

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5500 of 2023

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Zoya Rahman daughter of Md. Harun Rasid resident of Maweshi Hat,
Ranibagh, P.O. Simri Bakhtiyarpur, P.S. Bakhtiyarpur, District-Saharsa-
852127.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Education Department,
Government of Bihar, Patna.
2. The Bihar School Examination Board, Budh Marg, Patna through its
Secretary.
3. The Chairman, Bihar School Examination Board, Budh Marg, Patna.
4. The Controller of Examination, Bihar School Examination Board, Budh
Marg, Patna.
5. The Magadh University, Bodh Gaya through its Registrar.
6. The Principal-cum-Evaluation Director, Anugrah Memorial College, Gaya.
7. The State Information Commission Soochna Bhawan, 4th. Floor, Jawahar
Lal Nehru Marg, Patna through its Secretary.

... .. Respondents

with

Civil Writ Jurisdiction Case No. 1172 of 2021

- =====
1. The Bihar School Examination Board through its Secretary, Sinha Library
Road, P.S.- Kotwali, District- Patna.
 2. The Secretary, Bihar School Examination Board, Sinha Library Road, P.S.-
Kotwali, District- Patna.
 3. The First Appellate Officer, Bihar School Examination Board (Senior
Secondary), Budh Marg, Patna.
 4. The Public Information Officer, Bihar School Examination Board (Senior
Secondary), Budh Marg, Patna.

... .. Petitioners

Versus

1. The State Information Commission through its Secretary, 4th Floor, Suchna
Bhawan, P.S.- Sachivalaya, Bailey Road, Patna.
2. The Secretary, State Information Commission, 4th Floor, Suchna Bhawan,
P.S.- Sachivalaya, Bailey Road, Patna.
3. The State Chief Information Commissioner, Bihar, State Information
Commission, 4th Floor, Suchna Bhawan, P.S.- Sachivalaya, Bailey Road,
Patna.
4. The Deputy Secretary, State Information Commission, 4th Floor, Suchna
Bhawan, Bailey Road, Patna.
5. Harun Rashid Son of Abdul Hakim Village- Maweshi Hatt, Rani Hatt, P.O.-
Simri, Bakhtiyarpur, District- Saharsa, Bihar- 852127.



... .. Respondents

Appearance :

(In Civil Writ Jurisdiction Case No. 5500 of 2023)

For the Petitioner/s : Mr.Syed Masleh Uddin Ashraf, Advocate
For the Magadh University: Mr.Om Prakash Kumar, Advocate
For the BSEB : Ms. Namrata Mishra, Advocate
For the State : Mr.Kumaresh Singh, AC to SC-28

(In Civil Writ Jurisdiction Case No. 1172 of 2021)

For the Petitioner/s : Mr. Satyabir Bharti, Advocate
Mr. Abhishek Anand, Advocate
Mr.Kumaresh Singh, AC to SC-28
For the SIC : Mr. Sanjay Kumar Ghosarvey, Advocate
For Respondent No. 5 : Mr. Syed Masleh Uddin Ashraf, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date : 09-08-2023

Heard learned counsel for the parties.

2. As prayed, both the writ applications being connected to each other have been heard together and are being disposed of by this common judgment.

CWJC No. 5500 of 2023

3. This writ application has been filed by the petitioner for issuance of a writ in the nature of a Writ of Mandamus commanding the respondents to pay an enhanced amount of compensation to the tune of Rs. 25,00,000/- (Rupees Twenty Five Lakhs only).

4. Learned counsel for the petitioner submits that the petitioner had appeared in the intermediate examination of the Bihar School Examination Board, Patna (hereinafter referred to as the 'Board') in the year 2017 from Project Girls High School,



Simri Bhakhityarpur, Saharsa. She was declared 'failed' vide marksheet dated 30.05.2017 as contained in Annexure '2' to the writ application. The case of the petitioner is that her father filed an application before the Nodal Officer of the Board under Right to Information Act, 2005 (hereinafter referred to as the 'Act of 2005') on 25.09.2017 to provide the copy of answer books of the petitioner, the Public Information Officer (in short 'P.I.O.') did not supply the required information and the documents. The petitioner preferred an appeal under Section 19(1) of the Act of 2005 before the Chairman of the Board to provide the copy of the answer books but even the Appellate Authority failed to provide the information.

5. It is submitted that ultimately the father of the petitioner filed a second appeal under Section 19(3) of the Act of 2005 before the Chief Information Commissioner, Patna which was registered as Case No. A5718 of 2018. The Board was given an opportunity to file its reply/ show cause and after hearing the parties, the State Information Commissioner vide his order dated 06.12.2019 held that there were laches on the part of the P.I.O. and the then Assistant and the Section Officers in the matter of not providing the answer books to the petitioner.



6. Having arrived on this conclusion, the State Information Commissioner relied upon his earlier order dated 02.09.2019 in Case No. A6799 of 2018 and further relied upon a judgment of the Hon'ble Supreme Court in Criminal Appeal No. 420 of 2012 (Suresh and Anr. vs. State of Haryana) to take a view that even though the applicant has not prayed for relief of compensation, he may pass an appropriate order awarding compensation on his own. The State Information Commissioner has awarded a compensation of Rs. 5,00,000/- to the petitioner and issued further direction to the Board to initiate appropriate inquiry against the persons who are responsible for not providing the required information and the answer books to the petitioner and this amount be realized from them.

7. Learned counsel for the petitioner submits that the amount of compensation has been fixed at a lower side. The State Information Commissioner was required to appreciate the kind of loss not only in terms of her academic career but also on account of mental agony the petitioner had to suffer on having been declared 'fail'. It is submitted that by not providing the answer books to the petitioner the anxiety of the petitioner was only further enhanced and for all these sufferance the petitioner would have been entitled for a compensation of at least Rs.25,00,000/-.



CWJC No. 1172 of 2021

8. In this application the Board has challenged the order dated 06.12.2019 by which the compensation of Rs. 5,00,000/- has been awarded to the applicant-father of the petitioner in CWJC No. 5500 of 2023 who is Respondent No. 5 in the present writ application.

Submissions on behalf of the Board

9. Mr. Satyabir Bharti, learned Advocate representing the Board has, at the outset, submitted that there is no doubt a case of delay and laches on the part of P.I.O. and he would not be defending such delay and laches in not providing the information as required under the Act of 2005 but he is questioning the manner in which the State Information Commissioner (in short 'S.I.C.') has proceeded to pass a *suo moto* order in exercise of his power under Section 19(8)(b) of the Act of 2005.

10. Learned counsel submits that from the impugned order itself it would appear that the applicant was not appearing before the S.I.C. for last several dates and even on 06.12.2019 he was not present. The impugned order admits that in his application the applicant had not prayed for any compensation, therefore, it is submitted that there was no material at all before the S.I.C. to take a view on the issue of compensation. Learned counsel submits that



no doubt sub-Section (8) of Section 19 of the Act of 2005 empowers the S.I.C. to require the public authority to compensate the complainant for any loss or other detriment suffered but that power may be exercised only when the complainant brings to the notice of the S.I.C. the actual loss, if any, suffered by him/her or any other kind of detriment.

11. It is submitted that the strict rule of evidence may not apply in the matter of assessment of compensation or the detriment suffered but there must be some *prima facie* materials by way of cogent evidence to satisfy the S.I.C. about the requirement to award compensation and the quantum thereof is required to be fixed with reference to such materials.

12. Learned counsel has relied upon two judgments of the Hon'ble Delhi High Court. It is submitted that in case of **N.T.P.C. Ltd. vs. Mohd. Samad Khan** reported in **ILR (2010) 6 Del 55**, the Hon'ble High Court has examined the ambit of the power under 19(8)(b) of the Act of 2005 and it has been held that while exercising the power under the said provision a finding would have to be rendered by the Central Information Commission (in short 'CIC') on the extent of loss, even approximately, suffered by the person to whom such information ought to have been furnished. In another judgment in the case of **D.D.A. vs. Subhash**



Chander reported in **2009 SCC Online Del 1820**, the Hon'ble Delhi High Court was examining the case in which the CIC had awarded a compensation of Rs. 50,000/- to Respondent No. 2 which was under challenge. The Hon'ble High Court held that under Section 19(8)(b) compensation can be awarded on the loss or detriment suffered or failure to comply with the Act of 2005 and the same should be relatable to the loss or damage suffered by the applicant on the said account.

13. It is submitted that in the present case the State Information Commissioner has picked up an amount of Rs. 5,00,000/- on his own without there being any material to show the kind of detriment suffered by the applicant and his daughter on account of non-compliance with the provisions of the Act of 2005. It is, thus, submitted that CWJC No. 5500 of 2023 is fit to be dismissed and the impugned order in CWJC No. 1172 of 2021 is liable to be quashed.

14. The S.I.C. has also appeared and he has supported the impugned order. It is his stand that Section 19(8)(b) of the Act of 2005 vests power in him to award compensation and in this case the impugned order is a detailed reasoned order after giving due opportunity to the concerned parties, hence, no interference is required with the said order. An application has also been filed



seeking exemption from payment of cost of Rs. 5,000/- which has been imposed by this Court vide order dated 26.07.2023 for non-compliance with the earlier order of this Court.

15. It is stated in this application that the post of the State Chief Information Commissioner is vacant with effect from 16.05.2022 and since no sub-ordinate official has been delegated administrative powers regarding approval of the statement of facts for filing of counter affidavits in writ petition in which the Bihar State Information Commission is a respondent party, the counter affidavit could not be filed.

16. Having taken note of the reasons provided in the interlocutory application, this Court accepts the same and the cost imposed is hereby recalled.

Consideration

17. After hearing learned counsel for the petitioners, the Board and the S.I.C. as also upon perusal of the records, this Court finds that there is one admitted fact that there is delay and latches on the part of the P.I.O. and his sub-ordinate staffs which ultimately resulted in non-compliance with the provisions of the Act of 2005. The application for supply of the copy of answer books was filed in the year 2017 and for about two years it was not attended to.



18. Learned counsel for the Board has not defended the P.I.O. and he has admitted at the Bar that it is a case wherein one can understand that the applicant-Respondent No. 5 in CWJC No. 1172 of 2021 remained waiting for about two years for supply of the answer books but he could not get compliance of the same. In view of this stand, this Court is not required to go into the aforesaid aspect of the matter. What remains for consideration by this Court is as to whether the S.I.C. has rightly acted on his own to award a compensation of Rs. 5,00,000/- to the applicant. Section 19(8)(b) of the Act of 2005 reads as under:-

“19. Appeal.-

(1)Any person who, does not receive a decision within the time specified in sub-section (1) or clause

(a) of sub-section (3) of section 7, or is aggrieved by a decision of the Central Public Information Officer or the State Public Information Officer, as the case may be, may within thirty days from the expiry of such period or from the receipt of such a decision prefer an appeal to such officer who is senior in rank to the Central Public Information Officer or the State Public Information Officer, as the case may be, in each public authority: Provided that such officer may admit the appeal after the expiry of the period of thirty days if he or she is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2).....

(3).....

(4).....

(5).....

(6).....

(7).....



(8) In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to,—

(a)

(i).....

(ii).....

(iii).....

(iv).....

(v).....

(vi).....

(b) require the public authority to compensate the complainant for any loss or other detriment suffered;”

19. On a bare reading of the aforementioned provision, this Court may easily come to a conclusion that the S.I.C. is vested with a power to award compensation for the loss and the detriment suffered by the applicant under the Act of 2005 on account of non-compliance with the requirements of the law but then the question arises as to how and in what manner that power is required to be exercised. Vesting of power is one thing, exercise of power would be another thing. The exercise of power must satisfy the principles of natural justice and fair play in action and it should not leave any room for procedural arbitrariness.

20. In the two judgments, which have been cited on behalf of the Board, the Hon’ble Delhi High Court has briefly dealt with the requirements of Section 19(8)(b). This Court would



reproduce Paragraph '17' from the judgment of the Hon'ble Delhi High Court in the case of N.T.P.C. Ltd. (supra) 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 detriment



suffered by such person. There is no such determination by the CIC in the present case”

21. Paragraph ‘8’ from the judgment in the case of D.D.A. (supra) reads thus:-

“8. The respondent No. 2 in his reply, on the other hand, has alleged that compensation of Rs. 50,000/- has been awarded under Section 19(8)(b) of the Right to Information Act, 2005. The impugned order does not state so. Further, under Section 19(8)(b), compensation can be awarded for the loss or detriment suffered for failure to comply with the provisions of the Right to Information Act, 2005 and the same should be relatable to the loss or damage suffered by the applicant on the said account. The loss and detriment suffered must be on account of application made under the Right to Information Act and failure of the respondents to supply information. The impugned order does not state that the said parameters had been kept in mind and on what basis compensation has been awarded.”

22. In the aforementioned background of the facts and the discussions on the scope and ambit of Section 19(8)(b) when this Court tests the impugned order, this Court would come to a conclusion that the S.I.C. has on his own proceeded to award the compensation and picked up a sum of Rs. 5,00,000/- as quantum of compensation without there being any basis.



23. In this case the applicant was not appearing and there was no prayer for award of compensation, therefore, if the Commissioner was of the opinion that he can *suo moto* consider issue of award of compensation, he was required to provide an opportunity of hearing to the Board to contest this issue and at the same time the applicant would also have an opportunity to place on record any material as may be advised to the applicant to seek a particular amount of compensation. No such procedure was followed by the Commissioner.

24. In these circumstances, this Court sets aside the impugned order to the extent that the S.I.C. has awarded compensation of Rs. 5,00,000/- to the applicant/ writ petitioner *suo moto*.

25. At this stage, this Court would not go into the merit of the contention as to whether in the facts of the present case, the S.I.C. may proceed to award a compensation *suo moto* of it. That would be an issue open for discussion as the matter is being remanded to the S.I.C. for a fresh consideration on the issue of compensation and the quantum thereof. Both the parties will have liberty to appear before the State Information Commissioner within four weeks from today and submit their respective stands whereafter they will be heard and the State Information



Commissioner shall pass an appropriate order within a period of three months from the date of appearance of the parties.

26. In result, CWJC No. 5500 of 2023 is dismissed at this stage. CWJC No. 1172 of 2021 is allowed to the extent indicated hereinabove. There will, however, be no order as to costs.

(Rajeev Ranjan Prasad, J)

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AFR/NAFR	AFR
CAV DATE	
Uploading Date	10.08.2023
Transmission Date	

