

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 19540 of 2016 (O&M)

Date of decision: 21.09.2016.

Scientific Awareness & Social Welfare Forum through Sham Lal Singla

... Petitioner.

Versus

State of Punjab and another

... Respondents.

CORAM: HON'BLE MR. JUSTICE S.S. SARON
HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Sham Lal Singla - petitioner in person.

S.S. SARON, J.

The petition has been filed in the nature of a public interest for directing the respondents, i.e. the State of Punjab and the State Information Commission, Punjab, Chandigarh to implement the Right to Information Act, 2005 ('the RTI Act' - for short) in its true spirit so that the purpose of the same is not defeated/diluted.

During the course of hearing, the petitioner, who is appearing in person, submits that Section 20 of the RTI Act is not being implemented. The said Section reads as under:-

“Section 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) 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 and persistently, failed 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 recommend for disciplinary action against the Central Public Information Officer or the State Public Information Officer, as the case may be, under the service rules applicable to him.” (Emphasis added).

A perusal of the above Section 20 (1) shows that it is penal in nature and lays down the procedure where penalty can be imposed as also its quantum. The Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal have been authorized to impose penalties where the Commission is of the opinion that the Central Information Officer or the State Public Information Officer, as the case may be, have without any reasonable cause refused to receive an application for information or had 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 request or obstructed in any manner in furnishing, it shall impose a penalty of Rs.250/- each day till application is received or information is furnished, so however, the total amount of such penalty is not to exceed Rs.25,000/-. In terms of Section 20 (2), the Central Information Commission or the State Information Commission for similar defaults can also recommend disciplinary action against the Central Public Information Officer or the

State Public Information Officer, as the case may be, under the service rules applicable to him.

Therefore, if a Central Public Information Officer or a State Public Information Officer, in the opinion of the Central Information Commission or the State Information Commission, fails to perform his duties under the RTI Act or disregards its provisions or acts in its contraventions, he is liable for penalties, as prescribed by Section 20 of the RTI Act. However, it is for the the Central Information Commission or the State Commission, as the case may be, in the facts and circumstances of each case to form an opinion and impose the penalty in case of default and an omnibus direction is not liable to be issued by this Court to impose penalty in each and every case. Besides, the Central Information Commission or the State Information Commission exercises statutory jurisdiction and functions and there being no *lis* or material before us from which it can be said that either the Central Information Commission or the State Information Commission has improperly exercised its jurisdiction or failed to exercise it in an appropriate case, it would be difficult to pass any such direction.

The petitioner in his petition has submitted a list of penalty cases in the State Information Commission, Punjab w.e.f. 01.01.2014 to 30.11.2014. It is submitted that out of the list of 95 cases, the Commission has imposed penalty only in 39 cases. Insofar as compensation was concerned, it is submitted that though the same was awarded in 67 cases, however, the same is not in accordance with the provisions of the RTI Act. Even the penalty imposed, according to the petitioner, is not in consonance with the provisions of the RTI Act.

In the absence of the orders by which the penalty has been imposed and in the absence of the aggrieved persons approaching the Court, it would be unfair and unreasonable to pass any direction without examining the matter. In any case, the opinion formed by the State Information Commission in imposing the penalty in some cases and not imposing it in the others can only be examined in each particular case by way of judicial review by a person aggrieved. Besides, as has already been noticed, the provisions of Section 20 of the RTI Act are penal in nature and a public interest petition in a case involving criminal proceedings entailing penal consequences is not maintainable.

In The Janta Dal v. H.S. Chaudhary, JT 1991 (3) SC 497, it was held that in a criminal case registered against specified accused persons, a third party in the garb of public interest litigation cannot challenge the proceedings. The following observations are apposite:-

“Even if there are million questions of law to be deeply gone into and examined in a criminal case of this nature registered against specified accused persons, it is for them and them alone to raise all such questions and challenge the proceedings initiated against them at the appropriate time before the proper forum and not for third parties under the garb of public interest litigants.”

Therefore, it is for the aggrieved persons to assail the orders wherever there has been improper exercise of jurisdiction by the Central Information Commission or the State Information Commission showing that the opinion formed by it is not proper or that there has been an infraction of Section 20 of the RTI Act.

Even otherwise, the petitioner has mentioned various social activities that it has been conducting. However, it is to be noticed that this Court has framed the Maintainability of the Public Interest Litigation Rules, 2010 ('the Rules' - for short). Rule 7 of the Rules envisages that the Registry is entitled to verify the antecedents of a person, society or an association that invokes the jurisdiction of this Court on the cause of public interest. Besides, where the Registry has any doubt on such antecedents, an office note to that effect is to be put up, except on the petitions which are received by post. The Registry in the present case raised objections regarding the maintainability of public interest litigation, which *inter alia* records that the writ petition be filed according to the directions passed by a Division Bench of this Court in the case of Ajaib Singh v. State of Punjab, CWP No. 15987 of 2013, decided on 26.07.2013, which was available on the High Court website, reported in (2013 - 4) PLR 367. In response to the same, the petitioner merely recorded; 'PIL is maintainable and falls within the Rules'. It is mentioned that credentials of the petitioner were evident from general profile (Annexure P2), Constitution of Society (Annexure P3), appreciation letter (Annexure P4) and registration certificate (Annexure P1).

In Ajaib Singh's case (*supra*), a Division Bench of this Court emphasized that a petitioner has to specifically disclose his credentials and his direct or indirect personal motive or interest involved in the case, if any, by way of an affidavit. The expression “specifically disclose his credentials”, it was held, must naturally, imply that he has to set forth what he does for his living, what public interest he has been espousing,

the work done by him in that behalf, the particulars of any matter preferred by him as PIL earlier on which the Court had passed orders, etc. It could not imply merely writing a sentence that a person is residing in the State, is 'public-spirited' and is, thus, filing a PIL. A direction was issued to the Registry to ensure strict compliance with these rules and to return petitions styled as PIL with objection (s) unless these parameters were specified. It was held that in fact, there is a mandate on the Registry as per Clause-7 of the said Rules to verify the antecedents of the persons, Societies or Associations who invoke jurisdiction on the cause of public interest and, if they are not satisfied with the antecedents, to return the petition.

The petitioner has referred to the registration certificate (Annexure P1) certifying that the Scientific Awareness and Social Welfare Forum, Sangrur had been registered under the Societies Registration Act, 1860 and as amended by the Punjab Amendment Act, 1957. The certificate was issued on 14.05.2004 by the Additional Registrar-cum-General Manager, District Industries Centre, Malerkotla (Sangrur). The general profile (Annexure P2) mentions the names of members, office bearers, executive members and aims of the petitioner; besides, the other activities that have been conducted. A list of great donors to the petitioner Forum and the amount given have been mentioned. The Constitution (Annexure P3) of the petitioner Forum has been placed on record which also includes its Memorandum. In the Memorandum, it has been mentioned that the Funds of the Society will be deposited in any recognized bank and that withdrawal of the funds cannot be allowed without the signatures of two officer bearers out of

President, Secretary and Finance Secretary. A list of the members who unanimously passed the resolution on 27.11.2004 relating to the Memorandum has been given. Letter of appreciation (Annexure P4) has been issued by one, 'Public Cause Research Foundation' situated at Gaziabad.

The said documents though mention that the petitioner Forum is carrying out various public activities; however, there is no material to substantiate the same. The letter of appreciation (Annexure P4) is unclear as to what is the standing of the 'Public Cause Research Foundation', which has issued the letter of appreciation. Besides, there is a provision for collection of funds and the manner in which it is to be used, however, it is not disclosed as to in which bank funds are being maintained.

In Bhartiya Homeopathy College, Bharatpur v. Students' Council of Homeopathy Medical College, Jaipur and others, (1998) 2 SCC 449, the Supreme Court delineated the points relevant for deciding the maintainability of a PIL. A union of students had challenged the action of the Vice-Chancellor by way of a PIL. It was held that such a union, must disclose: (i) whether it was authorized to file the litigation; (ii) if so, by whom; (iii) whether it has sufficient funds to indulge in such litigation; and (iv) the basis of alleging harm to public interest. Otherwise, it was held that it should not be allowed lightly to litigate in the name of public interest to cause damage to others.

The petitioner Forum has not shown as to whether it has been authorized to file the litigation and, if so, by whom. Besides, it has not been disclosed whether it has sufficient funds to indulge in such a

litigation. The list of donors though has been mentioned, but it has not been disclosed as to in which bank the funds are being maintained and whether the funds have been allowed to be withdrawn for filing the present petition. Besides, it has not been disclosed that the chart by which the penalty is shown to have been imposed, then as to what harm has been caused to the public. Therefore, on the basis of material as placed on record, the petitioner Forum is not liable to be allowed to litigate lightly in the name of public interest which may cause damage to the others. On the basis of material as placed on record, the question of its *locus standi* to file the petition is liable to be kept open.

In the circumstances, we find no merit in the petition. The same is accordingly dismissed. The question of *locus standi* of the petitioner Forum to file the petition is kept open.

(S.S. SARON)
JUDGE

(LISA GILL)
JUDGE

21.09.2016
SwarnjitS

Note:	Whether reasoned/speaking	:	Yes
	Whether reportable	:	Yes