

(2010) 09 GUJ CK 0149

In the Gujarat High Court

Case No : Special Civil Application No. 7617 of 2010

Chief Officer

APPELLANT

Vs

Chief Information Commissioner and Others

RESPONDENT

Date of Decision : 03-09-2010

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Gujarat Municipalities Act, 1963 — Section 45(2), 45(D)
Right to Information Act, 2005 — Section 19, 20, 20(1), 7(1), 7(9)

Citation : (2010) 09 GUJ CK 0149

Hon'ble Judges : H.K. Rathod, J

Bench : Single Bench

Advocate : Deepak P. Sanchela, for the Appellant; N.V. Anjaria, for Respondent 1 and Amit Patel, AGP for Respondent 2, for the Respondent

Judgement

H.K. Rathod, J.—Heard learned advocates appearing on behalf of respective parties.

2. Though notice, issued by this Court, is served to respondent No. 3, no appearance is filed by respondent No. 3 and no advocate is engaged by respondent No. 3, therefore, in absence of respondent No. 3, matter is heard and decided finally by this Court.

3. The petitioner being a Chief Officer of Talaja Municipality has challenged order of penalty passed by respondent No. 1 - Chief Information Commissioner dated 20th May 2010 in Appeal u/s 19 of Right to Information Act, 2005 in Appeal No. 450/08-09 preferred by Respondent No. 3 - Asarabhai Nanubhai Chauhan.

4. Learned advocate Mr. Deepak P. Sanchela appearing on behalf of petitioner submitted that respondent No. 3 is not a genuine BPL Card Holder and his card has been cancelled by Mamlatdar, Talaja on the ground that he is having gas connection from 21st April 1996 as well as he is having immovable property in Bhavani Street and having Pan Kiosk and Cold drink shop along with fan and freeze, even though, petitioner was never acted malafidely with petitioner, but,

here, petitioner's efforts are to save the amount of expenses of public body as a Chief Officer of Talaja Municipality. He also submitted that on 29th April 2010, Mamlatdar Talaja has taken decision and communicated same to respondent No. 3 that now onwards, he does not to use BPL Card in his favour as a beneficiary. Learned advocate Mr. Sanchela submitted that respondent No. 1 has exercised power u/s 20(1) of Right to Information Act, 2005 and imposed a penalty of Rs. 15,000/- upon petitioner only on the ground for not providing information to respondent No. 3 within stipulated time limit and even after appellate authority's order until commission directed to Chief Officer. Therefore, he submitted that Commissioner decided entire appeal considering only technical aspect and substance of the matter has been ignored by him. He submitted that respondent No. 3 is not a genuine BPL Card Holder. For that, spot inquiry was carried out by petitioner through one Gulabkha Pathan, Peon of Talaja Municipality who has made statement before Chief Officer that after spot inquiry, at the place of respondent No. 3, who is having a residential property in Bhavani Street in name of Usmanbhai Sipai which has been registered property card of Talaja Nagar Palika being 4/2/6. Respondent No. 3 having rented premises in Wav Chowk Area of landlord Bhanushankar Pandya which is running in name of Chauhan Pan Center where business of Pan-bidi as well as Cold Drink are carried out by respondent No. 3 having a good business and also having fan and freeze in the said rented premises. The residential property also well furnished having all facilities which occupied by respondent No. 3. This report is submitted by Gulabkha Pathan on 15th April 2008. The application was made by respondent No. 3 before petitioner on 4th April 2008. Thereafter, Chief Officer has given answer to respondent No. 3 on 15th April 2008 that information which has been called for by respondent No. 3 whose wife is an elected Member of Municipality and keeping in mind financial interest of Municipality, expenses of xerox would come to Rs. 28,000/-, therefore, such expenses are not in interest of Municipality, therefore, it can be inspected by respondent No. 3 and after inspection, whatever relevant material will be supplied by Chief Officer to respondent No. 3. Therefore, learned advocate Mr. Sanchela submitted that Chief Officer has not denied information to respondent No. 3, but, looking to bulky record which having unnecessary financial cost to be bear by public body, way which is find out to less in burden to Municipality, but, respondent No. 3 being a husband of elected member of municipality approached appellate authority, District Collector, Bhavnagar and all details have been produced on record with a fact that no response is given by respondent No. 3 though two letters dated 15th April 2008 and 30th April 2008 communicated to respondent No. 3. However, only on the ground that within limitation, information is not supplied by petitioner and looking to BPL Rationing Card of respondent No. 3, he is entitled for such documents/information free of cost under provisions of Right to Information Act. Therefore, it was directed to petitioner to supply all the information to respondent No. 3 within a period of seven days by order dated 27th May 2008. Against which, appeal was preferred to respondent No. 1 u/s 19 of Right to Information Act with prayer to impose penalty to petitioner.

5. Learned advocate Mr. Sanchela further submitted that respondent No. 1 authority has merely considered technical aspect that information is not supplied in prescribed time and on the date on which respondent No. 3 made an application, he was possessing valid BPL Card, therefore, such information must have to be supplied by Chief Officer within a period of 30 days under provisions of Right to Information Act. Learned advocate Mr. Sanchela also submitted that respondent No. 1 has not applied his mind while imposing unreasonable cost/penalty upon petitioner.

6. Learned advocate Mr. Sanchela submitted that being a Chief Officer as well as working as Public Information Officer under Right to Information Act, it was considered to be an obligation upon Chief Officer cannot ignored relevant legal obligation u/s 45(D) of Gujarat Municipalities Act. He submitted that Municipality has rightly passed an order while exercising power u/s 45(2) of Gujarat Municipalities Act and thereafter, Mamlatdar has passed an order on 29th April 2010 considering resolution passed by Municipality. Therefore, in short, his submission is that defence which has been raised by petitioner and subsequent incident are doubted holding of BPL Card by respondent No. 3 from inception, therefore, respondent No. 3 may be considered to be not bonafide appellant and asking information, because, his wife is an elected member of Talaja Municipality, so, that information has to be utilised for some ulterior purpose, because, he submitted that there is no provision made under Right to Information Act that applicant must have to satisfy Public Information Officer to point out reason or justification for demanding such information or must have to point out objective requirement of such information. So, in absence of such provision, any person required any information from Public Information Officer which must have to be surrendered by Public Information Officer, except to exercise power u/s 7(9) for rejecting request made by such applicant to Public Information Officer. Therefore, learned advocate Mr. Sanchela submitted that merely technical approach without considering defence of present petitioner, Rs. 15,000/- penalty has been imposed which apparently found to be harsh for serious lapse not committed by petitioner and petitioner having a reasonable justification for not giving information to respondent No. 3 within a period of 30 days though letter dated 15th April 2008 and 30th April 2008 sent by petitioner to respondent No. 3, but, it has not been given any response by respondent No. 3 to petitioner. Therefore, the fault which has been found by respondent No. 1 - Commissioner cannot consider to be a proper and reasonable. Therefore, he submitted that let respondent No. 1 may reconsider entire defence case of petitioner and thereafter, order may be passed by respondent No. 1, so, his request is to remand matter back to respondent No. 1.

7. Learned advocate Mr. N.V. Anjaria appearing on behalf of respondent No. 1 submitted that order which has been passed by respondent No. 1 is strictly within his power as required under the provisions of Right to Information Act and u/s 20(1), respondent No. 1 having power to impose penalty upon erring Public Information Officer upto Rs. 25,000/-. Against which, only Rs. 15,000/- penalty

has been imposed which is considered to be a reasonable and for imposing penalty, respondent No. 1 having jurisdiction and power, for that, it cannot be considered that respondent No. 1 has no jurisdiction and power to impose penalty against present petitioner.

8. Learned advocate Mr. Anjaria also submitted that petitioner has not acted reasonably after receiving application from respondent No. 3 and not furnished information within 30 days without valid reason and acted malafidely denying information to respondent No. 3 which has been subsequently supplied after order passed by appellate authority, therefore, he submitted that no error is committed by respondent No. 1, which requires interference by this Court while exercising power under Article 226/227 of the Constitution of India.

9. Learned AGP Mr. Amit Patel appearing on behalf of respondent No. 2 - State Authority supported decision given by District Collector, Bhavnagar dated 27th May 2008 and submitted that District Collector as an appellate authority has rightly considered fact that on the date on which application was made by respondent No. 3 on 4th April 2008, respondent No. 3 was having in possession of BPL Card and therefore, respondent No. 3 is entitled to get information/document free of cost having exemption under provisions of Right to Information Act. Therefore, according to him, no interference is required by this Court.

10. I have considered submissions made by all learned advocates appearing on behalf of respective parties. I have also perused resolution passed by Municipality, and report submitted by Gulabkha Pathan dated 15th April 2008 and letters communicated to respondent No. 3 by Chief Officer dated 15th April 2008 and 30th April 2008. I have also considered power and jurisdiction of Municipality u/s 45(D) of Gujarat Municipalities Act. I have also considered Section 20 of Right to Information Act, 2005. This Section gives power to Central Information Commission having opinion that Public Information Officer has without any reasonable cause refused to furnish information within time specified u/s 7(1) or malafidely denied request for information or commonly giving incorrect, incomplete or misleading information or destroyed information which was subject of the request or obstructed in any manner in furnishing information it shall impose a penalty of Rs. 250/- each day till application is received or information is furnished, however, maximum limit of penalty has been fixed under provisions of Section 20 of the Right to Information Act which would come to Rs. 25,000/-. The burden to prove that Public Information Officer has acted reasonable and diligently is to be proved upon Public Information Officer.

11. In light of facts which are found from record, an application was made by respondent No. 3 on 4th April 2008 and present petitioner is having reasonable doubt or apprehension in respect to holding BPL Card by respondent No. 3, therefore, immediately, on 15th April 2008, spot inquiry was carried out by sending one Peon who has submitted report that respondent No. 3 is not a genuine BPL Card Holder. Thereafter, information has not been denied by petitioner to respondent No. 3. On the contrary, a request was made by

petitioner to respondent No. 3 by letter dated 15th April 2008 and information which has been called for by respondent No. 3 which having estimated cost of Rs. 28,000/-, therefore, get the inspection of such documents and copy of relevant documents can be pointed out which will be supplied by Public Information Officer to respondent No. 3. So, this letter suggests bonafide efforts made by petitioner, not denied information without any reasonable cause to respondent No. 3. The petitioner is having two designations as a Public Officer; one is Chief Officer of Municipality and another is Public Information Officer under Right to Information Act, so, it is his duty to protect or preserve interest of Municipality from unnecessary expenses. The answer which has been given by petitioner to respondent No. 3 on 15th April 2008 subsequently found from record that respondent No. 3 is not a genuine BPL Card holder and decision is taken by Mamlatdar, Talaja on 29th April 2010 not to use or misuse BPL Card as a beneficiary based on resolution passed by Municipality as a General Resolution No. 174 in General Body from list of BPL Card holder, name of respondent No. 3 has been cancelled and request was made to present petitioner by Municipality to file appropriate proceedings for cancelling BPL Card of respondent No. 3 before Mamlatdar. So, it is necessary to consider by respondent No. 1 - Commissioner that within 30 days from date of application 4th April 2008, a General Resolution No. 174 was passed by General Body of Municipality cancelling name of respondent No. 3 from list of BPL Card holder on 29th April 2008. Therefore, it cannot consider that petitioner has acted unreasonable or high handed manner or malafidely with respondent No. 3, this aspect has not been properly appreciated by respondent No. 1 while passing order on 20th May 2010.

12. Therefore, according to my opinion, a technical approach of respondent No. 1 - Commissioner ignoring reasonable efforts made and explanation given by petitioner which are found from record and without considering relevant Section 20 of Right to Information Act and without coming to correct conclusion that information/document has been denied by petitioner to respondent No. 3 without any reasonable cause or mala fide or not ? Respondent No. 1 - Commissioner has also not applied his mind whether amount of penalty of Rs. 15,000/- imposed upon petitioner can be considered to be a reasonable in light of this defence and reasonable efforts made by petitioner and subsequent event where Mamlatdar, Talaja has cancelled his BPL Card by order dated 29th April 2010. So, it is not a case of adamant approach of petitioner with respondent No. 3. On the contrary, a reasonable efforts have been made by petitioner to see that relevant documents may be made available to respondent No. 3 without unnecessary expenses caused to a public body. That cannot be penalised by imposing such harsh punishment of penalty of Rs. 15,000/- to petitioner. Therefore, order passed by respondent No. 1 Commissioner dated 20th May 2010 is required to be quashed and set aside with a direction to respondent No. 1 - Commissioner to decide while remanding back matter afresh after considering reasonable explanation/ defence of petitioner and then to pass appropriate reasoned order after giving reasonable opportunity of hearing to both parties which according to my opinion,

will meet end of justice between parties.

13. In result, order passed by respondent No. 1 - Commissioner dated 20th May 2010 is hereby quashed and set aside while remanding back matter and decide Appeal No. 450 of 2008-09 u/s 19 afresh after considering defence and reasonable cause pointed out by petitioner and then to pass appropriate reasoned order after giving reasonable opportunity of hearing to respective parties and consider such in light of defence and reasonable efforts made by petitioner, merely, a technical breach how much penalty is considered to be a reasonable and then to decide it within a period of four months from date of receiving copy of present order and intimate respondent No. 3 and petitioner before fixing hearing in remand matter and give opportunity of hearing to both i.e. respondent No. 3 as well as petitioner and thereafter to pass reasoned order in accordance with law.

14. In view of above observation and direction, present petition is disposed of by this Court without expressing any opinion on merits.