Court No. - 2

Case :- WRIT - C No. - 2028 of 2024

Petitioner :- Mahesh Prasad
Respondent :- State Information Commissioner U.P. Lko. / Second Appellate Information Authority And Others
Counsel for Petitioner :- Sharvan Kumar Pandey
Counsel for Respondent :- Shikhar Anand,C.S.C.

Hon'ble Vivek Chaudhary,J.
Hon'ble Om Prakash Shukla,J.

1. Heard learned counsel for petitioner, learned Standing Counsel for the State and Sri Shikhar Anand, learned counsel for the State Information Commission.

2. By the present writ petition, petitioner has challenged the order dated 01.03.2023 passed by respondent no.1.

3. Grievance of petitioner is that while deciding the appeal, the Information Commissioner has imposed penalty on the Public Information Officer, but thereafter without making any further efforts and issuing any direction to the Public Information Officer to provide the required information, the appeal itself is disposed of.

4. A similar controversy has already been considered and decided by this Court by its judgment and order dated 05.2.2024 passed in Writ-C No.301 of 2024 "Vishwamitra Bajpai vs. State Information Commission, U.P. Lucknow and others", whereby this Court has allowed the writ petition and set aside the order impugned therein. Relevant portion of the said judgment and order reads as under:

"(10) Having regard to the submissions advanced by the learned Counsel for the parties and after perusing the records available before this Court in the instant writ petition, it is relevant to note herein that the petitioner, by way of application under Section 6 (1) of the Right to Information Act, 2005 (for short, 'the RTI Act'), has sought certain information but the same was neither provided by the Public Information Officer or the first appellate authority, thereby leading to filing of application before the second appellate authority/State Information Commission.

(11) Learned Counsel for the respondent no.1/State Information

Commission could not dispute that the duty of all the Public Information Commissioner under RTI Act including the State Information Commissioner is to ensure that the information sought by a person is provided, subject to just exceptions as provided under the Act or the rules framed therein and therefore ancillary powers of penalty etc. have also been provided under the Act.

(12) It is apparent that since the requisite information was not supplied, a penalty was imposed by the respondent no.1 vide order dated 06.09.2022 and even after imposition of penalty, the same was not complied with by the respondent no.5/Public Information Commission and therefore an order of recovery dated 22.12.2022 was issued against the respondent no.5. However, suddenly, the State Commission, on a review application preferred by the respondent no.5, gave a finding that no fruitful purpose would be served in proceeding further in the matter and set-aside the order of penalty dated 06.09.2022 and 22.12.2022 and also disposed of the appeal, without even providing opportunity of hearing to the petitioner or providing the information as had been sought by him.

(13) This Court is of the view that the primary object of the State Information Commission (SIC) is to uphold the spirit of the RTI Act and to secure for every citizen a Right to Information by facilitating access to information in a fair, transparent and truthful manner. The Commission is not to act merely as a Post office, but has been given enormous power under section 18 of the RTI Act to ensure that information seekers are furnished what they ask for and are not to be driven away through filibustering tactics. It has to be remembered that SIC or for that matter, any authority under the RTI have an obligation to ensure a culture of information disclosure, so as to promote transparency and accountability in the working of every Public Authority. Recently, the Hon'ble Supreme Court in case reported as Kishan Chand Jian Vs Union of India : 2023 SCC Online SC 1021, held relating to the functionality of CIC/SIC in the following words :-

25. Having examined the Right to Information established by the statute under Section 3 in the context of the obligations of public authorities under Section 4, we are of the opinion that the purpose and object of the statute will be accomplished only if the principle of accountability governs the relationship between 'right holders' and 'duty bearers'. The Central and State Information Commissions have a prominent place, having a statutory recognition under Chapters III and IV of the Act and their powers and functions all enumerated in detail in Section 18 of the Act. We have also noted the special power of

'Monitoring and Reporting' conferred on the Central and State Information Commissioners which must be exercised keeping in mind the purpose and object of the Act, i.e., 'to promote transparency and accountability in working of every public authority'.

(14) As far as the impugned order is concerned, this Court finds that the SIC has abdicated its power and obligation under the RTI Act to provide information to the petitioner, which is apparent from the fact that the SIC has neither dealt with the aspect of providing the requisite information to the petitioner nor has provided for any solace to the petitioner on the aspect of delay in providing the information to the petitioner by the PIO.
(15) Further, there is another aspect of the matter, inasmuch as in the proceedings before SIC, what was required to be adjudicated was whether the petitioner had been supplied incomplete, misleading or false information under the RTI Act or not and to ensure that the said information is supplied to the petitioner. However, the State Information Commission, while revisiting its own order, has erroneously observed that no fruitful purpose would be served in proceeding further in the matter, whereas as per law, the Commissioner ought to ensure that the requisite information be provided to the petitioner.

(16) Apparently, by passing the impugned order, the State Information Commission has infact set aside the order which was operating in favour of the petitioner without the same being not complied with by the respondent no.5. Therefore, impugned order passed by the State Information Commission insofar as it directs disposing of the proceedings before the SIC, is not as per the letter and spirit of the provisions of RTI Act, the same is liable to be set-aside and consequently a fresh consideration of the said proceedings is therefore warranted, in the facts and circumstances of the present case.

(17) In view of the aforesaid, while keeping the legal question of maintainability of a review application before the SIC left open, the impugned order dated 01.09.2023 in so far as it directs disposing of the proceedings before SIC, is hereby set-aside and the matter is remanded to the Commissioner, State Information Commission, U.P. to pass appropriate order in accordance with law, keeping in view the observation made by this Court.

(18) The writ petition is, accordingly, allowed."

5. In view thereof, present writ petition is allowed in the aforesaid terms. The impugned order dated 01.03.2023, is set

aside. The matter is remanded to the Commissioner, State Information Commission, U.P. to pass appropriate orders in accordance with law.

(Om Prakash Shukla,J.) (Vivek Chaudhary,J.)

Order Date :- 29.2.2024
Arjun/-

Digitally signed by :-
ARJUN PRASAD
High Court of Judicature at Allahabad,
Lucknow Bench