

IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

220

CWP-658-2016

Reserved on 03.11.2016

Decided on : 18.11.2016

Sunil Chopra

... Petitioner

Versus

Chief Information Commissioner and others

.. Respondents

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

Present : Ms.Sushma Chopra, Advocate
for the petitioner.

Mr.Rohit Arya, AAG, Haryana.

Mr.Sarabjit Singh, Advocate
for respondent No.2.

G.S.Sandhawalia, J.

The petitioner challenges the order dated 21.10.2015 (Annexure P/14) whereby, respondent No.2-Commission has imposed a penalty of Rs.23,750/- upon the petitioner. The penalty was imposed on the ground that an application dated 26.07.2014 (Annexure P/1) had been filed under the *Right to Information Act, 2005* (in short the 'Act') by respondent No.3-complainant. At that point of time, he had sought the information from the then SPIO-cum-District Registrar, Firms and Societies, Panchkula, Sh.Jaideep Kapoor, respondent No.4 who had left the office without handing over the copy of the RTI application to his successor, the present petitioner, so that response had not been given to the information seeker. The petitioner after assuming the charge had not inquired into the pendency of RTI applications, and he failed to take action, and only when respondent-Commission issued notice to him, information was supplied on 10.04.2015. The receipt of which had been admitted by respondent No.3 on

04.05.2015 (Annexure P/7). Resultantly, penalty was imposed, along with Rs.1,250/- was also imposed upon the earlier SPIO, Shri Sh.Jaideep Kapoor.

Counsel for the petitioner has vehemently submitted that the information pertained to the election of the *Mandir* (temple) which had been held on 04.07.2010, and as to whether the elected officials were registered members of the Sabha or not. In similar circumstances, another person had also sought information under the Act, which had been denied on the ground that it did not come under the purview of the Act, as the *Mandir* was not being run from any government grant. It is submitted that respondent No.4 had not given the required information, and on that account, the complaint had been filed and the petitioner was not aware about the application moved. He had taken the additional charge on 29.08.2015 and he had come to know only after receiving the application on April, 2015 from the office of the appellate authority. He submitted that the fault was on account of respondent No.4 who had not provided the information within the stipulated period. Therefore, order is not justifiable.

In the written statement filed by respondent No.4, the plea taken is that the RTI application was marked to the concerned assistant on 06.08.2014 and the file had never been put up till the earlier SPIO relinquished the charge, i.e. on 29.08.2014. The case had been put up before the first appellate authority on 10.04.2015 and also before the Commission on 04.05.2015 and the petitioner had failed to appear and had not supplied the information to the Commission. Thus, the order was justified. The aspect of the *Mandir*, not being a Public Authority, and was not covered under the definition of Section 2(h) of the Act was also highlighted.

Perusal of the record would go on to show that after moving the application on 26.07.2014, the complaint had been filed before respondent No.2-Commission on 03.03.2015 under Section 18 instead of filing the first appeal. Accordingly, the same was remanded to the first appellate authority to be entertained as first appeal, and disposed of by passing speaking order, and liberty was given to file the second appeal. The same was done keeping in view the judgment of the Apex Court in (2011) 15, SCC 1, Chief Information Commissioner and another Vs. State of Manipur, wherein it has been held that the right to seek information lies under section 19 by way of second appeal.

However, the notice was also issued by treating it as a complaint under Section 18(2) of the Act, for inquiring into the matter. Resultantly, the first appellate authority issued notice to the respondent No.3. Pursuant to that, the information was supplied on 09.04.2015, and the photocopy of the complete file relating to Mandir situated at Panchkula was given. Offer was given by the District Registrar, Firms and Societies, Panchkula that the office could be visited to see the available record. Resultantly, on 10.04.2015 (Annexure P/6), first appeal was disposed of in view of the fact that the information had been supplied.

In the meantime, the notice had been issued in the complaint under Section 18(2) of the Act, and the matter came up on 04.05.2015 where the petitioner was not present. Resultantly, notice under Section 21 (1) was issued and the case was fixed for 08.07.2015. The first appellate authority was also asked to decide the appeal by passing a speaking order. The complainant was thereafter, informed that record could be inspected on 29.05.2015. The petitioner did not put in appearance before the respondent-

Commission on 08.07.2015. Accordingly, the Commission recorded that the onus was upon the petitioner, being SPIO, as to why the information was provided at a belated stage, and penalty of Rs.25,000/- was imposed which was to be recovered in two installment of Rs.12,500/- each.

The petitioner thereafter, filed an explanation dated 10.08.2015 (Annexure P/11) before the respondent- Commission as to the fact that file had not been put up to him and the dealing hand had been arrested in a bribery case. The moment when the notice was received from the first appellate authority, the whole record had been provided on 09-10/04/2015. Thereafter, also the inspection had been offered for 29.05.2015 as per communication dated 22.05.2015 and the record had also been inspected on 30.06.2015. Resultantly, respondent No.2 Commission had issued notice to all the parties including both the SPIOs. Thereafter, the impugned order had been passed whereby the penalty of Rs.25,000/- qua the petitioner was reduced by levying penalty of Rs.1,250/- upon respondent No.4 on account of non-furnishing the requisite information from 25.08.2014 to 29.08.2014 . The balance amount of penalty of Rs.23,750/- then was accordingly put upon the petitioner.

Section 20(1) of the Act provides that while deciding the complaint or appeal, the Commission can impose penalty, but that shall not exceed twenty five thousand rupees. However, finding has to be recorded that it is without any reasonable cause that the Public Information Officer refused to receive an application for information, or has not furnished the information within the time specified under subsection (1) of section 7 of the Act.

In the present case as noticed, the application had been filed on

26.07.2014. At that point of time, the respondent No.4 was Incharge whereas the petitioner had joined only on 29.08.2014. It is the specific case that he was not made aware by the dealing hand that any application as such, is pending. The complainant had preferred to file the proceedings before the respondent-Commission without preferring the first appeal at that point of time. Immediately, on receiving the notice, information was supplied on 09.04.2015 to the complainant. The lapse on the part of the petitioner, thus was, he chose not to put in appearance before the Commission on 04.05.2015 though the Commission was apprised of the fact that information already stood supplied. Resultantly, the notice had been issued under Section 20(1) of the Act. It is also to be noted that even before the first appellate authority, representative of the petitioner had not appeared and had only informed the first appellate authority also. Thereafter, the respondent-Commission had further issued directions on 04.05.2015 (Annexure P/7) that the date and time for inspection of the file may be intimated to the complainant and the appeal should also be decided by passing a speaking order. Thereafter, finding was recorded on 08.07.2015 (Annexure P/10) that information was only supplied on 22.5.2015 which led to the imposition of penalty of Rs.25,000/-.

After the case had been decided, the petitioner then, chose to file the explanation dated 10.08.2015 (Annexure P/11) as to why the order had not been complied within the specified period. Resultantly, the Commission had entertained the matter again at that stage. The petitioner was thus responsible for the imposition as such penalty imposed upon him on account of his lapses at various point of times, which have duly been noticed above. A finding has also been recorded that he did not bother to

find out whether any application was pending upto his joining i.e. 29.08.2014. The information was thus, denied till April, 2015 to the complainant/information seeker. It was only on account of the directions issued by the respondent-Commission and the complaint before it, thereby remanding the matter to the first appellate authority, the information was thus supplied. Resultantly, it can safely be held that the respondent-Commission had rightly imposed the penalty as the information continued to be denied beyond the period of 30 days on the receipt of request. The non-supply of information within the time specified had led to the imposition of penalty, and it cannot be said that the order passed by the respondent-Commission suffers from any illegality. Section 20(1) of the Act which reads as under.

“20 (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 case, refused to receive an application for information or has not furnished information within the time specified under sub-section (1) of section & 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.”

In the facts and circumstances of the present case, it could not be demonstrated by the counsel for the petitioner that there is any violation of opportunity of hearing as such. In spite of the case having been disposed of, the respondent Commission chose to consider the application dated 10.08.2015 and passed a fresh order thereafter, and bifurcated the penalty between the petitioner and respondent No.4. The burden of proof was also upon the petitioner under the second proviso of which he has failed to discharge that he had acted reasonably and diligently, from August, 2014 onwards. He had only acted when the directions were initially issued on 5th March, 2015. In such circumstances, as noticed, he also chose to refrain from appearing on two occasions before the Commission, and also before the first appellate authority.

In such facts and circumstances, this Court does not feel that it is a fit case for interference by this court with the orders passed by the respondent-Commission which led to the imposition of penalty. Resultantly, the writ petition is dismissed.

[G.S.Sandhawalia]
Judge

18.11.2016
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Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No