

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

206

CWP-24255-2019**Date of Decision: 22.11.2023**

Dr. Savita Sheoran

..... Petitioner

Versus

State Information Commission, Haryana and others

..... Respondents**CORAM: HON'BLE MR. JUSTICE VIKAS BAHL**

Present: Mr. Kanwal Goyal, Advocate
for the petitioner.

Mr. Amandeep Joshi, DAG, Haryana
for respondent No.1.

Mr. Sandeep Verma, Advocate
for respondent No.2.

Mr. Gaurav Mohunta, Advocate and
Mr. Satyendra Kumar, Advocate
for respondent No.3.

VIKAS BAHL, J (ORAL)

1. This is a civil writ petition filed under Article 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing the impugned order dated 30.05.2019 (Annexure P-1).

2. Learned counsel for the petitioner has submitted that in the present case, respondent No.3 had sought the information with respect to the complaint (Annexure P-3) filed under Section 9 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereinafter referred to as the Act of 2013). It is submitted that SPIO, vide letter dated 28.11.2018 (Annexure P-4) had not given the said information in view of Section 16 of the said Act of 2013. The appeal filed by respondent

No.3 was dismissed, vide order dated 09.01.2019 (Annexure P-5) on the same ground. It is submitted that the State Information Commissioner, Haryana, however passed an absolutely perverse and non-speaking order. It is submitted that it was perversely observed in paragraphs 2, 3 and 6 that the SPIO as well as the First Appellate Authority had failed to supply the information and failed to decide the appeal whereas the SPIO had refused to supply the information in view of Section 16 of the Act of 2013 and the First Appellate Authority had dismissed the appeal. It is further submitted that without considering the provisions of Act of 2013 or the Right to Information Act and without giving any reasons with respect to the controversy, the State Information Commissioner straightaway directed the SPIO to supply the said information. It is submitted that in view of the law laid down by this Court in ***CWP-17672-2023*** titled ***Rajwinder Singh Vs. State of Punjab and others and the judgment dated 13.07.2023 passed in CWP-1877-2022*** titled '***Gagnish Singh Khurana Vs. State of Punjab and others***' as well as the judgment dated 21.07.2023 passed in ***CWP-15500-2023*** titled '***Gopal Krishan Gupta Vs. Central Information Commission and others***', the impugned order is illegal, against law and deserves to be set aside. It is further submitted that the petitioner has a good case on merits also.

3. Learned counsel appearing for respondent No.3 has opposed the present petition and has submitted that the rejection with regard to supply of information by the SPIO as well as dismissal of the first appeal by the First Appellate Authority on the ground that the information is barred under Section 16 of the 2013 Act, is illegal and against the law and is misreading of the said provision. It is submitted that the said provision would not apply to the case of respondent No.3.

4. Learned counsel for respondent No.2 has submitted that the information sought by respondent No.3 has been rightly declined.

5. This Court has heard learned counsel for the parties and has gone through the paper-book.

6. It is not in dispute that the information sought by respondent No.3 by way of filing an application under the Right to Information Act (Annexure P-3) was to seek a copy of the complaint under Section 9 of the Act of 2013. The SPIO, vide letter dated 28.11.2018 (Annexure P-4) had refused to give the said information in view of Section 16 of the Act of 2013. The appeal filed by respondent No.3 was dismissed, vide order dated 09.01.2019 (Annexure P-5) by observing that the reply given by the SPIO was correct. The State Information Commissioner in the impugned order has perversely noticed in paragraphs 2, 3 and 6 that the SPIO had failed to supply the information and that the First Appellate Authority had also failed to decide the appeal whereas the SPIO had rejected the application of respondent No.3 for supply of information and the First Appellate Authority had dismissed the appeal filed by respondent No.3. Moreover, a perusal of the order dated 30.05.2019 (Annexure P-1) would show that the order, apart from being perverse, is also cryptic and non-speaking inasmuch as the issue as to whether the information is to be supplied or not and whether there is any bar in supplying the same, had not been dealt with and the said impugned order has been passed in a routine and cyclostyle manner.

This Court in the case of ***Rajwinder Singh (supra)*** has held as under:-

“This Court vide judgment dated 13.07.2023 passed in CWP-1877-2022 titled as “Gagnish Singh Khurana Vs. State of Punjab and others” has held as under:-

“13. It is a matter of settled law that quasi judicial authorities

must record reasons in support of its conclusion and insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done but also appear to have been done and that recording of reasons is indispensable in the decision making process and the same facilitates the process of judicial review by the Superior Courts and it is also necessary to give reasons for sustaining the litigants' faith in the justice delivery system. It has further been repeatedly held that reasons so given in support of a decision must be cogent and clear and should not be "rubber stamp reasons". Reference in this regard may be made to the judgment of the Hon'ble Supreme Court in case titled as "M/s Kranti Associates Pvt. Ltd. & Anr. Vs. Sh. Masood Ahmed Khan & Others" reported as 2010(3) SCC (Civil) 852, in which it has been held as under:-

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51. Summarizing the above discussion, this Court holds:

- a. In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.*
- b. A quasi-judicial authority must record reasons in support of its conclusions.*
- c. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.*
- d. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.*
- e. Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.*
- f. Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.*
- g. Reasons facilitate the process of judicial review by superior*

Courts.

h. The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.

i. Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

j. Insistence on reason is a requirement for both judicial accountability and transparency.

k. If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

l. Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.

m. It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harward Law Review 731-737).

n. Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and Anya vs. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

o. In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".

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14. Reference may also be made to the judgment of the Hon’ble Division Bench of this Court in case titled as “Banarsi Das Cotton Mills (P) Ltd. Vs. State of Haryana and another”, reported as 1997(1) PLR 17, in which, it has been held as under:-

“xxx xxx

3. Although the impugned order/notice has been challenged on various grounds, we are of the opinion that the same is liable to be quashed on the short ground it does not contain reasons. There can be no manner of doubt that while deciding the appeal the Higher Level Screening Committee acts as a quasi judicial authority and it is duty bound to record reasons in support of its decision. The recording of reasons and communication thereof is imperative for compliance of the principles of natural justice which must inform the proceedings of every quasi judicial body and even in the absence of a statutory provision or administrative instructions requiring recording of reasons in support of the orders, the quasi judicial authority must pass speaking orders so as to stand the test of scrutiny.

*4. In **Testeels Ltd. v. N.M. Desai, Conciliation Officer, A.I.R. 1970 Gujarat 1 (F.B.)**, Full Bench of the Gujarat High Court held that the jurisdiction of the High Court under Article 226 and that of the Supreme Court under Article 136 of the Constitution of India cannot be stultified by administrative authorities by passing non-speaking orders.*

*5. The requirement of recording of reasons and communication thereof by quasi judicial authorities has been emphasised in several judgments of the Supreme Court including a Constitution Bench Judgment in **S.N. Mukherjee v. Union of India, A.I.R. 1990 S.C. 1984**.*

6. Similar view has been expressed by a Division Bench of this Court in C.W.P. No. 10769 of 1995 (*Haryana Cotton Mills P. Ltd. Tohana v. State of Haryana and Ors.*), decided on 8.12.1995.

7. In view of the above legal position, we quash the rejection of the petitioner's appeal by the Higher Level Screening Committee and direct that Higher Level Screening Committee shall reconsider the appeal filed by the petitioner and pass a fresh order after giving opportunity of hearing to the petitioner. The High Level Screening Committee is further directed to decide the appeal afresh by passing a reasoned order within a period of one month after issuing notice to the petitioner for a specific date of hearing, on receipt of a copy of this order. The registry of this Court is directed to send a copy of this order to respondent No. 2.

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9. This Court in another judgment dated 21.07.2023 passed in CWP-15500-2023 titled as “*Gopal Krishan Gupta Vs. Central Information Commission and others*”, while dealing with a cryptic and non-speaking order passed by the Central Information Commissioner under Section 19(3) read with Section 20 of the Act of 2005, had observed as under:-

“5. Relevant portion of the order dated 28.02.2023 (Annexure P11) is reproduced herein below: -

“The fact is that no final point-wise reply was provided on any of the points to the appellant as per the record.

In view of the same, the CPIO is directed to provide a final consolidated reply on all the points as provided by the concerned custodians within 7 days from the date of receipt of this order.

The appeals are disposed of accordingly.”

6. A perusal of the above-said order would show that after considering the entire matter, the Information Commissioner was of the opinion that no final point-wise reply has been provided to the appellant as per the record and thus, had directed the CPIO to provide a final consolidated reply on all

the points as provided by the concerned custodians within 7 days from the date of receipt of this order. However, instead of waiting for the reply, the Information Commissioner disposed of the appeal without final adjudication of the matter and that the said procedure is not in accordance with law.

7. A perusal of Section 19 of the RTI Act would show that under sub-Section 3, an aggrieved person has a right to file the second appeal before the Central Information Commission or the State Information Commission and that, under sub-section (8), the Central Information Commission has been given several powers including the power requiring the public authority to compensate the complainant for any loss or detriment suffered or to impose any of the penalties provided under the Act. Section 19 of the RTI Act, is reproduced herein below: -

*“19. **Appeal.**—(1) Any person who, does not receive a decision within the time specified in sub-section (1) or clause (a) of sub-section (3) of section 7, or is aggrieved by a decision of the Central Public Information Officer or State Public Information Officer, as the case may be, may within thirty days from the expiry of such period or from the receipt of such a decision prefer an appeal to such officer who is senior in rank to the Central Public Information Officer or State Public Information Officer as the case may be, in each public authority:*

Provided that such officer may admit the appeal after the expiry of the period of thirty days if he or she is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) Where an appeal is preferred against an order made by a Central Public Information Officer or a State Public Information Officer, as the case may be, under section 11 to disclose third party information, the appeal by the concerned third party shall be made within thirty days from the date of the order.

(3) A second appeal against the decision under sub-section (1) shall lie within ninety days from the date on which the decision

should have been made or was actually received, with the Central Information Commission or the State Information Commission: Provided that the Central Information Commission or the State Information Commission, as the case may be, may admit the appeal after the expiry of the period of ninety days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(4) If the decision of the Central Public Information Officer or State Public Information Officer, as the case may be, against which an appeal is preferred relates to information of a third party, the Central Information Commission or State Information

Commission, as the case may be, shall give a reasonable opportunity of being heard to that third party.

(5) In any appeal proceedings, the onus to prove that a denial of a request was justified shall be on the Central Public Information Officer or State Public Information Officer, as the case may be, who denied the request.

(6) An appeal under sub-section (1) or sub-section (2) shall be disposed of within thirty days of the receipt of the appeal or within such extended period not exceeding a total of forty-five days from the date of filing thereof as the case may be, for reasons to be recorded in writing.

(7) The decision of the Central Information Commission or State Information Commission, as the case may be, shall be binding.

(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 Central Information Commission or State Information Commission, as the case may be, shall give notice of its decision, including any right of appeal, to the complainant and the public authority.

(10) The Central Information Commission or State Information Commission, as the case may be, shall decide the appeal in accordance with such procedure as may be prescribed.

8. Section 20 of the RTI Act provides that in case, the Central Information Commission at the time of deciding any complaint or appeal, is of the opinion that the Central Public Information Officer has, without any reasonable cause, not furnished information within the time specified under subsection (1) of Section 7 or has malafidely denied the request for information etc., then, it is empowered to impose a penalty of two hundred and fifty rupees each day till the information is furnished.

Section 20 of the RTI Act is reproduced 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.”

9. A conjoint reading of the above reproduced provisions would show that once a second appeal has been filed by an aggrieved person, then, after considering all the aspects, the matter is required to be finally adjudicated. In case, the Information Commissioner is of the opinion that the ingredients, as specified in Section 20 of the RTI Act are met, appropriate

action is also required to be taken. In the present case, after prima facie holding in favour of the petitioner with respect to points No. (a) and (b) and after directing the CPIO to file a revised reply, the appeals have been disposed of by respondent No.2 without waiting for the said reply and without finally adjudicating the matter and thus, to the said extent, the impugned order deserves to be set aside”

The State Information Commissioner, Punjab, while adjudicating the second statutory appeal filed by the petitioner under Section 19(3) of the Act of 2005 was acting as a quasi judicial authority and was, therefore, required to adjudicate the case after considering the facts of the case, pleas raised by both the parties and was required to record reasons for rejecting the pleas of one party and accepting the pleas of the other party by passing a reasoned order. The order should have been self-explanatory and reasons given in the same should not have been rubber stamp reasons. The same has not been done in the present case and the impugned order passed is cryptic and non-speaking as has been detailed in para 7 of the present order.

12. This Court has found that in a large number of cases, the authorities including the first Appellate Authority {(while adjudicating the first statutory appeal under Section 19(1))} and the second Appellate Authority {(while adjudicating the second statutory appeal under Section 19(3))} under the Act, have been passing cryptic and non-speaking orders in violation of the judgments passed by the Hon'ble Supreme Court and various High Courts and also in violation of the mandate of the Act of 2005. It is, thus, found necessary to give the following directions to the first Appellate Authority and second Appellate Authority under the Act of 2005 to clearly specify the following at the time of finally adjudicating the case:-

- i) The points on which the information is sought by the applicant as per his/her application filed under the Act of 2005.*
- ii) The point-wise reply with respect to the information sought.*
- iii) A categorical finding as to whether the information on any of the points has been supplied or not and if supplied, the date*

on which it has been supplied.

iv) In case, it is the stand of the authorities from whom the information is sought that the information sought under a particular point is not to be supplied on account of any bar contained in any provisions of the Act of 2005 or for any other reason, then, after recording the said stand and after considering the submissions made by both the parties with respect to said point/issue, return a finding with respect to the said issue/point.

v) Any other observation which the authority deems fit in the facts and circumstances of the case to be recorded.

13. The Chief Secretary to the States of Punjab & Haryana and the Advisor to the Administrator, Chandigarh are directed to circulate the judgment passed in the present case i.e. CWP-17672-2023 titled as “Rajwinder Singh Vs. State of Punjab and others” and the judgment dated 13.07.2023 passed in CWP-1877-2022 titled as “Gagnish Singh Khurana Vs. State of Punjab and others” as well as the judgment dated 21.07.2023 passed in CWP-15500-2023 titled as “Gopal Krishan Gupta Vs. Central Information Commission and others”, to all the authorities constituted under the Act for complying with the same.”

7. Keeping in view the fact that the impugned order dated 30.05.2019 is cryptic and is against the law laid down by this Court in the aforesaid judgment, the same deserves to be set aside on the said ground alone and accordingly, the order dated 30.05.2019 (Annexure P-1) is set aside and the present writ petition is partly allowed. Respondent No.1-Commission is directed to re-consider the matter and to decide the appeal No.3470-2019 filed by respondent No.3 afresh after taking into consideration the law laid down in the case of **Rajwinder Singh** (supra) and also after hearing all the parties concerned.

8. It is made clear that this Court has not opined on the merits of

the case and thus, it would be open to all the parties to raise all pleas, as are available to them, before respondent No.1-Commission and respondent No.1-Commission would consider the same independently, in accordance with law.

22.11.2023
D.Bansal

(VIKAS BAHL)
JUDGE

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