

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.507 of 2016
IN
Civil Writ Jurisdiction Case No. 19018 of 2011**

=====

Doman Ram Son of Musafir Ram Resident of Village - Bhatauliya, P.S. - Goroul,
Distirct - Vaishali.

.... Appellant

Versus

1. The State Information Commission through its Secretary-cum-Registrar, IVth Floor, Suchna Bhawan, Bailey Road, Patna.
2. Secretary-cum-Registrar, Information Commission, Suchna Bhawan, Bailey Road, Patna.
3. Deputy Secretary-cum-Joint Registrar, Information Commission, IVth Floor, Suchna Bhawan, Bailey Road, Patna.
4. Nagar Parishad, Sasaram through its Executive Officer.
5. Executive Officer, Nagar Parishad, Sasaram.

.... Respondents

=====

Appearance :

For the Appellant/s : Mr. Lalan Kumar, Adv.
Mr. Ranjeet Kumar Singh, Adv.
For Respondent No.1 to 3 : Mr. Lalit Kishore, Sr. Adv.
Ms. Binita Singh, Adv.
For the Respondent No.4 : Mr. Vijay Shankar Upadhyay, Adv.

=====

CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 11-04-2017

Seeking exception to an order dated 24.11.2015 passed by
learned writ court, dismissing the writ petition, wherein challenge was
made to an order dated 26.05.2009 (Annexure-12) in the record of the
writ petition, imposing fine upon the petitioner.

An Information Officer under Right to Information Act
on account of the fact that he did not supply the information, sought



for within the period 22.07.2008 to 14.09. 2008 and thereby rendering him liable to be fined a sum of Rs. 250/- per day for the aforesaid period. Even though the learned writ court has found that the order is proper and no interference is called for but we find no discussion in the order passed by the learned writ court for arriving at such a conclusion.

However, hearing learned counsels for the parties at length, we find that the aforesaid action has been taken against the petitioner, on account of fact that in spite of direction issued by the State Information Commission, he did not supply information to the concerned person between 22.07.2008 to 14.09.2008. However, while doing so, certain material procedural irregularities have been committed by the State Information Commission, in as much as after notice (Annexure-A series) was issued by the Office of the Commission to the petitioner on 24.06.2008, directing him to supply the information on or before 22.07.2008 or appear before the Commission on 22.07.2008. The petitioner had submitted his reply to the show cause and thereafter when he was again directed to supply the information and when he was asked to show cause as to why penalty should not be imposed upon him for not supplying the information from 22.06.2008 to 01.09.2008 (Annexure-A6). The petitioner on 15.09.2008 vide Annexure-A5 has given various reasons



and had pointed out that the information was not available in the office and he cannot supply. Thereafter the record goes to show that he was relieved from the office, transferred to some other office and it was some other officer, who took over the charge and was responsible to supply the information.

Be that as it may be, the fact remains that while passing the order by taking recourse of the penal provision and imposing the fine on the petitioner, this defence, as it contained in Annexure-A5, has not been addressed, it has not been taken note of nor has any finding has been recorded to say that the same is not correct. Even though learned counsel Ms. Binita Sinha appearing for the State Information Commissioner vehemently argued that the submissions made by the petitioner in Annexure-A5 is not correct because after transfer of the petitioner, the subsequent officer, who took over the charge of the petitioner did supply the information. The fact remains that imposition of penalty under Right to Information Act is a penal provision. The Information Commissioner discharges quasi judicial function and therefore, any order passed, penal in nature should show application of mind, assessment of the defence of the person concerned, its acceptance or rejection by recording of reason. If we go through the impugned order (Annexure-P 12), we find that it does not address the defence of the petitioner, his explanation as contained in



Annexure-A5 and the fact about the petitioner enabling to give the information for various reasons and subsequent transfer of the petitioner from the post in question have not been taken note of or consider the contention of the petitioner may be correct or may be false but a statutory duty imposed upon State Information Commission to take note of his defence and explanation, consider it and thereafter decided the issue by the speaking order.

In our considered view, this aspect of the matter has been completely lost sight of and without addressing all these questions and without taking note of the explanation and defence of the petitioner, he has been proceeded with a penal action against him. That being the position, it is a case where an imposing the penalty the principle of natural justice has been violated in the matter of imposing penalty against the petitioner and therefore, it is a fit case where the matter should be remanded back to the State Information Commission to reconsider the question and decide it afresh, in accordance with law.

Accordingly, the order impugned (Annexure-P 12) is quashed. This appeal is allowed. The writ petition is allowed and disposed of with the following directions:-

The petitioner shall appear before the State Information Commission along with the certified copy of this order on 01.05.2017 along with his



detailed objections and documents in support thereof and the State Information Commission shall consider the same, hear the petitioner and decide the question afresh in accordance with law, either on the head and the petitioner appear or adjourn day as may be thought appropriate by the State Information Commission. Needless to emphasize that a decision in the matter shall be taken within a period of 30 days from the date of appearance of the petitioner.

(Rajendra Menon, CJ)

(Sudhir Singh, J)

Amit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18-04-2017
Transmission Date	NA

