

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13640 of 2019

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Chandrashekhar Azad, Son of Achyuta Nand Singh, Resident of flat No. 102,
Lakhandev Enclave, Ashiyana Digha Road, P.S. Digha, District-Patna

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Bihar, Patna
2. The District Magistrate Nawada
3. The Bihar State Information Commission Bihar, Patna, Soochna Bhawan,
Bailey Road, Patna through the Chief Information Commissioner, Bihar
State Information Commission, Soochna Bhawan, Bailey Road, Patna
4. The Chief Information Commissioner Bihar State Information Commission,
Soochna Bhawan, Bailey Road, Patna
5. The Deputy Secretary Bihar State Information Commission, Soochna
Bhawan, Bailey Road, Patna
6. Shambhu Sharan Pandey the then Sub Divisional Officer cum Public
Information Officer, Rajauli (Now Sub Divisional Officer, Sonpur, Saran)

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sanjay Prakash Verma
For the State Information Commission:		Mr. Lalit Kishore, Sr. Advocate
		Ms. Binita Singh, Advocate
For the Intervener	:	Mr. Prashant Kumar, Advocate
		Mr. Rajesh Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

Date : 12-07-2019



I. A. No. 1 of 2019 on behalf of Md. Shahwaz Akhtar has been filed for impleading him as an Intervener in the present petition as he was the complainant before the State Information Commission for having received information after an unreasonable delay.

For the reasons stated in the I.A., the application is allowed and the complainant / Md. Shahwaz Akhtar is permitted to be impleaded as Opposite Party No. 7.

Heard the counsel for the parties including the Intervener.

The petitioner has challenged the order dated 01.04.2019 passed by the State Information Commissioner contained in Memo No. 8670 dated 04.04.2019 in Case No. A-5433 of 2018, whereby a penalty of Rs. 25,000/- has been imposed on the petitioner in his capacity as Public Information Officer-cum-Sub-divisional Officer, Rajauli, Nawada for having furnished information sought by the Intervener applicant much after the prescribed time-line and the petitioner has also been directed not to draw his salary until the said amount of



penalty is deposited with the Government Treasury at Rajauli, Nawada.

From perusal of the order impugned, it appears that the aforesaid penalty has been imposed on the petitioner on the presumption that it was because of the delay caused by him that the information sought by the complainant was provided belatedly.

It has been submitted on behalf of the petitioner that the information was sought by the complainant on 15.01.2018, when one Shambhu Sharan Pandey was posted as Public Information Officer whereas one Ashok Kumar Paswan was the Incharge Clerk in the office of Sub-divisional Officer, Rajauli, Nawada, who was entrusted with the task of dealing with such applications filed under the Right to Information Act, 2005. When the required information was not provided to the applicant / complainant, an appeal was preferred by him before the designated Appellate Authority and a second appeal *vide* Case No. A 5433 of 2018 of 2018 was also filed when no information was provided to him.



It has been submitted that after the filing of the second appeal on 26.04.2018, the petitioner was transferred from Kishanganj to Rajauli, Nawada as Sub-divisional Officer, and he joined on such post on 03.05.2018. It was only then that he was designated as Public Information Officer. His duty as Public Information Officer therefore began from 03.05.2018.

On 16.01.2019, the State Information Commission directed that the applicant be supplied with the requisite information as sought for by him by 10.02.2019. The aforesaid order was communicated on 16.01.2019 in the office of the District Magistrate, Nawada. It was only then that the petitioner was, for the first time, informed about the necessity of disseminating the information sought for by the complainant. No sooner the petitioner came to learn about the aforesaid requirement, he furnished the requisite information on 07.02.2019, i.e., well within the time-line prescribed by the Commission. A compliance report also was submitted before the Commission.



Despite this, by order dated 14.02.2019, the Commission issued a notice to the petitioner to appear before it on 01.04.2019 with a reply as to why a proceeding be not initiated against him for deliberate delay in furnishing the information to the applicant and why he be not charged / saddled with a fine of Rs. 25,000/- as penalty for delayed supply of information.

It has been submitted on behalf of the petitioner that on receipt of the aforesaid direction of the Commission, he sought permission from the District Magistrate, Nawada for appearing before the Commission on the date fixed but leave was not sanctioned because of the on-going Lok Sabha Elections, 2019 and in his place, the Executive Magistrate-cum-Assistant Public Information Officer, Rajauli, Nawada was directed to appear before the Commission.

Thereafter, the order impugned has been passed on 01.04.2019 contained in Memo No. 8670 dated 04.04.2019 saddling the petitioner with a fine of Rs. 25,000/- and a



direction not to draw his salary till the said amount is deposited in the Treasury.

It has been urged on behalf of the petitioner that the order impugned does not take into account the defence of the petitioner and the materials brought on record by him in his show-cause reply. There was no deliberate latches on the part of the petitioner and it was only a matter of the petitioner not being in know of such information having been sought from the Public Information Officer.

From the perusal of the order impugned, it clearly appears that the order has been passed by calculating the number of days of delay in furnishing information and without looking into the circumstances brought on record by the petitioner. Saddling the petitioner with a cost / fine of Rs. 25,000/- and directing for not drawing his salary till the said amount is deposited in the Government Treasury at Rajauli, Nawada, especially when he was not responsible for such delay and that he actually acted with urgent dispatch in submitting such information, is not proper and is unjust.



After having heard the counsel for the parties including the Intervener, this Court is of the view that the order impugned does not take into account the explanation offered by the petitioner. Non-consideration of the grounds taken by an employee in an order which saddles him with exemplary cost amounts to the order being passed without application of mind.

For the reasons afore-stated, this Court does not get persuaded to sustain the order impugned and hence the same is set aside.

The matter is remitted to the Chief Information Commissioner, Bihar State Information Commission, Soochna Bhawan, Bailey Road, Patna (Respondent No. 4) for writing out a fresh order in accordance with law after taking into account the explanation of the petitioner and if feasible and deemed necessary, after hearing the petitioner and the complainant. The order shall be passed within a period of eight weeks from the date of production/communication of a copy of this order.



In the meantime, if the amount of fine has not been deposited, the same shall not be deposited and there would be no embargo on the petitioner to draw his salary.

With the aforesaid observation / direction, this petition stands disposed off.

(Ashutosh Kumar, J)

skm/-

AFR/NAFR	N.A.F.R.
CAV DATE	
Uploading Date	06.08.2019
Transmission Date	

