(2009) 07 OHC CK 0031

In the Orissa High Court

Public Information Officer and Another APPELLANT

Vs

Orissa Information Commission and Another RESPONDENT

Date of Decision : 22-07-2009

Acts Referred:
Right to Information Act, 2005 — Section 7(1)

Citation : AIR 2010 Ori 74 : (2010) 109 CLT 105 : (2009) 2 ILR (Ori) 289 : (2009) 2 OLR 1002 Supp

Hon'ble Judges : I.M. Quddusi, Acting C.J.;S.R. Singharavelu, J

Bench : Division Bench

Final Decision : Allowed

Judgement

I.M. Quddusi, A.C.J.

1. This Writ Petition has been filed against the impugned Order Dated 10th of January, 2008 passed by the Orissa Information Commission, Bhubaneswar in Complaint Case No. 138 of 2006. By the said order, the State Information Commission imposed penalty of Rs. 19,250 on the Petitioner as Public Information Officer, who was Senior Assistant in the Office of the Commission of Commercial Tax, Orissa, Cuttack & directed that the amount will be deposited by Treasury challan under appropriate Head of Account of the State Budget within a period of 30 days failing which the amount shall be recovered from her salary in 10 (ten) equal consecutive monthly instalments commencing from the salary of February, 2008 payable in March, 2008 by the Public Authority & in case the Public Authority for adequate reasons is not able to recover the penalty amount from the Petitioner, the same can be realized from her as arrears of land revenue.

2. The facts of the case are that Opposite Party No. 2 had filed an application on 5.5.2006 before the Public Information Officer of the office of the Additional Commercial Tax Officer, Assessment Unit, Kesinga for the Oriya version of the rate of VAT on different commodities prevailing in Orissa who forwarded the same on the same day to the office of the Commissioner of Commercial Taxes, Cuttack. Section 7(1) of the Right to Information Act, 2005 provides that subject

to the proviso to Sub-section (2) of Section 5 or the proviso to Sub-section (3) of Section 6, the Central Public Information Officer or State Public Information Officer, as the case may be, on receipt of a request u/s 6 shall, as expeditiously as possible, & in any case within thirty days of the receipt of the request, either 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 & 9. As the information was not furnished within the time stipulated under the Act, Opposite Party No. 2 made a complaint to the Chief Information Commissioner on 6.7.2006 which was registered as Complaint Case No. 130 of 2006 & notice was issued to Petitioner No. 1 on 24.8.2006 to show cause by 4.10.2006. On 7.9.2006, the Additional Commissioner of Commercial Taxes (Admn.), office of the Commissioner of Commercial Taxes, Orissa, Cuttack intimated Opposite Party No. 2 that since the information regarding the rate of VAT on different commodities in Oriya version was not available in the department, the information could not be supplied being not available. Pursuant to the notice dated 24.8.2006 issued in Complaint Case No. 138 of 2006, the Assistant Commissioner of Commercial Taxes (Administration) showed cause stating that since the information sought for by Opposite Party No. 2 was not in existence, there was no occasion to supply the same. He however indicated that since information relating to rate of VAT on different commodities in Oriya had not been prepared/available, it was their duty to simply intimate the applicant about the fact of non-availability of the information bought for by him within the stipulated time. On 7.3.2007, the matter was taken up. The complainant did not appear but sent a better to the State Commission to permit him to withdraw the complaint. Even then, without permitting withdrawal of the complaint, the Commission came to hold that Petitioner No. 2 who was the dealing assistant & one Trilochan Pradhan who was the Section Officer were prima facie responsible for the delay. So holding the Commission directed issuance of notice only to Petitioner No. 2 to show cause as to why penalty as per provision of Section 29(1) of the Right to Information Act, 2005 should not be attracted. Pursuant to the notice dated 12.3.2007 issued to Petitioner No. 2, she showed cause stating that though the letter was available to her on 22.5.2006 but the single file in which such applications were dealt with was made available to her on 17.7.2006. Hence, there was delay. Penalty has been imposed due to the alleged reason that the Petitioner had retained the file from 22.5.2006 to 26.8.2006 & was found responsible for delay of 77 days. The complainant had sought for the Oriya version of the rate of VAT on different commodities prevailing in Orissa & if Oriya version of the VAT rate chart was not in existence with the Public Authority, a simple reply within the time line would have sufficed. But in the instant case, a negative answer was given by the referred PIO after a delay of 77 days which cannot be lost sight of or condoned.

3. Here at his stage we are not inclined to see the merits of the case in view of the provisions of the Right to Information Act & the Rules made thereunder, as it is not in dispute that the complainant did not want to proceed with the complaint & had already sought for withdrawal of his complaint. He also did not appear in

the case. Even then the Orissa Information Commission kept the complaint pending & decided the same punishing the PIO.

4. Section 20(1) of the Right to Information Act provides that 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 information which was the subject of the request or obstructed in any manner in furnishing the information, it shall impose a penalty of Rs. 250 each day till application is received or information is furnished, so however, the total amount of such penalty shall not exceed Rs. 25000.

5. Therefore, this power is to be exercised only at the time of deciding any complaint or appeal. But in this case since the complainant did not choose to appear & sought for withdrawal of the complaint, the complaint could not have been proceeded with. In view of the above, proceeding with the complaint in the absence of the complainant when he is not interested to proceed with the same is not warranted under the law &, therefore, the Chief Information Commission has committed manifest error of law in proceeding with the complaint after condoning the absence when he had already sought for withdrawal.

In view of the above, the Writ Petition is allowed & the impugned Order Dated 10.1.2008 passed by Orissa Information Commission in Complaint Case No. 138 of 2006 is quashed.

S.R. Singharavelu, J.

I agree.