
(2014) 11 P&H CK 0108

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 5175 of 2013 (O&M)

State of Punjab and Others

APPELLANT

Vs

State Information Commission, Punjab and Others

RESPONDENT

Date of Decision : 10-11-2014

Acts Referred:

Right to Information Act, 2005 — Section 20

Citation : (2015) 2 RCR(Civil) 410

Hon'ble Judges : Rameshwar Singh Malik, J

Bench : Single Bench

Advocate : Kamal Sehgal, Additional A.G, Advocates for the Appellant

Judgement

Rameshwar Singh Malik, J.—Present writ petition is directed against the order dated 29.1.2013 (Annexure P-1) passed by the State Information Commission, Punjab-respondent No. 1, whereby penalty of Rs. 25,000/- was imposed on the Public Information Officer-cum-Inspector General of Police (Crime) Punjab and compensation of Rs. 10,000/- was also directed to be paid to respondent No. 2 by the Public Authority, for alleged delay in supplying the information. Notice of motion was issued and pursuant thereto, written statement was filed on behalf of respondent No. 2.

2. Learned counsel for the petitioner-State submits that complainant-respondent No. 2, vide his original application dated 30.3.2012 (Annexure P-3) moved under the Right to Information Act, 2005, ("the Act" for short), never demanded any photographs much less original thereof. He further submits that information sought by the complainant-respondent No. 2 was duly supplied to him. However, he did not accept the copy of FSL report but put the demand of original photographs. On the other hand, defence taken by the petitioners was that respondent No. 2 never demanded photographs and in fact, he wanted to get original photographs without paying fee for it. He would next contend that although respondent No. 2 was not entitled to get the original photographs, yet in an endeavour to put the controversy at rest, even the original photographs

were supplied to him alongwith FSL report. He submits that respondent No. 1 failed to record any reason, whatsoever, while passing the impugned order and imposition of penalty was wholly unwarranted on the face of it. He concluded by submitting that even if it is assumed that the respondent-Commission was acting as an administrative authority, yet it was under legal obligation to record sufficient reasons. Since respondent No. 1 has failed to record any reasons before passing the impugned order, the same was not sustainable in law. In support of his contentions, learned counsel for petitioners relies on a judgment of Hon"ble Supreme Court in Manohar Anchule Vs. State of Maharashtra and Another, and a judgment of this Court in Satpal Singh v. SIC Haryana and others, 2012 (5) R.C.R. (Civil) 563 : 2012 ILR Punjab and Haryana 500. Finally, he prays for setting aside the impugned order, by allowing the present writ petition.

3-4. Per contra learned counsel for respondent No. 2 submits that since provisions of Section 20 of the RTI Act were clear in this regard, no further reasons were required to be recorded by the respondent-Commission. He further submits that since the petitioners caused intentional delay in supplying the information to respondent No. 2, respondent-Commission rightly imposed penalty vide impugned order and the same deserves to be upheld. He relies upon on a judgment of the Hon"ble Supreme Court in Union of India v. Namit Sharma passed in writ petition (C) No. 210 of 2012 and particularly para 20 and 21 thereof, to contend that since the Information Commission was performing an administrative function, it was not bound to record detailed reasons. He would next contend that petitioners supplied information, but at a belated stage and that too only before respondent-Information Commission because of which respondent-Commission has rightly invoked its jurisdiction under Section 20 of the RTI Act, while passing the impugned order. He prays for dismissal of the writ petition.

5. Having heard the learned counsel for the parties at considerable length, after careful perusal of record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that in the given fact situation of the present case, instant writ petition deserves to be allowed. To say so, reasons are more than one, which are being recorded hereinafter.

6. It is a matter of record and not in dispute that as per his original application filed under RTI Act vide Annexure P-3, respondent No. 2 did not demand the FSL report alongwith photographs. Once respondent No. 2 was not demanding copy of FSL report along with photographs, there was no scope of demanding original photographs. However, while submitting their reply before the respondent Commission vide Annexure P-17 pursuant to the show cause notice Annexure P-16, petitioners took the following averments in para 13 of the reply:-

"In reference to dated 30.5.2012 that reference was not received in this office, vide dated 19.7.2012 report of FSL of damaged car PCP-17 has been demanded and alongwith it another application dated 1.8.2012 vide which 8 photographs alongwith FSL report was demanded, the hearing of the same was fixed on

9.8.2012 in the court of Worthy Commissioner Sh. Ravinder Singh Nagi. As per this office letter No. 15491/CR/INV-3 dated 8.8.2012 attested photocopies alongwith photographs was issued to the aforesaid applicant Gurbakhsh Singh. But the aforesaid applicant on 9.8.2012 instead of receiving above letter on the office copy of above letter with his own hands has written that, as requested before the Commission original photographs are requested those photographs will not serve the purpose. Those photographs may be supplied, the copy of the same is attached herewith. Regarding the same, at the time of hearing in the above Commission, the copy of the above letter was submitted in the office of above Commissioner. Earlier to it, regarding the information demanded by the aforesaid applicant, report of FSL was demanded, in the same only the copy was demanded, but in the same for supplying 8 original photographs or requirement of copies was not mentioned, which the applicant wants to take without giving any fees to this office. But the aforesaid applicant had not deposited any fees in this office for taking original photographs."

7. A bare reading of the abovesaid categoric averments taken by the petitioners would show that respondent No. 2 was also at fault to some extent. Instead of pressing his original application for getting original photographs beyond the scope of the Act, he ought to have moved another application paying requisite fee for the said additional information which was not demanded in the original application. However, respondent No. 2 insisted for supply of FSL report alongwith photographs in original without paying any additional fee. Had the respondent-Commission adverted to these specific and categoric averments taken by the petitioners in their reply to the show cause notice, the Commission might have come to a different conclusion. However, since the abovesaid averments taken by the petitioners have not at all been considered, the impugned order cannot be said to be a well reasoned order and the same cannot be sustained for this reason also.

8. Even if it is to be accepted that respondent-Commission was performing an administrative function, still it can be safely concluded that respondent-Commission was under legal obligation to record reasons in support of its impugned order. It is always obligatory on the part of the administrative authorities to record reasons in support of their orders, because by now hardly any distinction is left for recording reasons by the quasi judicial authorities and administrative authorities. That is why, reasons are called the soul of an order.

9. There are twin objectives for recording the reasons. Firstly, a person who files an appeal, is entitled to know as to what were the reasons which weighed with the administrative authorities, to decline the relief claimed by him. Secondly, whenever the said administrative order is put for judicial scrutiny, the court is also in a position to know as to what were the reasons because of which the authorities were convinced for passing the impugned order, so that the issue involved gets due appreciation by the court. However, in the present case, respondent-Commission has failed to record any sufficient reasons while passing

the impugned order. Having said that, this Court feels no hesitation to conclude that impugned order cannot be sustained, for this reason as well.

10. The abovesaid view taken by this Court also finds support from the judgments in Ram Phal Vs. The State of Haryana and Others, , Manohar Manikrao's case (supra) and Satpal Singh's case (supra). The relevant observations made by the Hon''ble Supreme Court in para 6 of the judgment in Ram Phal's case (supra), which can be gainfully followed in the present case, read as'' under:-

"The duty to give reasons for coming to a decision is of decisive importance which cannot be lawfully disregarded. The giving of the satisfactory reasons is required by the ordinary man''s sense of justice and also a healthy discipline for all those who exercise power over others. This Court in Raj Kishore Jha v. State of Bihar has stated:

19....Reason is the heartbeat of every conclusion. Without the same, it becomes lifeless."

11. Again, while dealing with the question of distinction between the administrative orders and quasi-judicial orders as well as the requirement of adherence to natural justice for recording reasons, the Hon''ble Supreme Court has laid, down the broad guidelines in this regard, in the case of Kranti Associates Pvt. Ltd. and Another Vs. Sh. Masood Ahmed Khan and Others, .

The relevant observations made in para 47 of the judgment, which aptly apply in the present case, read as under:-

"47. Summarizing the above discussion, this Court holds:

- (a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone pre-judicially.
- (b) A quasi-judicial authority must record reasons in support of its conclusions.
- (c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done if must also appear to be done as well.
- (d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.
- (e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.
- (f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.
- (g) Reasons facilitate the process of judicial review by superior courts.
- (h) The ongoing judicial trend in all countries committed to rule of law and

constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a Judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of inceremonialism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or "rubber-stamp reasons" is not to be equated with a valid decision making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor).

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See Ruiz Torija v. Spain EHRR, at 562 para 29 and Anya v. University of Oxford, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "due process".

12. Reverting back to the facts of the case in hand and respectfully following the law laid down by the Hon'ble Supreme Court in the cases referred to hereinabove, it is unhesitatingly held that despite availability of Section 20 and also other similar provisions of the RTI Act on the statute book, the authorities under the Act, while performing their administrative functions, are certainly under legal obligation to pass speaking orders and recording sufficient reasons in support of their orders, so that twin objectives noticed above are achieved. Any cryptic and non-speaking order without recording cogent reasons would be deemed contrary to the true spirit of the RTI Act as well as the philosophy of our Constitution.

13. No other argument was raised.

14. Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the impugned orders have been found to be patently illegal, the same cannot be sustained and are hereby set aside. Consequently, the matter is remitted back to the State Information Commission, Punjab-respondent No. 1 with a direction to pass a fresh order, in accordance with law, after granting due opportunity of being heard to both the parties, but in any case within six months from today.

Resultantly, with the abovesaid observations made and directions issued, instant writ petition stands allowed, however, with no order as to costs.