

STATE INFORMATION COMMISSION, PUNJAB
SCO No.32-34, Sector 17-C, CHANDIGARH
(www.infocommpunjab.com)

Shri Harminder Singh,
2877, Phase-7,
S.A.S.Nagar (Mohali).

...Complainant.

Versus

The Public Information Officer,
O/o Senior Superintendent of Police,
Roopnagar.

... Respondent.

Complaint Case No.151 of 2014
ORDER

Present: Mr. Harminder Singh, complainant in person.
Mr. Inderjit Singh, ASI alongwith Mr. Kuljit Singh, HC, on behalf of the respondent.

Since the case has dragged on for over one and half years, it would be prudent to recapitulate the fact of the case in brief.

In the instant case, the complainant had sought information through his RTI request dated 27.05.2013 from the PIO o/o Senior Superintendent of Police on three points:-

- 1) "Please provide me the copies of peon book or peon diary/ register/ daak register/dasti register dated 11.12.2004; 23.05.2005; 08.07.2005;18.07.2005;,20.07.2005; 02.08.2005;04.08.2005 and 03.09.2005 i.e communication between SSP Ropar and SP, DSP and SHO PS Ph-1 Mohali."
- 2) "Please provide me copies of peon book or peon diary/register/ daak register/ dasti register dated 03.12.2004; 12.07.2005; 18.07.2005; 19.07.2005; 02.08.2005; 11.08.2005 and 03.09.2005 i.e. communication of documents between SSP Ropar and DA legal Ropar."

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- 3) "Please provide me the copies of peon book or peon dairy/ register/ daak register/ dasti register dated 18.11.2004; and 09.09.2005 i.e. communication between SSP Ropar and Deputy Commissioner(DC) done."

Acting swiftly on the RTI request, the SSP office directed the diary clerk, DPO, Roopnagar to furnish the information within five days and in compliance to the orders, the concerned officer i.e. diary clerk, informed that the said record (all peon books etc) up to 31.12.2006 had been destroyed. Since the record had been destroyed, it could not be supplied and the complainant was informed on 30.05.2013 accordingly, well within stipulated period.

Instead of approaching the First Appellate Authority (FAA) i.e. DIG, Roopnagar within a month of receipt of information, the complainant slept over the issue for nearly one and half years and then suddenly shot a complaint to the State Information Commission (SIC) on 16.01.2014.

The said complaint was assigned number CC 151of 2014 and it was assigned to bench of Ld. Commissioner Mr. Narinderjit Singh, who, in turn, issued a notice of hearing for 13.03.2014.

During the first hearing on 13.03.2014, the representative of the respondent stated that he had filed his written reply to the notice of hearing which was taken on record adding that he had sent a copy of the same to the complainant through registered post but the complainant protested that he had not received the same. The respondent PIO was directed to supply a copy of the written reply within a week's time and thereafter the complainant would raise his objections(s), if any, with the PIO and the case was deferred to 21.05.2014.

Instead of raising objections during the intervening time between the two hearings, the complainant again lost precious time and offered objections during the

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hearing vide his letter dated 21.05.2014. A copy of the letter was handed over to the representative of the respondent during the hearing and the respondent was directed to provide his response in the matter to the complainant within ten days and the case was deferred to 16.07.2014.

Despite the fact that Ld Commissioner Narinderjit Singh had taken an extra liberal view and had entertained the complaint and objections (as it would be evident from subsequent observations of the undersigned bench), the complainant got annoyed and agitated and urged the Ld. Commissioner Mr. Narinderjit Singh on 16.07.2014 to shift the case to another bench. Perhaps, it would have been a good riddance for Ld. Commissioner Mr. Narinderjit Singh but complainant's request was turned down by the then Ld. Chief Information Commissioner and the case was again assigned to Ld. Commissioner Mr. Narinder Singh and was slated to be heard on 15.10.2014.

In fact, the Ld. Commissioner Mr. Narinderjit Singh had been extra generous and benevolent in entertaining the complainant though it should have been outrightly rejected on the first hearing itself.

In Civil appeal Nos. 10787-10788 of 2011 a division bench of the Supreme Court of India in the Chief Information Commissioner v/s State of Manipur had observed that u/s 18 of the RTI Act the State Information Commission is not empowered to pass a direction to the State Information office for furnishing the information sought by the complainant.

“The only order which can be passed by the Central Information Commission or State Information Commission, as the case may be u/s 18 is an order of penalty provided u/s 20 however, before an order is passed, the Commissioner must be satisfied that the conduct of the information officer was not bona fide.”

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“Section 18 has been categorized under clauses (a) to (f) of Section 18(1). Under clauses (a) to (f) of Section 18(1) of the Act the Central Information Commission or the State Information Commission, as the case may be, may receive and inquire into complaint of any person who has been refused access to any information requested under this Act (Section 18(1)(b)) or has been given incomplete, misleading or false information under the Act (Section 18(1)(b)) or has not been given a response to a request for information or access to information within time limits specified under the Act (Section 18(1)(c).”

In the instant case, the PIO had responded within stipulated period rather more swiftly in letter and spirit of the RTI Act and informed the complainant that the record, relating to information, has already been destroyed as per the department's statutory Rules. Had the complainant in any way aggrieved by the destruction of the requisite record or was convinced that the said record had been wrongly destroyed, he could have approached the higher administrative authorities or the appropriate judicial forum to get his grievances redressed. But he had no business to knock at the doors of the State Information Commission.

However, as mentioned earlier, the complaint was entertained taking a very liberal and pro-information seeker approach which needs to be appreciated and not abused by information seekers.

On 15.10.2014, the complainant pointed out that the respondent had not provided complete response regarding objections raised in his submission dated 21.05.2014 in para 2.5.6, 7 & 8. He stated that he would send in writing the omissions/

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deficiencies relating to the response of the respondent dated 23.06.2014, and the respondent was directed to provide detailed clarifications /additional information, if any, to the complainant within two weeks after the receipt of the letter (objections) from complainant.

Instead of filing the objections at the earliest to ensure that he gets the information, the information seeker waited for the next hearing i.e. 26.10.2014. Unfortunately, there was no hearing on 26.11.2014 for some administrative reasons and Ld Commissioner Mr. Narinderjit Singh demitted office on 01.12.2014. Later, the case was assigned to the undersigned on 06.01.2015 and notice of hearing was issued for today i.e. on 27.01.2015.

During the hearing today, the complainant submitted his objections. As evident from his letter raising objections, the complainant had his objections finalized on 26.11.2014 but he neither submitted these to the PIO nor to the office of the Commission on that day i.e. 26.11.2014 and preferred to submit these during today's hearing itself though he was expected to submit these at earliest after the hearing on 15.10.2014.

Evidently in the instant case, the complainant had deliberately tried to prolong the litigation while invariably information seekers make all efforts to procure the information at earliest. And this suggests that he was not keen to procure information but in getting the case prolonged to harass the Public Authority. Firstly, instead of approaching the FAA within 30 days of the receipt of information, the complainant preferred to sleep over the reply of respondent PIO for over one and half years. After having lost the opportunity to make first appeal within 30 days, the information seeker approached the State Information Commission by way of complaint u/s 18 of the RTI Act. Also, while the Ld. Commissioner Mr. Narinderjit Singh had duly entertained the

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complaint, the complainant sought transfer of the case to some other bench sensing that the things were not taking shape as he desired. Unfortunately for him, his request for transfer was declined by the Ld. Chief Information Commissioner. Moreover, instead of complying with the directions of the Ld Commissioner Narinderjit Singh, Mr. Harminder Singh preferred to raise his objections after three months.

After perusing the objections raised by the complainant, the Commission is of considered opinion that instead of seeking information as defined u/s 2(f) of the RTI, the complainant was questioning the administrative decision of the Senior Superintendent of Police, Roopnagar of having destroyed the records containing the subject matter of the RTI request. The said records have been destroyed as per the department rules after constituting a four member committee and with the approval of the competent authority. Since the records had been destroyed, the requisite information could not be supplied.

If the complainant had any grievance or objections on the procedure or on the decision of the destroying the record, the complainant was at liberty to question the administrative decision at appropriate administrative or judicial forum. The undersigned has no authority or jurisdiction to question or probe the administrative decisions or give any directions on this account.

All the objections raised by the complainant during the today's hearing or earlier were frivolous and not maintainable and not having any bearing with the case. It was simply an open and shut case where the requisite information was not available as the related records have been destroyed after following due process and hence the information could not be supplied.

As defined in the RTI Act u/s 2(f), the " information means" any material in any form , including records, documents, memos, e-mails, opinions, advices, press

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releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force.

Mr. Harminder Singh in his complaint has argued that the PIO had not followed the RTI Act regarding he maintaining of the records for 20 years before and after the Act came into force w.e.f.12.10.2005 as u/s section 8(3) states that ' any information relating to any occurrence ,event or matter which has taken place, occurred or happened twenty years before the date on which any request had been made under section 6 shall be provided to any person making a request under that section.

This was skewed perception of the complainant and amounted to distortion of the provisions of the RTI Act. The complainant was explained during the hearing that section 8 of the RTI Act deals with the "Exemptions from Disclosure of Information" and in its sub-clause I, it lists the categories of information which can be furnished and its subsection 3 to which the complainant was referring to was that except the information as exempted information under clause (a), (c) and (i) , any information relating to any occurrence, event or matter which has taken place , occurred or happened 20 years before the date on which the request is made under Section 6 shall be provided to any person making a request under that section.

Evidently, section 8(3) clearly stipulates that the exempted information except under clause (a), (c) & (i) had to be provided to the information seekers only after 20 years. Thus, the ban on the disbursing information u/s is for 20 years and subsequently that can be furnished. However, section 8(3) calls for a ban on disbursal of information even after 20 years which is exempted under clause (a), (c) and (i) of 8(1) of the RTI Act.

Also, the Apex Court has clearly upheld the destruction of records as per the departmental or official rules in its landmark judgment in its 2011 STPL 685 SC

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Central Board of Secondary Education v/s Aditya Bandopadhyay. The Apex Court observed.

“On behalf of the respondents/examinees, it was contended that having regard to sub-section (3) of section 8 of RTI Act, there is an implied duty on the part of every public authority to maintain the information for a minimum period of twenty years and make it available whenever an application was made in that behalf. This contention is based on a complete misreading and misunderstanding of section 8(3). The said sub-section nowhere provides that records or information have to be maintained for a period of twenty years. The period for which any particular records or information has to be maintained would depend upon the relevant statutory rule or regulation of the public authority relating to the preservation of records. Section 8(3) provides that information relating to any occurrence, event or matters which has taken place and occurred or happened *twenty years before the date* on which any request is made under section 6, shall be provided to any person making a request. This means that where any information required to be maintained and preserved for a period beyond twenty years under the rules of the public authority, is exempted from disclosure under any of the provisions of section 8(1) of RTI Act, then, notwithstanding such exemption, access to such information shall have to be provided by disclosure thereof, after a period of twenty years except where they relate to information falling under clauses (a), (c) and (i) of section 8(1). In other words, section 8(3) provides that any protection against disclosure that may be available, under clauses (b), (d) to (h) and (j) of section 8(1) will cease to be available after twenty years in regard to records which are required to be

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preserved for more than twenty years. Where any record or information is required to be destroyed under the rules and regulations of a public authority prior to twenty years, section 8(3) will not prevent destruction in accordance with the Rules. Section 8(3) of RTI Act is not therefore a provision requiring all 'information' to be preserved and maintained for twenty years or more, nor does it override any rules or regulations governing the period for which the record, document or information is required to be preserved by any public authority."

So the perception that all the records are to be kept for 20 years by the public authorities is preposterous and absurd. Therefore, the public authority had not erred even remotely while destroying the records. However, if the complainant had any objections on the decision of the public authority to destroy the record, no remedy is available under RTI Act and the aggrieved party has to approach the higher echelon of the administrative hierarchy or the appropriate judicial forum to get his grievances redressed.

The undersigned had explained all this in detail to the complainant during the hearing but he remained immune to reasoning and continued to argue and shout.

The undersigned is of the considered opinion that the present complaint deserved to be disposed of as the respondent PIO had responded within the stipulated period of 30 days that the said record had been destroyed in accordance with the prescribed rules. However, out of compassion and extra leniency and usual tendency on the part of the Commission to ensure that the complainants / appellants are satisfied, the Ld, Commissioner Narinderjit Singh had entertained the complainant. Not only that, the Ld. Commissioner Narinderjit Singh had even directed the PIO to offer clarifications and additional information, if any, even at the risk of out-stepping his jurisdiction in his orders dated 15.10.2014 as u/s 18, the Commission can't direct the PIO to furnish information to the complainant. For that the complainant

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has to make the first appeal to FAA which in the instant case was time barred. Yet the Ld. Commissioner Mr. Narinderjit Singh accommodated him but the complainant abused the benevolence of the Commissioner and even sought change of bench.

Moreover, no additional information other than sought in the RTI application can be provided to the information seekers. Invariably, the complainants/ appellants seek additional information which can be sought only after submitting a separate RTI application. But usually, the PIO do oblige the complainant or appellant with additional information too as they do understand that the appellant /complainant would have to undergo the same drill to obtain some additional information. Also, the PIO feels that the additional information sought through a fresh RTI application too has to be provided so they would instantly provide additional information too. And the State Information Commission (SIC) too is proactive in ensuring that the information is furnished. However, the information seeker cannot demand additional information as a right which is not sought in the original RTI application.

In view of the above, the undersigned announced that the case is closed and disposed of but this triggered fierce protest and the complainant accused the undersigned of being biased in favour of police. When the undersigned tried to explain that since the case has been closed, the complainant is at liberty to contest the decision in the Punjab and Haryana High Court. But the complainant shouted back saying that the undersigned should "shut up". He went on to insist that the case be transferred to another bench to which the undersigned expressed his inability. Also, he was advised to approach the Chief Information Commission (CIC) to get the case reopened.

The complainant stated that the undersigned and other State Information Commissioners in the past had conceded his request to transfer his case/ cases to

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other benches. To this the undersigned explained that all those cases were in progress when the request was made. In such cases his request was referred to the Chief Information Commissioner who is competent to take a decision on transfer of cases to another bench. A State Information Commissioner has no power to transfer the case to another bench. Moreover, his request for transfer of complaint case could not be referred by the undersigned as the case already stood closed and disposed. Also, he was clearly told that he can approach the Chief Information Commission to get his case reopened. But all this advice fell on his deaf ears.

On hearing the commotion, two fellow Commissioners too entered the Chamber where the hearing was on and tried to calm down the agitated complainant but instead of listening to their advice, he continued shouting, abusing and making insinuating remarks and defamatory remarks against them too. However, both the Ld. Commissioners Mr. Chander Prakash and Mr. Harinder Pal Singh Mann kept their cool and advised the security and my driver to remove the complainant. Fearing that these security guard and driver may forcibly evict him from the Chamber, the complainant pushed and punched them but finally withdrew and later when the police arrived on the scene, he suddenly disappeared taking advantage of the crowd that had gathered in the corridor.

The complainant had behaved the same way in the past too. The modus-operandi of the complainant is that of a bully who would start shouting and threatening the Commissioners when the things don't shape up according to his design. Earlier too, he had got couple of cases transferred to some other benches after creating a commotion and ruckus during the hearing. In this case itself, the complainant has sought transfer of the case to some other bench from Ld Commissioner Mr. Narinderjit

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Singh but it was declined. However, the case had to be transferred after Ld. Commissioner Narinderjit Singh demitted office on superannuation on 01.12.20.2014.

Another case CC 1522/13 (Harminder Singh v/s SHO Phase 8, Mohali) could not be taken up today following pandemonium during the hearing . This complaint case filed on 24.04.2014 before the Commission was assigned to Ld Commissioner Mr. Harinder Pal Singh Mann, who had patiently heard him during seven hearings but subsequently recused himself after the complainant in another case had created a scene during the hearing. He refused to grant any further hearing and passed appropriate orders in presence of the complainant on 16.01.2014 that the “complainant had created in- discipline in his earlier case, therefore it is in the fitness of things to transfer the case from this bench”.

Then the case was assigned to Ld. Commissioner Mr. Narinderjit Singh who issued notice of hearing for 13.03.2014 and after couple of hearings, he created similar scenes during the hearing and then submitted an application for transfer of the case to another bench as he was not satisfied with the Ld. Information Commissioner Mr. Narinderjit Singh and submitted an application on 16.07.2014 to get the case transferred to some other bench.

The undersigned is convinced that the complainant / appellant has no right to select the presiding officers of his choice in the State Information Commission. Moreover, the request to transfer the case to another bench midway through the case is a practice abhorrent and needs to be curbed and cases should only to be transferred to another bench in rarest of the rare cases on a recommendation of a committee constituted for the purpose by the Chief Information Commissioner.

The complainant in the instant case has the habit of creating pandemonium in the Commission by raising his voice, threatening the respondent PIOs

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and their representatives, of being disrespectful to all, including the information Commissioners, and has scant respect for the decorum of the proceedings of the Commission. In the given circumstances, the undersigned is constrained to disqualify the said complainant from seeking information in view of his behavior during the hearing today and in the past.

As mentioned above, Ld. Commissioner Mr. Harinder Pal Singh Mann had transferred his cases to some other bench on the ground that Mr. Harminder Singh had created indiscipline during the hearing of a case.

In the past, the undersigned Commissioner too had faced similar situations. In orders dated 13.12.2012, the undersigned had passed the orders in AC 881/2012 , “The appellant (Harminder Singh) is in the habit of shouting, using foul language, and questioning the authority of the Commission. Thus, it is difficult to handle the appellant. Therefore, the case is referred to the Registry for allocation to some other bench after soliciting the orders of the Chief Information Commissioner”.

Subsequently, the undersigned Commissioner had not entertained any case related to the complainant. Even before taking up the case today, the undersigned had categorically asked if the complainant would like the undersigned to take up the case and he had assured to cooperate and not to create a scene but he resorted to same tactics to browbeat the Commission. No presiding officer of any court or administrative tribunal can countenance such behaviour without compromising the dignity of the office, one is holding.

In a similar case, the Sate Information Commission Tamil Nadu was forced to blacklist a petitioner from seeking any further information from the Commission and with a direction that that the petitions made by the petitioner should not be entertained. This extreme decision was taken as the information seeker had

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misbehaved during the hearing and had made defamatory and insinuating remarks. Consequently, High Court of Madras in WP 3778 of 2013 had upheld the decision of the State Information Commission and observed:

“Henceforth, no information seeker can be allowed to insinuate or defame the Commissioner in the guise of prosecuting their cases.”

“Under such circumstances, when a specific power is vested on the Commissioner and the Commission had proceeded against the information seeker, who abused the Chief Information Commissioner during the course of his proceedings, it will be open to the said authority to disqualify a particular information seeker by passing a speaking order.”

“A similar order has been passed by this Court when a particular individual had abused the process of law and kept on filing frivolous and irrelevant cases. A division bench of the Court in Dr. S Ching Chyang Ching v/s The Registrar, Tamil Nadu Administrative Tribunal and the Director of Elementary Education (MANU/TN/0692/2008) in WP No 18727 of 2001, 29158 of 2002 etc. batch cases, had directed not to entertain any more petitions from the said person concerned.

In the light of the foregoing, the instant case is **closed and disposed of with a direction that no further complaints/ appeals or requests under RTI be entertained from the said complainant.**

Announced in the open court.

Copies of the order be sent to the parties.

**Place: Chandigarh.
Dated: 27.01.2015**

**Sd/-
(Surinder Awasthi)
State Information Commissioner**