

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.14464 of 2016 (O&M)
Decided on :03.08.2016

A.N.Chauhan

... Petitioner

Versus

Pardeep Bhardwaj & another

... Respondents

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

Present : Mr.Ajay Kumar Kansal, Advocate, for the petitioner.

G.S. Sandhawal, J. (Oral)

CM-8975-CWP-2016

Application for placing on record Annexure P12, is allowed, subject to just exceptions. Office to tag the same at appropriate place.

Main case

Petitioner challenges the order dated 01.06.2016 (Anneuxre P11) passed by the State Information Commission under the Right to Information Act, 2005, whereby the Commission has imposed a penalty of Rs.25,000/- upon him, to be recovered in 5 equal instalments.

The reasoning for passing the said order is that the petitioner, being the SPIO, had delayed furnishing information on an application which was filed on 16.11.2015 (Annexure P1) and the information was only furnished after a delay of more than 5 months, in May, 2016. A finding has been recorded that the petitioner handled the case as per his own whims. It is not disputed that the petitioner was issued a show cause notice on account of the fact that the information

had been supplied only when the Commissioner had issued directions on 29.04.2016 to furnish the relevant information in a second appeal filed by the applicant.

The petitioner, in his reply to the show cause notice, issued under Section 20(1) of the Act, has taken the plea that the information was supplied on 02/03.05.2016, which is after the direction in the second appeal. The sole defence taken is that it was on account of ignorance and such type of mistake would not be repeated. Relevant part of the reply dated 11.5.2016 (Annexure P12) reads as under:

“It is, therefore, requested to your good self that the Show Cause notice which has been served to me due to my ignorance may please be got withdrawn & it is also ensured that such type of mistake will not be repeated in future. For this act of kindness I shall remain ever grateful to your good self.”

A perusal of the paperbook would go on to show that initially when the application was filed on 16.11.2015 with the Superintending Engineer, the same was forwarded on 19.11.2015 from the superior officer to the petitioner. The petitioner, in his communication dated 30.11.2015 (Annexure P2), instead of starting to process the application, asked the superior officer to direct respondent No.1 to seek the information directly from the undersigned. Under the provisions of the Act, the application had to be forwarded to the petitioner and it was his bounden duty, as such, to start processing the same and take necessary steps for supply of the information. Respondent No.1, thereafter, filed the appeal on 24.12.2015, aggrieved

by the non-supply of information. On 31.12.2015 (Annexure P5), for the first time, the petitioner wrote to the respondent No.1 that the necessary charges be deposited to the tune of Rs.50/- by way of postal order. The said respondent, thereafter, filed a second appeal on account of the denial of the information. Resultantly, notice was issued to the petitioner under Section 19(3) of the Act, leading to the order dated 29.04.2016 whereby directions were given to supply the information free of cost, within one week, while also issuing notice under Section 20(1) for imposing penalty upon the petitioner @ Rs.250/- per day of delay. A finding was also recorded that the petitioner had tried to mislead the Commission regarding filing of the first appeal. Relevant part of the order dated 29.04.2016 (Annexure P8) reads as under:

“The respondent SPIO-cum-Executive Engineer, Mech. Division, PWD B&R, Ambala Cantt. instead of furnishing information to the appellant, has also tried to repeatedly mislead and misguide the Commission. The Commission perused his communication sent to the appellant wherein instead of furnishing information to the appellant, he has told him to file application before him and not the Superintending Engineer whereas there is no bar on filing the RTI application before any 'public authority'. Furthermore, the respondent sought document fee of Rs.50/- on 31.12.2015 which was never deposited as the time of one month has already lapsed. The respondent SPIO received the RTI application on 18.11.2015 and the same is yet to be replied till date i.e. 29.04.2016. There is already a delay of more than 5 months without any valid reason whatsoever.

The respondent SPIO also tried to mislead the Commission by saying that the appellant never filed first

appeal before the designated officer. The same is wrong as the first appeal was filed on 24.12.2015 and the FAA sent the same to SPIO on 04.01.2016 with a direction to furnish information to the appellant. The respondent SPIO instead of abiding by the FAA's directions, did not furnish information and claimed before the Commission that he was not called for the hearing. This is in gross violation of the provisions of RTI Act and the conduct of SPIO is totally uncalled for.”

It is, in such circumstances, a show cause notice was issued, which, as noticed, has been replied. The only defence was that the petitioner himself had made a mistake. The Commission has already noticed the conduct of the petitioner. There is no satisfactory reason regarding the non-supply of the information nor the delay has been explained in any manner. It was only on account of the directions issued on 29.04.2016, the petitioner has supplied the information. The penalty, thus, levied, is as per the provisions of Section 20, as a finding has been recorded that there was a *mala fide* denial of the information. Even if the period is counted from the 01.01.2016, then also, information has not been supplied for over 4 months and thus, there is no scope for reduction of penalty also.

Argument of the counsel that the second appeal was not maintainable, is without any basis. The question before this Court is that whether the penalty imposed vide the impugned order is justified or not. The present writ petition does not challenge the order dated 29.04.2016 and only challenges the order dated 01.06.2016 (Annexure P11) whereby the penalty has been levied under the statute which itself

provides that for each day's delay a sum of Rs.250/- is to be imposed.
Thus, no fault can be found in the impugned order which would warrant
interference.

Accordingly, finding no merit in the present writ petition,
the same is, hereby, dismissed in limine.

AUGUST 3rd, 2016
sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No