

(2017) 04 AHC CK 0209
In the Allahabad High Court
Case No : 4986 of 2010

**Meerut Development Authority, Thru. Its Secretary & Ors. Vs U.P.
Information Commission, Thru. Its Registrar & Oth**

Date of Decision : 25-04-2017

Acts Referred:

Right to Information Act, 2005, Section 20, Section 18 -
Uttar Pradesh Urban Planning and Development Act, 1973, Section 27, Section 28,
Section 26

Citation : (2017) 04 AHC CK 0209

Hon'ble Judges : Devendra Kumar Arora, Ravindra Nath Mishra

Bench : Division Bench

Advocate : Ram Raj, Shikhar Anand

Judgement

1. On issuance of notice, Shri Shikhar Anand, Advocate has put in appearance on behalf of respondent no. 1 and 2.
2. An affidavit of service has also been filed by the petitioner with respect to service of notice upon respondent no. 3 which is taken on record.
3. Heard Sri Ram Raj, learned Counsel for the petitioners and Sri Shikhar Anand, learned Counsel for respondents no. 1 and 2.
4. In this petition, petitioner has assailed the order dated 31.03.2010 passed by State Information Commissioner, Uttar Pradesh Information Commission, Lucknow (opposite party no. 2) inter-alia on the ground that the said order has been passed in violation of the principles of natural justice and provisions of Section 18 and 20 of the Right to Information Act, 2005 (hereinafter to be referred as 'Information Act') as the Information Commissioner did not enquire at all into the complaint filed by the private respondent (opposite party no. 3) and proceeded to pass the impugned order in a most illegal and arbitrary manner, on the basis of conjectures and surmises.
5. Submission of learned Counsel for the petitioners is that residents of Guru

Nanak Nagar, Delhi Road, Meerut had lodged a complaint with Meerut Development Authority, Meerut (hereinafter to be referred as 'Development Authority') on 08.08.2008 in respect of illegal construction being carried out at 57, Guru Nanak Nagar, Delhi Road, Meerut by one Sri Sunil Jain. The officials of the Authority, on enquiry, found that the building was being constructed in deviation of the sanctioned building plan and builder had covered the front and side sets back of the building and hence directed for stopping the construction being made. Thereafter, proceedings under the provisions of Uttar Pradesh Urban Planning and Development Act, 1973 (hereinafter to be referred as 'Development Act') were initiated against the erring persons. In this context, an approval for proceedings against the builder under Sections 26, 27 and 28 of the Development Act was granted by the Development Authority on 29.09.2008 and thereafter, a show-cause notice dated 29.09.2008, under Sections 26-A and 27 of the Development Act was issued to the builders and case no. 45 of 2008 was registered.

6. It has been further contended by the learned counsel for the petitioners that notices under Section 28(1) of the Development Act were issued to stop the illegal development/construction to the builders. Since, builders continued with the illegal development/constructions, Development Authority (petitioner no. 1) lodged a complaint on 29.09.2008 with the concerned Police Station under Section 28 (2) of the Development Act, for removing the persons by whom the development was being undertaken and their assistants/workmen and with the help of police, the said construction was forcibly stopped and the premises in question was also sealed. In the meantime, builder had submitted an amended plan for sanction, after compounding of offence.

7. It has also been pointed out that on 24.11.2008, private respondent sought information from Public Information Officer, Meerut Development Authority, Meerut (petitioner no. 2) under the Right to Information Act, through Speed Post dated 25.11.2008, in respect of the construction of the building made by Smt. Anita Jain and Sri Sunil Jain, 57, Guru Nanak Nagar, Delhi Road, Meerut. Copies of documents, including the copy of building sanctioned plan, were also sought as per provisions contained in Uttar Pradesh Right to Information (Regulation of Fee and Cost) Rules, 2006.

8. On 12.01.2009, private respondent had preferred an appeal before the Appellate Authority of Development Authority (petitioner no. 1) in respect of obtaining the information through Registered Post, as information sought earlier vide application dated 24.11.2008 could not be furnished to the opposite party no. 3 as petitioner no. 1 had initiated proceedings against the builder under the provisions of Development Act.

9. It has been submitted by Sri Ram Raj, learned Counsel for the petitioner that Public Information Officer, Meerut Development Authority, Meerut (petitioner no. 2) vide letter dated 22.06.2009 had supplied information to the opposite party no. 3 and had also directed to pay requisite fee as per the fee rules. However,

the requisite fee was not paid by the opposite party no. 3 but even then Public Information Officer, Meerut Development Authority, Meerut (petitioner no. 2) on 09.07.2009 had furnished complete information alongwith desired documents including map to the authorized representative of the opposite party no. 3, namely, Sri Ram Nath.

10. Further, opposite party no. 1 had sent a notice dated 17.08.2009 to the petitioner no. 1 informing that the opposite party no. 3 had filed a complaint dated 06.06.2009 bearing no. S2/1029 (C)/09 under Section 18(1) of the Information Act on the ground of non-supply of the information sought by the opposite party no. 3 under the Information Act.

11. It is also submitted that since the petitioner had already supplied the entire copies of document to Sri Ram Nath, representative of opposite party no. 3 and the same was accepted by opposite party no. 3 without any protest, therefore, opposite party no. 3 did not pursue and press the complaint pending before opposite party no. 2. 11. It has been clarified that petitioner no. 2 on the date fixed apprised the Information Commissioner. However, despite the fact that there was no one to press the complaint on behalf of opposite party no. 3., the State Information Officer taking a view that information was supplied after a delay of 100 days, awarded penalty of Rs.25,000/- to be recovered from the salary of the petitioner no.2, which resulted in filing of the instant writ petition.

12. Learned Counsel for the petitioners has vehemently argued that firstly opposite party no. 3, after receipt of the information and documents on 9.07.2009, never raised his grievance regarding non supply of information. Secondly, the complainant did not pursue his complaint before opposite party no. 2, but opposite party no. 2 in utter disregard to the provisions of Section 18 and 20 of the Information Act passed the impugned order, thereby imposing penalty upon petitioner no. 2, as averred above.

13. Elaborating his submissions, learned Counsel for the petitioner has submitted that opposite party no. 3 was required to pay fee and cost as per Fee Rules but without payment of the same, all the information and documents were supplied to opposite party no. 3. It has also been clarified that when the information was sought by opposite party no. 3 on 08.08.2008 and till the information provided to him on 22.06.2009, petitioner no. 3 was not looking after the work of Public Information Officer of Meerut Development Authority, Meerut. As a matter of fact, he was nominated as Public Information Officer by the petitioner no. 1 on 22.01.2010 and if any opportunity was afforded, petitioner no. 3 would have explained the matter. Therefore, the impugned order has been passed not only in violation of Section 20 of the Information Act but also in breach of the principles of natural justice, and, therefore, the impugned order dated 31.03.2010 is liable to be quashed.

14. Sri Shekhar Anand, learned Counsel for opposite parties no. 1 and 2 has failed to explain with regard to compliance of the provisions of Section 20 of the

Information Act by the State Information Commissioner as he is under an obligation to act in consonance with the provisions of the said Act.

15. We have examined the submission of learned Counsel for the parties and gone through the record, especially the impugned order as well as relevant provisions of the Information Act.

16. At the outset, we would like to mention that Section 6(1) of the Information Act provides that any person who desires to obtain any information under this Act, shall make a request in writing or through electronic means in English or Hindi or in the official language of the area in which the application is being made, accompanying such fee as may be prescribed and as per Section 18(1) of the Information Act, on receipt of any complaint, the Central Information Commission and the State Information Commission, as the case may be, required to enquire into the matter and on finding in default in providing the information, he can proceed to impose penalty but before imposing penalty, he is required to provide reasonable opportunity of being heard. The Public Information Officer was required to prove that he acted reasonably and diligently.

17. Section 18 is the provision for making complaint and lays down the procedure for entertaining a complaint and making enquiry. Section 18 thus is a provision which is a consciously introduced section, so as to exercise complete control over the functioning of the Public Information Officers, at the time of receiving application, and at the time of giving information or during the appeal under the Act. Section 18 is a substantive provision regarding lodging and enquiring into a complaint, whereas Section 20 is the consequence of such an enquiry.

18. The whole purpose of making an enquiry on a complaint being given by the affected person, shall stand defeated, if the two provisions are read in isolation or they are given a meaning which does augment the object of the Act. From a harmonious construction of the aforesaid provisions keeping in mind the purpose for which they have been enacted, it can be safely concluded that the powers of the Commission under Section 18 are not restricted only to make enquiry and award punishment, but they also extend for issuing direction for receiving the application or for giving the necessary information under the provisions of the Act. Section 20(1) while empowering the Commission to impose penalty of Rs.250/- for each day till information is furnished subject to a maximum penalty not exceeding Rs.25000/-, also provides that the concerned officer should be given reasonable opportunity of being heard before any penalty is imposed on the said authority. The burden is also shifted on the concerned officer to prove that he had acted reasonably and diligently. Section 20(2) further empowers the Information Commission to decide that in case an information officer without any reasonable cause refused to receive an application or has not furnished information within the time provided or malafidely denied the request for information or knowingly given an incorrect, incomplete or misleading information or obstructed in furnishing the information, it can recommend for

disciplinary action against such officer under the service rules applicable to him.

19. From the perusal of the record as well as impugned order, it comes out that on the date fixed, on receipt of notice under Section 18(1) of the Information Act, the petitioner no.3 appeared before the State Information Commissioner but no one was present on behalf of opposite party no.3 to press the complaint. On the information being provided by petitioner no.3 to opposite party no.2, an inference was drawn that the information was provided to opposite party no.3 after delay of 100 days without appreciating the fact that opposite party no.3 did not deposit the fee/ cost of the document required to be supplied, but in abundant precaution the same was supplied to opposite party no.3 free of cost. The State Information Commissioner without giving any opportunity to petitioner no.3 to show that he has acted reasonably and diligently, passed the order of punishment which is legally unsustainable. Had the State Information Commissioner provided reasonable opportunity to petitioners no. 2/3, he would have brought the entire facts to the notice of State Information Commissioner and more particularly, the fact that he was not acting Public Information Officer at the relevant time.

20. On examining the issue in its entirety, we come to the conclusion that the State Information Commissioner has passed the order impugned in violation of provisions of Section 20(1) of the Information Act and, therefore, the same is not sustainable in the eye of law. Consequently, the writ petition is allowed and the impugned order dated 31.03.2010 passed by the State Information Commissioner is hereby quashed.

21. Costs easy.