

202 (PROCEEDINGS THROUGH V.C.)

RA-CW-194-2020

CM-9430-CWP-2020

with CM-13140-CWP-2020

CM-9431-CWP-2020

with CM-42-CWP-2021

in CWP-6874-2018

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**ASHISH V/S STATE INFORMATION COMMISSIONER HARYANA
AND OTHERS**

Present Mr. Sunil Kumar Nehra, Advocate,
for the petitioner (applicant in CM-13140-2020 & CM-42-
CWP-2021)

Ms. Shubhra Singh, Addl. A.G. Haryana,
for the State.

Mr. Vikas Chatrath, Advocate,
for the review applicant/respondents No. 2 and 3 (applicant in
CM-9430 & 9431 of 2020)

CM-9430-CWP-2020

C.M. is allowed subject to just exceptions. Filing of certified
copy of annexure is dispensed with and true copy of the same is accepted.

CM-13140-CWP-2020

Prayer in this application is for impleading Head Constable
Rajinder No. 1659 as respondent No. 4 in the main writ petition.

The reason for impleading him as a party is that the CCTV
Footage of the incident dated 20.11.2015 has been provided to him who was
the Investigating Officer of the assault committed upon the petitioner in the
Court of the District and Sessions Judge, Faridabad.

Keeping in view the scope of the provisions of the Right to
Information Act, the prayer made by the applicant-petitioner cannot be
accepted and, therefore, the same is dismissed.

CM-42-CWP-2021

C.M. is allowed subject to just exceptions. Filing of certified

copy of Annexures P-4 and P-5 is dispensed with and affidavit dated 04.01.2021 of the petitioner along with true typed/photo copies of documents Annexures P-4 and P-5 are taken on record.

RA-CW-194-2020

This review application has been filed on behalf of respondents No. 2 and 3 for review of the order dated 22.05.2019 whereby the writ petition was allowed and a direction was issued to the applicant-respondents No. 2 and 3 to supply the information, as sought by the petitioner on Point No. 1 in his application dated 26.12.2015 (Annexure A-5), which was the CCTV Footage of the incident dated 20.11.2015, within a period of 30 days from the date of receipt of certified copy of the order.

The primary plea, which was taken by the applicant-respondents No. 2 and 3, is based upon a fact that the CCTV Footage is kept intact for a period of 20 days and after completion of the said period, there is an automatic erasing provision from the DVR storage. The said information, therefore, being not available with the respondents even at the time when the interim order was passed by this Court on 19.03.2018, the order passed by this Court would be impossible to comply with. It is on this basis that the review and recall of the order passed by this Court has been sought.

Counsel for the non-applicant/petitioner states that the present application cannot be accepted in the light of the fact that this was never the stand of the applicant-respondents No. 2 and 3. All through the stand, which has been taken by the applicant-respondents No. 2 and 3, is only limited to the extent for exemption from disclosure, as provided for under Section 8 (1) (g) under the Right to Information Act, 2005.

If that would have been the factual position, the stand should have been taken at a very first instance when the application has been preferred by the petitioner for supplying information under the Right to Information Act on 26.12.2015. The said position now, therefore, be not accepted and it would not be a ground for review of the order.

At this stage, learned counsel for the applicant-respondents No. 2 and 3 submits that in principle, the applicant-respondents No. 2 and 3 have accepted the fact that the order, as passed by this Court, is in accordance with law and, therefore, needs to be complied with but because of the non-availability of the information and that too, on the basis of the automatic erasing of the DVR Storage of the CCTV Footage, the order cannot be given effect to practically because of the fact that the CCTV Footage cannot be retrieved. The information, thus, cannot be supplied to the petitioner. He, therefore, contends that the order, as passed by this Court, in principle is acceptable to the applicant-respondents No. 2 and 3 but because of the non-practicality for complying with the same, the present application has been filed.

Having considered the submissions made by the learned counsel for the parties and keeping in view the limited scope of the review, the prayer of the applicant-respondents No. 2 and 3 for recall of the order cannot be accepted. However, it is clarified that in case the said information is not available with the respondents and there is an automatic provision of the erasing of the CCTV Footage leading to no-retrieval thereof, the factum of non-compliance of the order passed by this Court would in itself not render the applicant-respondents No. 2 and 3 liable for proceedings under the Contempt of Court Act as it is a settled proposition of law that an

order, which cannot be complied with, practically would not amount to contempt.

It may, however, be pointed out that in case the information is available with the Police Department and the petitioner approaches the said department under the RTI Act, the said information, if available, be provided to the petitioner, if permissible, and subject to the provisions of the Right to Information Act.

The review application, therefore, stands disposed of with above observations.

CM-9431-CWP-2020

In view of the disposal of the review application, the present application has been rendered infructuous and the same is disposed of as such.

January 06, 2021
pj

(AUGUSTINE GEORGE MASIH)
JUDGE