

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

CWP No. 4042 of 2017 (O&M)

DECIDED ON: 8th February, 2023

Rajnish Sood, Executive Officer

.....PETITIONER

VERSUS

The State Information Commission Punjab and others

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN.

Present: Mr. Harbans Lal Sharma, Advocate for petitioner.

Mr. Rajesh Mehta, Additional Advocate General, Punjab.

Mr. H.C. Arora, Advocate for respondent No.2.

Mr. Arjun Kundra, Advocate for respondent No.3.

AVNEESH JHINGAN, J (ORAL)

1. This writ petition in the nature of Certiorari is filed seeking quashing of order dated 27.12.2016 passed by the State Information Commission (for short 'the Commission') imposing a penalty of Rs. 2000/- upon the petitioner and awarding compensation of Rs.1500/- to the complainant.

2. The petitioner was working as an Executive Officer designated as Public Information Officer (for short 'PIO') in Municipal Council, Morinda. The respondent No. 2 (for brevity 'the respondent') under the Right to Information Act, 2005 (for short 'the Act'), made an application on 5.10.2015. The information sought was supplied but the photographs of the building asked for were refused by stating that it would result in creating an information and same cannot be done under the Act. The respondent chose not to file appeal,

instead filed a complaint before the Commission alleging that misleading information after the expiry of stipulated period was supplied. Show cause notice was issued to petitioner. The reply filed by the petitioner explaining that the information asked for was provided to the respondent was accepted. However, another show cause notice was issued for providing the information late. In the reply filed, the defence taken was that the information sought was to be collected from the various branches of Municipal Council, Morinda and due to this the delay occurred. The Commission concluded that there was delay of about twenty days in responding to the application for supplying the information and imposed penalty of Rs.2000/- on the petitioner and also awarded compensation of Rs.1500/- under Section 19 of the Act to the respondent.

3. Learned counsel for the petitioner submits that the delay was duly explained and the Commission erred in imposing penalty and awarding the compensation.

4. Mr. Rajesh Mehta, Additional Advocate General, Punjab appearing for respondent No.1 defends the impugned order. He, however, fairly submits that the information asked for was supplied in consonance with the provisions of the Act.

5. Mr. H.C. Arora, Advocate, appearing for the respondent submits that the petitioner was the PIO and has filed the present petition in his individual capacity. He has no locus to challenge the compensation awarded to the respondent. He relies upon the provisions of Section 19(8)(b) of the Act.

6. The Commission in the impugned order concluded that the information asked for was duly supplied and it was not a case of supplying misleading or incomplete information. With regard to the delay in responding to

the application seeking information, the defence taken by the petitioner in his

reply that the information had to be collected from various departments of Municipal Council, Morinda, was not discussed. It was not considered that delay was marginal. The law is well settled that the penalty should not be imposed merely it is lawful to do so. The impugned order qua imposing the penalty upon the petitioner is set aside.

7. The contention of learned counsel for respondent that petitioner cannot challenge the compensation awarded, deserves acceptance.

8. Section 19(8)(d) of the Act is reproduced:-

"19. Appeal:-

*** *** *** ***

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

(a) require the public authority to take any such steps as may be necessary to secure compliance with the provisions of this Act, including—

(i) by providing access to information, if so requested, in a particular form;

(ii) by appointing a Central Public Information Officer or State Public Information Officer, as the case may be;

(iii) by publishing certain information or categories of information;

(iv) by making necessary changes to its practices in relation to the maintenance, management and destruction of records;

(v) by enhancing the provision of training on the right to information for its officials;

(vi) by providing it with an annual report in compliance with clause (b) of sub-section (1) of section 4;

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

(c) impose any of the penalties provided under this Act;

(d) reject the application."

9. The 'public authority' is defined under Section 2(h) of the Act which is reproduced hereinbelow:--

"2. Definitions:-

(h) "public authority" means any authority or body or institution of self- government established or constituted—

- (a) by or under the Constitution;
- (b) by any other law made by Parliament;
- (c) by any other law made by State Legislature;
- (d) by notification issued or order made by the appropriate Government, and includes any—

- (i) body owned, controlled or substantially financed;

- (ii) non-Government organisation substantially financed, directly or indirectly by funds provided by the appropriate Government; "

10. Under Section 19 (8), the Commission may direct the public authority to compensate the complainant for any loss or other detrimental loss suffered.

11. From a reading of Section 19(8) with Section 2 (h) of the Act, it is clear that respondent No.3-Municipal Council, Morinda is to pay compensation amount hence, the petitioner in his individual capacity cannot challenge it.

12. The writ petition is partly allowed.

13. Since the main case has been decided, pending application, if any is rendered infructuous.

(AVNEESH JHINGAN)
JUDGE

8th February, 2023

reema

Whether speaking/reasoned *Yes*

Whether reportable *Yes*