

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(C) No. 5519 of 2013

1. The State of Jharkhand through the Principal Secretary, Health and Family Welfare, Government of Jharkhand, At Nepal House, P.O. & P.S. Doranda, District-Ranchi.
2. The Deputy Secretary, Health and Family Welfare, Government of Jharkhand, At Nepal House, P.O. & P.S.-Doranda, District-Ranchi.

... .. Petitioners

Versus

1. The Information Commissioner, State Information Commission, Engineers Hostel No.2, H.E.C. Premises, Durwa, P.O. & P.S. Dhurwa, District-Ranchi.
2. Awdhesh Kumar Singh,
3. Ugeshwar Ram,

..... Respondents

CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD

For the Petitioners : Mr. Dhiraj Kumar, Advocate
For the Respondents : Mr. Sanjoy Piprawal, Advocate
Mr. Samavesh Bhanj Deo, Advocate

12/Dated 03rd February, 2022

1. The matter has been heard through video conferencing. There is no complaint about audio and visual quality.
2. The instant writ petition is under Article 226 of the Constitution of India preferred by the State of Jharkhand, through the Principal Secretary, Health and Family Welfare, Government of Jharkhand assailing the order dated 13.04.2010 passed by the State Information

Commissioner, Jharkhand in Appeal Case No.620 of 2009 whereby and whereunder, in exercise of power conferred under Section 19(8) of the Right to Information Act, 2005, a penalty of Rs.60,000/- has been imposed as compensation to be paid in favour of the complainant on the concerned department of the State Government for not providing the information in time.

Save and except this legal point no other factual aspect has been raised while assailing the impugned order.

The ground has been taken that under the provision of Right to Information Act, the order of penalty can only be passed upon the Public Information Officer who can only be treated to be erring official in not supplying the information in view of the request made by the complainant under Section 6 & 7 of the Right to Information Act, 2005.

3. Mr. Sanjoy Piprawal, learned counsel for the State Information Commission has submitted that there is no error in awarding the penalty upon the concerned department of the State Government in exercise of power conferred under Section 19(8)(b) of the Act, 2005. According to him, the reference of Public Authority has been made under Section 19(8)(b) of the Act, 2005 wherein the compensation is to be imposed upon the Public Authority.

According to him, the “Public Authority” has been defined which means any authority or body or institution of self-government established or constituted by or under the Constitution; by any other law made by Parliament; by any other law made by

State Legislature; by notification issued or order made by the appropriate Government, and includes any body owned, controlled or substantially financed, non-Government organization substantially financed, directly or indirectly by funds provided by the appropriate Government. It cannot be disputed that the Health Department of the State Government is not a creation by the State of Jharkhand and since the State of Jharkhand is coming under the control of State Government in view of the definition of Public Authority, Health Department of the State will be treated to be a Public Authority and hence, the penalty has been imposed.

4. We have considered the rival submission made on behalf of the parties as also gone across the impugned order. It would be evident from the impugned order dated 13.04.2010 that an application was filed for seeking information to the Public Information Officer. The matter went up to the second appellate stage, i.e., before the State Information Commission and since the information was furnished by the Public Information Officer is not found to be satisfactory by the State Commission, therefore, order has been passed under Section 20(1) and (2) of the Act, 2005 directing the Public Information Officer to pay the penalty to the tune of Rs.60,000/- in exercise of power conferred under Section 20(1) and (2) of the Act, 2005 as also directed the concerned department of the State of Jharkhand to compensate the complainant by resorting to the provision of Section 19(8)(b) of the Act, 2005.
5. This Court, in order to answer the legal issue as has been raised herein, deems it fit and proper to first deal with the object and scope

of the Right to Information Act, 2005 which has been enacted to provide for setting up the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto.

6. The reference of “Information” as also the “Public Authority” is required to be referred herein since these definitions are necessary for answering the issues which have been agitated by the petitioner. The information has been defined under the provisions of Section 2(f) of the Act, 2005 which reads hereunder as :-

“2.

(f) "information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force;”

The “Public Authority” has been defined under Section 2(h) which reads hereunder as :-

“2.

(h) "public authority" means any authority or body or institution of self-government established or constituted—

(a) by or under the Constitution;

(b) by any other law made by Parliament;

(c) by any other law made by State Legislature;

(d) by notification issued or order made by the appropriate Government,

and includes any—

(i) body owned, controlled or substantially financed;

(ii) non-Government organisation substantially financed, directly or indirectly by funds provided by the appropriate Government;”

The “Public Information Officer” has been defined under Section 2(m) which reads hereunder as :-

“2.

(m) "State Public Information Officer" means the State Public Information Officer designated under sub-section (1) and includes a State Assistant Public Information Officer designated as such under sub-section (2) of section 5;”

7. It is evident from the aforesaid definitions that the “information” means any material in any form, including records, documents etc. in any form and relating to any private body which can be accessed by a public authority under any other law for the time being in force.

The “Public Authority” has been defined which means any authority or body or institution of self-government established or constituted (a) by or under the Constitution; (b) by any other law made by Parliament; (c) by any other law made by State Legislature; (d) by notification issued or order made by the appropriate Government, and includes any - body owned, controlled or substantially financed, non-Government organization substantially financed, directly or indirectly by funds provided by the appropriate Government.

The “State Public Information” has been defined to be a designated officer under sub-section (1) and includes a State Assistant Public Information Officer designated as such under sub-section (2) of section 5.

Section 4 provides the obligation of Public Authority in maintaining all records while Section 5 casts duty upon the Public Authority to designate the Public Information Officer in the Central office or in the State office, as the case may be. Section 6 contains

the provisions for request for obtaining information and Section 7 provides disposal of the aforesaid request.

Section 19 provides provision for appeal. The first appeal is to be filed under Sub Section (1) and second appeal under Sub Section (3).

Section 19(8)(b) casts duty upon the Public Authority to compensate the complainant for any loss or other detriment suffered, impose any of the penalties provided under this Act and reject the application.

While Section 20(1) provides power upon the Commission to impose penalties both in terms of money as well as with a recommendation to initiate departmental proceeding but prior to that a reasonable opportunity of being heard is required to be provided, for ready reference Section 19(8) and Section 20 are being referred hereinbelow which reads hereunder as :-

“19.

(8) In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to—

(a) require the public authority to take any such steps as may be necessary to secure compliance with the provisions of this Act, including—

(i) by providing access to information, if so requested, in a particular form;

(ii) by appointing a Central Public Information Officer or State Public Information Officer, as the case may be;

(iii) by publishing certain information or categories of information;

(iv) by making necessary changes to its practices in relation to the maintenance, management and destruction of records;

(v) by enhancing the provision of training on the right to information for its officials;

(vi) by providing it with an annual report in compliance with clause

(b) of sub section (1) of section 4;

- (b) require the public authority to compensate the complainant for any loss or other detriment suffered;*
- (c) impose any of the penalties provided under this Act;*
- (d) reject the application.”*

20. (1) 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 two hundred and fifty rupees each day till application is received or information is furnished, so however, the total amount of such penalty shall not exceed twenty-five thousand rupees:

Provided that the Central Public Information Officer or the State Public Information Officer, as the case may be, shall be given a reasonable opportunity of being heard before any penalty is imposed on him:

Provided further that the burden of proving that he acted reasonably and diligently shall be on the Central Public Information Officer or the State Public Information Officer, as the case may be.

(2) 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 and persistently, failed to receive an application for information or has not furnished information within the time specified

under subsection (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 recommend for disciplinary action against the Central Public Information Officer or the State Public Information Officer, as the case may be, under the service rules applicable to him.”

8. The first issue has been raised about the power of the Information Commission to direct the Public Information Officer to make payment of compensation as per the provision conferred under Section 19(8)(b) of the Act, 2005.
9. As referred hereinabove, Section 19(8)(b) requires the Public Authority to compensate the complainant for any loss or other detriment suffered.

The word “Public Authority” is to be examined and the exact meaning of the same by making difference in between “Public Authority” and the “Public Information Officer” in order to answer the issue as because if the Public Authority and the Public Information Officer are treated to be the same as per the definition provided under the Act, 2005, then the issue about making the Public Information Officer liable for disbursement of compensation in favour of the information seeker will be said to be within jurisdiction but the consequence would be otherwise if the Public Authority will be different to that the Public Information Officer.

10. It is evident from the definition of Public Authority as provided under Section 2(h) which suggests that the Public Authority means any authority or body or institution or self-government established or constituted by or under the Constitution, by any other law made either by the Parliament or by the State legislature or by any notification issued in this regard by the appropriate Government and includes, any – body owned, controlled or substantially financed.

Further it would be evident from the provision of Section 4 which casts obligation upon the Public Authorities to maintain all its records duly catalogued.

Further Section 5 provides provision for delegation of power by making designation to appoint Public Information Officer.

If the definition as contained under Section 2(h), 2(m), Section 4 and Section 5 would be read together, it would be evident that the Public Authority will be said to be the authority if established or constituted by the enforcement of law or under the Constitution meaning thereby, the Public Authority if found to be State within the meaning of Article 12 of the Constitution of India, the same would be said to be Public Authority. On the other hand, the Public Information Officer means the officer designated by the Public Authority to act as the Public Information Officer.

11. Therefore, the Act, 2005 provides specific difference in between Public Authority and Public Information Officer to the effect that the Public Information Officer is the designated Officer to be designated by the Public Authority who is the custodian of the record and the designated Public Information Officer is required to provide information deriving from the custody of the Public Authority and that is the reason the obligation has been casted upon the Public Authority as per the provision of Section 4 of the Act, 2005 to maintain all records.

12. It further suggests that the Public Information Officer, if approached by information seeker, he is required to obtain the information from

the custody of the Public Authority and thereafter it would be supplied, if permissible, to the concerned information seeker.

13. Therefore, the object of the Act, 2005 is casting obligation upon the Public Authority who is the authority constituted either under the Constitution or any enforcement of law either by the Parliament or by the State legislature or any body owned or financially aided by the State Government.
14. Therefore, there is clear distinction in between the Public Authority and the Public Information Officer. Section 19(8)(b) and Section 20 provides the consequence in case of non-supply or inadequate supply of information as has been sought by the Information Commission, therefore, the Act provides the provision of compensation as also penalty.
15. The provision of compensation has been provided under the provision of Section 19(8)(b) by which a Public Authority is required to compensate the complainant for any loss or other detriment suffered.

Since this Court has answered the issue about distinction in between Public Authority and the Public Information Officer, therefore, the part of the order of liability of compensation is to be inflicted upon the Public Authority to compensate the complainant.

16. The object of the Act to compensate the complainant by the Public Authority is for the reason that it is the Public Authority who is supposed to keep the document in safe custody and if the document

is not found available, the compensation is required to be paid by the Public Authority.

Simultaneously, the State Public Information Officer who is the designated officer by the Public Authority, has also been casted some responsibility/accountability to provide the information sought for by the information seeker and if there would be any negligence in discharge of the aforesaid duty, the provision of penalty as also recommendation to initiated departmental proceeding has been provided under the provision of Section 20(2).

The provision of Section 20(1) provides that if the Information Commission will come to a conclusion that the information seeker has 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 two hundred and fifty rupees each day till application is received or information is furnished, so however, the total amount of such penalty shall not exceed twenty-five thousand rupees. Provided that the Public Information Officer shall be given a reasonable opportunity of being heard before any penalty is imposed on him.

The provision of penalty under Section 20 has been inserted by way of deterrent provision so that in case of violation of the purpose and object of the Act, the penalty is to be imposed upon the concerned Public Information Officer either of the Central or the

State Government, as the case may be, but prior to that an opportunity of hearing is required to be provided.

17. This Court, on the basis of the aforesaid legal position since has come to a finding that the State Information Commission is having power to pass an order of compensation by resorting to the provision of Section 19(8)(b) of the Act, 2005, therefore, is of the view that the order passed by the State Information Commission directing the concerned department of the State of Jharkhand to compensate the writ petitioner by making payment of Rs.60,000/- in exercise of power conferred under Section 19(8)(b) of the Act, 2005 cannot be held to suffer from any illegality.

Accordingly, this Court declines to interfere with the order whereby and whereunder the State Information Commission has directed the concerned department of the State of Jharkhand to compensate the complainant by making payment of Rs.60,000/- in exercise of power conferred under Section 19(8)(b) of the Act, 2005.

18. In the result, the instant writ petition fails and stands dismissed.

(Sujit Narayan Prasad, J.)