

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5296 of 2024

Arya Gautam son of Ashok Kumar, residence of Barahara Kothi, Post and P.S.-Barahara Kothi, District-Purnea, Bihar at present Senior Assistant Director cum Faculty, Bihar Institute of Public Administration and Rural Development Kushdihra, District Gaya.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, General Administration Department, Government of Bihar, Patna.
2. The State Chief Information Commissioner, Patna, Information Building (Suchana Bhawan), Fourth Floor, Bailey Road, Patna, Bihar.
3. The Under Secretary, State Information Commission, Government of Bihar.
4. The Divisional Commissioner, Koshi Division, Saharsa.
5. The District Magistrate, Supaul.
6. The Sub Divisional Officer, Supaul.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Bindhyachal Singh, Sr. Adv. Mr. Manoj Kumar Singh
For the Respondent/s	:	Mr. Birju Prasad, G.P. (13) Mr. Ajit Anand, AC to GP 13
For the State Information Commission	:	Ms. Binita Singh

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

2 05-04-2024 Heard the parties.

2. By way of this writ petition, following prayer has
been made by the petitioner:-

A. For issuance of a writ in the nature of certiorari or any other writ/order for quashing the order passed by State Information Commission dated 15.2.2024 (herein after referred to as Commission only) under the signature of State Chief Commissioner (herein after referred to as Commissioner) in a case No. A9424/2018 (Sri Nikesh Kumar Jha alias Ragho ji Versus First Appellate Authority-cum-Additional Collector, Supaul/Public Information Officer-cum-Sub. Divisional Officer, Supaul) contain in memo No. A9424 dated 15.02.2024 where by a direction has



been issued to the District Magistrate, Supaul Officer, Supaul, Sub-Divisional Police Officer, Circle Officer, Magistrate incharge, Circle inspector, officer-in-charge and Anchal Amin, Supaul, who have allegedly not acted as per the direction/order of Commissioner Koshi Division Saharsa, and District Magistrate, Supaul and also submitted a false report before a Commissioner. The Commissioner Koshi Division Saharsa and District Magistrate, Supaul has been directed further to submit the compliance report before the commission within two weeks. The case is adjourned for further hearing on 30.08.2023 at 10:30 and the Public Information Officer-cum-Sub Divisional officer is directed to Commission. be physically present before the.

B. For issuance of a writ in the nature of mandamus or any other writ/order/ direction for restraining the Commissioner Koshi Division Saharsa and District Magistrate, Supaul from taking any in coercive action against the petitioner including the institution of FIR pursuant to the aforesaid impugned order bearing memo No. A9424 dated 15.02.2024 passed by the Commission.

C. For holding that the Commission has exercise the power which is not inherent in it which passing the aforesaid impugned order contained in memo No. A9424 dated 15.02.2024 and have exceeded and turbulent beyond the mandate and



preview of the Right to Information Act, 2005 (herein after referred as to Act only) and accordingly the impugned order is illegal and unsustainable.

3. It is the case of the petitioner that a letter had been issued by the Sub-Divisional Officer, Supaul vide letter No. 2557-2 dated 08.12.2017 to the Circle Officer (the petitioner), Supaul for compliance of the order passed by the Court of D.C.L.R., Supaul in Misc. Case No. 08 of 2013 and 83 of 2021 and the petitioner was also directed to file a compliance report of the same. It has further been stated by the petitioner that the Sub-Divisional Officer, Supaul again vide his letter dated 16.12.2014 enquired about his earlier letter and its compliance.

4. The Sub-Divisional Officer, Supaul constituted a team for removal of encroachment and the petitioner was deputed as Magistrate for the same. It is relevant to mention here that as per the direction issued by the Sub-Divisional Officer, Supaul the petitioner along with other Magistrates demarcated the land in question and after that gave the possession of the same to the complainant Ashok Kumar Jha.

5. One Nikash Kumar Jha, Son of Ashok Kumar Jha, asked for an information under Right to Information Act, 2005 from the office of Sub-Divisional officer, Supaul regarding



redressal of the grievances of his father and he also enquired as to what action has been taken by the Sub- Divisional Officer, Supaul in this regard. Thereafter, as per the information asked by the Nikash Kumar Jha, all information was received by the Nikash Kumar Jha by the office of Sub-Divisional Officer, Supaul on 10.04.2018.

6. Thereafter, complainant Nikash Kumar Jha filed first appeal before first Appellant Authority-cum-Additional Collector, Supaul for his grievances and after disposal of first Appeal by the first appellate authority the complainant Nikash Kumar Jha also filed an appeal before the State Chief Information Commissioner, Patna vide Case No. A-9424 of 2018.

7. Thereafter, the Commission gave some direction to the Public Information Officer vide Letter No. 2809 dated 06.10.2020 regarding the whole proceeding under the Right to Information Act, 2005 before such Public Information Officer and the Commission also gave direction for physical appearance of the P.I.O. The Commission gave further direction to the first Appellate Authority to provide all orders and asked reasons for delay in disposal of Appeal.

8. In reference of case No. A-9424/2018, the Sub-



Divisional Officer sent a letter to the Under Secretary of the Commission through letter No. 06 dated 08.01.2021 regarding Memo No. 11915 dated 14.12.2020 of the Commission that all information has been given to the appellant/complainant through post. The Sub Divisional Officer-cum-Public Information Officer also submitted that a civil suit is pending between the parties before the competent Civil Court, Supaul vide Title Suit No-128/2018 for the same relief.

9. The Sub Divisional Officer-cum-Public Information Officer sent a letter to the Deputy Secretary of the Commission through letter no-378-2 dated 8.3.21 with reference to the letter no-2809 dated 6.10.22 and 11915 dated 14.12.20 said that all information was given by his office to the appellant/complainant dated 10.4.2018 and also provided information to the appellant/complainant through letter no- 01 dated 4.1.21 and letter no- 24 dated 9.2.21 and therefore he requested the Commission to dispose of the matter on its facts.

10. The Commission passed an order dated 19.7.21 as per submission of the appellant/complainant and fixed the case no. A9424/18 for further hearing on 16.11.21 and sent a letter to Sub-Divisional Officer-cum-Public Information Officer, Supaul vide letter no-14189 dated 28.7.21.



11. The Sub Divisional Officer-cum-Public Information Officer sent a letter to the Under Secretary of the Commission dated 29.9.21 with reference to the letter no. 14189 dated 28.7.21, in which he gave detailed explanation regarding grievances of the appellant/complainant. After that on 10.2.23, the Commission heard the matter and passed an order in which the Commission has admitted that all grievances of appellant cannot be redressed under the Jurisdiction of the Right to Information Act, 2005 and he further directed for personal appearance of the petitioner and other officers who had been deputed as Magistrates with the relevant documents.

12. On 15/2/2024, the Commission passed an order in case no-A9424/2018 in which it was directed to the District Magistrate, Supaul to lodge an FIR against the petitioner and other officers which is beyond jurisdiction under the Act.

13. It has also been stated by the petitioner that there is no default on his part as he has acted as per the direction and the order of his superior officer and the Petitioner never ever hold a post of designated Public Information Officer therefore he is not responsible for violation of the Act in any manner.

14. It has been submitted by the learned counsel for the petitioner that the impugned order by which the FIR has



been directed to be registered against the petitioner is illegal and without jurisdiction as the penalty which can be levied by the State Information Commission at the time of deciding any complaint or appeal is of Rs. 250/- per day till the application is received or information furnished and such penalty cannot exceed by Rs. 25000/-.

15. Section 20 of the Right to Information Act does not provide any power to the State Information Commission to direct the authorities concerned for registering an FIR against the guilty officer.

16. Learned counsel for the State Information Commission Smt. Binita Singh has tried to support the impugned order by which the State Information Commission has directed for registration of FIR but she has not been able to show any provision in support of her argument.

17. I have heard and considered the submissions of the parties.

18. Chapter V of the Right to Information Act, 2005 deals with the powers and functions of the Information Commission, appeals and penalties. Section 20 of the Right to Information Act, 2005 deals with the penalties and the same reads as follows:-

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 appeals 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.

19. From the reading of the provisions of the Right to Information Act, 2005 and particularly Section 20 of the Act, it is clear that there is no power conferred upon the Chief Information Commissioner for directing the authorities to register an FIR for violation of any order passed by the Commission.

20. In view of the above discussions, it is clear that the impugned order is without jurisdiction and therefore, the same cannot be sustained.

21. Accordingly, this application is allowed and the order dated 15.2.2024 passed by the State Information Commission is hereby quashed.

(Sandeep Kumar, J)

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