A.F.R.

Court No.2.

Civil Misc. Writ Petition No. 428 of 2010.

Dr. Kalpnath Chaubey .....Petitioner

Versus

Information Commissioner & another .....Respondents.

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Hon'ble Ashok Bhushan, J.
Hon'ble Virendra Singh, J.

Heard counsel for the petitioner, Sri R.B. Singhal, Senior Advocate, Assistant Solicitor General of India assisted by Sri R.R. Khan for respondent No.1 and Sri S.K. Singh appearing for respondent No.4.

The contesting parties are represented by their counsels. No notice has been issued to respondents No.2 and 3, who are only proforma parties. Looking to the nature of issues raised in this writ petition, with the consent of parties, we proceed to dispose of the writ petition finally.

By this writ petition, the petitioner has prayed for quashing the order dated 16th December, 2009 by which penalty of Rs.25,000/- has been imposed upon the petitioner as deemed Public Information Officer/Principal under Section 20(1) of the Right to Information Act, 2005.

The petitioner's case in the writ petition is that petitioner was working as Principal, Satish Chandra Degree College Ballia from March, 2009 to 8th May, 2009 and was also given charge of Co-ordinator of Indira Gandhi National Open University, Study Centre, Satish Chandra Degree College, Ballia. The respondent No.4 who

was working on the post of Lab Assistant in the same College and was also President of Shikshanettar Karmchari Parishad, Satish Chandra College, Ballia sought certain informations under the Right to Information Act, 2005 vide his application dated 8th April, 2009 (Annexure-1 to the writ petition). The said application was forwarded by letter dated 14th April, 2009 of respondent No.3 to the petitioner for providing information. The petitioner after receiving the said letter vide his letter dated 7th May, 2009 informed respondent No.4 that information has been sought as President of Shikshanettar Karmchari Parishad, hence it is not covered by Section 3 of the Right to Information Act, 2005 and he is not entitled for information. Petitioner's case further is that Sri R.S. Pandey was made Co-ordinator from 8th May, 2009. A first appeal was filed by respondent No.4 in which direction was issued on 21st May, 2009 directing the Public Information Officer to provide the information. It is not disputed that subsequent to the said order the informations were provided by the subsequent Coordinator, Sri R.S. Pandey on 24th October, 2009. A second appeal was filed before the information was given, which came for consideration before the Central Information Commissioner. The Central Information Commissioner while proceeding issued notice under Section 20 of the Right to Information Act, 2005 to both, petitioner and Sri R.S. Pandey. The petitioner submitted his reply and the Central Information Commissioner by the impugned order has imposed penalty of Rs.25,000/- on the petitioner against which the petitioner has come up in this writ petition.

Learned counsel for the petitioner, challenging the impugned order, contended that the petitioner, within the prescribed time, has already sent reply that information cannot be given since the application was made by the President of Shikshanettar Karmchari Parishad. He submits that there was no delay or mistake on the part of the petitioner. He submits that on 12th May, 2009 the respondent No.4 clarified that he is seeking information as an individual and

thereafter the proceedings were taken and direction was issued on 21st May, 2009 to provide the information. Learned counsel for the petitioner submits that petitioner ceased to be Coordinator on 8th May, 2009 when charge was given to Sri R.S. Pandey. Thus for any subsequent delay the petitioner cannot be penalised. He further submits that Central Information Commissioner without giving any reason has passed the order under Section 20 of the Right to Information Act, 2005.

Sri R.B. Singhal appearing for respondent No.1 has justified the order of the Central Information Commissioner. He submits that Central Information Commissioner has clearly found that no reasonable cause has been shown for not giving the information, hence the Central Information Commissioner was fully empowered to impose penalty.

Sri S.K. Singh learned counsel appearing for respondent No.4 submits that the petitioner was the Public Information Officer at the relevant time and he ought to have supplied the information and there being delay penalty has rightly been imposed.

We have considered the submissions of learned counsel for the parties and have perused the record.

The question, which has arisen in the present case, is as to whether the Central Information Commissioner has rightly invoked the power under Section 20 of the Right to Information Act, 2005 for imposing penalty. Section 20 of the Right to Information Act, 2005 is quoted below:-

> *"**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 Office, as the case may be, without any reasonable cause, refused to receive an application for information or has not furnished the 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 Office 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 Office, 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."*

The present is a case where the petitioner who was working as Coordinator after receiving the letter dated 14th April, 2009 within one month has sent a letter on 7th May, 2009 stating that no information can be given since the application was submitted by respondent No.4 as President of Shikshanettar Karmchari Parishad and not as a citizen. The petitioner has submitted before the Central Information Commissioner that on 8th May, 2009 charge of Coordinator was given to Sri R.S. Pandey and subsequent delay if any committed was by Sri R.S. Pandey and the petitioner cannot be found guilty. He submits that finding recorded by the Central Information Commissioner that after the order dated 21st May, 2009 information should have been supplied by 6th June, 2009 which having not been done, the delay has been caused was against Sri R.S. Pandey and the said finding cannot be made basis for imposing penalty upon the petitioner. It is submitted that the Central Information Commissioner only given conclusions that no reasonable cause has been shown. It is submitted that even the reply of the petitioner dated 7th May, 2009 has not been adverted to.

The order in proceeding under Section 20 of the Right to Information Act, 2005 is an order of penalty and the said power can be exercised only when the Central Information Commissioner at the time of deciding any complaint or appeal is satisfied that without any reasonable cause the Central Public Information Officer has refused to receive the application or has not furnished the 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. A perusal of the different grounds, which have been made for invoking the power of penalty indicate that there has to be finding that there was no reasonable cause or knowingly or malafidely incorrect or incomplete information was given. The penalty proceedings are quasi judicial proceedings where the Commission is entrusted with the power to impose penalty. A perusal of the order impugned indicates that only conclusions have been recorded by the Commission that no reasonable cause has been shown for not providing the information. The letter of the petitioner dated 7thMay,2009by which he informed that why information cannot be provided has not been even specifically dealt with nor there is any finding as required under Section20of the Right to Information Act, 2005 for imposing penalty. There is different between reasons and conclusions. The conclusions are opinion formed by an authority on the basis of reasons recorded therein. The reasons are link between the conclusions and materials on record. The Apex Court in A.I.R. 1974 S.C. 87; ***Union of India vs. M.L. Capoor and others*** has defined as to what are the reasons. Following was laid down by the Apex Court in paragraph 28:-

> *"**28**. In the context of the effect upon the rights of aggrieved persons, as members of a public service who are entitled to just and reasonable treatment, by reason of protections*

conferred upon them by Articles 14 and 16 of the Constitution, which are available to them throughout their service, it was incumbent on the Selection Committee to have stated reasons in a manner which would disclose how the record of each officer superseded stood in relation to records of others who were to be preferred, particularly as this is practically the only remaining visible safeguard against possible injustice and arbitrariness, in making selections. If that had been done, facts on service records of officers considered by the Selection Committee would have been correlated to the conclusions reached. Reasons are the links between the materials on which certain conclusions are based and the actual conclusions. They disclose how the mind is applied to the subject matter for a decision whether it is purely administrative or quasi-judicial. They should reveal a rational nexus between the facts considered and the conclusions reached. Only in this way can opinions or decisions recorded be shown to be manifestly just and reasonable. We think that it is not enough to say that preference should be given because a certain kind of process was gone through by the Selection Committee. This is all that the supposed statement of reasons amounts to. We, therefore, think that the mandatory provisions of Regulation 5 (5) were not complied with. We think that reliance was rightly placed by respondents on two decisions of this Court relating to the effect of non-compliance with such mandatory provisions. These were: Associated Electrical Industries (India) Pvt. Ltd.,

Calcutta v. Its Workmen, AIR 1967 SC 284 and Collector of Morighyr v. Keshav Prasad Goenka, (1963) 1 SCR 98 = (AIR 1962 SC 1694)."

A perusal of the order impugned imposing penalty indicates that in first, second and third paragraphs the authority has noted the contentions of Sri K.N. Chaubey (petitioner) and Sri R.S. Pandey (deemed Public Information Officer) who claims to have joined as Coordinator on 8th May, 2009. In the fourth paragraph the decision has been given in following words:-

"No reasonable cause has been shown for not providing the information. In view of this the Commission finds this as a fit case for levy of penalty since the delay has been over 100 days the Commission levies a maximum penalty of Rs.25000/- as per Section 20(1) of the RTI Act on Mr. K.N. Chaubey, Deemed PIO/Principal."

The above observations in the order is the entire discussion, reason and conclusion of the authority. The order impugned indicates that the explanation given by the petitioner was not adverted to nor any reason has been given for not finding reasonable cause. The words "no reasonable cause has been shown for not providing the information" at best are only conclusion of the authority. From the dictum of the Apex Court as laid down by the Apex Court in the ***Union of India vs. M.L. Capoor's*** case (supra), the above observations of the authority cannot be said to be any reason.

The recording of the reasons in an order passed by administrative authority exercising quasi judicial function has been emphasised from time to time. The Apex Court in the case of ***S.N. Mukherjee vs. Union of India*** reported in A.I.R. 1990 S.C. 1984

while considering the question of recording of reasons laid down following in paragraph 38:-

> *"**38.** The object underlying the rules of natural justice "is to prevent miscarriage of justice" and secure "fair play in action." As pointed out earlier the requirement about recording of reasons for its decision by an administrative authority exercising quasi judicial functions achieves this object by excluding chances of arbitrariness and ensuring a degree of fairness in the process of decision-making. Keeping in view the expanding horizon of the principles of natural justice, we are of the opinion, that the requirement to record reason can be regarded as one of the principles of natural justice which govern exercise of power by administrative authorities. The rules of natural justice are not embodied rules. The extent of their application depends upon the particular statutory framework whereunder jurisdiction has been conferred on the administrative authority...."*

Section 20 of the Right to Information Act, 2005 which empowers the Central Information Commissioner to impose penalty has to be more stringently observed. For imposing penalty an opinion has to be formed that the Public Information Officer without any reasonable cause has not furnished the information within the time specified. The formation of the opinion has to be on the basis of objective consideration. The opinion has to be formed on the basis of relevant materials. The formation of the opinion should disclose materials on the basis of which the opinion/conclusions are formulated. We are of the view that the opinion as contemplated under Section 20(1) of the Right to Information Act, 2005 for imposing

penalty has not been formulated by the Central Information Commissioner.

An authority, when exercises power to impose penalty, is bound to give reasons for conclusion. Merely repeating the words given in the sections does not satisfy the requirement of law. The Public Information Officer may have committed lapse bonafidely or malafidely, there may or may not be a reasonable cause but the authority has to advert to the cause shown by the officer before imposing penalty, without adverting to the relevant cause shown by the Public Information Officer, the penalty cannot be imposed. It is true that Right to Information Act, 2005 is a beneficial piece of legislation and the same has been enacted to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authority. The provisions of the said Act has to be implemented in a manner as to achieve its object.

In view of the foregoing discussions, we are satisfied that Central Information Commissioner having not adverted to the relevant reply submitted by the petitioner and there being no reason given in the order impugned, the order dated 16th December, 2009 deserves to be and is hereby set-aside remitting the matter to the Central Information Commissioner to pass fresh order in accordance with law expeditiously preferably within a period of three months from the date of production of a certified copy of this order.

The writ petition is disposed of accordingly.

Date: 21.1.2010.
Rakesh