
(2016) 11 P&H CK 0073
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 23569 of 2013

Arun Kumar

APPELLANT

Vs

State Information Commission, Punjab

RESPONDENT

Date of Decision : 18-11-2016

Acts Referred:

Right To Information Act, 2005 — Section 19(8)(b), Section 19(8)(b), Section 20(1)

Citation : (2017) 2 SCT 540

Hon'ble Judges : G.S. Sandhawalia, J.

Bench : Single Bench

Advocate : Harbans Sharma, Advocate for Vishal Sharma, Advocate, for the Petitioner; Ms. Lavanya Paul, AAG, Punjab, for the Respondent

Final Decision : Dismissed

Judgement

G.S. Sandhawalia, J.—In the present petition filed under Article 226/227 of the Constitution of India, quashing of the order dated 29.08.2013 (Annexure P-16) has been sought, passed by the respondent No.1-Commission. The said order is sought to be modified by imposing of penalty of Rs. 25,000/- under Section 20(1) of the Right to Information Act, 2005 (for short "Act") and also for awarding compensation under Section 19(8)(b), in favour of the petitioner for delayed information and harassment suffered due to the inaction of the respondent No.2.

2. Counsel for the petitioner has concisely limited his argument to the extent that once a recommendation to issue a suitable written warning to the respondent No. 2 has been issued as to why delay had been caused without any reasonable cause in providing the information, the relief prayed for was automatically also warranted for. He, accordingly, placed reliance upon the Division Bench judgment of the Himachal Pradesh High Court in "Sanjay Hindwan v. State Information Commission and others" AIR 2013 (H.P.) 30. It has been further pointed out that the said view was followed in "Smt. Chander Kanta v. The State Information Commission and others" 2016 (3) RCR (Civil) 410 by this Court.

3. A perusal of the paper book would go on to show that on 18.03.2013 (Annexure P-1), the petitioner had sought certain information pertaining to the DPC proposals and proceedings held in the year 2006, 2009, 2010 and 2011. Apart from that final seniority list of Assistants/Superintendent Grade-II of the Department of Employment Generation and Training, Punjab and copy of the roster for the posts of Superintendent Grade-II and Employment Generation and Training Officers and confidential reports were sought. He was informed to deposit the amount of the expenses vide communication dated 10.04.2013 (Annexure P-3), which he sought to deposit vide cash. The same was not accepted and postal order was asked for, against which he protested on 11.04.2013 and deposited the same alongwith the said letter. On the filing of the complaint (Annexure P-6), due to the non-supply of information, the respondent-Commission vide order dated 07.05.2013 directed the District Employment Officer, who was present to supply another set of information as the plea was taken that part of the information had been supplied on 22.04.2013, which had been allegedly not received by the petitioner.

4. Keeping in view the non-refusal of the fees in cash, show cause notice was issued to the respondent No.2 as to why penalty under Section 20(1) of the Act be not imposed and the case was fixed for final hearing for 03.06.2013, with directions to respondent No.2-Malkiat Singh Joint Director-the then PIO to be personally present. The said respondent was present on the said date, which would be clear from Annexure R-7. On account of the absence of the petitioner for which he had informed the Commission, the proceedings were adjourned to 25.06.2013 while noting that the information has been sent to the complainant through the registered cover, which was received on 23.04.2013. It would be pertinent to notice that from the order, no such directions were issued that the respondent No.2-PIO was to be present on the next date. On the said date another opportunity was granted to respondent No.2 for presenting before the Commission the relevant records pertaining to the remainder information.

5. Resultantly, it was noticed on 17.07.2013 (Annexure P-13) that the directions of the Commission were not complied with by respondent No.2, who was designated as PIO during the relevant period. Vide order dated 17.07.2013 he has given opportunity for personal hearing before imposition of penalty and as to why suitable compensation should not be payable under Section 19(8)(b) of the Act for the loss and other detriments suffered on account of providing the information on Point No.1 on 08.07.2013. Non-appearance on the said date was also an issue in question for which show cause notice was issued.

6. On account of not having convinced the Commission on 01.08.2013, the impugned order was passed on 29.08.2013 (Annexure P-16) by specifically holding that no such satisfactory explanation for the delay caused had been submitted. The information had been supplied after a lapse of four months from the date of the RTI application and was willfully and deliberately withheld without any justifiable reason. Resultantly, it has been held that no reasonable cause has

also been shown for not attending the Commission proceedings on 17.07.2013 and the other person being designated as PIO was not sufficient explanation. Resultantly, the recommendation was made to issue suitable written warning to respondent-PIO that there was undue delay caused without any reasonable cause in providing the information. Accordingly, the Secretary of the Employment Generation and Training was asked to issue suitable written warning to respondent No.2 while disposing of the case.

7. In response filed by the respondent No.2 justification has been sought by taking the plea that the information on Point No.1 relating to DPC proposals was related to the PIO at the Government level and the Government had been requested vide letter dated 28.03.2013 as per Annexure R-1. Vide communication dated 12.04.2013, the Government had declined the information as the Government was not in a position to provide the DPC proceedings as the information belonged to third party. The petitioner could have appealed against the same before the First Appellate Authority, but he had approached the respondent-Commission. The information has already been supplied to him and copies were also supplied before the Commission. The detailed affidavit had been filed before the Commission. The DPC proceedings relating to the PIO were at the Government level had been supplied on 26.07.2013 at 5.00 PM and the information had been sent on 29.07.2013 by post to the complainant. The warning which had been conveyed to the respondent No.2 was not in accordance with the record, as the information has been supplied within the time as per the delivery receipts. It has been averred that the respondent was on sick leave and could not have appeared before the Commission. Another officer had been appointed on 09.07.2013, as the PIO and the said officer had been attending the proceedings on 17.07.2013. The hearing on 01.08.2013 had been attended by the said respondent. Reference was also made to the letter dated 08.07.2013 (Annexure R-12), whereby the PIO of the Government had declined to provide the DPC proceedings to the petitioner, on account of the fact that it would be third party information and that the DPC proceedings were being retained at the Government level.

8. In the rebuttal filed by way of affidavit by the petitioner the contents of the writ petition were reiterated by taking the plea that the petitioner was a candidate in DPC proceedings, as per the demand which was made on 18.03.2013 (Annexure P-1). It was duty of respondent No.2 to supply the information, but he harassed the petitioner and tried to shift the responsibility and had supplied the information on 30.07.2013 (Annexure P-15) after four months. The information had been wrongly denied on Point No.1 for which the petitioner was liable to be granted compensation as per the prayer made in the petition.

9. The same was also replied by submitting a counter affidavit by the respondent No.2 and reiterating the said stance. It was, accordingly, submitted that the information had been supplied on 29.07.2013 (Annexure R-16), once it has been

received vide Government communication dated 26.07.2013. Reference was also made to the letter dated 26.07.2013 (Annexure R-15) of the PIO of the Government where the name of the petitioner Arun Kumar was considered and the DPC proceedings and information was being supplied accordingly from which it would be clear that the Government was unable to provide the DPC proceedings for the year 2010 being third party information as per the order passed by the Central Information Commission on 18.07.2012.

10. From a perusal of the above pleadings and the documents which have been placed on record by the respondent No.2, this Court is of the opinion that the relief which is now sought by the petitioner would not be warranted in the facts and circumstances of the present case. Sufficient material has been placed on record by the respondent No.2, the then PIO to show that the information which has been asked by the petitioner pertaining to Point No.1 was being withheld not by respondent No.2, but was withheld by respondent-PIO of the Government. This fact would be clear from communication dated 27.06.2013 (Annexure R-11). Rather it would go on to show that Director Employment Generation Training was asking that the information should be supplied and that the proceedings were being conducted before the Commission which were required on 17.07.2013. From the communication dated 08.07.2013 (Annexure R-12) addressed by the Government, it would be clear that it was being denied on the ground that it was third party information.

11. Similarly, perusal of the letter dated 26.07.2013 would also go on to show that while responding to the queries of the Director, the SPIO of the Government was declining the information and only providing the limited information, which was accordingly supplied on 29.07.2013. In the facts and circumstances of the case, it has been reasonably demonstrated that respondent No.2 was not withholding the information without any reasonable cause as such, whereby penalty would be liable to be paid by him to the tune of Rs. 25,000/- under Section 20(1) which has now been claimed.

12. The claim for compensation under Section 19 (8) (b) is also not tenable on account of the fact that no such demand can be made in the absence of filing any such appeal under the provisions of Section 19 of the Act. Rather a perusal of Annexure P-6, which was the complaint filed by the petitioner, would also go on to show that though under Section 19 and 20 action was sought, the Commission had also treated it as a complaint case. The Apex Court in the case of "Chief Information Commissioner and another v. State of Manipur and another" 2011 (15) SCC 1 has held that the proceedings under Section 18 and 19 are two different proceedings. In the present case as noticed the grouse of the petitioner at that point of time was that he required the information which was not being supplied and he had filed a complaint. The relevant portion of the abovesaid judgment reads as under :-

"29. If we look at Section 18 of the Act it appears that the powers under Section 18 have been categorized under clauses (a) to (f) of Section 18(1). Under

clauses (a) to (f) of Section 18(1) of the Act the Central Information Commission or the State Information Commission, as the case may be, may receive and inquire into complaint of any person who has been refused access to any information requested under this Act [Section 18(1)(b)] or has been given incomplete, misleading or false information under the Act [Section 18(1)(e)] or has not been given a response to a request for information or access to information within time limits specified under the Act [Section 18(1)(c)]. We are not concerned with provision of Section 18(1)(a) or 18(1)(d) of the Act. Here we are concerned with the residuary provision under Section 18(1)(f) of the Act.

Under Section 18(3) of the Act the Central Information Commission or State Information Commission, as the case may be, while inquiring into any matter in this Section has the same powers as are vested in a civil court while trying a suit in respect of certain matters specified in Section 18(3)(a) to (f). Under Section 18(4) which is a non-obstante clause, the Central Information Commission or the State Information Commission, as the case may be, may examine any record to which the Act applies and which is under the control of the public authority and such records cannot be withheld from it on any ground.

30. It has been contended before us by the respondent that under Section 18 of the Act the Central Information Commission or the State Information Commission has no power to provide access to the information which has been requested for by any person but which has been denied to him. The only order which can be passed by the Central Information Commission or the State Information Commission, as the case may be, under Section 18 is an order of penalty provided under Section 20.

However, before such order is passed the Commissioner must be satisfied that the conduct of the Information Officer was not bona fide.

31. We uphold the said contention and do not find any error in the impugned judgment of the High court whereby it has been held that the Commissioner while entertaining a complaint under Section 18 of the said Act has no jurisdiction to pass an order providing for access to the information.

xx xx xx xx xx

35. The procedure for hearing the appeals have been framed in exercise of power under clauses (e) and (f) of sub-section (2) of Section 27 of the Act.

They are called the Central Information Commission (Appeal Procedure) Rules, 2005. The procedure of deciding the appeals is laid down in Rule 5 of the said Rules.

Therefore, the procedure contemplated under Section 18 and Section 19 of the said Act is substantially different. The nature of the power under Section 18 is supervisory in character whereas the procedure under Section 19 is an appellate procedure and a person who is aggrieved by refusal in receiving the information which he has sought for can only seek redress in the manner provided in the

statute, namely, by following the procedure under Section 19. This Court is, therefore, of the opinion that Section 7 read with Section 19 provides a complete statutory mechanism to a person who is aggrieved by refusal to receive information. Such person has to get the information by following the aforesaid statutory provisions. The contention of the appellant that information can be accessed through Section 18 is contrary to the express provision of Section 19 of the Act. It is well known when a procedure is laid down statutorily and there is no challenge to the said statutory procedure the Court should not, in the name of interpretation, lay down a procedure which is contrary to the express statutory provision. It is a time honoured principle as early as from the decision in *Taylor v. Taylor*, [(1876) 1 Ch. D. 426] that where statute provides for something to be done in a particular manner it can be done in that manner alone and all other modes of performance are necessarily forbidden.

This principle has been followed by the Judicial Committee of the Privy Council in *Nazir Ahmad v. Emperor* [AIR 1936 PC 233(1)] and also by this Court in *Deep Chand v. State of Rajasthan* - [AIR 1961 SC 1527, (para 9)] and also in *State of U.P. v. Singhara Singh* reported in AIR 1964 SC 358 (para 8).

36. This Court accepts the argument of the appellant that any other construction would render the provision of Section 19(8) of the Act totally redundant. It is one of the well known canons of interpretation that no statute should be interpreted in such a manner as to render a part of it redundant or surplusage.

37. We are of the view that Sections 18 and 19 of the Act serve two different purposes and lay down two different procedures and they provide two different remedies. One cannot be a substitute for the other."

13. The judgments which are relied upon by the counsel for the petitioner in the facts and circumstances of the case, therefore, would not be applicable, in view of the discussion made above, since the respondent No.2 was apparently the PIO of the department. The non-supply of information was from the Government, as the DPC proceedings were being withheld at that level. Therefore, on account of the non-supply of the same, they could not be supplied to the petitioner. Section 20 (1) specifically provides that the refusal to supply information has to be without any reasonable cause and the respondent No.2 has discharged the onus of proving that he had acted reasonably and diligently.

14. In the present case, this Court is of the opinion that sufficient material has been placed on record by respondent No.2 to justify the delay which led to the supply of the information and, therefore, it would not be a fit case to levy penalty under Section 20 (1) of the Act as prayed for, before this Court.

Accordingly, finding no merit in the present petition, the same is dismissed.