.JUSTICE K.M.THAKER

Date

: 11/04/2011

ORAL

ORDER

1. The

petitioner has taken out present petition seeking below mentioned relief(s):-

"8.(A)

This Hon'ble Court may be pleased to admit and allow this petition.

(B)

This Hon'ble Court may be pleased to issue a writ of certiorari or a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction, directing the respondent No.1 to hear the complaint dated 18.1.2011 within a short period.

(C) During

the pendency and final disposal of the present petition, this Hon'ble Court may be pleased to direct the concerned authority to inquire into the matter and to initiate disciplinary action against the erring officer(s), directing the respondents to provide information to the petitioner which he asked in his application dated 14.7.2010."

## 2. Heard

Ms.Bora, learned advocate for the petitioner.

## 3. It

appears that the petitioner herein had made application before the respondent no.3 seeking certain information which would fall within the meaning of the term information as defined and contemplated under Clause-2(f) of the Right to Information Act, 2005.

## 4. It

further appears that such request was not considered and/or granted by the respondent no.3. Ultimately, the petitioner was constrained to approach the respondent no.1 and also the respondent no.2.

## 5. It

comes out from the record that on 22nd December, 2010, the respondent no.1 passed certain order and directed the respondent no.2 i.e. present respondent no.3 to furnish, on payment of fee, the information mentioned at Point Nos.1 to 5 in the said order.

### 5.1 The

said order was passed under the provisions of Sections 18(1) and 18(2) of the Right to Information Act.

### 5.2 The

petitioner has approached the Court with the grievance that despite the said order, the information has not been supplied to the petitioner. The petitioner, therefore, says that this Court should act as executing Authority/Court and implement and execute the order passed by an authority created under an Act i.e. the respondent nos.1 and 2 for not complying with the directions issued by virtue of the order dated 22.12.2010. It appears that the petitioner has, on this count, made complaint dated 18.01.2011 and the same did not yield any result. Therefore, present petition.

## 6. Ms.Bora,

learned advocate for the petitioner, has heavily relied upon the provisions of Section 18 of the Right to Information Act and submitted that it is the duty of the respondents to supply the information as directed by the respondent no.1. To that extent the submission by Ms.Bora, learned advocate for the petitioner, is justified.

## 7. However,

the petitioner is not justified in contending that the High Court should take action for execution of the order passed by the authority under the Act.

8. This

Court is of the view that the powers under Article 226 of the Constitution of India ought not to be exercised for execution of the order passed by an Authority constituted under any Statute. The Statute of the prerogative writ of mandamus command by this Court in exercise of the jurisdiction under Article 226 of the Constitution of India would not be issued for execution of subordinate authority's orders against some other party. The judgment holder is supposed to and required to take out appropriate proceedings before appropriate forum - Court for execution and enforcement of subordinate authority's orders.

9. The

petitioner ought to take appropriate action under the provisions of the Right to Information Act, 2005 or any other appropriate provisions, as may be relevant and applicable to enforce and execute the directions passed by respondent No.1 and get the order duly executed.

10. For

the purpose of implementation and execution of the order in question, the petitioner may take appropriate steps and action as may be available under law including Section 20 of the Act, however, the prerogative writ and powers under Article 226 of the Constitution of India cannot be permitted to be invoked for implementing the order passed by the authority under the Act. Hence, the petition is not entertained.

11. It

is, however, clarified that present order will not stand in the way of the petitioner in any manner whatsoever if the petitioner takes out any appropriate proceedings against the erring respondent/officer in any Court or Forum including Section 20 and Section 17 of the Act for not implementing the order passed by the respondent no.1. If and when such proceedings are taken out by the petitioner, the same will be decided in accordance with law.

With

the aforesaid clarifications and observations, the petition is disposed of. Rule discharged. No costs.

(K.M.

Thaker, J.)

rakesh/

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