

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 7188 of 2021

THAKARSHIBHAI BHURABHAI JAJAL

Versus

GUJARAT STATE INFORMATION COMMISSIONER

Appearance:

for the Petitioner(s) No. 1.1,1.2,1.3,1.4,1.5,1.6,1.7

MR NEERAJ SONI(3433) for the Petitioner(s) No. 1

MR SHIVANG M SHAH(5916) for the Respondent(s) No. 1

MS POONAM M MAHETA(11265) for the Respondent(s) No. 5

NOTICE SERVED for the Respondent(s) No. 2,3,4

CORAM: HONOURABLE MR. JUSTICE A.S. SUPEHIA

Date : 16/06/2022

ORAL ORDER

1. The original petitioner since deceased, is represented by his legal heirs.

2. The present writ petition has been filed for the following reliefs:

"10(A).Direct respondent 5 – Public Information Officer, Damnagar municipality to provide information sought by the petitioner vide application dated 28.06.2017 (Annexure B).

(B) Direction respondent 5 – Public Information Officer, Damnagar municipality to pay fine as he is liable to pay to the petitioner for not providing information in statutory time period of 30 days.

(C) Give inspection of the documents sought for vide application dated 28.06.2017, during pendency of the petition, and"

3. Learned advocate Mr.Soni appearing for the petitioners (i.e. legal heirs of the deceased petitioner-Thakarshibhai Bhurabhai Jajal) has submitted that in fact the respondent No.5 is not implementing the order dated 07.03.2019 passed in

Appeal No.A-0292-2018 passed by the State Chief Information Commissioner-respondent No.1. He has submitted that as per the aforesaid order, the respondent No.5 was supposed to give information with regard to service of the deceased petitioner however, the same is not done. Thus, he has submitted that as per the provisions of Section 20(2) of the Right to Information Act, 2005 (the RTI Act) the record of the deceased petitioner, which has been illegally destroyed, appropriate penalty may be imposed upon the respondent No.5.

4. In response to the aforesaid submissions, learned advocate Ms.Poonam Maheta for the respondent No.5, while inviting attention of this Court to the affidavit has submitted that despite the best efforts made by the respondent No.5, record pertaining to the service of the deceased petitioner was not found and accordingly, Panch Rojkam was prepared on 10.12.2021. She has submitted that as per the order dated 07.03.2019 passed by the State Chief Information Commissioner, the respondent No.5 was supposed to give the information and if the record is not available, the details with regard to their efforts having being made for finding such record are required to be produced, which they have done and hence, the said order has been complied with.

5. Heard the learned advocates for the respective parties and also perused the documents as pointed out by them.

6. The petitioners are seeking the information pursuant to the order dated 07.03.2019 passed in his appeal by the State Chief Information Commissioner-respondent No.1. A perusal of the said order reveals that while disposing the appeal, the respondent No.1 had ordered the respondent No.5 to give all the information and send the necessary information, without levying any charge, through RPAD "OR" if record is not available, appropriate details with regard to efforts made in finding such record should be supplied to the petitioners. Accordingly, the respondent No.5 had undertaken the necessary exercise to search the record however, since the same was not traced out, necessary information was given to the petitioners along with the communication dated 10.12.2021. The respondent No.5 has prepared Panch Rojkam dated 10.12.2021, which was supplied to the petitioners indicating that despite their best efforts made, they are unable to trace out his record.

7. Thus, in the considered opinion of this Court, the order dated 07.03.2021 passed by the respondent No.1 has been said to have been complied with, in wake of the option given to the respondent No.5 either to supply the information or send necessary details of the search or efforts made in finding such record. The directions issued in the said order do not in any way imply that information or record is required

to be given. The direction, as stated hereinabove, are in two parts, either to give the record "OR" to supply the details of the efforts made by the respondent No.5 in tracing out the record to the petitioners. Accordingly, Panch Rojkam dated 10.12.2021 prepared by the respondent No.5 reveals that despite their efforts, they are unable to find the record. It is not the case of the petitioners that Rojkam is falsely prepared and is concocted.

8. Learned advocate for the petitioners has placed reliance on sub-section (2) of Section 20 of the RTI Act, which reads as under:

(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.

9. In the considered opinion of this Court, the provision of Section 20(2) of the RTI Act will not apply in the present case as it is not the case of the petitioners that any incorrect or

misleading information has been provided to them or the information has been destroyed *mala fide*ly. If the petitioners are aggrieved by the action of the respondent authority in non-preservation of the record or destruction of the record in illegal manner, they may approach the concerned authority. There is no finding of any of the authority that such information has been destroyed with *mala fide* intent. While exercising discretionary power vested under Article 226 of the Constitution of India, this Court cannot delve in the question of fact with regard to destruction or non-preservation of the record of the deceased petitioner.

10. In light of the foregoing facts and observations, the present writ petition stands rejected. Notice is discharged.

NVMEWADA

Sd/-
(A. S. SUPEHIA, J)

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THE HIGH COURT
OF GUJARAT

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