
(2015) 06 JH CK 0031
In the Jharkhand High Court
Case No : Writ Petition (S) No. 197 of 2011

Ludi Kumari

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 19-06-2015

Acts Referred:

Right to Information Act, 2005 — Section 12(4), 15(4), 20, 7

Citation : (2015) 06 JH CK 0031

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Aparesh Kumar Singh, J.

1. Heard learned counsel for the parties.
2. The petitioner was posted as District Superintendent of Education, Chatra and given additional charge of District Education Officer, who was nominated as Public Information Officer by the Principal Secretary, Human Resources Development Department, Government of Jharkhand vide Annexure-2. The private respondent herein sought certain information from the District Education Office cum Public Information Officer, Chatra which according to him not being supplied, he preferred first appeal before the Regional Deputy Director of Education, North Chotanagpur Division, Hazaribag. Despite direction passed in first appeal, when the information was not provided, he preferred second appeal before Jharkhand Information Commission, which was numbered as Appeal No. 1768 of 2010. In the said appeal, by the order dated 1.12.2010 (Annexure-8), petitioner has been imposed with a penalty of Rs. 25,000/- and a departmental proceeding has also been recommended against her, which has been impugned by the petitioner in the present writ application.
3. The petitioner has assailed the impugned order inter-alia on the grounds that the order was without jurisdiction as a single member of the Commission was not

authorized to hear and decide the appeal or impose such punishment against the provision of Section 12(4) or 15(4) of the Right to Information Act, 2005. Reference has also been made to the direction issued by the Director, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, Government of India dated 22.5.2009 addressed to all the Chief Secretaries of the State, Annexure-9. The aforesaid document is in the nature of advisory to the State Information Commission that the complaints and appeals should be taken up by the Commission and not by the Benches of the Commission. Petitioner has also assailed the order impugned on the ground that no proper notice was received by the petitioner because of bona fide confusion in the wake of the fact that private respondent had sought same information from two different officers including the petitioner and the orders preceding the impugned order i.e. dated 21.9.2010 and 22.10.2010 also have added to the confusion. A reliance has also been placed on the provision of section 20 of the R.T.I. act as per which before imposing any penalty, the Commission has to form an opinion that without any reasonable cause or in a malafide manner information sought for is not being provided to the complainant. This requirement, according to him has not been followed and in support thereof rules framed by the Government of Jharkhand, Department of Personnel, Administrative Reforms and Rajbhasa notified on 27.2.2008, known as Jharkhand Right to Information Commission (Procedure for deciding Appeals and Conditions of Service of Officers and Employees) Rules, 2008 has been relied, specifically Rule 6 and its sub rules.

4. Learned counsel for the petitioner has pointed out to the first order dated 21.9.2010 passed in appeal No. 1768 of 2010 which records that the Officer In-charge, Itkhori Police Station, Chatra has not responded to the request for information of the Appellant/private respondent herein. Consequentially the order recorded that the Officer In-charge, Itkhori Police Station should furnish a reply as to why penalty be not imposed upon him under the provisions of R.T.I act. He also refers to the order to indicate that copy of the order dated 21.9.2010 was in fact sent to the Officer In-charge, Itkhori Police Station treating him as Public Information Officer(P.I.O.) and fixing the next date on 22.10.2010. He has also referred to the communication made by the petitioner to the Block Education Extension Officer, Itkhori dated 7.9.2010 bearing letter No. 1293(Annexure-14) in which the Block Education Extension Officer, Itkhori was directed to appear before the Commission on the date fixed on 21.9.2010 to provide the required information and also report to the undersigned. Learned counsel for the petitioner has thereafter also referred to the order recorded in another appeal of the same appellant/private respondent herein being Appeal No. 1769 of 2010, order dated 22.10.2010 (Annexure-7) which was disposed of by the single member of the Commission after the Block Education Extension Officer, Itkhori had appeared and the appellant had not disputed the supply of information by the said Public Information Officer. He submits that despite all that on 1.12.2010, the single member of the Commission had summarily held

the petitioner responsible as the Public Information Officer for not supplying the information and also imposed penalty impugned herein, which is in teeth of law and without giving reasonable opportunity to her.

5. Learned counsel for the complainant/private respondent herein has referred to the order dated 22.10.2010 in the said appeal No. 1768 of 2010, which is also Annexure-13 to the supplementary affidavit of the petitioner to point out that information about the next date on 1.12.2010 was duly conveyed to the petitioner holding the post of Public Information Officer taking note of the fact that none had appeared on her behalf on the said date. The said order also indicates that the Commission has asked the petitioner to show cause as to why the information requested has not been provided and at the same time why penalty be not recommended against her. It is submitted that therefore there was no lack of notice to the petitioner when the matter was taken up on 1.12.2010 when the Commission imposed penalty upon the petitioner and recommended departmental proceeding for failure to respond to the Commission's notice on successive dates and also failing to supply the information sought for. Learned counsel for the private respondent, however is not in a position to say as to whether required information has thereafter been provided or not.

6. Having heard learned counsel for the parties and given due consideration to the relevant materials on record including the points of law raised by the parties, the issue in controversy herein is in relation to the decision of the single member of the Commission contained in order dated 2.12.2010 in appeal No. 1768 of 2010 whereunder a penalty of Rs. 25,000/- has been imposed upon the petitioner invoking section 20 of the R.T.I Act, while at the same time recommending departmental proceeding against her. Petitioner, on the one hand by referring to Annexure-5 and 6 has stated that informant sought for are being supplied but the order of punishment and penalty however is based upon the findings that the petitioner in the capacity of Public Information Officer did not supply the information even at the second appellate stage and even after 3 successive dates before the Commission.

7. In order to arrive at a considered decision, the proceeding of the commission presided by the single member in the instant appeal requires to be gone into. The first order dated 21.9.2010, Annexure-12 in the instant appeal, however on the face of it is misleading as the Officer In-charge, Itkhori Police Station has been treated to be the Public Information Officer, who failed to supply the requisite information to the complainant/private respondent herein who incidentally had preferred another appeal No. 1769 of 2010 before the Commission, which was also fixed on the same date. It appears that on the said date the respondent/opposite party i.e. Public Information Officer was not represented but then the Commission issued notices upon the Office In-charge, Itkhori Police Station asking him to show cause as to why he not be imposed penalty under the R.T.I act. Notices of such order was also sent to the said

Officer In-charge and not to the present petitioner who actually was the Public Information Officer holding additional charge of District Education Officer, Chatra at the relevant point of time. On the next date obviously there was no representation on behalf of the petitioner as there was no due notice to her of the date fixed in view of the previous order of the Commission dated 21.9.2010. It is strange to find that though the officer authorized by the petitioner i.e. Block Education Extension Officer, Itkhori duly appeared in appeal No. 1769 of 2010 as per annexure-7 to the writ petition and the said appeal was disposed of being satisfied with the supply of the information by the Commission but in the instant appeal, it has been recorded by the Commission that neither the complainant/appellant nor the Public Information Officer cum D.E.O. Chatra were present on 22.10.2010. The commission proceeded to pass an order in the nature of show cause upon the petitioner as to why penalty be not imposed upon her. This order of course has been sent to the petitioner as per communication at Annexure-13 dated 22.10.10. Thereafter on 2.12.2010, however there was no representation on behalf of the Public Information Officer i.e. the petitioner and it was recorded by the learned member that D.E.O., Chatra has failed to provide requisite information. After having come to such a conclusion, the Commission proceeded to impose penalty upon the petitioner on the same date by the same order. The Commission, however, did not give reasonable opportunity to the petitioner after forming such opinion to show cause as to why the relevant information was not provided on behalf of the P.I.O as is the requirement of Section 20 of the R.T.I Act as also rule 6(v) of the Rules of 2008 referred to hereinabove framed by the Government of Jharkhand laying down the procedure for deciding appeal. Section 20 of the Act of 2005 and Rule 6(v) are quoted hereunder:--

"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 informatively 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 providing that he acted reasonably and diligently shall be on the Central Public Information Officer and 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".

"6(v) If the Commission is of opinion that, a penalty as provided under the Act be imposed on a public authority, then before such imposition, a reasonable opportunity of being heard be given to such public authority and the Commission shall pass a reasoned order for imposing such penalty."

8. It is therefore apparent that decision to impose penalty under Section 20 the R.T.I Act was to be preceded by formation of an opinion by the Commission relating to deliberate intentional or malafide act of the Public Information Officer in failing to provide information. However on 01.12.2010 while rendering such finding that requisite information has not been provided by the Public Information Officer, before giving any reasonable opportunity to show cause against the proposed penalty, a fine of Rs. 25,000/- has been imposed by the commission apart from making recommendation for initiation of departmental proceeding against her. The order imposing penalty and recommending departmental proceeding against the petitioner being Public Information Officer entailed adverse consequences which should have been imposed after giving due reasonable opportunity as is also contemplated under the Act of 2005 and is a facet of principles of natural justice. The preceding facts leading to passing of the impugned order shows that proceeding in the instant appeal drawn by the Commission on the first date were also misleading as on 21.09.2010, the Commission considered the Officer In-charge, Ithkhori Police Station to be the Public Information Officer and communicated the next date to the said officer.

9. The impugned penalty therefore, appears to suffer from violation of principles of natural justice as also the provisions of Section 20 of the Act of 2005 and the relevant rules. Since the decision cannot be sustained on these grounds alone, the Court is not inclined to go into other legal issue raised by the petitioner. Accordingly, the impugned order dated 02.12.2010 is quashed. The writ petition is allowed in the manner indicated hereinabove.