
(2015) 05 UK CK 0004

In the Uttarakhand High Court

Case No : Writ Petition No. 412 (MS) of 2009

Nagar Nigam, Dehradun

APPELLANT

Vs

Chief Information Commissioner and Others

RESPONDENT

Date of Decision : 05-05-2015

Acts Referred:

Right to Information Act, 2005 — Section 19(8)(b), 20(2)

Citation : AIR 2015 Utt 118

Hon'ble Judges : Alok Singh, J

Bench : Single Bench

Advocate : B.D. Upadhayay, Senior Advocate assisted by Naveen Tiwari, for the Appellant

Final Decision : Allowed

Judgement

Alok Singh, J—Present petition is filed assailing the judgment and order dated 21.01.2009 passed by Chief Information Commissioner whereby Rs. 30,000/- were directed to be paid as damages to the respondent No. 2, herein and Rs. 20,000/- were directed to be paid as penalty for non furnishing of information on point No. 4 within time. Brief facts of the present case, inter alia, are that respondent No. 2 was granted permission vide order dated 17.12.2004 to install a kiosk on the roadside Patri in front of Government Hospital, Saharanpur Road, Dehradun; kiosk of the petitioner was removed by CPWD for the purpose of widening of road, thereafter, respondent No. 2 sought six information, which read as under:

"i. land measuring 6 ft. x 6 ft., which was allotted to the applicant/respondent No. 2, herein, vide order dated 17.12.2004 for installation of kiosk, was owned by which Department?

ii. As to whether, in the year 2004, Nagar Nigam was competent to allot the said land belonging to CPWD?

iii. As to whether State Government has passed any restrain order not to allot

the land of Patari on the roadside? As to whether Nagar Nigam had taken permission from the State Government to allot the land of Patari on the roadside, after 2004.

iv. File No. 1380/Bhoomi/Anu./04 pertaining to allotment in favour of the applicant/respondent No. 2 be produced for inspection and perusal of the applicant/respondent No. 2, herein.

v. As to how Nagar Nigam can provide re-employment to the applicant/respondent No. 2, herein, in view of removal of kiosk by CPWD causing damage of Rs. 80,000/- to the applicant/respondent No. 2 herein.

vi. As to how, State Government could help respondent No. 2 - a physically handicapped person, in gaining the re-employment."

2. Above information was sought by respondent No. 2 vide letter dated 20.06.2008; all the information sought except information No. 4 was provided by the Department vide letter dated 24.07.2008 and it was stated in reply that File No. 1380, pertaining to allotment of land in favour of respondent No. 2, was not available in the office, for which an FIR had already been lodged. Feeling aggrieved, for not supplying the information No. 4 regarding File No. 1380 pertaining to allotment in favour of respondent No. 2, respondent No. 2 preferred statutory appeal before first Appellate Authority saying file of allotment in favour of respondent No. 2 be made available for his perusal. Since file was not traceable, therefore, appeal was decided, as such.

3. Feeling aggrieved, respondent No. 2 filed second appeal before the Chief Information Commissioner, which was decided vide impugned order.

4. Feeling aggrieved, petitioner Department has approached this Court by way of filing present writ petition.

5. Undisputedly, respondent No. 2 sought six information; five information was supplied to respondent No. 2; information No. 4 i.e. file of allotment of land in favour of respondent No. 2, could not be produced for perusal of the applicant/respondent No. 2 because file was not traceable, for which FIR had already been lodged.

6. Chief Information Commissioner in the impugned order has held that lodging of an FIR for a missing file is no ground for non-supply of information or non-supplying of file for perusal of the applicant, therefore, applicant should be paid compensation as well as penalty should be paid by the guilty officer.

7. Undisputedly, kiosk of the respondent No. 2 was removed from roadside for the purpose of widening of road. Damages/compensation can be granted by Chief Information Commissioner under Section 19(8)(b) of the Right to Information Act, if by non-supplying of information/or delayed supply of information complainant has suffered any loss.

8. Admittedly, respondent No. 2, herein, has not suffered any loss due to non-

supply of information as allotment file went missing. He has, in fact, suffered loss due to removal of kiosk because land of patari of roadside was required by CPWD for widening of road, therefore, award of compensation of compensation seems to be totally unjustified.

9. Penalty can be imposed under Section 20(2) of the Act, only when information was supplied with undue delay without there being any sufficient reason or information was declined to be supplied without any sufficient reason. However, in the present case, file was not made available for inspection by respondent No. 2, as the same was missing.

10. In view of the fact that file went missing in the Department and for lose of file, FIR had already been lodged, therefore, non-furnishing of file for perusal of respondent No. 2 seems to be justified and consequently, penalty ought not to have been imposed. Consequently, writ petition is allowed. Impugned order passed by the Chief Information Commissioner is hereby quashed. No order as to costs.