

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 20882 of 2021

Alok Kumar Son of Parmeshwsar Sahu Resident of Sector- B, Mitra Mandal
Colony, Anishabad, P.S.- Phulwarisharif, District- Patna

... .. Petitioner/s

Versus

1. The State Chief Information Commissioner, Bihar at Patna.
2. The Municipal Commissioner, Patna Municipal Corporation, Patna.
3. The Deputy Municipal Commissioner-cum- Public Information Officer,
Patna Municipal Corporation, Patna.
4. The Executive Officer-cum- Public Information Officer, Water Supply
Circle, Patna Municipal Corporation, Patna.

... .. Respondent/s

Appearance:

For the Petitioner/s : Mr. Bibhakar Tiwary, Advocate
For the PMC : Ms. Archana Palkar Khopde, Advocate
For the State Information
Commission : Ms. Binita Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date : 16-03-2023

The present petition has been filed for setting aside the order dated 19.03.2021 passed by the State Chief Information Commissioner, Bihar i.e. the respondent no.1, whereby and whereunder a cost of Rs. 25000/- has been imposed upon the petitioner for not providing information within the time frame prescribed by the Right to Information Act, 2005 (hereinafter referred to as 'the Act, 2005') i.e. 30 days.



2. The brief facts of the case are that the petitioner was posted at the relevant time as the Deputy Municipal Commissioner, Patna Municipal Corporation, Patna and was also given additional charge of the post of the Executive Officer-cum-Public Information Officer, Water Supply Circle, Patna Municipal Corporation, Patna for the period 25.07.2018 to 12.12.2018. While the petitioner was in additional charge of the post of Executive Officer-cum-Public Information Officer, Water Supply Circle, Patna, one Krishna Kumar Singh had sought information under the Act, 2005 from the Public Information Officer, Patna Municipal Corporation as to how many pump operators have been appointed by the Nalanda Tubewell Boring Works for running the water pumps. The said application is stated to have been filed on 19.09.2018, whereafter the same was forwarded by the Public Information Officer, Patna Municipal Corporation, Patna to the Executive Officer-cum-Public Information Officer, Water Supply Circle, Patna Municipal Corporation, Patna, vide letter dated 26.09.2018, i.e. to the petitioner herein, whereupon the petitioner had directed the Computer Operators, Water Supply Circle to collect the information sought for by the aforesaid applicant so that the same could be furnished within the



prescribed time frame, however, the petitioner had stood transferred, during the interregnum period, i.e. on 12.12.2018.

3. The aforesaid applicant, namely, Krishna Kumar Singh had then filed a first appeal before the Municipal Commissioner, Patna Municipal Corporation, Patna, complaining therein regarding non-furnishing of the requisite information, and then he had filed a second appeal before the State Information Commission, Bihar, Patna on 27.11.2018, which was registered as Case No. A1324/2019.

4. The learned counsel for the petitioner has submitted that apparently, the information sought by the aforesaid applicant, namely, Krishna Kumar Singh was made available to him, nonetheless the fact remains that the order regarding the appointment of 28 pump operators on contract basis was passed by the Municipal Commissioner, Patna Municipal Corporation only on 21.12.2018, i.e. much after the petitioner had stood transferred from the post of the Executive Officer-cum-Public Information Officer, Water Supply Circle, Patna Municipal Corporation, Patna.

5. The learned counsel for the petitioner has further submitted that since the information sought for by the aforesaid



applicant was not in existence, inasmuch as the order regarding the appointment of pump operators came to be passed only on 21.12.2018, it was not within the dominion of the petitioner to have supplied the information sought for by the applicant and moreover, he had stood transferred on 12.12.2018, only whereafter the order appointing pump operators on contract basis came to be passed on 21.12.2018, thus, the petitioner cannot be faulted with, hence, the impugned order dated 19.03.2021 is illegal, perverse and fit to be set aside.

6. The Ld. counsel for the petitioner has referred to various provisions of the Act, 2005, more particularly Sections 6, 7 and 20 of the Act, 2005, which are reproduced herein below:-

"6. Request for obtaining information: (1) A person, who desires to obtain any information under this Act, shall make a request in writing or through electronic means in English or Hindi or in the official language of the area in which the application is being made, accompanying such fee as may be prescribed, to-

(a) the Central Public Information Officer or State Public Information Officer, as the case may be, of the concerned public authority;

(b) the Central Assistant Public Information Officer or State Assistant Public Information Officer, as the case may be;



specifying the particulars of the information sought by him or her;

Provided that where such request cannot be made in writing, the Central Public Information Officer or State Public Information Officer, as the case may be shall render all reasonable assistance to the person making the request orally to reduce the same in writing.

(2) An applicant making request for information shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him.

(3) Where an application is made to a public authority requesting for an information.-

(i) which is held by another public authority; or

(ii) the subject matter of which is more closely connected with the functions of another public authority.

the public authority, to which such application is made, shall transfer the application or such part of it as may be appropriate to that other public authority and inform the applicant immediately about such transfer-

Provided that the transfer of an application pursuant to this sub-section shall be made as soon as



practicable but in no case later than five days from the date of receipt of the application.

7. Disposal of request: (1) *Subject to the proviso to sub-section (2) of Section 5 or the proviso to sub-section (3) of Section 6, the Central Public Information Officer or State Public Information Officer, as the case may be, on receipt of a request under Section 6 shall, as expeditiously as possible, and in any case within thirty days of the receipt of the request, either provide the information on payment of such fee as may be prescribed or reject the request for any of the reasons specified in Section 8 and 9.*

Provided that where the information sought for concerns the life or liberty of a person, the same shall be provided within forty-eight hours of the receipt of the request.

(2) *If the Central Public Information Officer or State Public Information Officer, as the case may be, fails to give decision on the request for information within the period specified under sub-section (1), the Central Public Information Officer or State Public Information Officer, as the case may be, shall be deemed to have refused the request.*

(3) *Where a decision is taken to provide the information on payment of any further fee representing the cost of providing the information, the*



Central Public Information Officer or State Public Information Officer, as the case may be, shall send an intimation to the person making the request, giving-

(a) the details of further fees representing the cost of providing the information as determined by him, together with the calculations made to arrive at the amount in accordance with fee prescribed under sub- section (1), requesting him to deposit that fees, and the period intervening between the despatch of the said intimation and payment of fees shall excluded for the purpose of calculating the period of thirty days referred to in that sub-section;

(b) information concerning his or her right with respect to review the decision as to the amount of fees charged or the form of access provided, including the particulars of the appellate authority, time limit, process & any other forms.

(4) Where access to the record or a part thereof is required to be provided under this Act and the person to whom access is to be provided is sensorily disabled, the Central Public Information Officer or State Public Information Officer, as the case may be, shall provide assistance to enable access to the information, including providing such assistance as may be appropriate for the inspection.

(5) Where access to information is to be



provided in the printed or in any electronic format, the applicant shall, subject to the provisions of sub-sections (1) and (5) of Section 7 shall be reasonable and no such fee shall be charged from the persons who are of below poverty line as may be determined by the appropriate Government.

(6) Notwithstanding anything contained in sub-section (5), the person making request for the information shall be provided the information free of charge where a public authority fails to comply with the time limits specified in sub-section (1).

(7) Before taking any decision under sub-section (1), the Central Public Information Officer or State Public Information Officer, as the case may be, shall take into consideration the representation made by a third party under section 11.

(8) Where a request has been rejected under sub-section (1), the Central Public Information Officer or State Public Information Officer, as the case may be, shall communicate to the person making the request-

(i) the reasons for such rejection:

(ii) the period within which an appeal against such rejection may be preferred: and

(iii) the particulars of the appellate authority.



(9) An information shall ordinarily be provided in the form in which it is sought unless it would disproportionately divert the resources of the public authority or would be detrimental to the safety or preservation of the record in question.

20. Penalties *(1) Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause refused to receive an application for information or has not furnished information within the time specified under subsection (1) of Section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall impose a penalty of two hundred and fifty rupees each day till application is received or information is furnished, so however, the total amount of such penalty shall not exceed twenty-five thousand rupees.*

Provided that the Central Public Information Officer or the State Public Information Officer, as the case may be, shall be given a reasonable opportunity of being heard before any penalty is



imposed on him;

Provided further that the burden of proving that he acted reasonably and diligently shall be on the Central Public Information Officer or the State Public Information Officer, as the case may be.

(2) Where the Central Information Commission or the State Public Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause and persistently, failed to receive an application for information or has not furnished information within the time specified under sub-section (1) of Section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall recommend for disciplinary action against the Central Public Information Officer or the State Public Information Officer, as the case may be under the service rules applicable to him."

7. The learned counsel for the petitioner has specifically referred to Section 7(2) of the Act, 2005 to submit that if the Public Information Officer fails to give decision on the request



for information within the period specified, i.e. within a period of 30 days, it shall be deemed that he has refused the request. Thus, it is submitted that in case the information was not supplied by the petitioner to the applicant within 30 days, although it is the case of the petitioner that the order regarding appointment of the pump operators was passed only on 21.12.2018 and before that no such information, as sought for by the applicant was available, it would be deemed that the request of the applicant has been refused, in terms of Section 7(2) of the Act, 2005. Thus, it is contended that the State Chief Information Commissioner, in its order dated 19.03.2021, has committed a grave error of law by observing that in case the Public Information Officer was not possessing the information sought for by the applicant, he should have written to the applicant, within one month, stating therein that the information sought for was not available.

8. The learned counsel for the petitioner has further submitted that as far as Section 20 of the Act, 2005 is concerned, it specifically provides that only in case a Public Information Officer has, without any reasonable cause, not furnished information within the time specified, penalty has to be imposed, however, in the present case, the State Chief



Information Commissioner has though himself admitted that there was reasonable cause for the Public Information Officer to not have supplied the requisite information but still he has imposed penalty upon the petitioner, which is a blatant disregard to the provisions contained under Section 20 of the Act, 2005.

9. The learned counsel for the petitioner has lastly submitted that the State Chief Information Commissioner has imposed a penalty of Rs. 25000/- upon the petitioner while recording specific ground to the effect that the petitioner did not provide information within the prescribed time, although in the preceding portion of his order dated 19.03.2021, he has recorded that the petitioner was not in a position to supply information to the applicant within 30 days, inasmuch as though the application was filed by the applicant on 19.09.2018, but the order regarding appointment of the pump operators on contractual basis was issued by the Municipal Commissioner, Patna Municipal Corporation only on 21.12.2018, thus, apparently, the reasoning/ground forming basis for imposition of penalty of Rs.25000/- is misconceived, fallacious, hence on this ground as well, the impugned order dated 19.03.2021 is fit to be set aside.

10. *Per contra*, the learned counsel appearing for the



Respondent- State Chief Information Commissioner, Bihar has submitted that admittedly, the petitioner did not supply information to the applicant within a period of 30 days, as prescribed under Section 7(1) of the Act, 2005 and even if, he did not possess the information, he ought to have written to the applicant, within one month, stating therein that the information sought for was not available. It is further submitted that the reason forming the basis for imposition of a penalty of Rs. 25000/- is preceeded by factual aspects of the matter, hence, imposition of penalty of Rs. 25000/- by the respondent no.1 upon the petitioner is justified. Finally, it has been submitted by the Ld. counsel for the respondent No.1 that the respondent no.1 has fairly and in a just manner exercised the power vested in him by virtue of the provisions contained under the Act, 2005.

11. I have heard the learned counsel for the parties and gone through the materials on record. This Court finds that the applicant had filed an application for supply of information, as aforesaid, before the Public Information Officer, Patna Municipal Corporation, Patna on 19.09.2018, which was then forwarded to the Executive Officer-cum-Public Information Officer, Water Supply Circle, Patna vide letter dated 26.09.2018 and that is how the said application came before the petitioner,



who was then posted, as the Executive Officer-cum-Public Information Officer, Water Supply Circle. The petitioner is stated to have directed the Computer Operators, Water Supply Circle to collect the information so that the same can be made available to the applicant. However, since there was no order regarding posting of pump operators, the authorities were finding it difficult to supply such information but, in the meantime, the petitioner had stood transferred on 12.12.2018 and only thereafter, an order dated 21.12.2018 was passed by the Municipal Commissioner, Patna Municipal Corporation appointing 28 pump operators for running the water pumps.

12. This Court has taken note of the various provisions contained under the Act, 2005, more particularly, Section 7 (2) and Section 20 of the Act, 2005. It is amply clear from the provisions contained under Section 7 of the Act, 2005 that on receipt of a request under Section 6 of the Act, 2005, the Public Information Officer is required to either provide the information or reject the request for any reasons specified under Sections 8 and 9 of the Act, 2005, which are exemption clauses, as expeditiously as possible, and in any case within 30 days of the receipt of the request. This Court also finds that in case the information is not provided by the Public Information Officer, it



would be deemed that the request of the applicant has been refused, hence, this Court is of the view that the observation made in the impugned order dated 19.03.2021 to the effect that it was incumbent upon the Public Information Officer to have written to the applicant, within one month, stating therein that the information sought for was not available, is contrary to the provisions contained under Section 7(2) of the Act, 2005, inasmuch as the respondent no.1 has failed to appreciate the afore-said provisions of law in their proper perspective. This Court also finds that the respondent no.1, in the impugned order dated 19.03.2021, has though admitted that although the information was sought for on 19.09.2018, but the requisite information regarding appointment of the pump operators on contract basis could not have been provided before 21.12.2018, since the order regarding the same was issued by the Municipal Commissioner, Patna Municipal Corporation only on 21.12.2018 and the petitioner had already stood transferred on 12.12.2018, but still the respondent no.1 has imposed penalty by not taking into account the provisions contained under Section 20 of the Act, 2005 to the effect that before imposing penalty it is incumbent upon the respondent no.1 to inquire and come to a finding as to whether the information, as has been requested for,



has been denied without any reasonable cause, however, on the contrary, the respondent no.1 has proceeded to impose penalty upon the petitioner though reasonable cause had existed, hence, on this ground alone, the impugned order dated 19.03.2021 is bad in law, thus is fit to be set aside. This Court also finds that the respondent no.1, while imposing a penalty of Rs. 25000/- upon the petitioner, by the impugned order dated 19.03.2021, has stated therein that the penalty is being imposed since the requisite information was not provided to the applicant within the prescribed time frame, despite observing, in the same order dated 19.3.2021 that the order regarding the information sought for by the applicant was passed only on 21.12.2018, meaning thereby that the requested information was neither available nor could have been provided within 30 days. One more aspect of the matter, which stares at the face of the respondent no.1 is that no opportunity of hearing was ever granted to the petitioner prior to imposing penalty of Rs. 25000/- upon him, hence, the impugned order dated 19.03.2021 is also bad on account of violation of the principles of natural justice.

13. Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove, I deem it fit and proper to quash the impugned order dated 19.03.2021, passed by



the State Chief Information Commissioner in Case No. A1324/2019. Any consequential order shall also be deemed to have been nullified. The State Chief Information Commissioner, Bihar is expected to be careful in future as also is required to adhere to the statutory provision of law, as aforesaid.

14. The writ petition stands allowed.

(Mohit Kumar Shah, J)

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AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	29.08.2023
Transmission Date	NA

