

Gujarat High Court
Gujarat High Court
Jadhav vs State on 25 April, 2011
Author: K.M.Thaker,&Nbsp;
Gujarat High Court Case Information System function loadSearchHighlight() {

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SCA/4962/2011 5/ 5 ORDER

IN

THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL

CIVIL APPLICATION No. 4962 of 2011

=====

JADHAV

PRADEEP CHANDRAKANT - ROYALTY INSPECTOR - Petitioner(s)

Versus

STATE

OF GUJARAT - THROUGH PUBLIC INFORMATION OFFICER & 2 - Respondent(s)

===== Appearance

:

MRGUNVANTRTHAKAR

for

Petitioner(s) : 1,

MR JANAK RAVAL AGP for Respondent(s) : 1, None

for Respondent(s) : 2 -

3.

=====

CORAM

:

HONOURABLE

MR.JUSTICE K.M.THAKER

Date

: 25/04/2011

ORAL

ORDER

1. The

petitioner has prayed for below mentioned relief/s:

"

(a)

(b)

direct the respondent no.1 & 2 authorities to provide the requisite information to the petitioner as prayed in the prescribed format dated 17/07/2010;

(c)

direct the respondent no.3 authority to exercise his powers for penal provisions for failure to provide information to the petitioner, as per law, against the respondent no.1 and 2 as both the authorities have totally ignored the order dated 04/09/2010 passed by respondent no.3;

(d)

direct the respondent no. 1 and 2 to pay the exemplary cost to the petitioner as they have acted against the objects and reasons of the Right to Information Act and in that way they tried to make the said Act meaningless;"

2. Heard

Mr.Thakar, learned advocate for the petitioner and Mr.Raval, learned Assistant Government Pleader for respondents.

3.

It transpires from the submissions made by learned advocate for the petitioner that the petitioner required certain information. Therefore, an application to the competent authority was made by the petitioner. The application/request was not responded to by the concerned authority. The petitioner repeated his attempts, however, attempts did not yield any result. Hence, petitioner filed application/appeal under the provisions of Right to Information Act. The application/appeal was filed in August, 2010.

4. By

order dated 4th September, 2010, the Commissioner, Right to Information, directed the concerned-competent authority to decide the application in prescribed time. The operative part of the order reads thus;

"3.

The Commission, therefore, decides to send this appeal in original to the Appellate Authority, the respondent No.2, with the direction that the respondent No.2 to treat this application as the first appeal and should decide it within the prescribed time limit from the receipt of this order and inform the Commission."

5. Thereafter

also respondent No.2 did not respond to the petitioner's request. Hence the petitioner again approached respondent No.3 i.e. Commissioner under the Right to Information Act. Until now, petitioner's request is not met with. Therefore, present petition.

6. Mr.Thakar,

learned advocate for the petitioner has submitted that though the Commissioner, vide his order dated 4th September, 2010 directed the authority to decide the application, any action by the competent authority has not been taken. The petitioner, therefore, feels that this Court may execute the direction given by the Commissioner vide order dated 4th September, 2010.

7. Having

regard to the powers under Article 226 of the Constitution of India, this Court is not inclined to exercise the prerogative and extraordinary powers under the said provisions for execution and implementation of order passed by any statutory Authority.

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 statutory 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. Learned

advocate for the petitioner has, considering the view of this Court submitted that petitioner has already made application/representations which are, though not exactly under, but, in the nature of application/complaint under section 20 of the Act. However, the petitioner will make, appropriate application in prescribed form, under section 20 of the Act and for that purpose, the petitioner may not press the petition at this stage. However, respondent No.3 may decide the said application and pass appropriate orders. Section 20 of the Act reads thus;

"20.-Penalties.-(1)

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."

11.

In view of the aforesaid position, it would be open for the petitioner to make appropriate application including the application under section 20 of the Act and make necessary and appropriate request to the respondent No.3.

12.

While disposing of this petition, since this Court would not exercise power under Article 226 of the Constitution of India to execute order of subordinate authority, it is, however, clarified that if and when the petitioner makes an application under section 20 or any other provisions of the Act, the respondent No.3 may

take necessary action and decision in connection with such application by the petitioner and pass appropriate orders in accordance with law.

13.

With the aforesaid clarification, petition is disposed of.

(K.M.THAKER,

J.)

Amit

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