

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

C.M. No. 9053-CWP of 2016 in/and
CWP No. 9195 of 2013
Date of decision: 31.08.2016

Uday Ram and othersPetitioner(s)

Versus

State of Haryana and others ...Respondent(s)

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

Present: Mr. Amit Parashar, Advocate,
for the petitioners.

Mr. Rohit Arya, AAG, Haryana.

G.S.SANDHAWALIA, J. (Oral)

C.M. No. 9053-CWP of 2016

The present application has been filed for restoration of the writ petition, which was dismissed for want of prosecution on 26.07.2016.

For the reasons mentioned in the application duly supported by affidavit, the same is allowed.

The writ petition is restored to its original number.

With the consent of counsel for the parties, the same is taken up for hearing today itself.

CWP No. 9195 of 2013

The petitioners, who are 23 in number, are aggrieved against the non-supply of information qua the service record as per the orders dated 22.08.2012, 26.07.2012, 01.08.2012, 07.08.2012, 03.07.2012, 27.07.2012 (Annexure P-1 and P-6 to P-27) passed by respondent no. 5-State Information Commissioner. A perusal of one of the orders passed in the

case of petitioner no. 1 would go on to show that he had filed an application dated 20.08.2011 with the Public Information Officer-cum-Divisional Forest Officer, Mahendergarh seeking record from 1991 to 2006 regarding his work in various nurseries of the respondent public authority. The respondent no. 5-Commission, vide the order dated 22.08.2012, had come to the conclusion that the appellant or his representative was entitled to visit the respondent's office to inspect the relevant record and confirm requisite information in terms of his application. Directions were also issued to furnish attested copy of the same to the appellant despite the appellant having inspected the relevant record confirming the information furnished by the respondents. A compliance report was to be filed within 5 weeks of the receipt of the order. A compensation of ₹500/- was also granted under Section 19(8)(b) of the Right to Information Act, 2005 (in short 'the Act'). The grouse of the petitioners herein is that the same has not been done.

The stand of the State, on the other hand, is that the petitioners had come and taken the amount of compensation but refused to inspect the record and it was only harassment at their hands.

It is not disputed that under Section 20 of the Act, where the information has not been supplied without any reasonable cause or the Officer has refused to receive an application for information or has not furnished information within the specified time frame under Section 7(1) or the information malafidely being denied, the State Information Commission has the power to impose penalty of ₹250/- each day, which is not to exceed ₹25,000/-. Similarly, under sub-section (2) of Section 20 of the Act, disciplinary action can also be recommended against the State Public Information Officer on the same account.

Section 20 of the Act reads thus:-

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.”

A Division Bench of the Karnataka High Court in ***Smt. G. Basavaraju vs. Smt. Arundathi, AIR 2009 (2) Karnataka 549***, examined the provisions of Section 20 of the Act and held that the Act is a self contained Code and the Commission had the power to execute its own order. It was accordingly held that the said power cannot only be exercised to incidents/events prior to the passing of the order but also its enforcement, otherwise, the legislative intent behind the enactment will get defeated. Resultantly, the contempt petition which had been filed before the High Court for non-implementation of the order of the Karnataka Information Commission was held not maintainable. The complainant was, thus, given the right to approach the Commission under Section 20 of the Act. In the said case also, the contention of the complainant that the provisions of Section 20 of the Act were not efficacious and the fact that the Commission did not have the power was rejected and it was held that the provisions of Section 20 of the Act could be used to exercise its powers by the Commission to enforce its order. The relevant portion reads thus:-

“9. Section 20 of RTI Act provides for penalties. It confers powers on the Commission on the basis of which it can enforce its order. The Act having provided for

constitution of the Commission and the power to impose the penalties by way of levy of fine and also the Statutory right to recommend to the Government for disciplinary action against the State Information Officer, itself has the necessary powers I provisions, in the form of the provisions of Contempt of Courts Act. It is cardinal principle of interpretation of Statute, well settled by catena of decisions of the Apex Court, that, Courts or tribunals, must be held to possess power to execute its own order. Further, the RTI Act, which is a self-contained Code, even if it has not been specifically spelt out, must be deemed to have been conferred upon the Commission the power in order to make its order effective, by having recourse to Section 20.

*10. In the case of **Sakiri Vasu v. State of Uttar Pradesh 2008 (2) SCC 409**, it has been held as follows :*

18. It is well settled that when a power is given to an authority to do something it includes such incidental or implied powers which would ensure the proper doing of that thing. In other words, when any power is expressly granted by the statute, there is impliedly included in the grant, even without special mention, every power and every control the denial of which would render the grant itself ineffective. Thus where an Act confers jurisdiction it impliedly also grants the power of doing all such acts or employ such means as are essentially necessary for its execution.

19. The reason for the rule (doctrine of implied power) is quite apparent. Many matters of minor details are omitted from legislation. As Crawford observes in his Statutory Construction (3rd Edn., p.267) :

"...If these details could not be inserted by implication, the drafting of legislation would be an interminable process and the legislative intent would likely be

defeated by a most insignificant omission."

20. In ascertaining a necessary implication, the court simply determines the legislative will and makes it effective. What is necessarily implied is as much part of the statute as if it were specifically written therein.

(Emphasis supplied by us)

The powers of the Commission to entertain and decide the complaints, necessarily shows that, the Commission has the necessary power to adjudicate the grievances and decide the matters brought before it, in terms of the provisions contained in the RTI Act. The legislative will, in incorporating Section 20 in the RTI Act, conferring power on the Commission to impose the penalties, by necessary implication is to enable the Commission to do everything which is indispensable for the purpose of carrying out the purposes in view contemplated under the Act. In our considered view, provisions of Section 20 can be exercised by the Commission also to enforce its order. The underlying object in empowering the Commission to impose the penalty and/or to resort to other mode provided therein, cannot and should not be construed only to the incidents/events prior to the passing of an order by the Commission, but are also in aid of the order passed by the Commission and its enforcement/execution, as otherwise, the legislative will behind the enactment gets defeated."

Thus, in case the petitioners are aggrieved against the non-implementation of the orders of the State Commission, it is always open to them to approach the State Commission by filing appropriate application for the redressal of their grievances. In view of the fact that the Commission has adequate powers to act against the delinquent officers as per the provisions of the Act, the petitioners are accordingly liable to be relegated

to the remedy before the Commission.

Accordingly, this Court is of the opinion that in view of the alternative and efficacious remedy available, the present writ petition is not maintainable. It is for the Commission to enquire into the matter as to whether the compliance has been done or not and take action against the delinquent officers accordingly.

The writ petition is disposed of with liberty to the petitioners to avail the alternative and efficacious remedy available to them.

31.08.2016
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No