

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Civil Writ Petition No.2112 of 2012(O&M)

Date of decision: 29.8.2016

Municipal Corporation and others

...Petitioners

Versus

State Information Commission, Punjab and others

...Respondents

CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Mr. Harsh Aggarwal, Advocate for the petitioners.

Ms. Lavanya Paul, Assistant Advocate General, Punjab

Mr. J.S.Rana, Advocate for respondent no.3.

Mr. Sandeep Khunger, Advocate for respondent no.4.

Mr. Gurmeet Singh, Advocate for respondent no.5.

G.S.SANDHAWALIA, J. (Oral)

Civil Misc. No.2116 of 2012

Prayer made in the present Civil Misc. Application for placing on record Annexures P/13 and P/14 and exemption from filing certified copies thereof is allowed.

Annexures P/13 and P/14 are taken on record.

The Civil Misc. Application stands disposed of accordingly.

Civil Misc. No.2370 of 2012

Prayer made in the present Civil Misc. Application for placing on record Annexure P/15 and exemption from filing certified copies thereof is allowed.

Annexure P/15 is taken on record.

The Civil Misc. Application stands disposed of accordingly.

Civil Misc. No.15998 of 2013

Prayer made in the present Civil Misc. Application for placing on record accompanying short reply by way of affidavit on behalf of respondent no.4 is allowed.

Short reply is taken on record.

The Civil Misc. Application stands disposed of accordingly.

Civil Writ Petition No.2112 of 2012

The petitioner Corporation alongwith its officials seek quashing of order dated 9.11.2011 (Annexure P/10) whereby penalties of ₹ 15,000/- and ₹ 5000/- were imposed upon petitioner no.2-Sh. H.S.Khosa, Xen-cum-APIO and petitioner no.3-Sh. Harish Bhagat, Legal Assistant-cum-PIO (Headquarter), Municipal Corporation, Ludhiana respectively. The amount of ₹ 5000/- was also awarded as compensation payable by the Corporation. Challenge is also made to order dated 17.1.2012 (Annexure P/12) whereby prayer for review of the said order was rejected.

The reasoning given by the respondent-Commission to impose penalties under the Right to Information Act, 2005 vide impugned order was that the application had been filed on 11.10.2010. The charges for supply of information had been asked for on 9.11.2010 which were duly deposited on 15.11.2010. The information was only provided on 6.4.2011 after the respondent no.3 had approached the Commission on 9.12.2010 and resultantly the penalties were imposed after taking into consideration to the fact that assurance with regard to supply of information has been given on 4.4.2011 in the second appeal. Show Cause notice dated 28.2.2011 (Annexure P/3) was also issued to respondent no.4 as to why penalty should not be imposed upon the said respondent. The said respondent filed

reply to the show cause notice on 4.7.2011 (Annexure P/7) and took the plea that respondent no.5-Sh. Ashok Lal, Superintendent, Health Branch was a designated APIO for the purposes.

Counsel for the petitioners accordingly submits that in view of such reply, the petitioners were only appearing before the respondent-Commission and liability has been wrongly fixed upon them. They were not concerned APIOs and as per affidavit itself it has come on record that the respondents who were impleaded on 23.2.2012 were the culprits and accordingly they had been put to notice by the Court.

The reply on behalf of respondent no.5 has not been filed in spite of the fact that a period of more than 4 years have expired as appearance on behalf of the said respondent had been put up on 26.4.2012.

Counsel for the said respondent has tried to demonstrate from order dated 13.1.2011 (Annexure P/14) that he was only appointed as APIO on 13.1.2011. It is thus submitted that immediately the information was provided on 6.4.2011 when show cause notice was issued to respondent no.5. It is thus apparent that for a period of almost 3 months from the date of appointment, the information was not supplied even though respondent no.5 had already been appointed as APIO.

Section 20 of the Right to Information Act, 2005 provides that a penalty of ₹ 250/- is to be imposed for each day till the information is furnished, however, the total amount of such penalty shall not exceed ₹ 25,000/-. A reasonable cause has to be shown for not furnishing information in time and where there is a delay or denial to the request for information, penalty is to be imposed for the delay until reasonable cause is shown. In the present case nothing has been shown why the respondent

no.3 was not supplied the information and no response has also been filed to counter the fact of the affidavit filed by respondent no.4 before the Commission.

In view of the fact that an affidavit had been filed before respondent-Commission that respondent no.5 had been appointed as APIO on 13.1.2011, this Court is of the opinion that person responsible was respondent no.5 and not the petitioners no.2 and 3 who were only appearing on behalf of the Corporation before the Commission.

Resultantly, orders dated 9.11.2011 (Annexure P/10) is accordingly modified. The amount of penalty to the tune of ₹ 20,000/- which has been imposed upon the petitioners no.2 and 3 will according be deposited by respondent no.5. However, the amount of compensation of ₹ 5,000/- which has been levied upon the Corporation on account of delay in supply of information, that the Corporation will be liable to pay the said amount as it has harassed the respondent no.3 since its officers had failed to respond on the application for request of information expeditiously.

Let the needful be done within a period of two months from the date of receipt of certified copy of this order.

The present writ petition is disposed of accordingly.

August 29, 2016
Pka

(G.S.SANDHAWALIA)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable:

Yes/No