

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No. 640 of 2012-D

Date of Decision: 24.08.2012.

Sanjay Hindwan son of Shri Ras Bihari Sharma, Sharma Cottage, Lakkar Bazar, Solan (H.P.) – 173212.

.... Petitioner.

Vs.

1. State Information Commission through the Registrar, State Information Commission, Majitha House, Shimla (H.P.)- 171 002.
2. Public Information Officer-cum- Divisional Forest Officer, Solan, Forest Division, Solan (H.P.) – 173212.
3. Public Information Officer-cum-Executive Officer, Municipal Council, Solan, H.P. – 173212.

.... Respondents.

Civil Writ Petition under Articles 226/227 of the Constitution of India.

Coram:

The Hon'ble Mr. Justice Deepak Gupta, Judge.

The Hon'ble Mr. Justice Sanjay Karol,, Judge.

Whether approved for Reporting? Yes.

For the petitioner:

Petitioner in person.

For the respondents:

Mr. Ajay Chandel, Advocate for respondent No.1.

Mr. Rajesh Mandhotra, Advocate for R-2.

Mr. Anil God, Advocate for respondent No.3.

Per Deepak Gupta, J:(Oral)

1. The short question involved in this petition is whether the Central Information Commission or the State Information Commission, as the case may be, has any power to impose penalty other than that prescribed in Section 20 of the Right to Information Act, 2005.

2. To appreciate the rival contention of the parties, it would be appropriate to refer to Section 20(1) of the Act, which reads as follows:-

“20. Penalties – (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 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 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.”

3. In the present case the relevant portion of the order of the State Chief Information Commissioner dated 29.10.2011 reads as follows:-

“Even if we take the claim of the PIO to be true there is a delay of 14 days in disposal of the RTI application. This delay has been attempted to be explained by saying that the office of the EO, MC Solan is very small and the requisite information gets generated from the proceedings of a Committee- comprising Revenue, Forest and Municipal Committee officer, as a result of which record was not maintained properly which resulted in this delay. He has also attributed the delay to his holding dual charge of NAC Rajgarh. Keeping in view these difficulties expressed during oral arguments and the information having been supplied a penalty of Rs.1,500/- (Rs.fifteen hundred only) is imposed upon the PIO for this delay which should be deposited in the Govt. Treasury under relevant head of account already notified in this regard. PIO is also directed to streamline the upkeep of record.”

4. It is thus clear from the reading of this order that the State Chief Information Commissioner came to the conclusion that there was at least a delay of 14 days if not more in supplying the information. Section 20 of the Act clearly lays down that in case the Commission concerned comes to the conclusion that the information has not been supplied within time without any reasonable cause or has been refused to be given for other malafide reasons, etc.

then the Commission shall impose a penalty of two hundred and fifty rupees each day till application is received or information is furnished. The only caveat is that the total amount of penalty should not in any event exceed Rs.25,000/-.

5. We find no provision in the Act which empowers the Commission to either reduce or enhance this penalty. If the Commission comes to the conclusion that there are reasonable grounds for delay or that the Public Information Officer (P.I.O) concerned has satisfactorily explained the delay then no penalty can be imposed. However, once the Commission comes to the conclusion that the penalty has to be imposed then the same must be @ Rs.250/- per day and not at any other rate at the whims and fancy of the Commission. To this extent the petitioner is absolutely right. The penalty either has to be imposed at the rate fixed or no penalty has to be imposed.

6. We, therefore, allow the writ petition and without going into the question as to what was the actual delay but accepting the finding of the Commission that the delay was 14 days, impose penalty @ of Rs.250/- per day, which works out to Rs.3,500/-. We allow the petition in the aforesaid terms and the penalty is enhanced from Rs.1,500/-

to Rs.3,500/-. Respondent No.3 is directed to deposit the enhanced amount of penalty i.e. Rs.2000/- in the Government treasury within two weeks from today. No order as to costs.

(Deepak Gupta)
Judge.

24th August, 2012.
TM

(Sanjay Karol)
Judge.

High Court of J&K