

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

**CWP No.24954 of 2014
Decided on :05.08.2016**

O.P. Kajal

... Petitioner

Versus

State Information Commission, Haryana and another

... Respondents

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

Present : Mr. Karan Bhardwaj, Advocate
for the petitioner.

Mr. J.S. Bedi, Addl. AG, Haryana
for respondent No.1.

Mr. Deepak Sabherwal, Advocate
for respondent No.2.

G.S. Sandhawalia, J. (Oral)

The petitioner challenges the order dated 18.03.2013 (Annexure P-7) passed by the respondent No.1-Commission, vide which while deciding the show cause notice under Section 20 (1) of the Right to Information Act, 2005, directions were issued that information on the rest of the points could not be provided to the petitioner, as it would amount to creation of information. The information available on record had already been furnished and there was no malafide intention to conceal the information and there was reasonable grounds to condone the delay. Resultantly, directions were issued to give information on Point No.5 and the penal proceedings proceeded against the respondent-SPIO were dropped.

Counsel for the petitioner has submitted that the said order was

without jurisdiction and amounted to review of the earlier order dated 05.11.2012 (Annexure P-3) where already a direction had been issued by the Commission itself to provide the requisite information from Points No.2 to 5, vide the abovesaid order. It is, accordingly, submitted that what was the subject matter before the respondent-Commission was only the non-implementation of the earlier order dated 05.11.2012 and the show cause notice No.71/2013 (Annexure P-6) was only to the extent that why the penalty should not be imposed as the earlier directions had not been complied with within the stipulated time.

The abovesaid argument has substantial merit in the opinion of this Court. It is not disputed that the petitioner had filed a complaint regarding seepage of water from House No.398, Sector-21, Panchkula, which is his adjoining house. The grouse was that there are three sewerage pipes/outlets for release of rain water which has been sanctioned. However, the said occupant had only constructed two outlets on the petitioner's side and the slope was also given on his side. Resultantly, on account of poor drainage, he was adversely affected.

In pursuance of the said grouse, he filed an application dated 27.04.2012 (Annexure P-2) seeking necessary information, wherein information was sought regarding six points. It is not disputed that the only issue which remains is that the information has not been supplied regarding part of Point No.4. The same is as to how many sewerage pipes have been actually installed for disposal of rain water at the spot against the sanctioned site plan. The said point reads as under:-

“4. As per approved map/site plan provision of how many sewerage pipe outlet has been show and how many sewerage pipe has been actually installed for disposal of rain water at the spot.”

It is a matter of fact that on account of non decision of the first appeal, the petitioner was forced to approach the Commission and vide order dated 05.11.2012 (Annexure P-3), the following directions were issued after noting that the First Appellate Authority was not deciding the RTI appeal. A specific direction was issued that information on Points No.2 to 5 had to be furnished by 20.12.2012. The relevant portion of the said order dated 05.11.2012 (Annexure P-3) reads as under:-

“(i) The SPIO shall furnish the requisite information on points No.2 to 5 of the RTI application to the appellant within two weeks of the receipt of this order under intimation to the Commission but not later than 20.12.2012.

(ii) The First Appellate Authority is directed to decide all the RTI appeals received by him within the specified time limit, after affording an opportunity of hearing to the parties and also by passing a speaking order.”

The petitioner was supplied information on 14.05.2012 (Annexure P-4) against Clause No.4. The information was “*See approved sanction building plan*”. Thus, the specific information as to whether on site there were three outlets or not as per the sanctioned site plan was never supplied. The petitioner filed the application before the Commission for bringing it to the notice that no action had been taken. A show cause notice (Annexure P-6) was issued. Instead of acting upon the said show cause notice, the respondent-Commission has gone astray by

recalling its own order, which cannot be justified.

Counsel for the petitioner is well within his right to contend that in the absence of the review, the earlier orders could not have been modified by the impugned order (Annexure P-7). It is settled principle that review is a creature of the statute. Even otherwise as noticed from the facts above that the petitioner was aggrieved against the non-implementation of the earlier order, but the Commission choose to withdraw the relief already granted.

In such circumstances, the impugned order 18.03.2013 (Annexure P-7) cannot be justified and same is quashed. The respondent-Commission shall re-decide the issue, why the order had not been complied with for which the show cause notice had been issued. The same be decided within a period of 4 weeks from the receipt of the certified copy of this order.

With the abovesaid observations, the present writ petition stands disposed of.

AUGUST 05, 2016
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No