
(2009) 12 OHC CK 0064

In the Orissa High Court

Case No : Writ Petition (C) No. 2784 and 3720 of 2008

Ajay Ku. Setha and Mahalapada Gram Panchayat	APPELLANT
Vs	
State Information Commission and Others	RESPONDENT

Date of Decision : 24-12-2009

Acts Referred:

Right to Information Act, 2005 — Section 19, 19(8), 20, 20(1), 26

Citation : (2010) 1 ILR (Ori) 139

Hon'ble Judges : I.M. Uddusi, Acting C.J.; B.P. Ray, J

Bench : Division Bench

Final Decision : Allowed

Judgement

I.M. Uddusi, A.C.J.

1. Since both the writ petitions have been filed against the order dated 3.1.2008 passed by the Orissa Information Commission, Bhubaneswar in Second Appeal No. 50 of 2004, they were taken up together and are being disposed of by this common judgment.

2. By order dated 3rd January, 2008 passed in Second Appeal No. 50 of 2007, the Orissa Information Commission imposed penalty of Rs. 25,000.00 each on Ajay Kumar Setha, ex PIO and Pravakar Nayak, PIO of Mahalpada Gram Panchayat for the delay in providing information within thirty days of the receipt of request as provided in Section 7(1) of the Right to Information Act, 2005 to one Rabiundranth Nayak. By the said order, the Commission attracting the provision of Section 19(8) of the Act directed the Public Authority, i.e. Mahalpada Gram Panchayat to pay compensation of Rs. 3000.00 to the application Rabiundranth Nayak within a period of 15 days from the date of the order. Being aggrieved by the aforesaid order, the ex PIO has filed W.P.(C) No. 2784 of 2008 whereas the Sarpanch, Mahalpada Gram Panchayat has filed W.P.(C) No. 3720 of 2008. No challenge to the said order has been made by the other PIO.

3. Case of the ex PIO Ajay Kumar Setha, is that while continuing as Village

Agricultural Worker (V.A.W.) at Junei under O.P.3, he was appointed as the Public Information Officer (in short "P.I.O.") of Gop Block as per the provisions of Right to Information Act, 2005 (in short the Act). On 29.5.2006 while he was functioning as the PIO of Gop Block, one Rabindra Nath Nayak (opposite party No. 5) made an application u/s 6(1) of the Act before the Gram Panchayat Extension Officer, Gop Block requesting for furnishing certain information and the said application was received by the Petitioner on 6.6.2006 being forwarded by the Gram panchayat Extension Officer. By order dated 6.7.2006 passed by the Deputy Director of Agriculture, Puri Range, he was transferred to Olans Farm where he joined on 11.7.2006 and in his place one Bhaskar Mohanty, VAW Erbang was kept in charge of Junei V.A.W. Circle until further orders. Contention of the Petitioner is that since he was transferred to Olans Farm which is at a distance of 15 K.M. from Gop Block just one month after the receipt of the application by him and he was not imparted with any training about the provisions of the Act, he could not furnish the information within the time he was transferred to Olans Farm. The case of the Mahalpada Gram Panchayat, the Petitioner in W.P.(C) No. 3720 of 2008, is that opposite party No. 3 Rabindranath Nayak made the application for supply of certain information before the Gram Panchayat Extension Officer on 29.5.2006. As the said information was not supplied within the time stipulated under the Act, opposite party No. 3 preferred an appeal before the Competent Authority as provided u/s 19 of the Act. On being unsuccessful in the appeal he moved the Commission in second appeal in which the Secretary of the Gram Panchayat was directed to appear before the Commission on 6.12.2007. Pursuant to the direction of the Commission, the Secretary appeared before the Commission on 6.12.2007 when he was directed by the Commission to refund Rs. 383.00 deposited by opposite party No. 3 on 17.10.2006 as requisite fees for supply of the information. Accordingly the Secretary refunded the amount to Rs. 383.00. The Commission finally heard the matter on 3.1.2008 and without affording any further opportunity of hearing and without giving any reason has directed the Gram Panchayat to pay Rs. 3000.00 to opposite party No. 3 as compensation.

4. Counter affidavit has been filed on behalf of the Commission in both the cases. It has been stated therein that there is no illegality in the impugned order. The fine was imposed after considering the facts and circumstances of the case. Though adequate opportunity of hearing was provided to the Petitioner Ajay Kumar Setha, he failed to file any show cause to establish that he acted reasonably and diligently and that there was sufficient cause for the delay in supplying the information. It has been further stated that the averments of the Petitioner that he had not undergone any training for implementation of the provision of the Act is not correct and it is not also the duty of State Commission. The training etc. are the responsibility of the Public Authority as well as the appropriate Government. It has been further stated there in that the Petitioner (PIO) has been provided reasonable opportunity of hearing before the Commission but he failed to establish existence of sufficient cause for delay. The

plea of the Petitioner that due to ignorance about the provisions of the Act there was delay was not considered by the Commission as a valid ground for the delay. Rejoinder has been filed by the Petitioner controverting the averments made in the counter affidavit.

In the counter affidavit filed on behalf of the Commission in W.P.(C) No. 3720 of 2008 it has been averred that the writ petition is not maintainable; that there is no legal basis for the Petitioner to challenge the impugned order and that the Petitioner having admitted that the information was not furnished within the stipulated time, the plea of ignorance is not a valid defence and that the Petitioner was liable to pay compensation for the delay in furnishing the information. The allegation of the Petitioner that the direction for payment of compensation was given without affording further opportunity of hearing has been denied in the counter affidavit.

5. Admittedly, the application u/s 6 was filed on 29.5.2006 but according to the Petitioner he received the same on 6.6.2006 being forwarded by the Gram Panchayat Officer. According to Section 7(1) of the Act the PIO is required to provide the information on payment of such fee as may be prescribed or reject the request for any of the reasons-specified in Sections 8 and 9 within thirty days from the date of receipt of request. No doubt in the writ petition the Petitioner has averred that he was relieved of the charge of PIO on 7.11.2006 and the new PIO joined on 11.7.2006. It is also admitted by the Petitioner that he issued letter dated 26.9.2006 to the applicant asking him to deposit the required fees which he did on 17.10.2006. The contention of the Petitioner is that after his transfer in absence of the knowledge of the provisions of the Act he could not initiate any action. The contention of the Petitioner that due to his transfer to Olans Farm and in absence of the knowledge of the provisions of the Act he could not initiate any action is not acceptable for the simple reason that after his transfer he issued letter to the applicant to deposit the fees. Therefore, even after transfer he was in seisin of the matter. Fact remains that he continued as the PIO till 7.11.2006 but the information could not be furnished by that date. Therefore, he is prima facie answerable for the delay till 7.11.2006. The plea of the ex PIO is that as no training as contemplated under Sub-section (d) of Section 26 was imparted to him, he being a mere village Agriculture Worker could not be able to understand the intricacies of the Act and after his transfer to Olans Farm, he could not take proper steps on the application is of no avail because ignorance of law is no excuse for any omission and commission. Being posted as the PIO the Petitioner was expected to know the provisions of the Act and, therefore, he cannot be permitted to take refuge under ignorance of law. It appears from the record that the matter was taken up by the Commission on 7.9.2007 when despite notice the Petitioner did not appear though the applicant the appellate authority and other PIO appeared. Again summon was issued to the Petitioner to appear on 6.12.2007 when the Petitioner appeared but could not satisfactorily explained the delay caused by him. Therefore, by order dated 6.12.2007 the Commission held the Petitioner prima facie responsible for 124

days of delays and the matter was posted to 3.1.2008 in order to afford another opportunity to the Petitioner to explain the delay as required u/s 20 of the RTI Act. Even then the Petitioner did not file any written show cause on 3.1.2008 when the impugned order was passed. The order dated 6.12.2007 by which the Commission held the Petitioner prima facie responsible for the delay of 124 days has not been filed nor challenged by the Petitioner. In view of this, the contention of the Petitioner that sufficient opportunity was not provided to him to show cause is not acceptable. The State Commission in the impugned order held that despite repeated opportunities the two PI Os failed to prove that they had acted in good faith, diligently and with a view to upholding the provision of the Act. They admitted the violation but only prayed to exonerate them by taking a lenient view. Accordingly in absence of any proof, the Commission rejected the oral submission of the PI Os to exonerate them and imposed the maximum penalty of Rs. 25,000/- as prescribed u/s 20(1) of the Act on each of them.

6. Section 20(1) of the Act is reproduced as under:

20(1) Where the Central Information Commission or the State 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 of 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 stipulated under Sub-section (1) of Section 7 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 reasonable and diligently shall be on the Central Public Information Officer or the State Public Information Officer, as the case may be.

7. The provision says that where the Central Information Commission or State Information Commission is of the opinion that the PIO refused to receive an application for information or has not furnished information within the time specified under Sub-section (1) of Section 7, 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. But the Commission has directed each of the PI Os to pay penalty of Rs. 25,000.00 each for the delay in furnishing information to Rabindranath Nayak, i.e. in total Rs. 50,000.00 whereas the Act postulates that

the total amount of penalty shall not exceed Rs. 25,000.00. Therefore, the matter needs reconsideration by the Commission.

8. W.P.(C) No. 3720 of 2008 has been filed by Mahalapada Gram Pdmchayat through its Sarpanch. In the impugned order dated 3.1.2008 passed by the State Commission, while allowing the prayer for Rabindra Nath Nayak (o.p.3) for compensation, directed the Public Authority (Mahalapada G.P.) through its Sarpanch to pay a sum of Rs. 3,000/ as compensation to opposite party No. 3 within fifteen days from the date of receipt of that order and accordingly Sarpanch of the Mahalapada Gram Panchayat, Gop Block, Puri district was informed. Against the order of compensation, the Mahalapada Gram Panchayat has filed this writ petition for quashing of the same. It appears from the order dated 7.9.2007 that as the relevant file/records were with the Secretary of Mahalapada Gram Panchayat as is the system in all Gram Panchayats in the State, the delay was attributable to him. Hence, the Secretary, Mahalapada Gram Panchayat was noticed by the Commission to appear on 6.12.2007. On that day the Secretary appeared and the Commission directed the Secretary of the Panchayat to refund Rs. 383.00 to the applicant as the information were supplied after expiry of the stipulated period of 30 days. By that time, no application was filed by the applicant for grant of any compensation. On 6.12.2007 the matter was adjourned to 3.1.2008. From paragraph 9 of the impugned order it appears that the applicant filed petition for compensation only on 28.12.2007 which was confronted to the Secretary on 3.1.2008. It is not known whether copy of the said petition was served on the Secretary. It is not the case of the PIO that as the file/records were held up by the Secretary, there was delay in furnishing the information. In such circumstances while holding that no sufficient opportunity was provided to the Public Authority to have his say we are of the opinion that the Commission was not right in directing the Public Authority, i.e., Mahalapada Gram Panchayat to pay a compensation of Rs. 3,000.00 to the applicant. Accordingly, we quash that part of the impugned order by which Mahalapada G.P. was directed to pay Rs. 3000.00 as compensation to the applicant.

9. In the result, W.P.(C) No. 3720 of 2008 is allowed and W.P.(C) No. 2784 of 2008 is disposed of and the matter is remanded to the State Information Commission to reconsider the quantum of penalty to be imposed on the Petitioner and the other PIO having regard to the provision quoted above.

There would be no order as to costs.