IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1580 of 2013

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1. Md. Akhtar Sayeed Son of Late Md. Abu Sayeed Resident of Village- Islampur, Police Station- Bhikanpur, District- Bhagalpur, At Present Posted As Principal, District Institute of Training Farbisganj (Araria)

.... Petitioner/s

Versus

1. The State Of Bihar
2. The State Information Commission through Secretary, Suchana Bhawan, Secretariat Campus, Bailey Road, Patna
3. Balmiki Prasad Singh Son of Late Kailash Singh Resident of Village And P.O.- Khanawan, P.S.- Narhat, District- Nawada

.... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Abhay Kumar Thakur, Adv.
For the Respondent/s : Mr. Parijat Sourav, A.C. to GP13

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL JUDGMENT
Date: 27-10-2016

Heard Mr. Abhay Kumar Thakur, learned counsel for the petitioner, Mr. Parijat Sourav, learned A.C. to AAG 10 and Ms. Vinita Singh learned counsel appearing for the State Election Commission.

The petitioner is aggrieved by order dated 5.7.2011 communicated vide memo no. 6500 dated 29.07.2011 passed by the State Information Commission in Case No. 30887 of 2009-10 (Shri Balmiki Prasad Singh vs. State of Bihar)-cum- District Education Officer, Nawada whereby on the failure of the Public Information Officer concerned to provide information sought for by the applicant, that a penalty of Rs. 25000/- was imposed on the petitioner who at the

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relevant time held the post of Public Information Officer- cum-District Education Officer, Nawada, to be deposited in 5 monthly installments and alongside the petitioner was put to show case under section 20(2) of the Right to Information Act, 2005 (hereinafter referred to as 'the Act') against institution of disciplinary proceeding. A copy of such order is impugned at Annexure-18 and since the petitioner as well as the authorities failed to ensure compliance to the order that a second order was passed on 9.12.2011 circulated vide memo No. 11293 dated 12.12.011 which is impugned at Annexure-22. The third order impugned at Annexure-25 of the writ petition is dated 7.3.2012, passed by the Commission in the Case No. 30887 of 2009-10 in which the Chief Information Commissioner while admitting to the facts available on record regarding the information sought by the applicant and even while accepting that the records pertaining to the year 1985 could not have been preserved beyond the period of 12 years, yet does not exercise his power for recall of the earlier orders inter alia on grounds that the Commission is not vested with the power of review of its order. However, the case has been finally disposed of by the said order.

Though the applicant has been duly served as respondent No. 3 but he has not chosen to contest the matter.

According to Mr. Thakur the proceeding in question is a 3rd

round exercise and that the private respondent sought the same information on 31.3.2009 vide Annexure-1 on the following three issues:-

(a) The proceedings initiated on the application filed by the applicant in the Janta Darbar of the Commissioner held on 19.11.2007 which was received in the office of the District Education Officer on 19.2.2008 and the final report thereof.

(b) The copy of the appointment letter issued in respect of Praveen Kumar Rai.

(c) The notesheet prepared by the office towards issuance of the appointment letter to Pravin Chandra Rai.

It is argued that the petitioner at the relevant time was the Public Information Officer-cum-District Education Officer, Nawada and vide letter dated 20.4.2009 informed the applicant regarding the status of the matter and a plain reading thereof would show that whatever information that was sought by the applicant through his application dated 19.11.2007 filed in the Janta Darbar of the Commissioner, did not pertain to any information in the custody of the petitioner rather it was available with the Principal of the High School, Chandi Nama and the petitioner on his part made all efforts to gather the information so sought by the applicant.

It is submitted that in the circumstances where the records

relating to the appointment of Praveen Chandra Rai was not available in the office of the District Education Officer, the applicant was informed that no sooner the information would be received, that he shall be accordingly informed.

With reference to Annexure-3 Mr. Thakur informs that even earlier thereto the same information was asked by the private respondent and was duly informed through letter dated 29.1.2008 vide Annexure-3. It is stated that not being satisfied that again the private respondent no. 3 abused the process of law to seek the same information vide Annexure-8 which was received in the office of the Public Information Officer -cum- District Education Officer, Nawada on 27.10.2009 and was replied vide Annexure-9. It is submitted that despite the position being clarified yet the private respondent filed an appropriate application in the State Information Commission and which was acted upon by registering the matter as Case No. 30887 of 2009-10 and in which the orders impugned have been passed.

As already noted vide order passed on 5.7.2011 while a penalty of Rs. 25000/- was imposed on the petitioner for not providing the information which order was reiterated in the subsequent order passed on 9.12.2011 at Annexure-22 but when the matter was finally disposed of on 7.3.2012, the Chief Information Commissioner has taken note of the fact that while the issue at paragraph 1 had nothing

to do with the any information sought, the information at Item No. 2 regarding appointment order of Pravin Chandra Rai had been provided to the private respondent and the information regarding the note sheet towards appointment was of the year 1985 and thus was not available and hence not supplied. The Chief Information Commissioner thus while admitting to the fact regarding supply of the information by the petitioner, has refused to exercise jurisdiction in so far as the issue of penalty and the initiation of disciplinary proceeding under Section 20(2) of 'the Act' is concerned, in pursuance of the order passed on 5.7.2011 as reiterated in the order dated 9.12.2011 inter alia on grounds of absence of power of review.

In my opinion, the entire proceedings itself, was wholly without jurisdiction because the information sought by the applicant was not preserved in office of the Public Information Officer- cum- District Education Officer rather the Information sought through Janta Darbar was in relation of an appointment, the records, of which was available in the High School at Chandinama. The provisions of 'the Act' does not create any obligation on the Public Information officer for providing any information not preserved in his office and thus once the petitioner had duly informed the private respondent vide Annexures- 3 and Annexure-9 as to the status of the matter as also the fact that information would be given on its receipt, then it was an

abuse of the process of 'the Act' by the private respondent to invoke the jurisdiction of the Commission and the Commission on its part has mechanically proceeded to impose penalty on the petitioner without appreciating as to whether at all in absence of records the petitioner was under any obligation to provide the information sought. My opinion draws strength from the judgment of the Supreme Court reported in **(2011)8SCC 497 (Central Board of Secondary Education vs. Adity Bandhopadhya and others.)** more particularly paragraph 59 which reads as under;

> "59. The effect of the provisions and scheme of the RTI Act is to divide 'information' into the three categories. They are:
>
> (i) Information which promotes transparency and accountability in the working of every public authority, disclosure of which may also help in containing or discouraging corruption (enumerated in clauses (b) and (c) of section 4(1) of RTI Act).
>
> (ii) Other information held by public authority (that is all information other than those falling under clauses (b) and (c) of section 4(1) of RTI Act).
>
> (iii) <u>Information which is not held by or under the control of any public authority and which cannot be accessed by a public authority under any law for the time being in force.</u>
>
> <u>Information under the third category does not fall within the scope of RTI Act.</u> Section 3 of RTI Act gives every citizen, the right to 'information' held by or under the control of a public authority, which falls either under the first or second category. In regard to the information falling under the first category, there is also a special responsibility upon public authorities to *suo moto publish and disseminate such information* so that they will be easily and readily accessible to the public without any need to access them by having recourse to section 6 of RTI Act. There is no such obligation to publish and

> disseminate the other information which falls under the second category."
>
> (Emphasis supplied by me)

The petitioner thus, was under no obligation to provide the information which was not held by him or was under his control and in which view of the matter the orders passed by the Commission impugned at Annexures 18, 22 and 25 put to challenge in this writ petition in so far as it proceeds to impose penalty of Rs. 25000/- and advises on initiation of disciplinary proceedings, is illegal, without sanction of law, and in excess of jurisdiction so vested on the Commission under 'the Act'.

In the circumstances, the entire proceedings arising from Case No. 30887 of 2009-10 including the order dated 5.7.2011, 9.12.2011 and 7.3.2012 passed by the State Information Commissioner are accordingly quashed and set aside.

The writ petition is allowed.

(Jyoti Saran, J)

Bibhash/-

AFR	
CAV DATE	
Uploading Date	9.11.16
Transmission Date	