

## कार्यालय आदेश

आयोग में सुनवाई की जाने वाली द्वितीय अपीलें/शिकायतों/आदेश वापसी प्रार्थना पत्रों में पक्षकारों द्वारा इस आशय की शिकायतें प्रस्तुत की जा रही हैं कि:-

- 1) उ0प्र0 सूचना का अधिकार अधिनियम, 2005 की धारा-20 के प्रावधानों के अन्तर्गत दण्डादेश पारित किये जाने के उपरॉत, बिना किसी विधिक आधार के आयोग में दण्डादेश वापस ले लिया जाता है।
- 2) आयोग द्वारा दण्डादेश अधिरोपित किये जाने के उपरॉत, विलम्ब से दण्डादेश शास्ति अनुभाग में प्रेषित किया जाता है।
- 3) आयोग द्वारा पारित दण्डादेश में जन सूचना अधिकारी के नाम का स्पष्ट उल्लेख एवं दण्डादेश में अधिरोपित धनराशि का स्पष्ट उल्लेख नहीं आता है।
- 4) आयोग द्वारा क्षतिपूर्ति आदेश जन सूचना अधिकारी के विरुद्ध पारित कर दिया जाता है, जबकि क्षतिपूर्ति का आदेश लोक प्राधिकारी के विरुद्ध ही पारित किया जा सकता है।

बिन्दु संख्या-1 के सम्बन्ध में उ0प्र0 सूचना का अधिकार नियमावली, 2015 के नियम-12 में आदेश वापसी के आधारों का स्पष्ट उल्लेख किया गया है तथा केवल इस प्रक्रियात्मक त्रुटि के आधार पर कोई आदेश वापस लिये जाने का प्रावधान है कि वह आवेदक का कोई दोष न होते हुए भी, आवेदक को बिना सुने पारित किया गया है अथवा आयोग द्वारा प्रकरण का निस्तारण नियत तिथि से भिन्न तिथि पर कर दिया गया है। इस सम्बन्ध में मा0 इलाहाबाद उच्च न्यायालय द्वारा मिस0 बेंच संख्या 985/2012 अमिताभ ठाकुर बनाम उ0प्र0 सूचना आयोग एवं अन्य में पारित आदेश दिनांक 02-11-2016 (छाया प्रति संलग्न) महत्वपूर्ण है, जिसमें यह मत व्यक्त किया गया है कि उ0प्र0 सूचना का अधिकार नियमावली, 2015 में आदेश वापसी की शक्ति उन विशिष्टियों तक ही सीमित है, जैसा कि उसमें वर्णित है। ऐसे में विधि अनुसार नियमावली में उल्लिखित आधारों पर ही आयोग द्वारा पारित कोई दण्डादेश वापस लिये जाने योग्य है।

बिन्दु संख्या-2 के सम्बन्ध में यह स्पष्ट है कि उत्तर प्रदेश सूचना का अधिकार नियमावली, 2015 के नियम-15(2) में यह प्रावधानित है कि किसी राज्य लोक सूचना अधिकारी पर शास्ति अधिरोपण आदेश की एक प्रति रजिस्ट्रार को अग्रसारित की जायेगी। अतएव आयोग द्वारा दण्डादेश अधिरोपित किये जाने के उपरॉत दण्डादेश की एक प्रति रजिस्ट्रार को दण्डादेश पारित किये जाने के उपरान्त तत्काल प्रेषित की जाए, जिससे कि आयोग द्वारा पारित दण्डादेशों का समुचित निष्पादन शीघ्रतिशीघ्र सम्भव हो सके।

बिन्दु संख्या-3 के सम्बन्ध में स्पष्ट है कि सूचना का अधिकार अधिनियम, 2005 की धारा 20(1) यह स्पष्ट प्रावधान करती है कि दण्डादेश पारित किये जाने से पूर्व जन सूचना अधिकारी को सुनवाई का समुचित अवसर प्रदान किया जाए। धारा-20 यह भी प्रावधान करती है कि सूचना प्रदान किये जाने में त्रुटि कारित करने पर जन सूचना अधिकारी पर प्रतिदिन रु0 250/- की दर से जुर्माना अधिरोपित किया जायेगा। इसके अतिरिक्त मा0




उच्च न्यायालय के द्वारा भी मिस0 बेंच संख्या 20315/2019 पी0के0गर्ग, बनाम उ0प्र0सूचना आयोग, लखनऊ व अन्य की विधि व्यवस्था (छाया प्रति संलग्न) में यह निर्देश दिया गया है कि दण्डादेश पारित करने से पूर्व विलम्ब कारित करने वाले दोषी अधिकारी को विनिश्चय किये जाने हेतु उचित जाँच राज्य सूचना आयुक्त द्वारा की जानी चाहिए एवं ऐसे व्यक्ति को सुनवाई का सम्यक अवसर दिये जाने के उपरॉत ही आदेश पारित किया जाना चाहिए। मा0 न्यायालय द्वारा यह भी कहा गया है कि ऐसी सूचना सम्बन्धित विभाग से अथवा जिस व्यक्ति को नोटिस निर्गत किया गया है और जो वर्तमान में पदस्थापित है, उससे प्राप्त की जा सकती है।

अतः उपरोक्त के दृष्टिगत दण्डादेश, जन सूचना अधिकारी एवं उसके कार्यालय का स्पष्ट उल्लेख करते हुए पारित हो तथा जुर्माने की स्पष्ट धनराशि का उल्लेख भी दण्डादेश में हो।

बिन्दु संख्या-4 के सम्बन्ध में यह स्पष्ट है कि सूचना का अधिकार अधिनियम, 2005 की धारा 19(8)(ख) के अन्तर्गत क्षतिपूर्ति का आदेश लोक प्राधिकारी के विरुद्ध पारित हो सकता है। अतएव उपरोक्त उपबन्ध के दृष्टिगत क्षतिपूर्ति का आदेश जन सूचना अधिकारी के विरुद्ध पारित न हो, अपितु लोक प्राधिकारी के विरुद्ध ही पारित हो।

यह कार्यालय आदेश सूचना का अधिकार अधिनियम, 2005 की धारा 15(4) में प्रदत्त शक्ति का प्रयोग करते हुए जारी किया जा रहा है जो तत्काल प्रभाव से लागू होगा।

  
(भवेश कुमार सिंह)  
राज्य मुख्य सूचना आयुक्त

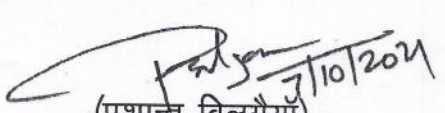
### कार्यालय उ0प्र0 सूचना आयोग, RTI भवन, विभूति खण्ड, लखनऊ

पत्रांक 183 / उ0प्र0सू0आ0 / रजिस्ट्रार / 1(1) / 2019

दिनांक: 07 अक्टूबर:2021

प्रतिलिपि निम्नलिखित को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित:-

- 1) प्रतिलिपि निजी सचिव, मा0 राज्य सूचना आयुक्तगण को इस आशय से कि वह मा0 राज्य सूचना आयुक्त के समक्ष अवलोकनार्थ प्रस्तुत करें।
- 2) सचिव, उ0प्र0 सूचना आयोग।
- 3) रजिस्ट्रार, उ0प्र0 सूचना आयोग।
- 4) संयुक्त रजिस्ट्रार, उ0प्र0 सूचना आयोग।
- 5) उप सचिव, उ0प्र0 सूचना आयोग।
- 6) प्रशासनिक / जन सूचना अधिकारी, उ0प्र0सूचना आयोग।
- 7) शोध अधिकारीगण, उ0प्र0 सूचना आयोग।

  
(प्रशान्त बिलगैर्या)  
रजिस्ट्रार

**Court No. - 1****Case :-** MISC. BENCH No. - 985 of 2012**Petitioner :-** Amitabh Thakur**Respondent :-** U.P.State Information Commission, Thr.Its Secy.Lko.& 2 Ors.**Counsel for Petitioner :-** Amitabh Thakur (Inperson)**Counsel for Respondent :-** C.S.C.,Shikhar Anand**Hon'ble Amreshwar Pratap Sahi,J.****Hon'ble Anil Kumar Srivastava-II,J.**

Heard learned counsel for the petitioner and Sri Shikhar Anand for the respondent no. 1 and the learned Standing Counsel for respondents no. 2 and 3. Vakalatnama of Mrs. Nutan Thakur is taken on record. The respondents have filed their counter affidavit that are on record.

This writ petition questions the correctness of part of the orders that are impugned dated 24.7.2009 and 19.11.2010 whereby two orders dated 13.3.2009 and 22.6.2010 were altered at the instance of the Public Information Officer. The ground of challenge is that the State Information Commission did not have powers to review its own orders inasmuch as there is no statutory provision for the same nor the power of review was available as on the date the impugned orders were passed.

Sri Shikhar Anand learned counsel for the State Information Commission submits that these are two separate orders and two separate causes of action and, therefore, binding them in one and praying for an identical relief amounts to mis-joinder of causes. Accordingly the writ petition should not be entertained for two causes. He further submits that the power which has been exercised under the impugned orders was available inherently to the Commission in order to avoid any injustice to the Public Information Officer and the same would, therefore, be within the jurisdiction of State Information Commission to do so.



The learned Standing Counsel for the State has also supported the aforesaid submissions and has invited the attention of the Court to paragraphs no. 45 and 46 of the counter affidavit of respondents no. 2 and 3, that in such contingency, the power which has been exercised presently cannot be said to be vitiated in any manner, and would fall within the scope of section 20 of the Right to Information Act, 2015. In sum and substance the argument is that such power which can be described as a power to reconsider, recall or review is inherently available with the State Information Commission for the purpose of doing justice between the parties.

It is admitted at the Bar that there was no specific provision under the Right to Information Act, 2015 or under the Right to Information Rules, 2012 available for the purpose of exercise of such power of review.

However, a provision has now been incorporated in the U.P. Right to Information Rules, 2015 being Rule 12 which empowers the Commission to recall its order on the ground of procedural defect, which rule is extracted hereinunder :

**"12. Recall of its order by the Commission on the ground of procedural defect.-(1) The Commission, on an application submitted by any party aggrieved by an order of the Commission, may recall its order on the ground of any of the following procedural defect :**

*(i) The order was passed by the Commission without hearing the applicant for no fault of his; or*

*(ii) The Commission heard and decided the matter on a date other than the one fixed for hearing of the same and the applicant could not attend the hearing for no fault of his.*

*(2) The applicant may submit recall application within thirty days from the date of knowledge of the order of the Commission.*

*(3) If the Commission is of the view that prima facie there is no merit in the application, it may reject the recall application.*

*(4) If the Commission is of the view that the matter requires hearing then before passing any order on such recall application, the Commission shall issue notice to all parties to the proceeding to give them an opportunity of being heard."*

It is, therefore, clear that the statutory provisions as then existed on the date of the passing of the impugned orders did not contain any express provision for recall or review. The question is whether such powers were inherently available or not. To understand this the nature of the power to be exercised by the Commission as in the present case under section 20 of 2005 Act has to be looked into. Section 20 empowers the Commission to impose penalties which is extracted hereunder:

*"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 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 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 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."*

Thus, the exercise of the aforesaid powers have civil consequences. The power of imposing penalty and initiating disciplinary proceedings entail such consequences which can be questioned and can be judicially reviewed. The power, therefore, is quasi-judicial in nature and is not purely administrative. In such circumstances the aforesaid power if exercised by the State Information Commission can be subjected to judicial scrutiny.

The issue that has come up to be raised is as to whether by the same authority is barred from exercising the power of review as presently involved. The exercise of power is quasi-judicial. A review of the same would be inherently permissible provided the order has been obtained by fraud or misrepresentation as has been held in a catena of judgments e.g. 1976 AWC 123 and 1978 AWC 40. The said view has been further followed in several Supreme Court decisions as well. However, the element of fraud and misrepresentation has to be established which in the present case does not appear to be so.

In the present case the Public Information Officer took a plea that since he was unable to attend the proceedings before the State Information Commission on account of his engagement elsewhere and had not been able to submit his reply, the same has resulted in injustice and, therefore, the imposition of penalty deserves to be reviewed. This is not a case where no notice was served on the officer. This is a case where the officer himself has admitted his non-presence on account of his own engagement. This was a clear default on the part of the officer for whatever reasons it might have been. The impugned orders, therefore, proceed on an erroneous assumption as if the State Information Commission had the power to revisit its own orders of penalty in such circumstances. We cannot approve the said proceedings being adopted by the State Information Commission in the absence of statutory powers either under the 2005 Act or the Rules framed thereunder. Indisputably, the 2015 Rules were not in existence then and have come in 2015. Even in these rules the power to recall is limited in contingencies as referred to therein. In such circumstances the contention raised on behalf of the petitioner on the legal plane that the State Information Commission will not have the power to review in the circumstances of the present case is clearly established.

However, in view of the nature of the explanation given by the Public Information Officer we would not like to interfere with the impugned orders at this stage but at the same time the aforesaid observations made and the findings recorded would be building on the State Information Commission.

The writ petition stands consigned to records with the said observations.

**Order Date :- 2.11.2016.**

Om.

(Anil Kumar Srivastava-II,J.)(Amreshwar Pratap Sahi,J.)