

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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Civil Writ Petition No.13110 of 2016
Date of Decision: November 13th, 2019

Dinesh Kumar

...Petitioner

Versus

State Information Commission, Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Himanshu Arora, Advocate
with Mr. S.P. Arora, Advocate
for the petitioner.

Mr. Ravi Partap Singh, Assistant Advocate General, Haryana.

Mr. Surinder Gandhi, Advocate
for respondent No.3.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Petitioner has approached this Court impugning the order dated 02.06.2016 (Annexure P-11) passed by the State Information Commission, Haryana, whereby on an appeal preferred by Shri Vikram Singh-respondent No.3, the applicant-appellant before the State Information Commission, the SPIO-cum-Deputy Excise and Taxation Commissioner (Sales Tax), Gurgaon (East), has been called upon to file complete para-wise reply along with all relevant documents in an attested format free of cost to the appellant within two weeks of the receipt of the order and further for responding to the show cause notice under Section 20 (1) of the Right to Information Act.

2. It is the contention of learned counsel for the petitioner that vide the impugned order dated 02.06.2016 (Annexure P-11, as has been passed by the State Information Commission), the information which has been sought by respondent No.3, has been ordered to be supplied in an

attested format. This is being done without even hearing the other side or

giving an opportunity to explain the stand. He asserts that the information as sought by respondent No.3 is personal in nature and the said information, since it is relatable to the petitioner, could not have been ordered to be supplied without giving an opportunity of hearing to the petitioner to respond to the information which is being sought. He asserts so, especially in the light of the fact that the State Public Information Officer as well as the Appellate Authority has denied the information as sought by respondent No.3 on the plea that the said information would be protected under the provisions of Section 8 (1) (j) of the Right to Information Act being personal information and, therefore, could not be supplied. That apart, he asserts that by way of the order dated 02.06.2016, the reply which is being sought by the State Information Commission is merely an eyewash or a formality as it has already been ordered that the information sought by respondent No.3, the appellant before the State Information Commission, be supplied to him. He, thus, contends that virtually the appeal having been allowed, the stand of the respondent would be redundant if the said information has already been supplied to the party seeking information and that too as attested document.

3. Learned counsel for respondent No.3 states that only a show cause notice has been issued to the SPIO to respond to the appeal by way of para-wise reply and also for why the penalty should not be imposed on him for having not furnished the requisite information to the appellant within the time stipulated. He, however, states that as regards the information as has been sought by the petitioner under the Right to Information Act, the same would not fall within the purview of Section 8 (1) (j) of the Right to Information Act and in any case, it has to be adjudicated upon by the

State Information Commission as of now.

4. I have considered the submissions made by learned counsel for the parties and with their assistance, have gone through the impugned order.

5. Perusal of the impugned order would show that it is only a notice which has been issued in the second appeal, which has been preferred by respondent No.3. Para-wise comments/reply of SPIO has been sought by the State Information Commission and it is relatable to those para-wise reply that the requisite documents are required to be submitted by the said authority. Nowhere in the order, it is mentioned that the information as sought under the Right to Information Act by respondent No.3 is to be supplied to him. Observation, if any, with regard to attested documents, is relatable only to the para-wise reply which is required to be filed of the appeal. For clarity, it is mentioned herein that the State Information Commission having still not adjudicated upon the issue involved in the case with regard to the information as sought by respondent No.3 to be personal information or not, could not have ordered for supplying of information under the Right to Information Act, which has been declined by the SPIO as well as the Appellate Authority on the grounds of it being a protected information as per Section 8 (1) (j) of the Right to Information Act.

6. Order dated 02.06.2016 (Annexure P-11) further indicates that notice has also been issued under Section 20 (1) of the Right to Information Act to the SPIO for showing cause as to why penalty should not be imposed upon him for the delay in forwarding the information to the Appellate Authority. This also cannot be said to be in any manner deciding upon imposing punishment upon the SPIO as it is only the show cause notice calling upon the SPIO to respond as to why penalty be not imposed

upon him.

7. Petitioner, it appears, has proceeded on the assumption that the information as sought by respondent No.3 has been ordered by the State Information Commission vide order dated 02.06.2016 to be supplied without even hearing the SPIO, what to say the petitioner himself.

8. It may be clarified here that as per the provisions of Right to Information Act, in case even the State Information Commission comes to a conclusion that the information sought under the Right to Information Act does not fall within the ambit of Section 8 (1) (j) of the Right to Information Act, principle of natural justice would require notice to be issued to the concerned person also i.e. the petitioner herein, so that he may be given an opportunity to object, he if so desires to supplying of such information, which has been declined by the SPIO as well as the Appellate Authority.

9. Let fresh notice be issued to the SPIO by the State Information Commission, Haryana, in the light of the pendency of the present writ petition, for filing reply to the order dated 02.06.2016 (Annexure P-11).

10. The writ petition is disposed of with above observations.

November 13th, 2019
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: Yes