

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (C) No.1667 of 2009

(Arising out of order dated 26-11-2008 passed by the State Chief Information Commissioner, Chhattisgarh Information Commission, Raipur in Appeal Case No.363/2008)

Public Information Officer, High Court of Chhattisgarh, Bilaspur (C.G.)
---- Petitioner

Versus

1. Chhattisgarh Information Commission, Through the State Chief Information Commissioner, Nirmal Chaya Bhavan, Meera Daata Road, Shankar Nagar, Raipur (C.G.)
2. Pramod Pathak, S/o Shri Rajendra Pathak, Assistant Grade-III, Central Filing Section, High Court of Chhattisgarh, Bilaspur (C.G.)
---- Respondents

For Petitioner:	Mr. Rajeev Shrivastava, Advocate.
For Respondent No.1:	Mr. Shyam Sunder Lal Tekchandani, Advocate.
For Respondent No.2:	Mr. Saurabh Dangi, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

30/11/2017

1. Respondent No.2 made an application under Section 6 (1) of the Right to Information Act, 2005 (for short, 'the RTI Act') for getting certain information, to the Public Information Officer / petitioner herein. The information was supplied to him, but dissatisfied with the order of the Public Information Officer, he filed first appeal before the first appellate authority. The first appellate authority by its order dated 17-12-2007 allowed the appeal and directed furnishing of certain more information, but respondent No.2 was not satisfied with the order of the first appellate authority leading to filing of second appeal before the State Information Commission. The State Information Commission by its order dated 11-9-2008 directed the petitioner to allow respondent No.2 to inspect further documents / information to

be supplied to him and on a list being supplied by him within three days, the information be supplied to him free of cost within further 15 days. It is the case of the petitioner that in compliance of that order, respondent No.2 did not appear before the Public Information Officer / petitioner herein and when the matter was taken up before the State Information Commission on 26-11-2008, the Commission has passed the impugned order holding that the information has not been supplied to respondent No.2 without there being any reasonable cause and also imposed a cost of ₹ 300/- upon the petitioner in exercise of power conferred under Section 19(8)(b) of the RTI Act. Being aggrieved against that order, this writ petition has been filed.

2. Learned counsel for the petitioner would submit that the impugned order compensating the complainant is without jurisdiction and without authority of law.
3. On the other hand, learned counsel for respondent No.1 would support the impugned order and learned counsel for respondent No.2 would also support the impugned order.
4. I have heard learned counsel for the parties and perused the impugned order and also perused the copies of other documents with utmost circumspection.
5. It is not in dispute that respondent No.2's application under Section 6(1) of the RTI Act and further first appeal were allowed. The second appellate authority (State Information Commission) by its order dated 11-9-2008 directed the petitioner to allow respondent No.2 for inspecting the documents to be further supplied to him, but it is the case of the petitioner that respondent No.2 did not appear which has not been seriously disputed and which has been specifically raised in para 8.11 of the petition, but by filing return, it has not been seriously

disputed by respondent No.2. Even otherwise, there is no document on record to hold that respondent No.2 appeared and indicated the documents to be supplied to him. Therefore, respondent No.2 has failed to comply the order of the State Information Commission passed on 11-9-2008. Unless the documents required are inspected and indicated by respondent No.2, same could not be supplied by the petitioner to him, as it is the case of the petitioner that all relevant documents running into more than 600 pages have already been supplied to respondent No.2.

6. At this stage, it would be appropriate to notice Section 19(8)(b) of the RTI Act which provides as under:-

“19(8) In its decision, Central Information Commission or State Information Commission, as the case may be, has the power to—

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(b) require the public authority to compensate the complainant for any loss for other detriment suffered;”

7. A careful perusal of the aforesaid provision would show that the State Information Commission has authority and jurisdiction to compensate the complainant for any loss or other detriment suffered by him, but the compensation payable under Section 19(8)(b) of the RTI Act must be “for any loss or other detriment suffered” on account of denial of information under the RTI Act .
8. The High Court of Delhi in the matter of **N.T.P.C. Ltd v. Mohd. Samad Khan**¹ has held as under:-

“17. The ambit of the power under Section 19(8)(b) has to be determined by the scope of the powers of the CIC generally under Section 19, and as an Appellate Authority in terms of Section 19 (1) to (8). The

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compensation payable under Section 19(8)(b) is "for any loss or other detriment suffered", on account of the denial of the information under the RTI Act and not just about any loss or detriment suffered by the applicant. In the context of the present case if the CIC had found that the Respondent was unfairly denied by the NTPC, the information sought for by him, the CIC was next to determine the precise loss suffered by the Respondent on account of such denial of information. Thereafter it could pass appropriate orders to compensate the Respondent for the loss or detriment suffered. In the present case, there is no finding by the CIC that the NTPC had in its records a survey report which it unfairly denied to the Respondent. This factual determination was essential for the CIC to proceed to determine the loss suffered by the Respondent on account of the denial of such information. Thereafter under Section 19(8)(b) RTI Act it was in the discretion of the CIC to award compensation. Even while exercising that power a finding would have to be rendered by the CIC on the extent of loss, even approximately, suffered by the person to whom such information ought to have been furnished. This is because the compensation that has to be awarded under Section 19(8)(b) is for the loss or the detriment suffered" on account of the denial of such information and not just about any loss or detriment suffered by such person. There is no such determination by the CIC in the present case."

9. Therefore, what flows from Section 19(8)(b) of the RTI Act and decision of the Delhi High Court in **Mohd. Samad Khan's** case (supra) is that the Commission has authority and jurisdiction to impose compensation only on account of denial of information under the RTI Act, whereas in the instant case, the Commission has imposed compensation upon the petitioner without recording such finding and without there being any reasonable cause, which is

unsustainable and bad in law.

10. The decision of the Delhi High Court in **Mohd. Samad Khan's** case (supra) has been followed by this Court in W.P.(C)No.6789/2008 (South Eastern Central Railway v. Central Information Commission and another) decided on 16-11-2017.
11. In view of the above, imposition of cost upon the petitioner by the State Information Commission is unauthorised and without authority of law. For the foregoing reasons, the impugned order so far as directing payment of compensation of ₹ 300/- to the complainant / respondent No.2 without indicating any loss or detriment having been suffered by respondent No.2 / complainant, is hereby set aside.
12. The writ petition is allowed to the extent indicated herein-above. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge