

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

पत्रांक: 196/नि0स0/रा0मु0सू0आ0/2022

दिनांक: 10 :जून:2022

परिपत्र

मा0 उच्च न्यायालय में योजित रिट याचिका संख्या सी-2572/2022 राकेश कुमार बनाम उ0प्र0 सरकार व चार अन्य में मा0 उच्च न्यायालय द्वारा पारित आदेश दिनांक 07-5-2022 (छाया प्रति संलग्न) के महत्वपूर्ण प्रस्तर निम्नवत् हैं:-

“On bare perusal of the impugned order dated 04.1.2021, it appears that the penalty was imposed and thereafter the proceedings contemplated under Section-20 of the Right to Information Act, 2005, was initiated which is in violation of Section-20 of the Right to Information Act, 2005. It is urged that it is a case of pre determination of mind to impose penalty without following the mandated procedure. Submission requires consideration.

Till the next date of listing, the effect and operation of the impugned recovery order dated 05.4.2022, issued by respondent no.3 and impugned orders dated 12.11.2021, as well as, 04.1.2021, passed by respondent no.2 shall remain stayed”.

इससे यह स्पष्ट होता है कि मा0 उच्च न्यायालय द्वारा प्रारम्भिक रूप से प्रेक्षण किया गया है कि आयोग के प्रश्नगत आदेश दिनांक 04-1-2021 द्वारा पहले शास्ति अधिरोपित की गयी, तदोपरान्त सूचना का अधिकार अधिनियम, 2005 की धारा-20 में उल्लिखित प्रावधानों के अन्तर्गत कार्यवाही प्रारम्भ की गयी, जो सूचना का अधिकार अधिनियम, 2005 के प्रावधानों के विपरीत है। उक्त प्रेक्षण के साथ मा0 उच्च न्यायालय द्वारा दण्ड अधिरोपण आदेश को स्थगित किये जाने का आदेश पारित किया गया है।

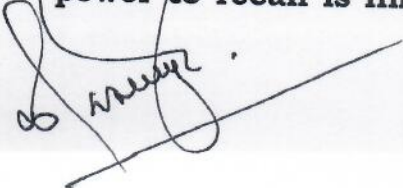
उक्त के दृष्टिगत यह स्पष्ट है कि आयोग में कुछ सुनवाई कक्षों द्वारा सुनवाई के प्रारम्भिक स्तर पर ही जन सूचना अधिकारी के विरुद्ध दण्डादेश पारित किये जा रहे हैं; शास्ति अधिरोपित करने के पश्चात् शास्ति आदेश वसूली हेतु शास्ति अनुभाग प्रेषित नहीं किये जा रहे हैं। यह भी स्पष्ट होता है कि

प्रारम्भिक स्तर पर दण्डादेश पारित करने के उपरान्त जन सूचना अधिकारी को स्पष्टीकरण का अवसर प्रदान किया जाता है और दण्डादेश वसूली के सम्बन्ध में पृथक से आदेश पारित किया जाता है तथा कई अवसरों पर दण्डादेश समाप्त भी कर दिया जाता है।

यह भी ध्यातव्य है कि सूचना का अधिकार अधिनियम में यह प्रावधान है कि जुर्माना अधिरोपित करने से पूर्व जन सूचना अधिकारी को सुनवाई का युक्तियुक्त अवसर प्रदान किया जाए। अतः ऐसा अवसर प्रदान किये जाने के उपरान्त, पारित जुर्माना अधिरोपण आदेश को बिना विधिक आधारों के वापस लिया जाना न विधिसम्मत है और न ही औचित्यपूर्ण है। इस सम्बन्ध में मा० उच्च न्यायालय द्वारा मिस० बेंच नं० 985/2012 अमिताभ ठाकुर बनाम उ०प्र० राज्य सूचना आयोग व अन्य (छाया प्रति संलग्न) में प्रदत्त विधि व्यवस्था का महत्वपूर्ण प्रस्तर निम्नवत् है:-

“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 judgements e.g. 1976AWC 123 and 1978 AWC 40. The said view has been further followed in several Supreme Court decisions as well.

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.

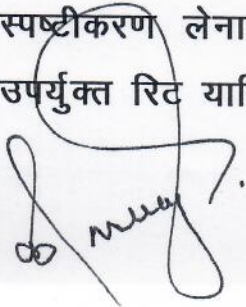


In such circumstances the contention raised on behalf of the petitioner on the legal plane that the State Information Commission will not have the power to review in the circumstances of the present case is clearly established.

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 binding on the State Information Commission."

अतः सूचना का अधिकार अधिनियम, 2005 की धारा-20 एवं उ0प्र0 सूचना का अधिकार नियमावली, 2015 का नियम-12 तथा उपर्युक्त के सम्बन्ध में रिट याचिका संख्या सी-2572/2022 राकेश कुमार बनाम उ0प्र0 सरकार व अन्य में पारित आदेश दिनांक 07-5-2022 तथा रिट याचिका संख्या 985/2012 अमिताभ ठाकुर बनाम उ0प्र0 राज्य सूचना आयोग व अन्य में पारित आदेश दिनांक 02-11-2016 में मा0 उच्च न्यायालय द्वारा दी गई व्यवस्था एवं किये गये प्रेक्षण के आलोक में यह समीचीन है कि:-

- 1) अधिनियम की धारा-20 के अन्तर्गत दण्ड अधिरोपित करने के पूर्व सम्बन्धित जन सूचना अधिकारी को दण्ड के बिन्दु पर सुनवाई के लिए युक्तियुक्त अवसर प्रदान करना आवश्यक एवं विधिक रूप से अनिवार्य है।
- 2) उ0प्र0 सूचना का अधिकार नियमावली, 2015 के नियम-12 के अन्तर्गत अपने आदेशों को वापस लेने की शक्ति केवल सीमित आधारों पर ही उपलब्ध है। अतः जन सूचना अधिकारी से दण्ड के सम्बन्ध में आवश्यक स्पष्टीकरण दण्डादेश पारित करने के पूर्व प्राप्त करना चाहिए, दण्डादेश पारित करने के पश्चात् नहीं। दण्डादेश पारित करने के पश्चात्, जन सूचना अधिकारी से स्पष्टीकरण लेना और स्पष्टीकरण लेने के बाद दण्डादेश वापस लेना विधिसम्मत नहीं है। पुनश्च: दण्डादेश पारित करने के बाद स्पष्टीकरण लेना और स्पष्टीकरण के आधार पर दण्डादेश वापस लेना, उपर्युक्त रिट याचिकाओं में मा0 उच्च न्यायालय द्वारा दी गई विधि व्यवस्था

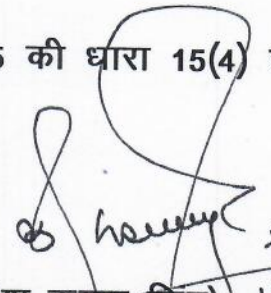


और प्रतिपादित सिद्धान्त की अवहेलना होगी और तदनुसार यह मा0 उच्च न्यायालय के आदेश की अवहेलना होगी।

- 3) शास्ति अधिरोपित करने का आदेश द्वितीय अपील/शिकायत की सुनवाई के प्रारम्भिक स्तर पर नहीं, अपितु द्वितीय अपील/शिकायत के विनिश्चय के समय पारित किया जाना चाहिए।
- 4) आयोग द्वारा पारित शास्ति आदेश स्वतः वसूली योग्य है। अतः शास्ति आदेश पारित करने पर उसे वसूली हेतु तुरन्त रजिस्ट्रार को प्रेषित करना चाहिए। शास्ति आदेश पारित करने के पश्चात्, पृथक से वसूली आदेश निर्गत करना—न अपेक्षित है, न औचित्यपूर्ण है और न ही विधिसंगत है।

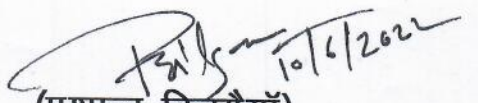
अतः उपर्युक्त के सम्बन्ध में अपेक्षित है कि अधिनियम, नियमावली तथा मा0 उच्च न्यायालय द्वारा प्रतिपादित सिद्धान्तों का प्रभावी रूप से अनुपालन सुनिश्चित किया जाए।

उपर्युक्त परिपत्र सूचना का अधिकार अधिनियम, 2005 की धारा 15(4) के तहत जारी किया जा रहा है।


(भवेश कुमार सिंह) 10/06/2022
राज्य मुख्य सूचना आयुक्त

प्रतिलिपि निम्नलिखित को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित:-

- 1) समस्त राज्य सूचना आयुक्त, उ0प्र0 सूचना आयोग, लखनऊ।
- 2) सचिव, उ0प्र0 सूचना आयोग, लखनऊ।
- 3) रजिस्ट्रार, उ0प्र0 सूचना आयोग, लखनऊ।
- 4) संयुक्त रजिस्ट्रार, उ0प्र0 सूचना आयोग, लखनऊ।


(प्रशान्त बिलगैयाँ)
रजिस्ट्रार

Court No. - 6

Case :- WRIT - C No. - 2572 of 2022

Petitioner :- Rakesh Kumar

Respondent :- State Of U.P. Thru. Prin. Secy. Information, Up
Civil Sectt. Lko. And 4 Others

Counsel for Petitioner :- Sher Bahadur Yadav, Girish Kumar
Pandey

Counsel for Respondent :- C.S.C., Shikhar Anand

Hon'ble Suneet Kumar, J.

Hon'ble Ajai Kumar Srivastava-I, J.

Learned counsel for the petitioner, at the outset, submits that the petitioner may be permitted to delete the fifth respondent from the array of the parties.

Prayer allowed. Necessary incorporation to be carried out within 24 hours.

Learned Standing Counsel, as well as, the learned counsel for respondent nos.2 and 3 pray for and are granted four weeks' time to file counter affidavit. Rejoinder affidavit, if any, may be filed within two weeks thereafter.

List thereafter.

Heard learned counsel for the petitioner, learned Standing Counsel for respondent nos.1 and 4 and Sri Shikhar Anand, learned counsel for respondent nos.2 and 3.

The short point raised by learned counsel for the petitioner is that without complying the procedure as contemplated under Section 20 of the Right to Information Act, 2005, penalty at Rs.10,000/- has been imposed upon the petitioner.

Attention of the Court has been drawn to the first proviso to Section 20 of the Right to Information Act, 2005, which clearly mandates that before imposing penalty, reasonable opportunity would be given to the concerned person.

On bare perusal of the impugned order dated 04.01.2021, it appears that the penalty was imposed and thereafter the proceedings contemplated under Section 20 of the Right to Information Act, 2005, was initiated which is in violation of Section 20 of the Right to Information Act, 2005. It is urged that it is a case of pre determination of mind to impose penalty without following the mandated procedure.

Submission requires consideration.

Till the next date of listing, the effect and operation of the impugned recovery order dated 05.04.2022, issued by respondent no.3 and impugned orders dated 12.11.2021, as well as, 04.01.2021, passed by respondent no.2 shall remain stayed.

Order Date :- 7.5.2022

Mahesh

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.)