

**IN THE HIGH COURT OF PUNJAB AND HARAYANA AT CHANDIGARH
201**

**CM-7604-CWP-2018 &
CWP-397-2018**

Date of decision: 10.09.2018

SANDEEP SHARMA

....PETITIONER

V/S

STATE OF PUNJAB AND ORS

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Sanjiv Gupta KKR, Advocate,
for the applicant/respondent No. 5.

Mr. Navneet Jindal, Advocate,
for the petitioner.

Mr. Aditya Sharda, AAG, Punjab,
for the State.

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AUGUSTINE GEORGE MASIH, J. (ORAL)

CM-7604-CWP-2018

Counsel for the non-applicants have no objection to the submission of the counsel for the applicant/respondent No. 5 if the main writ petition is itself preponed and taken up for final disposal.

In view of the above, the present application is allowed to the extent of preponing the hearing of the main case from 23.10.2018 to today and the same is taken on Board for final disposal.

CWP-397-2018

It is the contention of the learned counsel for the petitioner that the information, which was being sought by respondent No. 5, is that of the petitioner, which relates to his personal information, for which he had objected before the Public Information Officer when he was called upon.

Counsel for the petitioner further contends that the information, which was denied by the Public Information Officer, was based upon the provisions of Section 8 (1) (j) & (k) of the Right to Information Act, 2005. Thereafter, in the first appeal, which was filed by respondent No. 5, the petitioner was again associated. Subsequent thereto, before the State Information Commission, where the second appeal was preferred by respondent No. 5, the petitioner was not impleaded as a party. However, the said appeal was dismissed by the State Information Commission, which order of the State Information Commission dated 20.10.2016 was challenged by respondent No. 5-Mukesh Kumar by filing CWP No. 26089 of 2016. On 16.12.2016, when the case came up for hearing, this Court, at the oral request made by the counsel for respondent No. 5 herein, impleaded the petitioner Sandeep Sharma @ Deepa as respondent No. 5 and thereafter, issued notice of motion. When the case finally came up for hearing before this Court on 26.09.2017, where the petitioner's counsel was also present, the order dated 20.10.2016 passed by the State Information Commission, Punjab, was set aside as the same was not a speaking order. While setting aside the said order, the matter was remitted to the State Information Commission, Punjab, for fresh decision after affording opportunity of hearing to the concerned parties, meaning thereby all the parties to the writ petition. While passing the impugned order dated 27.12.2017 (Annexure P-10), the State Information Commission has not issued notice to the petitioner herein and he was not even heard, although he asserts that he was present when the said order was passed but neither his presence has been marked nor his contentions, which were sought to be raised before the Commission, were taken into consideration. On these

factual assertions, counsel for the petitioner contends that the impugned order passed by the State Information Commission dated 27.12.2017 (Annexure P-10) cannot sustain and deserves to be set aside.

Although the counsel for respondent No. 5 has vehemently opposed the said contentions of the counsel for the petitioner by asserting that in case the petitioner would have been present on the date when the order dated 27.12.2017 (Annexure P-10) was passed by the State Information Commission, Punjab, there was no reason why the presence of the petitioner has not been marked or his contentions would have been considered by the State Information Commission in the light of the fact that this Court, vide order dated 26.09.2017 (Annexure P-9), had mandated upon the State Information Commission, Punjab, to afford an opportunity of hearing to the concerned parties which would include the petitioner as well as he was also a party to the writ petition.

This assertion of the counsel for respondent No. 5 cannot be accepted in the light of the fact that in the impugned order dated 27.12.2017 (Annexure P-10), neither the presence of the petitioner or his representative has been marked nor has any contention/objection, which would have been raised by the petitioner, been considered.

In view of the above, the order dated 27.12.2017 (Annexure P-10) passed by the State Information Commission, Punjab, cannot sustain and is hereby set aside especially in the light of the order dated 26.09.2017 (Annexure P-9) passed in CWP No. 26089 of 2016, operative part of which reads as follows:-

“ In view of above, order passed by the State Information Commission, Punjab, is hereby set aside. Matter is remitted to the same authority for decision afresh after affording

opportunity of hearing to the concerned parties.

Allowed in these terms.”

A perusal of the above would show that the intent and purpose of the order passed by this Court was that all the parties to the dispute should be heard and they should be given an opportunity to put forth their respective contentions, which were to be considered and decided by the State Information Commission.

The order dated 27.12.2017 (Annexure P-10) is hereby set aside. The matter is remanded back to the State Information Commission, Punjab, for fresh decision. Parties are directed to appear before the State Information Commission, Punjab, on 01.10.2018.

Liberty is also granted to the parties to file their respective pleadings/objections within a period of two weeks from the date of appearance before the State Information Commission, which shall, thereafter, consider the respective contentions/claims/objections and pass a speaking order in accordance with law.

Writ petition stands disposed of accordingly.

Any observations made herein above by this Court on merits shall have no bearing upon the appeal to be decided by the Commission.

10th September, 2018

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**(AUGUSTINE GEORGE MASIH)
JUDGE**