

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

CWP-6063-2013

Date of decision : 21.04.2016

Sukhdev Singh

..... Petitioners

Vs

The State Information commission, Punjab & Ors.

..... Respondents

Coram : Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Hemender Goswami, Advocate,
for the petitioner.

Mr. V.Ramswaroop, Addl. A.G., Punjab.

Rakesh Kumar Jain, J. (oral)

This petition is directed against the order dated 6.12.2012 passed by the State Information Commission, Punjab imposing a penalty of ₹ 25,000/- upon the petitioner in terms of Section 20(1) of the Right to Information Act, 2005 (hereinafter referred to as 'the Act').

The only argument raised by learned counsel for the petitioner is that the action initiated in the impugned order is contrary to the provisions of Section 20(1) of the Act, wherein it is 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.

Counsel for the petitioner has drawn the attention of the Court to the order dated 8.8.2012, which is alleged to be a notice issued to the petitioner.

I have perused the said order dated 8.8.2012 passed by the State Information Commission, Punjab in which the following order was passed against the petitioner :-

“Sh. Sukhdev Singh who was PIO when the RTI was moved, now posted as Executive Officer, Nagar Council, Fazilka, is directed to submit in writing that why inordinate delay has taken place on his part for providing the requisite information to the complainant.”

According to the counsel for the petitioner, this was only a notice to the petitioner to explain about the inordinate delay but there was no show cause notice under Section 20(1) of the Act.

Counsel for the State has failed to point out any notice having been issued to the petitioner except for the aforesaid order dated 8.8.2012.

I have heard learned counsel for the parties.

The short issue involved in this case is as to whether the penalty under Section 20(1) of the Act can be imposed upon the Central Public Information Officer or the State Public Information Officer without affording an opportunity of being heard? In order to answer this question it would be relevant to reproduce Section 20(1) of the Act, which reads as under :-

“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.”

It is categorically provided in 1st proviso to Section 20 of the Act that before imposing penalty of ₹ 250/- for each day till application is received or information is furnished, which should not exceed ₹ 25,000/- in all, it is incumbent upon the authority to afford opportunity of being heard to the erring person.

In the present case, notice as required under Section 20(1) of the Act, has not been given to the petitioner and notice which was alleged to have been given on 8.8.2012 does not satisfy Section 20(1) 1st proviso of the Act. The impugned order is, thus, held to be totally illegal, having been passed in violation of Section 20(1) of the Act and, hence, the same is set aside. The matter is remanded back to the State Information Commission, Punjab to decide it again after giving opportunity of hearing to the petitioner as prescribed under Section 20(1) of the Act. The entire exercise should be completed within two months from the date of passing of the order.

(RAKESH KUMAR JAIN)

JUDGE

21.04.2016

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