

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No. 2275 of 2016**

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Imran Alam, Son of Late Mohammad Moiuddin, Resident of Harun Nagar, Sector No. 1, Road No. 6, House No. 68, Police Station- Phulwari, District- Patna.

.... .... Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Department of General Administration, Government of Bihar, Patna.
3. The Principal Secretary, Department of Food and Civil Supplies, Bihar, Patna.
4. The District Magistrate- cum-Collector, Patna.
5. The State Information Commission, through the Secretary, Suchana Bhawan, Secretariat Campus, Baily Road, Patna.

..... Respondents 1<sup>st</sup> Set.

6. Ram Bhajan Sharma, Son of Late Bajrangi Singh, Resident of Village and Post Office- Sarasat, Police Station- Naubatpur, District- Patna.

..... Respondents 2<sup>nd</sup> Set.

.... .... Respondent/s

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**Appearance :**

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| For the Petitioner/s | : | Mr. Abhay Kumar Thakur, Advocate |
| For the S.I.C        | : | Mr. Lalit Kishore, P.A.A.G. 1    |
| (Respondent No. 5)   | : | Ms. Binita Singh, Advocate       |
| For the State        | : | Mr. G. P. Ojha, G.A. 7           |
|                      | : | Mr. Gopal Krishn, A.C. to G.A. 7 |

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**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH**  
**ORAL JUDGMENT**

**Date: 09-02-2017**

Heard learned counsel for the parties.

The petitioner has moved the Court for quashing of the order dated 01.06.2015 passed in Case No. 87264 of 2012-13, by the State Chief Information Commissioner, Bihar as contained in Memo No. 7026 dated 11.06.2015.

The petitioner, at the relevant time, was posted as Block Supply Officer at Naubatpur in the District of Patna and was also designated as Public Information Officer under the Right to



Information Act, 2005 (hereinafter referred to as the 'Act'). On 09.11.2012, the respondent no. 6, filed an application before the petitioner seeking information relating to distribution by a particular PDS dealer under Adala Panchayat among the beneficiaries. Such information not being available with the petitioner, he wrote to the concerned PDS dealer on 17.11.2012 to supply the information making him aware that the same was sought under the Act. The dealer was asked to furnish such information within one week. However, the same was not done and only on 10.12.2012, the concerned PDS dealer sent the information to the petitioner. As per the requirement under the Act, the petitioner wrote to the respondent no. 6 to deposit Rs. 2,548/- for getting copies of the documents relating to such information. In the meantime, the respondent no. 6 moved before the Appellate Authority on 19.12.2012 but when nothing happened, he filed Second Appeal on 22.01.2013 under the Act and the same has finally resulted in the impugned order dated 01.06.2015 by which a penalty of Rs. 25,000/- has been awarded against him under Section 20(1) of the Act with a further direction to initiate departmental proceeding under Section 20(2) of the Act.

Learned counsel for the petitioner submitted that he was posted as a PIO till 11.08.2014. It was submitted that during the proceeding before the State Information Commission, the petitioner



was appearing regularly and on 05.05.2014, the order clearly shows that the case was closed. However, subsequently, on the same day, on appearance of the respondent no. 6, there was an order that since the information was not provided within 30 days, it should be given without charging any fee and the next date was fixed for 27.10.2014 at 10.30 A.M. He submitted that in the meantime, on 11.08.2014, he was transferred from the post and another person became the Public Information Officer under the Act. Learned counsel submitted that on 27.10.2014, the order indicates that the successor in the office of the petitioner was not present and the matter was fixed for 05.02.2015. Learned counsel submitted that after him moving out as the PIO of the concerned place, after 11.08.2014, he cannot be fastened with the liability of any non compliance with the order or the requirement of the Act. Learned counsel further submitted that the stipulation of 30 days for supplying the informant is in a case where the information is available with the concerned PIO, but in the present case, the information was required to be sought from a private party and the same was made available only on 10.12.2012. It was further submitted that the petitioner had thereafter written to the respondent no. 6 on the same day for depositing the requisite fee for getting copies relating to such information and thus, if at all the 30 days period is to be counted, it shall be from 10.12.2012, when the



petitioner in the capacity of PIO under the Act was in possession of such information. Learned counsel submitted that after having written to the respondent no. 6 on 10.12.2012, and him not having deposited the money, the onus was on him and, thus, there cannot be any occasion to charge the petitioner for having violated the provisions of the Act for not having supplied the information within 30 days, for which penalty has been imposed and departmental proceeding recommended. Learned counsel submitted that even as per the order dated 05.05.2014, the substantive case was closed only with the further direction to supply the information to the respondent no. 6, without charging fee. Learned counsel submitted that the order dated 27.10.2014 clearly indicates that the State Information Commission had granted further 15 days time and also asked for submitting of show cause but the said order was passed much after the petitioner has been transferred as PIO from that particular place. Learned counsel submitted that in an application filed by the petitioner on 18.09.2015, for staying of the order passed under Sections 20(1) and 20(2) of the Act, he had categorically taken the stand that in his presence the order dated 05.05.2014 was passed closing the case, which is reflected from the order itself, and only later on in the absence of the petitioner, the respondent no. 6 had appeared and an order was passed for him to supply the information



without charging any fee but the communication of the order was never received by the petitioner. It was submitted that had the same been received, there was no occasion for the petitioner not to comply with the order. Learned counsel submitted that thus, both on facts as well as in law, the liability of the petitioner under the Act ended the moment, upon receiving information, which was sought from a private person on 10.12.2012, when he had communicated to the respondent no. 6 to deposit a certain amount, well within 30 days, and the respondent no. 6 not having deposited the same, the petitioner cannot be held responsible for the violation of any of the provisions under the Act and, thus, action under Sections 20(1) and 20(2) of the Act is unjustified. Learned counsel submitted that by order dated 27.10.2014, when a show cause was asked from the PIO, the petitioner was not holding the post and thereafter on 01.06.2015, when the impugned order was passed, the same states that no show cause has been submitted and, thus, the State Chief Information Commissioner has proceeded to pass the order. He submitted that the aforesaid factual background clearly indicates that there has been no laches on the part of the petitioner which would warrant such an extreme penal order under the Act. Learned counsel further submitted that the order dated 27.10.2014 also does not appear to have been communicated.



Learned counsel for the State Information Commission submitted that the order has been passed in the background of admitted facts, when information sought by the respondent no. 6 through an application on 09.11.2012 was not provided to him within 30 days. He further submitted that the order impugned cannot be said to be illegal or arbitrary since neither the petitioner nor his successor-in-office appeared before the State Information Commission, either on 27.10.2014 or 01.06.2015 and thus, there being no representation before him, he has simply applied the provisions of the Act to the facts of the case which were available on record i.e., information having been sought on 09.11.2012 and not being provided to the respondent no. 6 within 30 days.

The Court had requested learned counsel appearing for the State Information Commission (respondent no. 5) to keep the records with him. The same have been produced and also perused by the Court. From the records, it is apparent that the order dated 05.05.2014 clearly states that the petitioner was present and in his presence the case was finally closed and later on the respondent no. 6 had appeared, when the petitioner was not present and an order was passed to provide the information sought without charging any fee within the next 15 days. After going through the records produced and being assisted by learned counsel appearing for the respondent



no. 5, a receipt of DTDC Courier and Cargo Limited has been shown to contend that the order dated 05.05.2014 was communicated to the petitioner, but on the said receipt the date is mentioned as 03.11.2014. Learned counsel for the respondent no. 5 submitted that there is some confusion as the order was communicated in close proximity of 05.05.2014. The Court finds such stand to be erroneous, for the reason, that on the very same receipt two numbers have been mentioned, one 87264 and another 11055. From a perusal of the issue register, the number 87264 relates to Memo No. 1119 dated 09.05.2014 whereas the number 11055 is the Memo number of letter dated 03.11.2014. Thus, the said receipt could not have been prior to 03.11.2014, which is much after the petitioner had been transferred on 11.08.2014 itself. Such fact is not disputed at the Bar and is also clearly reflected from the records itself. With regard to the liability of the petitioner to supply information within 30 days, in the particular facts of the case, the Court finds that the petitioner as a PIO was never liable to supply such information, since the same was held by a completely private person i.e., the concerned PDS dealer. Thus, such information will not come under the ambit of Section 11 of the Act for the reason that Section 11 relates to third party information which is already available with the PIO and has been treated as confidential by that third party and such information shall be given to the



requisitionists only after deciding whether the same should be given after informing the third party and considering the objections, if any. In the present case, there is no similarity to such a situation as the information was not available with the petitioner in the capacity of PIO and was only concerned with the PDS dealer, who is a private party. Secondly, the equally important aspect is that the petitioner in fact, had used his good office and managed to get the information from the PDS dealer and also intimated to the petitioner to deposit the requisite fee. Thus, from any point of view, the Court does not find any lapse or laches on the part of the petitioner in discharging his duties as a PIO under the Act. From the records it becomes clear that on 05.05.2014, the matter was finally closed and thereafter, behind the back of the petitioner and without any communication of such order, the petitioner even having moved out on 11.08.2014, action against him under the impugned order, cannot be justified, either on facts or in law.

Having said that, the Court would only indicate that all these aspects not being brought to the notice of the State Chief Information Officer, and the order passed in the absence of any assistance or the true factual position being brought before him, there was no occasion for him to pass any other order with the limited material available with him on record.



Be that as it may, in view of the discussions made hereinabove, the petitioner cannot be said to be responsible in any way for not providing the information sought under the Act by the respondent no. 6 and, thus, the order for action under Section 20(1) and 20(2) of the Act against the petitioner cannot be sustained.

Accordingly, the order impugned dated 01.06.2015 contained in Memo No. 7026 dated 11.06.2015 is set aside. The matter may proceed in accordance with law after issuing notice to the PIO, who succeeded the petitioner and/or who is now in office, in light of the observations made in this order.

The writ application stands allowed in the aforementioned terms.

**(Ahsanuddin Amanullah, J.)**

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