

(2008) 10 P&H CK 0061

High Court Of Punjab And Haryana At Chandigarh

Case No: None

S.P. Arora, State Public
Information
Officer-Cum-Estate
Officer, HUDA

APPELLANT

Vs

State Information
Commission and
Others

RESPONDENT

Date of Decision: Oct. 17, 2008

Acts Referred:

- Right to Information Act, 2005 - Section 19, 19(1)

Citation: AIR 2009 P&H 53 : (2008) 152 PLR 557 : (2009) 1 RCR(Civil) 237

Hon'ble Judges: Kanwaljit Singh Ahluwalia, J; Hemant Gupta, J

Bench: Division Bench

Final Decision: Allowed

Judgement

Hemant Gupta, J.

The challenge in the present writ petition is to the order dated 23.8.2007 (Annexure P. 13), whereby the State Information Commission, Haryana, has imposed a penalty of Rs. 10,000/- on the petitioner for the lapse on his part, to be recovered in four monthly installments. The Commission has also imposed a costs of Rs. 2,000/- on account of considerable harassment meted out to respondent No. 3.

2. Respondent No. 3 sought certain information in respect of plot No. 609, Sector 8, Panchkula. The said application was received in the Estate Officer on 29.1.2007. The information sought was in respect of the steps taken for transfer of the aforesaid plot in the name of Rajiv Arora (hereinafter referred to as "the applicant"); Sandeep Arora and Anurag Arora. The aforesaid plot No. 609, Sector 8, Panchkula was originally allotted to one Shri Madan Lai. A Power of Attorney was executed by Shri Madan Lal in favour of

Shri Ram Sarup, father of the applicant on 31.1.1990. The said Power of Attorney was cancelled on 15.11.1996 and a fresh General Power of Attorney was executed in favour of one B.R. Verma. The cancellation of the Power of Attorney in favour of father of the applicant was alleged to be an act of fraud. Shri Madan Lal was informed by the Estate Office that the plot cannot be transferred in the name of Shri B.R. Verma. Shri Madan Lal filed a civil suit on 20.7.1998, challenging the action of the Estate Officer, refusing to transfer plot in favour of B.R. Verma. The said civil suit was dismissed on 8.2.2006. The first appeal was dismissed on 15.6.2006. Madan Lal filed a second appeal, the information of which was given to the Estate Office by Shri Madan Lal on 14.2.2007.

3. As per the petitioner, the office file of plot No. 609, Sector 8, Panchkula, was with the ICIC1 Bank in relation to the project of computerization of the official record of the office of Estate Office. 20,000 files, including the file of the plot in question were sent for computerization on 18.12.2006. The files were in the office of ICICI Bank from 18.12.2006 to 22.2.2007 and from 13.3.2007 to 30.3.2007. The information sought by the applicant was supplied on 10.4.2007 after the files were finally returned on 30.3.2007.

4. The applicant filed an appeal to the Chief Administrator, HUDA, against the inaction of the Estate Officer on 21.3.2007. The said appeal was fixed for hearing on 17.4.2007 after notice to the present petitioner. The said appeal was disposed of on 17.4.2007 in the absence of respondent No. 3, when it was stated that the information sought for has been supplied to the applicant on 10.4.2007. An application was filed by the applicant that he had not received any notice of the hearing of the appeal. The Chief Administrator of the HUDA, the Appellate Authority, under the Right to Information Act, disposed of the appeal on 11.6.2007 on the ground that the information has already been supplied and that the applicant is satisfied with the information provided.

5. The applicant has filed an appeal dated 15.4.2008 u/s 19(1) of the Act, the notice of which was issued on 17.4.2007. The grievance of the applicant was that no reply has been received from the Public Information Officer or from the Appellate Authority within one month. It was the said appeal, which was decided by the State Information Commission on 12.7.2007, holding that the state of affairs as noticed is a sorry reflection on the functioning of the Estate Officer and supervision being exercised in the matter of information given by the Administrator, HUDA.

6. It was also found that the matter is being deliberately delayed and excuses are being offered for not taking action on the application submitted by the applicant. After returning such finding, a notice u/s 20(1) of the Act was issued to the present petitioner to show cause as to why the penalty @ Rs. 250/- for each day of delay, should not be imposed upon him. A notice was also issued u/s 19(8)(b) of the Act as to why the applicant should not be compensated suitably for the harassment caused to him. The record pertaining to the transfer was also called for perusal of the State Information Commission. After considering the reply filed, the impugned order has been passed by the Chief Information Commissioner on 23.8.2007. It has been found that the excuses of litigation pending

before the High Court was made to justify the inaction on the transfer application submitted on the basis of the decree passed by the Sessions Judge.

7. The Commission also found that letter dated 1.6.2007 was not disclosed to have been issued in the hearing before the Commission on 12.7.2007, which was considered to be a deliberate and willful concealment of facts. It was found that though the decision was taken for transfer of the plot subject to payment of the deposit of the extension charges, but the Estate Officer continued to harp on the alleged litigation pending before the High Court. It was also found that the Estate Officer assured the Commission in many earlier cases about not repeating delays in future but none of these assurances has been acted upon.

8. The present writ petition has been contested by the State Information Commission, but not by the applicant.

9. Learned Counsel for the petitioner has argued that the State Information Commission is a Statutory Body created under the Act. Such Statutory Authority has no lis with the petitioner which can be defended by such authority before this Court. It is contended that the Commission has been impleaded as respondent for any adversarial litigation between the parties, but for the reason that for issuance of a writ of Certiorari, the records are to be produced by such authority. It is further contended that having passed an order, the statutory authority is not engaged in an adversarial litigation, but was required only to produce the record. It is argued that the record of the plot in question was with the ICICI Bank for the purpose of computerization and remained in the custody of the Bank from 10.12.2006 to 22.2.2007 and 13.3.2007 to 30.3.2007, It is, thus, contended that if the time during which the file was with the Bank is excluded, then the information was given within 30 days.

10. It is further contended that appeal before the Administrator came to be decided in the presence of the applicant on 11.6.2007, wherein it has been categorically recorded that the applicant is satisfied with the information supplied. Still further, the applicant has filed appeal u/s 19 of the Act on 15.4.2007 raising a grievance that neither the Public Information Officer nor the Appellate Authority has responded, even though the information was supplied on 10.4.2007. The applicant has not disputed the satisfaction recorded by the Appellate Authority in its order dated 11.6.2007 and therefore, the order of penalty and compensation are unjustified. It is further contended that the penalties u/s 20 of the Act could be imposed upon the petitioner if the petitioner has without any reasonable cause has not furnished the information within the time specified u/s 7(1) of the Act, or denied the request for information or knowingly given incorrect or misleading information in a mala fide manner. It is contended that since the record of plot in question was with the Bank for digitalization purposes, therefore, such is a reasonable cause, which prevented the petitioner from furnishing the information within one month. In any case, it is contended that the penalty could not be imposed in the facts and circumstances of the present case.

11. The sequence of events would show that the information was sought on 29.1.2007, when the file of the plot in question was laying with the Bank. The file was received back on 22.2.2007, but again sent to the Bank on 13.3.2007. The same was received on 30.8.2007 the information was supplied on 10.4.2007. The penalty can be imposed only if there is no reasonable cause for not furnishing the information within the period of 30 days. The word "reasonable" has to be examined in the manner, which a normal person would consider it to be reasonable. The right to seek information is not to be extended to the extent that even if the file is not available for the good reasons, still steps are required to be taken by the office to procure the file and to supply information. The information is required to be supplied within 30 days only if the record is available with the office. The inference cannot be drawn of the absence of reasonable cause, for the reason that file could have been requisitioned back from the Bank. Since file was not available with the office, the inference drawn does not seem to be justified.

12. Still further, in an order passed on 11.6.2007 as an appeal before the State Public Information Officer, a finding has been recorded that the applicant was satisfied with the information provided. The appeal before the Appellate Authority under the Act, was filed on 15.3.2007 i.e. within a period of six weeks after filing an application for requisite information. The applicant filed an appeal u/s 19 of the Act on 15.4.2007 even though the first appeal itself was filed on 15.3.2007.

13. In our opinion, once the Appellate Authority has recorded satisfaction of the applicant in respect of supply of the information, it was not open to the applicant to continue with the appeal pending before the State Information Commission. Instead of refusing to entertain the appeal u/s 19 of the Act on the ground of satisfaction, the State Information Commission has proceeded ahead to decide the appeal and also imposed penalty on the petitioner. It appears that the State Information Commission has made hill out of the mole.

14. Still further, the previous orders relied upon by the State Information in its reply before this Court cannot be considered, once they were not made part of the show cause notice.

15. In view thereof, we are of the opinion that the order of imposing penalty on the petitioner not sustainable in law. Consequently, the writ petition is allowed. The impugned order passed by the State Public Information Commission, is set aside.