

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

CWP No. 9479 of 2021 (O&M)

Date of decision: 29th March, 2023

Ajmer Singh Deswal

Petitioner

Versus

State Information Commission, Haryana and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. M. K. Garg, Advocate for the petitioner.
Mr. Shararad Aggarwal, AAG, Haryana.

AVNEESH JHINGAN, J (Oral):

1. This writ petition in the nature of *Certiorari* is filed seeking quashing of order dated 5.8.2020 passed by State Information Commission, Haryana (for short, 'the Commission') imposing penalty of Rs.25,000/- under Section 20(1) of the Right to Information Act, 2005 (for short, 'the Act').

2. The brief facts are that respondent No. 5 (hereinafter referred to as 'the respondent') filed an application on 23.12.2017 seeking information under the Act. The application was forwarded on 17.1.2018 to Deputy Director (IH), Gurgaon for supplying the information directly to the respondent. The Deputy Director vide memo dated 29.1.2018 sent para-wise information along with the record and also a letter dated 30.1.2018 intimating that requisite fee be demanded from the respondent qua extra pages. Vide letter dated 1.2.2018, the respondent was asked to deposit fee

within fifteen days. On deposit of fee vide letter dated 21.2.2018 the information was sent by memo dated 13.3.2018. In the intervening period, on 27.2.2018 the respondent filed the first appeal. The appeal was disposed of by an ex-parte order on 27.2.2018. The first appellate authority noted the fact that the information had already been supplied. The respondent was granted liberty to file an application with the State Public Information Officer (for short, 'SPIO') for seeking clarification in case he was dissatisfied with the information supplied. The second appeal filed before the Commission was disposed of on 31.8.2018 with the directions to PSIO:- (i) to re-provide the information after certifying the annexures, (ii) to provide the names of Haryana beneficiaries and (iii) location of the labs as sought in point No. 3. The respondent filed a complaint on 16.5.2019 raising a grievance that the information in pursuance to the order of the Commission was not provided. The petitioner filed reply to the show cause notice issued by the Commission. It was stated that the requisite information was supplied to the respondent and no intimation was received from his end of being dis-satisfied with the information forwarded. Vide order dated 5.8.2020, the Commission imposed penalty of Rs.25,000/- on the petitioner, hence the present petition.

3. Learned counsel for the petitioner submits that after collecting the information from the Factory Wing it was supplied to the respondent. It is argued that the petitioner was not present before the Commission on 5.8.2020 due to urgent official engagement. The contention is that the penalty was imposed without giving a reasonable opportunity.

4. Learned counsel for the State defends the impugned order.

5. Section 20 of the Act is reproduced below:

“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.”

6. The Commission at the time of deciding the appeal or complaint shall impose the penalty of Rs.250/- for delay of each day in receiving the application or in furnishing the information but penalty shall not exceed Rs.25,000/-. The penalty shall be imposed if the Commission formulates an opinion that the application was not received by SPIO without reasonable cause or not supplied information within the time or malafidely denied the information or knowingly gave an incorrect or incomplete or misleading information or destroyed the information or in any manner obstructed the furnishing of information. First proviso to Section 20(1) of the Act provides that reasonable opportunity of hearing would be provided before imposition of penalty. Second proviso casts the onus on SPIO/CPIO to prove that he acted reasonably and diligently.

7. The impugned order was passed considering that the information was not supplied in compliance of the directions of the Commission, there was delay in supplying the information and that the SPIO was not present before the Commission despite a show cause notice.

8. The petitioner had filed a reply to the show cause notice. It was explained that the information was supplied to respondent and in spite of liberty granted by the first appellate authority he had not raised any issue that the information supplied was not proper. It would be apposite to

mention here that it is recorded in the impugned order that as per the respondent he had received the information.

9. The onus casted upon the petitioner under second proviso to Section 20(1) of the Act was discharged by the following factual aspects: (i) the information was to be collected from the Factory Wing; (ii) the respondent was asked to make good the deficiency of the fee and thereafter the information was supplied; (iii) that the respondent neither appeared before the first appellate authority nor before the Commission (iv) he was satisfied with the information supplied and no such issue was there before the Commission on the day of passing of the impugned order.

10. It is a trite law that a penalty is not to be imposed merely because it is lawful to do so. The usage of 'reasonable cause', 'malafide' and 'knowingly' in section 20 of the Act necessitates the contumacious conduct, intentional violation of the provisions and malafide act on part of SPIO for imposing penalty, *albiet* the onus is on SPIO to prove that he acted reasonably and diligently.

11. It is averred that on 8.1.2020, the petitioner was not able to appear before the commission due to urgent official work. From the perusal of the impugned order, it is evident that the conduct and attitude of the petitioner towards the Commission also weighed for imposition of penalty. In case, the Commission was not satisfied with the reply, a reasonable opportunity of hearing should have been provided before imposing the penalty. The impugned order is bereft of reasons. The factual aspects of the matter were neither considered nor discussed while penalising the petitioner.

11. The impugned order is set aside and the writ petition is

allowed.

[AVNEESH JHINGAN]
JUDGE

29th March, 2023
mk

1. Whether speaking/ reasoned

:

Yes / No
2. Whether reportable

:

Yes / No