

(2008) 07 GUJ CK 0058
In the Gujarat High Court

Case No : Special Civil Application No's. 27225 and 27227 of 2006

Prahladbhai Patel and Another

APPELLANT

Vs

Gujarat State Information Commission and Others

RESPONDENT

Date of Decision : 09-07-2008

Acts Referred:

Citation : (2008) 07 GUJ CK 0058

Hon'ble Judges : Jayant M. Patel, J

Bench : Single Bench

Advocate : Mehul Sharad Shah, for Petitioners 1-2, for the Appellant; Poojari, AGP for Respondents 1-2, N.V. Anjaria, for Respondent 1 and Tushar Mehta, for Respondent 3, for the Respondent

Final Decision : Allowed

Judgement

Jayant Patel, J.—Rule. Mr. Anjaria, learned Counsel waives service of notice of Rule for respondent No. 1, Mr. Poojari, learned AGP appears for respondent No. 2 and waives service of notice of Rule, and Mr. V.K. Shah for Mr. Tushar Mehta, learned Counsel waives service of notice of Rule for respondent No. 3. With the consent of the learned Counsel appearing for both the sides, the matter is finally heard today.

2. The short facts of the case appear to be that respondent No. 3 applied for certain information, which as per respondent No. 3, was not supplied and, therefore, the complaint was made to the Commission for non-compliance of the provisions of Right to Information Act, 2005 (hereinafter referred to as "the Act"). In response to the said complaint, as per the respondent No. 1 Commission, notice was issued to the petitioner and the petitioner did appear. It is the contention of respondent No. 1 that the opportunity was given, the written reply was considered, however, the opportunity of oral submissions by way of furtherance to the written submission was not availed of by the petitioner and as, on merits, the informations were not supplied and consequence of penalty has been provided under the Act and, therefore, the impugned order has been

passed.

3. Whereas it is the contention of the petitioner that after the submission of written reply, in furtherance thereto, second reply/submission was also to be submitted, but when it was tendered to the Clerk/Public Sherestedar, the same was not accepted and the petitioner was asked to approach before the Commission and as the Commission was not available, the same could not be submitted and thereafter the petitioner received the impugned order of imposition of the punishment. It is under these circumstances, the petitioner has preferred the present petition.

4. Heard Mr. Shah, learned Counsel for the petitioner, Mr. Anjaria, learned Counsel for the respondent No. 1, Mr. Poojari, learned AGP for the respondent State Authority and Mr. Shah for Mr. Mehta, learned Counsel for respondent No. 3.

5. It appears that on the ground of opportunity of hearing to the petitioner, there are rival submissions made by the learned Counsel appearing for the respective sides, however, it does appear from the record that opportunity of hearing was given to the petitioner, but it was not fully availed of well in time, whereas as per the petitioner, before they could resort to such opportunity fully, the order has been passed.

6. Mr. Shah, learned Counsel appearing for the petitioner also declared before the Court that if the matter is remanded to the Commission for reconsideration, the petitioners are ready to pay reasonable cost for the present litigation.

7. Under these peculiar circumstances, it appears that since the petitioner has not been able to fully utilize the opportunity given, may be on the ground that the written submissions were tendered and not accepted by the Clerk or that the Commission was not available or otherwise, it would be just and proper if the Commission is directed to give opportunity of hearing to the petitioner and the matter is decided afresh after considering the submissions, which may be made on behalf of the petitioner.

8. The learned Counsel appearing for the petitioner did submit that considering the facts and circumstances, the Commission ought to have imposed the penalty, whereas it was the submission of the respondent No. 1 that as per the Scheme of the Act, if the information is not supplied within the prescribed period, penalty would be as of course and, therefore, the power is rightly exercised on the merits of the matter.

9. In my view such aspects may not be required to be examined and adjudicated at this stage, since ultimately the matter is to be reconsidered by the Commission and a fresh decision is to be arrived at after considering the submissions of the petitioner.

10. Mr. Shah, learned Counsel appearing for the petitioner, however, submitted that pending the petition, recovery of the fine is already effected, but under protest of the petitioner and, therefore, in the event this Court is inclined to

remand the matter to the Commission for rehearing, the fine which is already recovered of Rs. 25,000/- from the petitioner may be ordered to be refunded.

11. It appears that since the matter is yet to be reconsidered by the Commission, if the amount which is already recovered is ordered to be kept as deposit until fresh decision is taken by the Commission, the same would not seriously prejudice the rights of the petitioner and ultimately such amount can be appropriated as per the fresh order, which may be passed by the Commission as ordered hereinafter.

12. In view of the above, the following directions shall meet with the ends of justice:

(a) The impugned order Annexure "A" passed by the Commission is quashed and set aside on condition that the petitioner pays an amount of Rs. 2,500/- being the cost of this litigation to respondent No. 1 within a period of two weeks from today. It is further ordered and directed that the complaint No. 79 of 2006 and 80 of 2006 shall stand restored to the file of the Commission and the Commission shall give opportunity of hearing to the petitioner and the petitioner shall positively remain present with submissions, if any, to be made before the Commission on the date, which may be fixed by the Commission and the Commission shall pass a fresh order in accordance with law, preferably within a period of three months from the date of deposit of the cost by the petitioner with the Commission.

(b) Until a fresh order is passed by the Commission, the amount of Rs. 25,000/- already recovered as penalty pursuant to the impugned order shall remain as deposit and the amount shall be adjusted and/or refunded as per the fresh order, which may be passed by the Commission.

13. The petitions are allowed to the aforesaid extent. Rule made absolute accordingly.