

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5810 of 2012

=====

1. Uday Shankar Singh Son Of Late Awadh Narain Singh Resident Of Village -
Fatehpur, P.S.- Didarganj, District - Patna, Presently Posted As Assistant District
Supply Officer, Madhepura

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Food & Consumer Protection Department, Bihar, Patna
3. The District Magistrate, Madhepura
4. The District Magistrate, Madhubani
5. The Sub-divisional Officer, Madhepura
6. The Sub-divisional Officer, Jhanjharpur, Madhubani
7. The Sub-divisional Establishment Deputy Collector, Madhepura
8. The Block Supply Officer, Madhepur Block, Madhepur, District- Madhubani
9. The State Information Commission, Bihar, Suchan Bhawan, Bailey Road, Patna
Through Its Secretary
10. Sri Manoj Jha Son Of Not Known Resident Of Village & Post- Madhepur, P.S.-
Madhepur, Block- Madhepur, District- Madhubani

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Prashant Sinha
Mr. Sushil Kumar Singh
For the Respondent/s : Mr. Rajesh Kumar, A.C. to G.P. 28
Mrs. Binita Singh
Mr. Ram Chandra Jha 'Raman'

=====

CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

Date: 30-11-2015

Heard Mr. Prashant Sinha for the petitioner, Mrs. Binita Singh
for the respondent Commission, Counsel for the private respondent
no. 10 as also the Counsel for the State. Affidavits have been
exchanged between the parties.

In the year 2009, the petitioner was posted as the Block Supply
Officer, Madhepur in the district of Madhubani. By virtue of the
position he held, he was designated as the Public Information Officer.



The respondent no. 10 filed an application on 7.5.2009 (Annexure-2) under the Right to Information Act (for short 'the Act') to seek information. The same was filed in the office of the Sub-divisional Officer. The Sub-divisional Officer forwarded the application to the Block Supply Officer who was the Public Information Officer. Certain informations were supplied but some of the informations were not supplied to the petitioner. The grievance was raised by the respondent no. 10 before the State Information Commission (respondent no.9) giving rise to Case No. 26527 of 2009-10. By order dated 01.03.2011, the Commission found the culpability on the part of the Public Information Officer and imposed penalty in terms of Section 20 of the Act. Aggrieved thereby, the present writ petition has been filed.

Relevant part of Section 20(1) of the Act reads as under:-

“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) xxxxxxxxxxxxxxxx”

It has been submitted on behalf of the petitioner that the original application forwarded to him by the Sub-divisional Officer was not received. The State Government vide notification dated 1.6.2009 transferred him from Madhepur to the district of Bhojpur at Ara on promotion as Additional District Supply Officer. After having made over the charge of the office of the Block Supply Officer, Madhepur on 24.6.2009, he got himself relieved and subsequently joined at Ara where he functioned as such from 26.6.2009 to June, 2011. Again, by another government order/notification issued in June, 2011, he was transferred as Additional District Supply Officer, Madhepura where he joined. The notice issued to him by the Commission on his official address at Madhepur was never received by him and, as such, he could not appear before the Commission and explained these facts.

The authority under the Act could have imposed penalty if the circumstance so warrant provided an opportunity of hearing is



granted/afforded to the person against whom such penalty is to be imposed. This is the mandate of law. In the case of the petitioner, the same was not complied with since the notice earlier issued by the Commission was not served on the petitioner. It was addressed to the Block Supply Officer, Madhepur whereas the petitioner had already made over charge of the office on 24.6.2009 and joined the new assignment at Ara. The notice issued by the Commission in terms of the said provision has been brought on record by the Commission (Annexure-A). This Court required the State to file affidavit regarding service thereof on the addressee. A supplementary counter affidavit has been filed on behalf of respondent nos. 4 and 6 in the light of the said order of the Court. Counsel for the petitioner has drawn attention of the Court to the statement made in paragraph 6 of the said supplementary counter affidavit which reads as follows:-

“6. That in is stated and further humbly submitted that it has also been confirmed from Chief Post Master, Main Branch, Madhubani vide letter no. 609 dated 02.05.2013 of S.D.O., Jhanjharpur through special messenger regarding service of such registered letter no. and it has been reported by the Chief Post Master, Main Post Office, Madhubani that no such registered letter has been received.”

There is nothing on record to suggest that the notice which was issued by the Commission for penalizing the petitioner was ever served on the petitioner who had already left the place on being

transferred as Additional District Supply Officer, Ara on 24.6.2009. Some more facts have been placed by the petitioner as well as the respondents in opposition thereof. However, this Court is not delving into these aspects of the matter since the requirement of law as enshrined in Section 20 of the Act appears to have not been complied with. This Court is satisfied that the order imposing punishment on the petitioner under the impugned order merits to be interfered with and set aside. I order accordingly.

It will be open to the respondent Commission to proceed afresh, if so advised, against the petitioner in the light of the rule/provision. Petitioner has undertaken before this Court to produce certified copy of the present order before the Commission within four weeks enabling the Commission to proceed afresh in the proceeding, if so advised, in accordance with law. Needless to observe that it would be open to the petitioner to make submission as are available to him before the Commission in case he is proceeded against afresh by the respondent Commission.

(Kishore Kumar Mandal, J)

Pankaj/-

U			
---	--	--	--