

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 525 of 2012**

1. Pradeep Raj Paul, S/o Late D. Paul, aged about 49 years, Principal (Public Information Officer), Mission Higher Secondary School, Bilaspur (C.G.)
2. Secretary, Board of Secondary Education and Teachers Training M.P. C.N.I. through Secretary, Shri M. Singh, Sivni (M.P.P

---- Petitioners**Versus**

1. Chhattisgarh State Information Commissioner, Nirmal Chhaya Bhawan, Mira Datar Road, Shankar Nagar, Raipur (C.G.)
2. Atish Kumar Lal, Late Shri A.K. Lal, aged about 40 years, R/o Jarhabhata Mamta Villa Indu Chowk, Bilaspur (C.G.)

---- Respondents

For Petitioners	:	Mr. Saurabh Dangi, Advocate.
For Respondent No. 1	:	Mr. S. S. Tekchandani, Advocate.
For Respondent No. 2	:	None.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****17/07/18**

1. In a second appeal preferred by the complainant, the State Information Commission has directed the Principal Secretary, School Education to obtain information from the petitioners and to furnish the same to the complainant and also levied damages to the extent of Rs.3,000/- in exercise of power conferred under Section 19(8)(b) of the Right to Information Act, 2005 (for brevity, 'Act of 2005'). Questioning the levy of damages, this writ petition has been filed by the petitioners.

2. Learned counsel for the petitioner would submit that the State

Information Commission has not recorded any finding that the complainant has suffered any loss or detriment and without recording any such finding, the order levying damages could not be passed and it is liable to be set aside.

3. Mr. S.S. Tekchandani, learned counsel appearing for the respondent No. 1 – State Information Commission would oppose the submissions made by counsel for the petitioners and support the order impugned.

4. None appeared for respondent No. 2 though served.

5. I have heard learned counsel for the parties, considered their rival submissions made herein above and perused the impugned order with utmost circumspection.

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 Khan¹ 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 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

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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 / damages is for any loss or other detriment suffered on account of denial of information and not just about any loss or detriment suffered, whereas in the instant case, the Commission has imposed compensation upon the petitioners without recording finding that the respondent / complainant has suffered loss / detriment on account of denial of information, 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. Accordingly, the impugned order passed by the State Information Commission to the extent of levying damages is hereby set aside. However, the petitioners are not relieved to supply information as directed by the State Information Commission, if not already supplied.

12. The writ petition is allowed to the extent indicated herein above. No order as to cost(s).

SD/-
(Sanjay K. Agrawal)
Judge