

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

267

Reserved on : 26.05.2023.
Date of Decision : 24.07.2023.

(1) CWP-15442-2022 (O&M).

AJIT BALAJI JOSHI .. Petitioner

VERSUS

STATE OF HARYANA AND OTHERS ... Respondents

(2) CWP-15444-2022 (O&M).

HARYANA SHEHRI VIKAS PRADHIKARAN .. Petitioner

VERSUS

STATE OF HARYANA AND OTHERS ... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

ARGUED BY: Mr. Vipin Pal Yadav, Advocate,
for the petitioner in CWP-15442-2022 and
for respondent No.5 in CWP-15444-2022.

Mr. Satyaveer Singh, Advocate, and
Mr. Ashish Pundir, Advocate,
for the petitioner in CWP-15444-2022.

Mr. Vivek Chauhan, Addl. A.G. Haryana.

Mr. Anmol Puri, Advocate,
for respondent No.5 in CWP-15442-2022 and
for respondent No.4 in CWP-15444-2022.

Mr. Vishavjeet S. Beniwal, Advocate,
for respondents No.2 and 3 in CWP-15442-2022.

Mr. Uday Agnihotri, Advocate, assisted by
Mr. T.C. Gupta, Chief Commissioner, Haryana
Right to Service Commission (in person)
for respondents No.2 and 3 in CWP-15444-2022.

VINOD S. BHARDWAJ, J.

The question that arises for consideration in the present case is as to whether the Haryana Right to Service Commission can take *suo moto* cognizance of a grievance in exercise of its power under Section 17 of the Haryana Right to Service Act, 2014 (hereinafter referred to as 'the Act of 2014') and the Rules framed thereunder even when the aggrieved has not invoked the jurisdiction or applied for the service in accordance with the procedure laid down in the Act of 2014.

Both these writ petitions arise out of order dated 23.06.2022 passed by the Haryana Right to Service Commission (hereinafter referred to as 'Commission') in *suo moto* Notice No.HRTSC/File No.112/SM-204/2103 dated 23.05.2022.

Whilst CWP No.15442 of 2022 has been filed in person by Ajit Balaji Joshi, IAS, the Chief Administrator of the Haryana Shehri Vikas Pradhikaran (for short 'HSVP') aggrieved of the remarks/strictures recorded in the said order and the penalty imposed, the CWP No.15444 of 2022 has been filed by the Haryana Shehri Vikas Pradhikaran itself.

Brief facts of the case from CWP No.15442 of 2022 titled as '**AJIT BALAJI JOSHI Vs STATE OF HARYANA AND OTHERS**' are as under:-

The petitioner is 2003 Batch officer of Indian Administrative Service having been assigned the cadre of the State of Haryana. The petitioner has been discharging duties as Chief Administrator of the Haryana Shehri Vikas Pradhikaran (HSVP) since 08.02.2021. It is claimed that the petitioner has been an outstanding officer performing duties with uprightness and welfare orientation for the citizens. The petitioner claims to have been conferred with the following awards for distinguished service:-

“G-files Governance Award, 2013.

The Distinguished Service Award 2009 by the hands by Hon'ble A.P.J. Abdul Kalam for starting of India's first school for children of Brick kiln workers'.

The Prime Minister's Award for Administrative Excellence, 2016 for excellence in implementing the Pradhan Mantri Jan Dhan Yojana in Chandigarh district.”

The petitioner also claims certain major contributions made by him during his service. The same are extracted as under:-

A. Adoption of flood affected village in Bihar and complete Rehabilitation of it in 2009.

B. Starting of India's first school for children of Brick kiln workers and implementation of it in entire state.

C. Starting of Kalam Express for the underprivileged M. R. children.

D. Starting of 300 bed Sarai for poor people in the PGI Chandigarh under CSR in 2018.

E. Starting India's first non subsidy based kitchen for supplying hot cooked food for underprivileged poor persons in

Chandigarh for Rs 10. It has severed more than 3 crores meals to needy persons in Chandigarh from 2018.

G. Major reforms for providing services in IT delivery system of HSVP and decentralization of powers so that people will get the delivery of services at lower level offices. On date of joining of petitioner as Chief Administrator, HSVP, around 13000 plot files involving issues of data correction were pending out of which 11000 issues have been resolved.

H. Registration of document, attendance from anywhere to property owner in the state in HSVP.”

It is further averred that when the petitioner joined as Chief Administrator of HSVP, it was under a debt of Rs.23,500/- crores and was confronted with the challenge to bring it out of the debt trap. Various initiatives were taken by the petitioner and the outstanding debt has already been reduced by Rs.15,000/- crores. Recovery of huge amount of overdue outstanding was effected by the petitioner. He has approached this Court challenging the Award passed by the Haryana Right to Service Commission (for short ‘the Commission), on the grounds that adverse comments/strictures have been recorded and penalty has been imposed upon the petitioner even though there was no lapse on his part and the law and statutory provisions have been ignored. There was no occasion or necessity to record remarks/strictures against the petitioner since the adjudication of the dispute did not require such recording. The additional grounds raised have been adverted to in the later part of the judgment.

The HSVP has also filed its separate writ petition i.e. CWP

No.15444 of 2022.

**FACTUAL BACKGROUND OF THE DISPUTE AND PLEADINGS
OF PETITIONERS**

One plot No.1170-P Sector 64 Faridabad measuring 135 sqm. was allotted to one Daya Ram vide allotment letter dated 18.06.2017. Allottee Daya Ram was handed over possession of the above plot vide possession certificate dated 03.08.2010 issued by J.E. Ramesh Chander o/o Estate Officer, HSVP, Faridabad. Subsequently, vide separate re-allotment letter and with the same size of area, the said plot was transferred to one Vandna Kohli on 26.10.2010; thereafter in favour of Yogesh Kumar vide re-allotment letter dated 16.08.2011; in the name of Smt. Kusum Sharma vide re-allotment letter dated 10.10.2011 and finally on 13.07.2012 in favour of the respondents-applicants by mentioning the size of plot as 135 sqm. After about 7 years i.e. on 19.04.2019 respondent Megha Gupta submitted an application to the E.O., HSVP, Faridabad, for issuance of a conveyance deed of her plot. On re-measurement, the actual size of the plot on spot was 148.50 sqm. and not 135 sqm. as mentioned in the re-allotment and possession letter, since beginning, by evident mistake. Resultantly, E.O., HSVP, Faridabad issued a demand notice dated 8.7.2019 for enhanced cost of Rs.58,415/- for the increased size and an additional amount of Rs.3,91,721/- as interest on outstanding amount. The complainant requested to remit the interests amount.

The issue regarding the demand of interest amount was later on heard in an appeal instituted in 2019 (wrongly mentioned in the order as instituted on 20.03.2018) by the Administrator, HSVP, Faridabad (exercising the powers of Chief Administrator u/s 17 of the HSVP Act, 1977) and matter was decided in favour of the respondent no.5 vide order

dated 24.2.2021 (conveyed vide memo.no.2595 dated 5.3.2021). The complainant submitted an application for re-calculation of the amount to be payable after order of the Administrator and also requested for execution of the conveyance deed vide her request letter dated 12.3.2021.

The E.O., HSVP, Faridabad, however, sent the case to the petitioner Chief Administrator on 08.04.2021 to decide as to whether any appeal or revision petition is to be filed against the order passed by the administrator or to implement the order.

However, due to spread of Covid – 19 Pandemic, the decision remained pending on the administrative side. The Assistant District Attorney recommended that the revision petition may not be filed, on 15.12.2021. The petitioner-Chief Administrator sought certain clarifications when the file was put up before him on 16.12.2021 including that interest on additional area be got recovered from the concerned Junior Engineer including the details as to calculation of the cost of additional land. The case file was submitted again on 13.04.2022 to the Chief Administrator with a recommendation that it is not a fit case for filing a revision before the Principal Secretary and the order of Administrator be implemented. The petitioner-Chief Administrator sought report from the Administrator and status of fixing of responsibility on 19.04.2022.

The petitioner thereafter took a decision as the Chief Administrator to file appeal/revision petition on 07.05.2022 against all orders passed by the Zonal Administrator under Section 17 (5) of the HSVP Act, 1977, w.e.f. 01.01.2019 to 09.05.2022. The said decision was taken to safeguard the best interests of HSVP. The decision was to be uniformly applied to all and merely because the respondent-applicant also fell in the

said category, it cannot be said that the decision was motivated or aimed to inflict injury to her. Moreover, it is also not the allegation of the respondent-applicant that the petitioner harboured any grudge or malice against her. In the absence of any malice or any axe to grind with the applicant, the decision cannot be labeled as not having been taken in good faith. The decisions taken by the petitioner in his above capacity do not fall under the review of the Haryana Right to Service Act 2014. Hence, merits of any such administrative decision is not subject to the validation of Chief Commissioner under the Act, 2014 as it is not a part of notified service

That order under Section 17 (5) of HSVP Act was passed by Administrator Faridabad on 24.2.2021 (conveyed vide Memo.No.2595 dated 05.03.2021) which such period was un-precedently affected due to Covid-19, hence, there was some delays in decision making process. As per judgment of Hon'ble Apex court in suo-motu Writ Petition (c) No.3 of 2020 wherein time period from 15.03.2020 to 28.02.2022 was not to be counted throughout the country for computing limitation, hence, said period needs to be exempted. The period of limitation of 90 days was to start from 01.03.2022 as per the judgment of Hon'ble Apex Court and not from the date of the order of the Administrator dated 24.02.2021 and communicated vide Memo No.2595 on 05.03.2021 and will expire on 29.05.2022. The E.O., HSVP, Faridabad forwarded the memo of revision petition to the office of ACS, TCP vide memo.no.4653-54 dated 25.5.22 along with the requisite demand draft and number of copies within limitation.

Oblivious of the internal proceedings of the Department, respondent-allottee sent an E-mail dated 28.03.2022 espousing her grievances to various officials including the Hon'ble Prime Minister of

India as well as the Chief Minister and Minister of Urban Local Bodies amongst others.

Taking *suo moto* cognizance of the said e-mail sent by the allottee, Commission sent a letter dated 04.04.2022 to the Estate Officer, HSVP Faridabad, inviting his attention to the complaint and seeking the status report. The above said notice as well as the reminders were sent by the Commissioner, Haryana Right to Service Commission only to the Estate Officer, who is the Designated Officer under the Haryana Right to Service Commission, 2014 and the rules framed thereunder.

A reply dated 02.05.2022 was submitted by the Estate Officer to the Commission, however, a *suo moto* notice dated 23.05.2022 (Final order dated 23.06.2022) was addressed to the Chief Administrator in his personal capacity directing him to file reply and also mandating personal appearance even though he has no concern with the same.

An application for keeping the proceedings in abeyance was moved by the petitioner along with furnishing the status report and informing that revision against the order of the Zonal Administrator, Faridabad had already been filed. However, notwithstanding the status report as well as the application moved by the petitioner, adverse personal comments and strictures were passed against the petitioner Chief Administrator vide order dated 23.06.2022 and a penalty of Rs.20,000/- along with payment of compensation of Rs.5,000/- was also imposed on the petitioner in addition to issuing directions to the HSVP.

Aggrieved of the above, the present writ petitions have been filed challenging the order on various grounds.

RESPONSE BY THE RESPONDENTS

Reply on behalf of respondents No.2 and 3 had been filed.

Learned counsel appearing on behalf of respondents No.4 and 5 made their statement on 09.03.2022 to the effect that they do not intend to file any separate reply while counsel for respondent No.1 stated that it shall rely on the reply filed by respondents No.2 and 3.

In its reply, the Commission has given details with respect to the object of the Haryana Right to Service Commission Act, 2014 and that there are as many as 576 services that have been notified under the HRSC Act, 2014 and are required to be made available within the notified time limit. It is averred that Section 17 (2) of the HRSC Act, 2014 empowers the Commission to initiate *suo moto* inquiry if it is satisfied that there are reasonable grounds to inquire into the same and/or refer such cases for decision to the First Grievances Redressal Authority (FGRA) or the Second Grievances Redressal Authority (SGRA). Ample powers are given to the Commission to take notice of the failure of the Designated Officer to deliver services within the notified time limits for the facility of the citizens and to save them from unnecessary harassment, bureaucratic red- tapism or gross negligence of the Government functionaries. The commission is empowered under Section 17 (1) (h) to impose penalty not only on the Designated officers but also on any other official 'involved in the process of providing such service.' Hence, where the Designated officer is not competent to provide the notified service, as per delegated powers, and is required to seek approval of the competent Authority, such Authority would also thus fall within the ambit of Commission and be amenable to imposition of penalty.

The respondent-Commission has given details of the initiatives taken by it and to ensure seamless redressal of the grievances espoused before it. It is averred that as on 26.07.2022, a total of 5,40,53,066 applications had been processed and 4,60,33,063 applications had been disposed of within the notified time limits under the Right to Service Act. The Commission has also taken steps to ensure timely delivery and for fixing responsibility in the cases of delay which was pegged at around 80 lakhs applications. For ensuring the implementation of the Act, the Commission is taking cognizance of not only the complaints that are received through Email or post but is also actively monitoring the Antoyadaya SARAL Portal in case of online delivery and also seeking monthly reports from the Departments in cases relating to offline services. It has been calling for the explanations for delay from the concerned quarters and thus making its business felt and its object implemented. It was averred that the Commission has given 335 *suo moto* notices from 01.07.2021 till 21.07.2022 and that there was no victimization of the petitioner having been singled out for serving of any *suo moto* notice. The receipts of such notices include 20 IAS officers, 04 IPS Officer and 04 Indian Forest Service Officers amongst numerous other Class I and Class II officers, most of whom are not Designated officers or the First Grievances Redressal Authority (FGRA) or the Second Grievances Redressal Authority (SGRA) but for their involvement in the process of providing the notified services. Such notices were even issued to the Additional Chief Secretary, Government of Haryana in the Department of Finance.

It has been further stated that the Commission had rightly exercised its authority within the framework of HRSC Act, 2014. The

petitioner in his capacity as the Chief Administrator of the HSVP was expected to examine each case on merits and take the essential and desirable decisions. The State Litigation Policy lays emphasis on reduction of unnecessary litigation. Taking a sweeping decision to challenge all the orders even without noticing any illegality or impropriety and without application of mind is clearly in violation of the State Litigation Policy. The petitioner Chief Administrator did not assign any reason for challenging the order passed by the Zonal Administrator, Faridabad more-so when as many as 07 different officers had worked during the relevant period. Sweeping orders to file unnecessary petitions/appeals was a gross abuse of the power and the so called uniformity of decision is a mindless abuse of authority. Being a watchdog for ensuring delivery of service in a time bound manner, delay in providing such services under the pretext of necessary litigation can also be examined by the Commission and it would not be ousted of its jurisdiction to examine the validity and legality of the explanation put forth by the competent Authority for the delays. If such explanation does not appear to reason, it is free to discard the same and pass such appropriate orders as it deems fit. The decision to prefer the appeal/revision had been conveyed by a whatsapp message notwithstanding that the opinion of the legal branch of the HSVP found the order perfect and recommended implementation. There was no material available with the Chief Administrator to not accept the opinion/report or to hold that the decision of the Zonal Administrator suffered from any illegality or factual misappreciation. The decision to file appeals/revisions is accentuated by ulterior motives to delay the delivery of service within the notified timelines for no valid reason and to overreach the Authority, jurisdiction and scope of

the Commission. A narrative of the initiatives taken by the Commission has also been given.

It is further submitted in the reply on merits that the concerned Estate Officer was the Designated Officer responsible for delivery of service and accordingly, notices were initially sent to him. However, in his response filed, it was informed that the matter had been sent to the Chief Administrator for necessary approval, hence, the notice was issued to the petitioner as well. It is also pointed out that the petitioner has been the Chief Administrator since 08.02.2021, hence, the entire delay relates to his tenure for which he has to own the responsibility. An opportunity had been given to the petitioner to put forth his case but he chose to not avail the same. The case was accordingly decided on merits. No exception can be carved for the petitioner merely because he occupies a senior position. Rather, higher the position, greater the responsibility of the petitioner against the acts and omission/lapses committed by the subordinates working under the administrative control of the petitioner. The impugned decision having been taken by the Commission after following the due process of law and in exercise of the powers conferred in it, there was no valid basis for raising a challenge to the award.

No replication/rejoinder has been filed by the petitioner.

The parties were heard at length and documents appended along with the petitions have been perused with their able assistance.

ARGUMENTS OF PETITIONERS

Learned counsel appearing on behalf of the petitioner has argued that the impugned order has been passed by the Commission in complete derogation of the provisions of the Haryana Right to Service Act,

2014. The complainant Smt. Megha Gupta had never approached the Designated Officer, the First Grievances Redressal Authority (FGRA) or the Second Grievances Redressal Authority (SGRA) as provided under Sections 5, 6 and 7 of the Haryana Right to Service Act, 2014 for seeking execution of the conveyance deed. *Suo moto* cognizance of the complaint has been taken by the Commission notwithstanding the procedure under the Act of 2014. An 'eligible person' has to file the application before the Designated Officer for obtaining any service as per Section 5 of the Act of 2014. As per the first proviso to Section 5 (4), the complainant may also submit an application in the office of First Grievance Redressal Authority (FGRA) against the order of the Designated Authority and thereafter to the Second Grievance Redressal Authority (SGRA). The complainant never invoked the procedure or availed the remedies provided under the Statute. The proceedings are thus in violation of the procedure established under law. He further argues that an inquiry was initiated by the Commission against the petitioner even though he was not the Designated Officer under the Act of 2014 and was not responsible for providing the notified services. It is vehemently argued that *suo moto* powers provided under Section 17 of the Act are to be read in consonance with Rule 9 of the Rules of 2014 wherein the notice could be taken by the Commission only when the applications/appeals are not decided by the Designated Officer and/or Grievance Redressal Authorities within the notified time lines or there is unreasonable delay in disposal of the such applications/appeals. In the absence thereof proceedings could not have been initiated *suo moto*. He further submits that the right of the complainant Smt. Megha Gupta had not yet become final and a decision had been taken to challenge the order

passed by the Zonal Administrator. When such appeal had been preferred within limitation, there was no reason to fasten any liability on the petitioner alleging failure to discharge the obligation. The tenor of the order passed against the petitioner shows that the same is driven by a perception that the revision petition filed by the HSVP was time barred without appreciating that the limitation was to commence only from 01.03.2022 as per the judgment of the Hon'ble Apex Court and the entire period from 15.03.2020 till 22.03.2022 was to be considered as zero period. It is further argued that the petitioner was performing his statutory duties while ordering a challenge to the orders passed by the Zonal Administrator, Faridabad and he had no personal malice against any person. Considering the huge financial hardship faced by the HSVP and an immense responsibility to bring HSVP out of debt trap, it necessitated numerous tough decisions and which helped in reducing the debt by nearly Rs.15000 crores. The petitioner was not in the knowledge of the proceedings before the Commission by that time, when the decision to file the revision had been taken. Hence, there was no occasion for labelling allegations against the petitioner for causing the alleged delay. Further, no application for grant of conveyance deed had been submitted, complete in all respects, to the Designated Officer at all.

ARGUMENTS OF RESPONDENTS

The Chief Commissioner has reiterated his contentions and argued that the complainant had submitted a representation to the Hon'ble Prime Minister on 28.03.2022 about her ordeal and seeking permission to die and noticing the same, the Commission had taken *suo moto* cognizance and sought a report from the Designated Authority on 04.04.2022. The report was received only on 02.05.2022 after a reminder and a show cause

notice wherein it was then informed that file had been sent for seeking approval to the office of Chief Administrator as to whether the order of the Zonal Administrator was to be implemented. The file remained pending for nearly one year in the office of the Chief Administrator and noticing such delay, a detailed order was passed by the Commission. Being the Chief Administrator, it was his solemn duty to ensure that notified services are delivered in the prescribed time lines. He was also directed to appear before the Chief Commissioner, however, instead of doing the needful and submitting his case, an application for keeping the proceedings in abeyance was submitted. Since the petitioner disregarded the provisions of the HSVP Act, 1977 and also delayed the implementation of the provisions of the Act of 2014, hence, the Commission imposed the penalty of Rs.20,000/- and the compensation of Rs.5,000/- for aiding and facilitating inconvenience and injustice. A reference was also made to the file notings to contend that the legal Department had specifically reported that the order of the Zonal Administrator was correctly based on the policy issued by HSVP dated 29.06.2004 and that the interest on the delayed payment qua the increased area could only be claimed from the date when the allottee takes over possession. Despite the same, no conveyance deed was executed. It was further argued that the extension of limitation for preferring an appeal or revision has no bearing on the timelines prescribed for providing notified services. The delay in filing of the appeal/revision was attributable to the petitioner himself and the sweeping decision to challenge all orders was passed to masquerade the mischief as a bona fide act. The petitioner cannot feign ignorance and remain in breach of law to ensure services are provided within the time lines prescribed under the Haryana Right to Service

Commission Act, 2014 and Rules framed thereunder. Being the person responsible for the affairs of the respondent-HSVP, the petitioner would fall under the powers of the Haryana Right to Service Commission and is liable to be penalized for such delay. He further contends that even the appeal preferred before the Administrative Secretary by the HSVP has been dismissed which establishes that the petitioner never cared to examine the merits of the claim and was in fact ministerialy and irresponsibly passing the orders against the allottees instead of ironing out red-tapism and bureaucratic delays to ensure smooth and prompt services to the allottees. The Commission had no personal axe to grind with the petitioner and various other show cause notices issued to him have been filed after noticing that the explanation for such delay was valid. Despite the enhanced area cost having been already deposited by the allottee, no explanation has been given for not executing the conveyance deed in favour of the allottee. A reference was also made to the initiatives taken by the Commission, the difficulties of the citizens redressed by the Commission through its intervention in addition to the details of notices issued to various senior functionaries. He also argued that the sweeping order of the petitioner in directing filing of appeals, without assigning any reasons, is clearly an abuse of power. Further as per the Auto Appeal System applicable in HSVP, more than 47,000 appeals were pending. Noticing the lethargy and negligence/incompetence of the officers causing delay for extraneous reasons, the Commission had to take firm steps.

REBUTTAL ARGUMENTS

In rebuttal, counsel for the petitioner reiterated his arguments. He could not dispute that the revision had been dismissed by the Additional Chief Secretary, Town and Country Planning, Haryana. He submits that the conveyance deed has not yet been executed as a further decision is still to be taken by the Competent Authority. No reference could however be made to any error or defect in the order passed by the Administrator or that the policy relied by him was inapplicable. No denial was done about the State Litigation Policy and necessity to reduce frivolous litigation. No reference was made also to the over-whelming reasons giving rise to a necessity for challenging the orders en-block.

CONSIDERATION

I have heard the learned counsel appearing on behalf of the respective parties as well as the Chief Commissioner, Haryana Right to Service Act and have also gone through the documents appended along with the present petitions.

Before examining the merits of the present case, relevant provisions of the Haryana Right to Service Act, 2014 as well as the Rules of 2014 are extracted below:-

THE HARYANA RIGHT TO SERVICE ACT, 2014

2. (c) “Designated Officer” means an officer as notified under section 3;

(d) “eligible person” means a person who is eligible for obtaining services notified under section 3;

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(f) “prescribed” means prescribed by rules made under this Act;

(g) “right to service” means a right to obtain the service within the notified time limit;

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(j) “Service” means service notified under section 3;

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3. Notification of services, time limit, Designated Officers, First Grievance Redressal Authority, Second Grievance Redressal Authority.- (1) *The State Government on the recommendations of the Commission may, by notification from time to time, notify the services and time limit to which this Act shall apply.*

(2) *The State Government may, by notification, notify the Designated Officer, First Grievance Redressal Authority and Second Grievance Redressal Authority.*

4. Providing of service.- *The Designated Officer shall provide the service to the eligible person within the notified time limit.*

5. Procedure for obtaining service.-

(1) *An eligible person shall make a duly filled in application to the Designated Officer for obtaining any service.*

(2) *The Designated Officer shall, on receipt of an application under sub-section (1), provide service or reject the application within the notified time limit and in case of rejection of application, shall record the reasons in writing and intimate the same to the applicant.*

(3) *Every Designated Officer shall maintain detailed record of services applied for, in such format, as may be prescribed.*

(4) Notified time limit shall start from the date when requisite complete application for notified service is received by the Designated Officer or a person subordinate to him authorized to receive the application. Such application shall be duly acknowledged.

"Provided that if the Designated Officer refuses to receive the application or refuses to issue acknowledgement, the eligible person may submit his application in the office of the First Grievance Redressal Authority stating therein the reasons for so doing, who shall forward the same to the Designated officer.

Provided further that the notified time limit in such a case shall start from the date when the requisite complete application for notified service is received by First Grievance Redressal Authority."]

6. First appeal,- (1) Any eligible person, whose application for obtaining service is rejected under sub-section (2) of section 5 or who is not provided the service within the notified time limit, may file an appeal to the First Grievance Redressal Authority within thirty days from the date of rejection or the expiry of the notified time limit, as the case may be:

Provided that the First Grievance Redressal Authority may admit the appeal after the expiry of thirty days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) On receipt of an appeal under sub-section (1), the First Grievance Redressal Authority shall consider the matter and if, in its opinion the grievances of the eligible person appears to be genuine, it may direct the Designated Officer to provide the

service within seven working days, or such period as may be specified by it and in case of default, to appear before it in person and explain reasons thereof.

(3) After affording an opportunity of hearing to the Designated Officer and the eligible person, the First Grievance Redressal Authority may pass a reasoned order in writing either accepting the appeal or rejecting the same. Decision in appeal shall be communicated to both the parties by registered post.

(4) An appeal made under sub-section (1) shall be finally disposed of by the First Grievance Redressal Authority within a period of thirty days of its receipt.

7. Second Appeal - *(1) Any eligible person, whose appeal for obtaining service is rejected or who is not provided the service within the time specified in the order accepting the appeal by the First Grievance Redressal Authority under section 6, may file an appeal to the Second Grievance Redressal Authority within sixty days from the date of such rejection or the expiry of the time specified by the First Grievance Redressal Authority:*

Provided that the Second Grievance Redressal Authority may admit the appeal after the expiry of sixty days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) On receipt of an appeal under sub-section (1), the Second Grievance Redressal Authority may pass a reasoned order in writing either accepting the appeal and directing the Designated Officer to provide service to the eligible person within seven working days or within such period, as may be specified or reject the same in writing the reasons for such

rejection: Provided that before rejecting the appeal, an opportunity of hearing to the eligible person shall be granted by the Second Grievance Redressal Authority:

Provided further that an order made by the Second Grievance Redressal Authority under this section shall be communicated to both the parties by registered post:

Provided further that the appeal made under sub-section (1) shall be decided by the Second Grievance Redressal Authority within a period of [thirty days] from the date of receipt of appeal, as far as possible.

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10. Revision. Any person who is aggrieved by any order of the Second Grievance Revision Redressal Authority, may file revision before the Commission within a period of ninety days from the date of such order:

Provided that the Commission may entertain the application after the expiry of the said period of ninety days, if it is satisfied that the revision could not be filed in time due to a reasonable cause.

**["Provided further that a revision made under this section shall be decided by the Commission within a period of thirty days from the date of receipt of revision."]*

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17. Powers and functions of Commission.- (1) It shall be the duty of the Commission to ensure proper implementation of this Act and to make suggestions to the State Government for ensuring better delivery of services. For this purpose the Commission may,-

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(b) take suo motonotice of failure to deliver service in accordance with this Act and refer such cases for decision to the First Grievance Redressal Authority or the Second Grievance Redressal Authority or pass such order, as may be appropriate.

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(h) impose penalty on Designated Officer or any other official involved in the process of providing such service up to a sum of twenty thousand rupees, as deemed fit under the circumstances of the case and allow compensation up to five thousand rupees, to be paid to eligible person by defaulter.”

(Emphasis supplied)

HARYANA RIGHT TO SERVICE RULES, 2014

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3. (1) An eligible person shall make an application for delivery of service to the designated officer either personally or through registered post duly addressed to the aforesaid Designated Officer or through e-disha kendras.

(2) If such an application is found complete in all respects, the Designated Officer shall acknowledge the receipt thereof in the specified Forms provided by the respective departments for each service:

Provided that if any document is required for the delivery of service has not been enclosed with the application by the applicant, the same shall be clearly mentioned in the acknowledgement by the Designated Officer, to enable the applicant to make his application complete in all respects:

Provided further that the time limit specified for delivery of service in such cases shall commence from the date when the applicant supplies the documents mentioned in the acknowledgement.

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9. The Commission may take suo-moto notice in such cases where the such applications/appeals are not decided by the Designated Officer/Grievance

by Redressal Authorities within the stipulated period and there is unreasonable delay in disposal of such application/appeals. On finding any lapse, the Commission may pass appropriate orders in this regard as it may deem fit.

(Emphasis supplied)

It is noticed that the Estate Officer HSVP had informed the Haryana Right to Service Commission vide Memo dated 02.05.2022 that the allottee had applied for conveyance deed on 19.04.2019 which was rejected on 30.04.2019 for the reason that as per the report of the JE, an increase in area was reported and the allottee was required to pay the additional cost due to increase of area, along with interest. The intimation regarding the rejection was sent to the Headquarter as well. The allottee chose not to challenge the rejection of application for execution of the conveyance deed. He, however, challenged the demand raised by HSVP from her for the additional area with interest for delay payment. The appeal was decided in favour of the allottee by the Zonal Administrator, Faridabad, on 05.03.2021 and the case was sent to the Chief Administrator to decide whether to file revision against the said order or to implement the same.

The case was submitted by the Record Keeper on 23.06.2021 but the Deputy District Attorney down marked the file by writing “please speak” on 25.06.2021. The Record Keeper kept the said file with himself for approximately 06 months and resubmitted it on 15.12.2021. The ADA, however, again pointed out that it is not a fit case for filing of a revision petition and the order be implemented. The Zonal Administrator, however, was directed by the Chief Administrator to conduct an inquiry in the matter so that the loss caused to the HSVP could be recovered from the delinquent

official, in terms of the policy dated 29.04.2004 on the same day by the Chief Administrator and was returned with certain queries. The file was resubmitted after a period of nearly 04 months with a recommendation that the revision petition be not filed and a direction be issued to the Administrator HSVP to recover the financial loss caused to HSVP from the J.E. concerned.

The Chief Administrator, however, ordered to first seek report from the Administrator and the Junior Engineer and to fix the responsibility, vide his order dated 19.04.2022.

Thereafter, on 07.05.2022, the Chief Administrator, HSVP, conveyed a whatsapp message to the District Attorney to file revision petition in the case along with various others without assigning any reasons; the deficiency or any defect in the order of the Administrator or recording reasons dis-agreeing with the opinion/recommendation of the legal cell.

A time period of 05 days has been prescribed under Rules for providing the service i.e. the execution of the conveyance deed. The Designated officer for providing the service for issuance of a conveyance deed is the Estate Officer. The First Grievance Redressal Authority is the concerned Zonal Administrator whilst the Second Grievance Redressal Authority is the Administrator, HUDA, Headquarters.

It has also remained uncontroverted that no application for execution of the conveyance deed had been moved by the eligible person i.e. the allottee to the Designated officer for obtaining any service as per the procedure prescribed under Section 5 of the Act of 2014.

The Act of 2014 had been enacted with an object to ensure delivery of services to eligible persons within the notified timelines. The

procedure for 'obtaining services' has been provided under Section 5 which mandates that an eligible person shall make a duly filled in application to the Designated Officer for obtaining any service. On receipt of such application under sub section (1) of Section 5, the Designated Officer shall pass an appropriate order within the notified time limit. It is also provided that notified time limit shall start from the date when the complete application for notified service is received by the Designated Officer or a person subordinate to him authorized to receive the application. If the Designated Officer refuses to receive the application or issue acknowledgement, the eligible person may submit an application in the office of FGRA stating reasons for so doing, who shall then forward the same to the Designated Officer. The notified time limit in such a case shall start from the date when the requisite complete application for notified service is received by FGRA.

Section 17 of the Act of 2014 deals with the powers and functions of the Commission and sub section (b) uses the expression "take *suo moto* notice of "failure to deliver service in accordance with this Act....."

Section 17 (1) (h) further uses the expression "impose penalty on Designated Officer or any other official involved in the process of providing such service....."

Further Rule 9 uses the expression, the Commission may take *suo moto* notice "in such cases where the applications/appeals are not decided by the Designated Officer/FGRA/SGRA within the stipulated time.

....."

The above said provision deal with invocation of the suo moto provisions of the Act of 2014 and the procedure to be adhered to for such invocation. The primary obligation of providing service under the Act of 2014 is that of the designated officer under Section 4 as per procedure provided for obtaining the service under Section 5 to an eligible person within time limit notified under Section 3. It mandates the 'eligible person' to make an application, which is duly filled, to the Designated Officer whereupon such Designated Officer is made bound to provide such service within the notified time limit or to convey his reasons for not doing so. It is also provided under Section 5 (4) that notified time limit shall commence when all requisite formalities are fulfilled by the eligible person.

Section 17 (1) (b) thus, even though confers power on the Commission to take *suo moto* notice, however, such power is qualified with the use of expression "failure to deliver service in accordance with this Act." Hence, the *suo moto* power is qualified and is conferred on the Commission in the event of failure to deliver service in accordance with this Act which such expression stands reiterated in Rule 9 wherein it is stated that the Commission may take *suo moto* notice in such cases where the applications/appeals aren't decided by Designated Officer within the stipulated notified time.

The expression "in accordance with this Act" used in Section 17 (1) (b) of the Act of 2014 thus needs to be understood. In ordinary legal understanding, the expression "in accordance with" means "to be complied with to the applicable rule on its terms, conditions, limitations and exceptions as applicable." The aforesaid expression mandates strict

adherence to the applicable Statutes, Rules and Regulations of any Government Authority having jurisdiction.

The *suo moto* power of the Commission under Section 17 (1) (b) of the Act of 2014 is thus available on a failure to deliver service “in accordance with the Act.” It necessarily also flows that the applicant/eligible person has approached the Designated Authority strictly as per the mandate of law. If such a rider was not intended to be put forth, there was no reason for the Legislature to qualify the *suo moto* powers for failure to deliver service with the expression “in accordance with this Act...” The said expression “in accordance with this Act...” has to be assigned a meaningful interpretation. The procedure for obtaining service is provided under Section 5 read with Rule 3 and the Rule 9. The Commission would thus not enjoy any sweeping inherent power, notwithstanding whether any allottee/eligible person has approached the Designated Officer as per procedure laid in law for obtaining the service. Even though, the above view may be construed as restricted, however, the Legislature has consciously not conferred any unbridled, unqualified, sweeping, general and overriding *suo moto* powers on the Commission.

The Constitutional Court, while interpreting a statutory provision, does not confer a jurisdiction or a power on an Authority which is not intended by the Legislature more-so when such Legislative intent is evident from the plain reading of the provisions. The Legislature having chosen to vest such authority or power only upon occurrence of certain events/conditions, exercise of such power/jurisdiction is dependent upon fulfilling of such events/conditions. Failure to fulfill such condition would deprive the allottee from claiming applicability of the special statute

The interpretation as suggested by the Chief Commissioner of the Right to Service Commission, although seems to be enhancing the scope of the Act, however, the same cannot be accepted merely for the said reasons and ignoring the procedure prescribed to be followed, law for such service to be obtained and the obligations to be enforced or the liabilities imposed.

The final order passed by the Commission does not examine and satisfy itself as to whether the procedural requirements prescribed under the Act have been followed or not and has to be set aside along with observations recorded therein. It is well laid out principle of law that an adverse remark needs to be made in an order/judgment only in case it becomes absolutely necessary for adjudication of the dispute and without which such remark, the judgment may not appear to be possible and after granting hearing to such person. I fail to find any material to hold that it was essential for the order to culminate that the functioning of the Authority ought to be adversely commented upon. More-so, since the allottee nowhere pressed or suggested any victimization or mischief against her. No motive, malice or any foul play or foul demand has been alleged. Thus, the decision taken was a general decision (its legality apart) applicable universally and not intended to target the allottee.

It is undisputed that the application earlier submitted to the Estate Officer on 09.04.2019 was rejected on 30.04.2019 within the applicable notified time limit. No challenge was made to the rejection of the application by the Estate Officer in any appellate proceedings. A demand was thereafter conveyed by the HSVP towards the enhanced cost of Rs.58,415/- along with interest vide demand notice dated 08.07.2019.

Aggrieved whereof an appeal was preferred before the Zonal Administrator, HSVP, Faridabad under Section 17 (5) of the Haryana Shehri Vikas Pradhikaran Act, 1977. Even though the date of institution has been referred as 20.03.2018 in the final order of the Administrator HSVP, dated 24.02.2021 (endorsed on 25.03.2021), however, the same is clearly a typographical error since challenge itself is to demand notice dated 08.07.2019 which specifically finds mention in the said order and the appeal has been preferred against the above demand. The said appeal was only against levy of interest of Rs.3,91,725/- on delayed payment for the increased area and there was no challenge to the additional cost for the differential area. The said amount of Rs.60,000/- towards the differential area had also been deposited by the allottee on 20.03.2021. Hence, the requirements, complete in all respects, could at best be said to have been fulfilled only on 20.03.2021. However, no fresh application for conveyance deed was submitted thereafter.

It also remains undisputed that the limitation for filing a petition has been extended by the Hon'ble Supreme Court in **Suo moto Writ Petition (Civil) No.(s).3/2020 in RE: Cognizance for Extension of Limitation** from 15.03.2020 to 22.03.2022, hence, the interim period was to be treated zero period for computing limitation. A further limitation period of 90 days was granted to all persons from 01.03.2022 and where the period of limitation was more than 90 days, the longer period was to be available. The decision to prefer an appeal/revision before the Government was conveyed by the Chief Administrator on 07.05.2022 i.e. within the period of limitation prescribed by the Hon'ble Supreme Court.

It thus is to be examined as to whether the Designated Officer/FGRA/SGRA or any other officer involved in the process of providing services can be held liable under the Haryana Right to Service Act, 2014 notwithstanding that the allottee/eligible person has not preferred any application with the Designated Officer for providing the notified service.

The Hon'ble Supreme Court, in the matter of Noor Mohammed Vs. Khurram Pasha, reported as (2022) 9 Supreme Court Cases 23, has held that where a statute provides a procedure for doing of a thing, such thing has to be done in the procedure so prescribed. The relevant extract of aforesaid judgment reads as under:-

“14. The remedy for failure to pay interim compensation as directed by the court is thus provided for by the Legislature. The method and modality of recovery of interim compensation is clearly delineated by the Legislature. It is well known principle that if a statute prescribes a method or modality for exercise of power, by necessary implication, the other methods of performance are not acceptable. While relying on the decision of the Privy Council in Nazir Ahmad Vs. King Emperor, reported as 1936 SCC Online PC 41, a Bench of three Judges of this Court made following observations in State of Uttar Pradesh Vs. Singhara Singh and others, reported as AIR 1964 SC 358..

“7. In Nazir Ahmed case, the Judicial Committee observed that the principle applied in Taylor v. Taylor [(1875) 1 Ch D 426, 431] to a court, namely, that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden, applied to judicial

officers making a record under Section 164 and, therefore, held that the Magistrate could not give oral evidence of the confession made to him which he had purported to record under Section 164 of the Code. It was said that otherwise all the precautions and safeguards laid down in Sections 164 and 364, both of which had to be read together, would become of such trifling value as to be almost idle and that “it would be an unnatural construction to hold that any other procedure was permitted than that which is laid down with such minute particularity in the sections themselves”.

8. The rule adopted in Taylor v. Taylor [(1875) 1 Ch D 426, 431] is well recognised and is founded on sound principle. Its result is that if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The principle behind the rule is that if this were not so, the statutory provision might as well not have been enacted. A Magistrate, therefore, cannot in the course of investigation record a confession except in the manner laid down in Section 164. The power to record the confession had obviously been given so that the confession might be proved by the record of it made in the manner laid down. If proof of the confession by other means was permissible, the whole provision of Section 164 including the safeguards contained in it for the protection of accused persons would be rendered nugatory. The section, therefore, by conferring on Magistrates the power to record statements or confessions, by necessary implication, prohibited a Magistrate from giving oral evidence of the statements or confessions made to him.”

(Emphasis supplied)

15. In *J.N.Nehru Ganatra Vs. Movi Municipality*, reported as (1996) 9 SCC 495, exercise of power of dismissal having not been done in conformity of the Act, the same was set aside. It was stated:-

“4. We have heard the learned counsel for the parties. We are of the view that the High Court fell into patent error in reaching the conclusion that the dismissal of the appellant from service, in utter violation of Rule 35 of the Rules, was an “act done in pursuance or execution or intended execution of this Act ...”. It is no doubt correct that the General Board of the Municipality had the power under the Act to dismiss the appellant but the said power could only be exercised in the manner indicated by Rule 35 of the Rules. Admittedly the power of dismissal has not been exercised the way it was required to be done under the Act. It is settled proposition of law that a power under a statute has to be exercised in accordance with the provisions of the statute and in no other manner. In view of the categorical finding given by the High Court to the effect that the order of dismissal was on the face of it illegal and void, we have no hesitation in holding that the dismissal of the appellant was not an act done in pursuance or execution or intended execution of the Act. The order of dismissal being patently and grossly in violation of the plain provisions of the Rules. It cannot be treated to have been passed under the Act.”

(Emphasis supplied)

16, In *Commissioner of Income Tax, Mumbai vs. Anjum M.H.Ghaswala*, (2002) 1 SCC 633, a Constitution Bench of this Court stated the normal rule of construction in such cases as under:-

“27. Then it is to be seen that the Act requires the Board to exercise the power under [Section 119](#) in a particular manner i.e. by way of issuance of orders, instructions and directions. These orders, instructions and directions are meant to be issued to other income tax authorities for proper administration of the Act. The Commission while (1996) 9 SCC 495 (2002) 1 SCC 633 exercising its quasi-judicial power of arriving at a settlement under [Section 245-D](#) cannot have the administrative power of issuing directions to other income tax authorities. It is a normal rule of construction that when a statute vests certain power in an authority to be exercised in a particular manner then the said authority has to exercise it only in the manner provided in the statute itself. If that be so, since the Commission cannot exercise the power of relaxation found in [Section 119 \(2\) \(a\)](#) in the manner provided therein it cannot invoke that power under [Section 119 \(2\) \(a\)](#) to exercise the same in its judicial proceedings by following a procedure contrary to that provided in sub-section (2) of [Section 119](#).”

(Emphasis supplied)

The anxiety expressed by the Commission cannot be perceived as misconceived or misplaced or to be without any valid reason, however, at the same time, the settled law too has to be kept in mind to the effect that where the statute provides certain pre-requisites for invoking the rigors of any statutory provision, failure to fulfill such pre-requisites validates invocation of the penal provisions of the statute. Interpretation to the contrary is likely to render [Section 5](#) of the Act of 2014 and [Rule 3](#) of the Rules of 2014, nugatory, otiose and meaningless.

A failure to provide service nonetheless may give rise to an actionable claim under any other governing statute i.e. under the Consumer Protection Act, the Legal Services Authorities Act, 1987 or under the civil law, which do not mandate any such pre-requisite. The distinction is fine but real. Refusal to grant compensation or imposition of penalty under the Right to Service Act, 2014, is not the same thing as condoning any deficiency or arbitrariness as may be apparent.

A harmonious construction of the provisions of Act of 2014 read in the light of the judgment of the Hon'ble Supreme Court (supra) establish that for fastening of any liability/obligation under the Act of 2014, an eligible person is required to approach the Authorities under the Act of 2014 in the manner prescribed and fulfill the requisites requirements prescribed thereunder. The limitation by prescribing such a clause by the Legislature is seemingly to sensitize the Authorities that in the event the eligible person, having invoked the special Statute, they shall be bound to pay the penalty/compensation if the requisite service is not provided within the notified time limit. It was more of an opportunity to an authority to avoid the consequence that are likely to follow in the event of a delay in providing the service. Imposition of any penalty for the purported delay, without the eligible person having invoked the jurisdiction of the Statute, would be inept and unsustainable. Since the undisputed position is that the allottee never approached the Designated Officer, hence, the procedure for invoking the mandate of Act of 2014 and for obtaining services thereunder cannot be said to have been legally invoked by the allottee.

However, at the same time, it is noteworthy and rightly highlighted by the Commission that the grievance of the allottee has not

been redressed since 2019 and notwithstanding that the demand of interest had been set aside by the Administrator of HSVP vide his order endorsed on 05.03.2021. Once the policy of the Department was already in force and was deemed to be to the notice of the concerned, there was no occasion or reason for the petitioner – HSVP to demand interest on delayed payment for enhanced area especially when no fault, concealment, mischief or forgery is attributed to the allottee. The raising of an invalid and unsustainable demand of interest on delayed deposit of the differential amount only added to the agony of the allottee. The Administrator, HSVP Faridabad, specifically noticed the above said policy and allowed the appeal and thereby set aside the demand of interest. The legal department of the HSVP also examined the order and found the same to be fully covered by the instructions issued by the HSVP. However, the above aspects notwithstanding, grievance of the allottee was not redressed despite not finding any defect or error in the order of the Administrator, HSVP. The act of respondent –HSVP in subjecting the allottee to undue harassment cannot be ignored or permitted to sustain on a plea that the HSVP had chosen to prefer an appeal which has subjected the allottee to an unwanted and unnecessary litigation. It is also noticed that even the increased amount had also been deposited by the allottee on 20.03.2021 and a period of more than two years has elapsed since thereafter. The revision petition preferred by the HSVP has also been dismissed by the Principal Secretary, Town and Country Planning in May 2023. No reason has been given by the Authority or even the counsel representing the petitioner herein as regards the error/defects, if any, in the order passed by the Administrator. Such an act is clearly in violation of the State Litigation Policy and has also caused undue

hardship to the allottee apart from burdening him with the costs of pursuing unnecessary litigation.

Hence, with a view to balance the equities, I am inclined to invoke the jurisdiction of this Court under Article 226 of the Constitution of India for compensating the allottee for the undue hardship caused to her by unnecessary delays in the decision making and subjecting the allottee to unnecessary litigation.

The HSVP is thus held liable to pay a compensation to the tune of Rs.1 lakhs to the respondent allottee. HSVP is also directed to issue the conveyance deed in favour of the allottee within a period of 04 weeks of receipt of a certified copy of this order subject to fulfillment of all other essential conditions and without prejudice to its rights.

Petitions are disposed off accordingly.

July 24, 2023
raj arora

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No1