

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.202 of 2023

Pravin Kumar, Male, aged about 55 years, Son of Late Satya Narayan Chaudhary, Resident of Quarter No. Q/2, Officers Flat, New Punaichak, Police Station- Shastri Nagar, District- Patna, Bihar- 800023

... .. Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna
2. The Additional Chief Secretary, General Administration Department, Government of Bihar, Patna.
3. The District Magistrate, Saran at Chapra.
4. The State Information Commission, through the Chairman, 4rth Floor, Suchna Bhawan, Bailey Road, Patna, Bihar.

... .. Respondents

Appearance :

For the Petitioner/s	: Mr.Kumar Kaushik, Advocate
For the State	: Mr.Sheo Shankar Prasad, SC-8
	Mr.Sanjay Kumar, AC to SC-8
For the State Information Commission	: Ms. Binita Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 24-02-2023 Heard learned counsel for the petitioner, learned SC-8 for the State and learned Advocate for the State Information Commission.

The present writ application has been filed for the following reliefs:-

“(i) For issuance of an order, direction or a writ of certiorari for quashing and setting aside the order contained in Memo No. 10822 dated 30.06.2022 whereby and whereunder the petitioner has been inflicted with the punishment of censure under Bihar Government Servant (Classification, Control and Appeal) Rules, 2005.

(ii) For issuance of order, direction or a writ of certiorari for quashing and setting aside the order



contained in Memo No. 16313 dated 09.09.2022 issued by the respondent authorities by which the application for review filed on behalf of the petitioner against the order of the punishment has been rejected.

(iii) For issuance of an order, direction or an appropriate writ for staying the operation of the impugned orders dated 30.06.2022 and 09.09.2022 during the pendency of this writ application.”

Brief facts of the case

This case arises out of an application filed under the Right to Information Act by one Digvijay Kumar Pandey of village- Gangauli, P.O. & P.S. :- Mashrakh, District- Saran (hereinafter called ‘ the applicant’) as contained in Annexure ‘1’ to the writ application. The applicant sought for certain information from the State Public Information Officer (hereinafter referred to as the “P.I.O.”). Since the information sought for were in relation to the meetings of the Gram Panchayat, Gangauli, it is the submission of the petitioner that the P.I.O. for providing such information at the Gram Panchayat level would be the concerned Prakhanda Raj Padadhikari and the First Appellate Authority would be the Prakhanda Vikas Padadhikari (B.D.O.). The fact is that the applicant submitted his application with the District Panchayat Officer, Saran which remained unattended.

An appeal is said to have been filed on 22.10.2011



before the petitioner who was posted as Additional Collector, Saran at Chapra. The applicant described this petitioner as the First Appellate Authority whereas the fact was that the petitioner was not the First Appellate Authority for the information sought at Gram Panchayat level. As per the notification enclosed as Annexure 'P3' to the writ application, it is the submission of the learned counsel for the petitioner that the petitioner was the First Appellate Authority for the information related to the Collectorate and not for the Gram Panchayat level but the applicant once again committed a mistake in submitting his appeal before the petitioner. No information with regard to the first appeal was received by the applicant whereafter he filed a second appeal giving rise to case no. 66003/11-12 before the State Information Commission, Patna.

It is this second appeal in which the State Information Commissioner passed some orders from time to time. The first order brought on record is the order dated 21.10.2014 (Annexure 'P4') whereby the state information commissioner directed the First Appellate Authority to complete the hearing before the next date fixed in the second appeal and the P.I.O. was directed to show cause as to why action be not taken against him under Sub-section (1) of Section 20 of the Right to



Information Act, 2005 (hereinafter referred to as the “Act of 2005”) for not providing the required information in terms of Sub section (1) of Section 7 of the Act of 2005. The next date fixed in the matter was 27.04.2015. It appears from the records that on receipt of the information from the State Information Commission, the petitioner drew the attention of the District Panchayat Raj Officer, Saran before whom the application under RTI was submitted and called upon him to comply with the directions. At this stage, the petitioner did not notice that neither he was the First Appellate Authority nor the District Panchayat Raj Officer was the P.I.O. in relation to the information sought at the Gram Panchayat level.

The second appeal could not be taken up on the next few dates and vide Annexure ‘P7’ to the writ application, it was fixed for 26.11.2015. In this regard once again the petitioner made a communication (Annexure ‘P8’) with the District Panchayat Raj Officer, Saran calling upon him to submit the information within three days from the date of receipt of the letter.

After writing, Annexure ‘P8’ as contained in Letter No. 848 dated 29.06.2015, the petitioner got transferred vide office order no. 11743 dated 12.08.2015 issued by the General



Administration Department, Government of Bihar (Annexure 'P9A'). He was posted as Regional Development Officer, Patna Division, Patna. From Annexure 'P9B', it would appear that the petitioner took charge of his post at Patna on 25.08.2015 (forenoon). The second appeal came to be heard on 26.11.2015, on this date neither the applicant nor the other side were present. The State Information Commissioner recorded that no information has been received from either the Appellate Authority or the P.I.O. He further ordered that the First Appellate Authority-cum-Additional Collector, Saran be called to show cause as to why recommendation to initiate departmental proceeding against him be not made. From the order dated 26.11.2015 (Annexure 'P10') it is evident that the explanation was called from the petitioner for the reason that he had not disposed of the first appeal within the time frame.

Learned counsel for the petitioner has challenged this approach of the State Information Commissioner in calling upon the petitioner to show cause for the reason that he had not disposed of the appeal within the time frame.

Learned counsel submits that the State Information Commissioner was not informed of the correct legal position wherein neither this petitioner was the First Appellate Authority



nor the Act of 2005 confers upon the State Information Commissioner to recommend a disciplinary action against the First Appellate Authority only for the reason that he had not disposed of the appeal within the prescribed period. Be that as it may, further submission of learned counsel for the petitioner is that the copy of the order dated 26.11.2015 was never served upon this petitioner.

Learned counsel further points out from the subsequent order dated 29.06.2016 (Annexure 'P11') that even on the next date neither of the parties were present but the State Information Commissioner proceeded to pass another order directing the petitioner as First Appellate Authority and the District Panchayat Raj Officer as P.I.O. to submit their show cause in terms of the order dated 26.11.2015. The P.I.O. was directed to be personally present on the next date with the records. At this stage, it is submitted that vide letter no. 46 dated 19.04.2016 the Panchayat Sachiv of the Panchayat Raj, Gangauli describing himself as P.I.O. wrote to the applicant furnishing the information sought for. A copy of the same is on record as Annexure 'P12A'. Vide Letter No. 1396 dated 23.09.2016, the Block Development Officer, Masrakh, Saran wrote to the District Panchayat Raj Officer that the applicant has



already received information under the RTI and he had given a letter to that effect being satisfied with the information. His letter is also annexed as Annexure 'P12C' to the writ application.

Learned counsel submits that it is evident from the communications received from the Block Development Officer, Masrakh, Saran that ultimately he had come forward to make available the information. It is submitted that despite all these information, the State Information Commissioner kept on proceeding with the matter on his own. Neither the applicant was appearing before him nor any other party was appearing but the State Information Commissioner kept on passing order one after another and ultimately vide order dated 06.02.2017 (Annexure 'P13'), he recommended for initiation of disciplinary action against the petitioner.

On receipt of Annexure 'P13', the General Administration Department, Government of Bihar initiated a proceeding without being satisfied that under Section 20(2) of the Act of 2005, the State Information Commissioner could not have proceeded against the petitioner. The Second Appellate Authority had no authority of law to recommend disciplinary action against the First Appellate Authority only for the reason



that the First Appellate Authority had not disposed of the appeal within the prescribed statutory period. It is submitted that in any case, this petitioner was not the First Appellate Authority and this fact finds support from the letter written by the District Magistrate (Annexure '16B') wherein he had pointed out to the State Information Commissioner that the information called for by the applicant related to Gram Panchayat and it is the Secretary of the Panchayat who is the P.I.O. and the Block Development Officer, Masrakh who is the First Appellate Authority. The District Magistrate, Saran had requested the State Information Commissioner to withdraw the recommendation but it was never paid heed to.

Learned counsel submits that in the given facts of the case, the order imposing the minor punishment of censure vide resolution contained in Memo No. 10822 dated 30.06.2022 (Annexure 'P22') is wholly illegal, arbitrary and bad in law. It is submitted that the show cause submitted by the petitioner has not at all been considered and the disciplinary authority could not appreciate that the petitioner was not the First Appellate Authority and the order of the State Information Commissioner was to be complied with at the level of the P.I.O. only. It is, thus, submitted that Annexure 'P22' is bad in law and is liable to be



set aside.

In this case, the petitioner had also preferred a review application vide Annexure 'P23' but the same has been rejected vide resolution contained in Memo No. 16313 dated 09.09.2022 as contained in Annexure 'P24' to the writ application.

Mr. Sheo Shankar Prasad, learned SC-8 has represented the State. A counter affidavit has been filed on behalf of respondent no. 2. In the counter affidavit, there is no denial of the fact that the petitioner was not the First Appellate Authority and the applicant had wrongly described him as First Appellate Authority while filing the first appeal. There is no denial of the fact that prior to recommending the initiation of disciplinary proceeding against the petitioner, the State Information Commissioner had not ensured that the copy of the orders as contained in Annexures 'P10' and 'P11' be duly served upon the petitioner. The orders contained in Annexures 'P10' and 'P11' had civil consequences inasmuch as by issuing such letters, the State Information Commissioner had directed for initiation of a disciplinary proceeding against the petitioner. In the counter affidavit, there is no whisper that under any provision of the Act of 2005, the State Information Commissioner is authorized by law to recommend the initiation



of a disciplinary proceeding against First Appellate Authority under the Act of 2005 for the reason that the first appeal could not be disposed of within the prescribed statutory period.

Learned counsel for the State Information Commissioner has though opposed this writ application but she is also unable to dispute the facts appearing from the record that prior to issuance of Annexures 'P10' and 'P11', the petitioner had already been transferred from his previous place of posting and further that these two orders were never served upon him, thus, he had no opportunity to clarify that he had no role to play in the matter of furnishing the required information under the RTI.

Having heard learned counsel for the petitioner, learned counsel for the State and learned counsel for the State Information Commissioner, this Court is of the considered opinion that the impugned order as contained in Annexures 'P22' and 'P24' by which the petitioner has been punished in the disciplinary proceeding and his review application has been rejected are liable to be set aside. It is evident from the materials on record that the petitioner was not the First Appellate Authority. It was incumbent upon the State Information Commissioner to ensure himself before passing any such order



that the petitioner had been the First Appellate Authority. The kind of information called for by the applicant was very much available before the State Information Commissioner and it was sufficient to find out as to who is the P.I.O. and the First Appellate Authority in such matters. The State Information Commissioner kept on proceeding with the matter without looking into this relevant fact that it was the Panchayat Secretary and the Block Development Officer of the concerned block who were the P.I.O. and the First Appellate Authority in the matter. The whole matter before the State Information Commissioner has proceeded on a wrong premise. The fact remains that prior to issuance of Annexures 'P10' and 'P11' to the writ application, the petitioner had already been transferred and he was posted at Patna at the relevant time. These orders were never served upon him. Since these orders have got civil consequence it was all the more necessary for the State Information Commissioner to ensure that these orders are duly served upon the petitioner. Non-service of these orders has certainly resulted in disadvantages and prejudices to the petitioner in as much as he was proceeded against on the basis of the recommendation of the State Information Commissioner and has been punished.



This Court further finds that Section 20 of the Act of 2005 reads as under:-

“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 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 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 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.”

From a bare reading of the entire Section, it would be crystal clear that this does not confer any power on the State Information Commissioner to recommend disciplinary action against the First Appellate Authority only for the reason that the appeal filed before the First Appellate Authority could not be disposed of within the prescribed period of 45 days. Apparently, the State Information Commissioner in this case has assumed a power upon himself which is not vested by the statute. The impugned order as contained in Annexure ‘22’ has been passed after recording a finding that on analysis it has been found that the petitioner has not shown the promptness in the matter of compliance with the order of the State Information Commission. This finding is completely wrong and falsified



from the materials on the record. The disciplinary authority also failed to appreciate that this petitioner was not the First Appellate Authority. This was brought to the notice of the disciplinary authority by the petitioner vide his reply to the show cause notice as contained in Annexure 'P21' but that was not considered. From the records, it is evident that immediately on receipt of the order as contained in Annexure 'P4' from the State Information Commissioner, he had written letter to the District Panchayat Raj Officer before whom the applicant had filed the application under RTI to provide him the information. He could not have done more than that.

This Court is, therefore, of the considered opinion that at both the stages, initially before the State Information Commissioner and thereafter before the disciplinary authority, the matter could not be considered in right perspective. The impugned orders, therefore, suffer from non-consideration of the materials available on the record and the findings are not based on the record. In law, Section 20 of the Act of 2005 does not confer any power upon the Second Appellate Authority to recommend disciplinary proceeding against the First Appellate Authority.

In these circumstances, the impugned orders as



contained in Annexures 'P22' and 'P24' are hereby set aside.

This writ application is allowed.

(Rajeev Ranjan Prasad, J)

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