

IN THE HIGH COURT OF PUNJAB AND HARAYANA AT CHANDIGARH

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CWP-26288-2018

Date of decision: 11.01.2019

ASEEM TAKYAR

...PETITIONER

VS.

STATE INFORMATION COMMISSION HARYANA AND ORS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Johan Kumar, Advocate,
for the petitioner.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Prayer in this writ petition is for quashing of order dated 28.06.2017 (Annexure P-2) passed by the State Public Information Officer, Haryana Vidhan Sabha-respondent No. 3, order dated 21.08.2017 (Annexure P-3) passed by the First Appellate Authority-cum-Deputy Secretary, Haryana Vidhan Sabha Scretariat-respondent No. 2, order dated 07.12.2017/08.12.2017 (Annexure P-5) passed by the State Public Information Officer, Haryana Vidhan Sabha-respondent No. 3 and order dated 20.06.2018 (Annexure P-6) passed by the State Information Commission, Haryana, whereby the application moved by the petitioner for supply of information under the Right to Information Act, 2005 (hereinafter referred to as 'RTI Act'), has been declined.

1. Learned counsel for the petitioner has narrated the facts by stating that the petitioner had filed an application dated 17.05.2017 (Annexure P-1) under the RTI Act seeking information regarding attendance marked of each member of the Haryana Vidhan Sabha Assembly during each session period from 01.09.2014 till the date of information is provided with a further request to upload the same on the official website of Haryana Vidhan Sabha. The said application was declined by the State Public Information Officer, Haryana Vidhan Sabha on 28.06.2017 (Annexure P-2) relying upon Rule 118 of the Rules of Procedure and Conduct of Business in Haryana Legislative Assembly and Rule 8 (1) (c) of the Right to Information Act stating that it was exempted.

2. Appeal preferred by the petitioner before the First Appellate Authority-cum-Deputy Secretary, Haryana Vidhan Sabha Secretariat-respondent No. 2 was dismissed vide order dated 21.08.2017 (Annexure P-3). Petitioner, thereafter, filed a second appeal before the State Information Commission, Haryana, who, vide order dated 07.11.2017 (Annexure P-4) after considering the reply filed by the respondents, recommended to the State Public Information Officer to take a decision for providing the information sought by the petitioner.

3. In compliance with the said order, petitioner was conveyed the order dated 08.12.2017 (Annexure P-5) by the State Public Information Officer, wherein it was asserted that the petitioner cannot be supplied the information in the light of the earlier position i.e. Rule 118 of the Rules of Procedure and Conduct of Business in Haryana Legislative Assembly and Rule 8 (1) (c) of the Right to Information Act. The matter was again taken up by the State Information Commission, Haryana, in pursuance to the

earlier order dated 07.11.2017 by the State Information Commission, Haryana on 20.06.2018 when the Commission proceeded to accept the stand, as has been taken by respondents No. 2 and 3, to the effect that the information cannot be supplied to the petitioner in the light of Rule 118 of the Rules of Procedure and Conduct of Business in Haryana Legislative Assembly and Rule 8 (1) (c) of the Right to Information Act. It was further observed that in the light of the fact that the information can only be supplied which is within the domain and available with the State Public Information Officer and if the said information is not available, the same cannot be supplied to the applicant. This has led to the filing of the present writ petition.

4. In the light of the above facts, counsel for the petitioner contends that the Lok Sabha and Rajya Sabha have uploaded the information with regard to its members on the website which can be assessed by any of the members of the public. The official website of the Parliament shows and indicates the attendance details of the members of the Houses and even their participation in the Committee constituted by the Hon'ble Speaker is available on the website, which is not being done by the Haryana Vidhan Sabha. He, accordingly, asserts that a direction is required to be issued to the Speaker, Haryana Vidhan Sabha. His further contention is that the provisions, under which exemption is being sought from supplying the information by the respondents i.e. Rule 118 of the Rules of Procedure and Conduct of Business in Haryana Legislative Assembly and Rule 8 (1) (c) of the Right to Information Act, are not sustainable in the light of the provisions of Sections 6 and 8 of the Right to Information Act.

He asserts that no public interest would be prejudiced rather it would be in

the interest of justice that such information is made public. He, therefore, contends that the impugned orders cannot sustain and deserve to be set aside and a direction issued to the respondents to supply the information, as sought by the petitioner.

5. I have considered the submissions made by the learned counsel for the petitioner and with his assistance, have gone through the records of the case.

6. Although the intent and purpose of the Right to Information Act is to bring in transparency and to make available maximum information within the public domain so that the people are aware at large but the said intent is not an uncontrolled one. Certain restrictions have been provided in the form of access from supplying information under the RTI Act itself. It cannot be disputed that the documents and information within the Assembly chamber cannot be made public without the permission of Speaker who carries a special privilege and Rule 118, which deals with the custody of the papers, makes it amply clear which provides that the custody of all records, documents and papers belonging to the Assembly or any of its Committees or the Legislative Assembly Secretariat would be in the custody of the Secretary of the Assembly. However, he shall not make available or permit any such records, documents or papers to be taken out from the Assembly chamber and its offices without the permission of the Speaker. As per the pleadings and the documents on record, initially the information was declined on the order of the Speaker and thereafter, as per the orders passed by the State Information Commission dated 07.11.2017 (Annexure P-4), the matter was re-considered by the Speaker but it was decided that the previous official procedure be continued i.e. Rule 118 of the Rules of Procedure and

Conduct of Business in Haryana Legislative Assembly and Rule 8 (1) (c) of the Right to Information Act shall continue to operate. The permission was not granted to supply information as sought for by the petitioner.

7. In the light of the provisions, as contained under the RTI Act read with specially Section 8 (1) (c), the information when read with Rule 118 of the Rules of Procedure and Conduct of Business in Haryana Legislative Assembly, the information has been rightly declined to the petitioner.

8. In view of the above, finding no merit in the present writ petition, the same stands dismissed.

January 11, 2019

pj

**(AUGUSTINE GEORGE MASIH)
JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable : Yes/No