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Sh. Harinder Singh Sidhu, (9815355655)

S/o Late Sh. Jagdev Singh,

R/o 127, Sector 23 A, Chandigarh.

.....Appellant/Complainant

Versus

Public Information Officer

.....Respondent

O/o Registrar, Cooperative Societies, PB,

Sector-17, Chandigarh.

First Appellate Authority

O/o Registrar, Cooperative Societies, PB,

Sector-17, Chandigarh

Appeal Case No.3720 of 2020

ORDER

To be read in the continuity of previous order dated 14.07.2021 vide which the decision was reserved. **Decision announced on 21.09.2021.**

1. The Appellant in the present case has filed these appeals u/s. 19(3) read with Section 20 of the Right to Information Act, 2005 (hereinafter referred to as the 2005 Act) being aggrieved by the non-supply of information by the Respondent – Authorities. He has also sought imposition of penalty upon the Respondent – Authorities for giving incomplete information and that too beyond the time specified u/s. 7(1) of the 2005 Act.
2. The brief facts surrounding the present case as are follows.

Factual Background of the case

3. The Appellant while working as an Additional Registrar, Cooperative Societies in the Office of Registrar Cooperative Societies, Punjab, Chandigarh had applied under the RTI Act and sought certain information vide RTI Application dated 20.07.2020. the contents of the information which was sought by the Appellant are as follows:

(1) Copy of the letter issued by RCS/Admin-1/H-13/2099 dated 12.03.2020 and copy of the noting on which this letter was dealt.

(2) Pages of the dispatch register on which this letter RCS/Admin-1/H-13/2099 dated 12.03.2020 was dispatched.

4. It is further stated that in view of the aforesaid RTI Application dated 20.07.2020, the Respondent No. 2 i.e., Public Information Officer O/o Registrar Cooperative Societies Punjab, Chandigarh vide his letter no. RCS/RTI/Chd/4559 dated 08.09.2020 supplied the information pertaining to point no. 2 but failed to provide information regarding point no. 1.
5. A bare perusal of the letter dated 08.09.2020 issued by the concerned PIO reveals that the information sought by the Appellant under point no. 1 of his RTI Application was not provided to him and the same was sought to be justified on the ground that the disclosure of said information is barred under Section 8(h) of the 2005 Act as information which would impede the process of investigation or apprehension or prosecution of offenders cannot be provided under the 2005 Act.
6. Being aggrieved by furnishing of incomplete information by the concerned PIO, the Appellant resorted to filing the statutory First Appeal u/s. 19(1) of the 2005 Act. A cursory glance of the said appeal shows that the Appellant stated that Section 8(h) of the 2005 Act was not applicable in his case as the disclosure of information under point no. 1 of his RTI Application would not impede the process of investigation or apprehension or prosecution of offenders. It was further submitted in the first appeal that the Order dated 08.09.2020 does not specify the details of any offender in the present case.
7. Thereafter the First Appellate Authority O/o Registrar Cooperative Societies Punjab, Chandigarh vide his Order dated 14.10.2020 dismissed the aforesaid First Appeal filed by the Appellant and upheld the Order dated 08.09.2020 vide which information under point no. 1 was not supplied to the Appellant by resorting to provisions of the Section 8(h) of the 2005 Act. The First Appellate Authority accepted the stand taken by the representative of the Department that since the information being sought under point no. 1 pertained to a Chargesheet whose investigation was underway at the Government level therefore the said information cannot be furnished to the Appellant.

8. Since the Appellant was not satisfied with the Order dated 14.10.2020 passed by the First Appellate Authority, therefore he chose to file present Second Appeal before this Commission on 27.11.2020.
9. The Appellant has submitted that apart from the present RTI Application he had also sought certain information under the 2005 Act from the PIO Cooperation Branch -1, O/o Special Secretary Cooperation vide RTI Application dated 18.03.2020 which was provided to him vide letter dated no. 37/23/2019-C-1/2763 dated 17.06.2020. By way of the said information, a copy of the letter no. RCS/Admin-1/H-13/2099 dated 12.03.2020 was also provided to him, a copy of which along with the file noting on which the said letter was dealt with has been sought under point no. 1 of the present RTI Application dated 20.07.2020.
10. As a matter of the fact it is a categoric submission of the Appellant that when the copy of the letter no. RCS/Admin-1/H-13/2099 dated 12.03.2020 has been supplied to him in another RTI Application filed by him, then how can the Respondents state that providing information under point no. 1 which pertains to the same letter and its file noting would impede the process of investigation.
11. That on 27.01.2021 when this matter was taken up for hearing by this Commission, Ms. Sandhya Sharma, APIO of the Respondent – Department gave an undertaking before this Commission that the complete information would be supplied within 15-20 days. Accordingly the matter was adjourned for 01.03.2021. Thereafter vide letter bearing memo no. RCS/RTI/Chd/2484 dated 19.02.2021 the PIO of the Respondent Department provided certain information to the Appellant. However the Appellant has submitted that even vide letter dated 19.02.2021 the complete information was not supplied. Another letter bearing memo no. RCS/RTI/Chd/2672 dated 26.02.2021 was sent by the concerned PIO to the Appellant reiterating that the letter dated 12.03.2020 and its file noting have already been supplied to the Appellant vide letter dated 19.02.2021.
12. Accordingly the matter was taken up for hearing on 01.03.2021 and the Respondents reiterated the aforesaid stand before this Commission regarding having supplied the concerned information to the Appellant. However the counsel representing the Appellant made a categoric statement that

complete information was still not supplied. Therefore this Commission directed the Appellant to point out discrepancies in written form in the information so supplied by the Respondent and the matter was adjourned for 30.03.2021. In compliance thereof, the Appellant submitted a letter dated 15.03.2021 before the PIO, O/o Registrar, Cooperative Societies, Punjab, Chandigarh stating that the information sought by him pertains to the noting along with the comments on that noting qua letter no. 2099 dated 12.03.2020. He further submitted that the information supplied to him vide letter dated 19.02.2021 does not relate to the aforesaid letter but relates to noting of letter no. 2035 dated 12.03.2020.

13. Despite of ample opportunities having been given to the Respondents, yet they failed to provide the relevant information with connection to the Letter no. RCS/Admin-1/H-13/2099 dated 12.03.2020. As a matter of fact vide order dated 30.03.2021 passed in the present case, this Commission again directed the Respondent to furnish the complete information and the Commission was assured by the Representative of the Respondent that complete information would be provided before the next date of hearing.
14. In pursuance thereof, the Appellant also submitted a letter dated 12.04.2021 to the PIO elucidating the entire factual background of the case and the information sought by him. He also stated that whatever information had been supplied to him did not pertain to letter no. RCS/Admin-1/H-13/2099 dated 12.03.2020.
15. The APIO vide her letter dated 22.04.2021 again reiterated their earlier stand that the information sought by the Appellant qua letter no. RCS/Admin-1/H-13/2099 dated 12.03.2020 has already been supplied to the Appellant vide letter dated 19.02.2021.
16. That to the utter shock and surprise of this Commission, when this matter was taken up for hearing on 14.07.2021 the Respondent who was being represented through Sh. Sandhya Sharma (APIO) submitted a letter bearing diary no. 11233 dated 24.05.2021 before this Commission as per which a totally contrary stand has been taken wherein after a period of almost 11 months and giving assurances to this Commission that the complete information would be supplied, the Respondent in unequivocal words stated that there is no file noting pertaining to letter no. RCS/Admin-1/H-13/2099 dated 12.03.2020. Upon

taking into consideration the aforesaid facts, this Commission, vide Order dated 14.07.2021 had asked the PIO to show cause as to why a penalty should not be imposed upon him u/s. 20(1) of the 2005 Act for causing wilful delay in supplying the information.

17. In compliance of the Order dated 14.07.2021, the PIO submitted a written reply to the aforesaid show cause notice and also filed an affidavit vide diary no. 15328 dated 13.07.2021. Accordingly the Commission took on record all the documents submitted by the PIO and thereafter upon ensuring that due opportunity of hearing as mandated u/s. 20 of the 2005 Act has been given to the Respondent – PIO, this Commission reserved the present appeals for orders on 14.07.2021.

Findings

18. From a reading of the facts of the present case and the submissions advanced by the respective parties it transpires that the Respondent-PIO has provided different justifications and different points in time, for not providing the complete information sought by the Appellant vide his RTI Application dated 20.07.2020.
19. Initially vide letter dated 08.09.2020 the Respondent – PIO provided only partial information sought by the Appellant and refused to furnish the rest by stating that disclosure of such information is barred as per the provisions of Section 8(h) of the 2005 Act.
20. Thereafter when the matter came up before this Commission by way of the present Second Appeal, the Respondent undertook to supply the complete information as sought by the Appellant. Accordingly, at the time of hearing on 12.05.2021, the Respondent – PIO intimated the Commission that the information sought by the Appellant has been supplied to Appellant.
21. Thereafter at the time of hearing of the present case on 12.05.2021, the Appellant informed this Commission that the information pertaining to file noting of letter no. 2099 dated 12.03.2020 has not be supplied yet. Even on the said date the Respondent gave an assurance that complete information would be supplied to the Appellant by the next date.

- 22.** However on 28.06.2021 when the present case was taken up for hearing, the Respondent took a totally contrary stand to their previous undertakings and assurances given before this Commission regarding furnishing the complete information sought by the Appellant and submitted a letter before this Commission vide diary no. 11233 dated 24.05.2021 stating that there were no file noting pertaining to letter no. 2099 dated 12.05.2020 which were sought by the Appellant under Point no. 1 of his RTI Application.
- 23.** Thus, upon taking into consideration the conduct of the Respondent whereby initially they delayed furnishing of the aforesaid information for about 11 months on the pretext that they would supply the complete information to the Appellant and eventually stated before this Commission that there were no file noting pertaining to letter no. 2099 dated 12.03.2020, this Commission issued Show Cause Notice to the PIO as to why the penalty prescribed under section 20(1) of the 2005 Act should not be imposed on him in view of the aforesaid facts.
- 24.** The Respondent – PIO submitted his Written Reply to the aforesaid Show Cause supported by an affidavit which was received by this Commission vide Diary No. 15238 dated 13.07.2021. This Commission has carefully examined the contents of the Written Reply submitted by the PIO
- 25.** Thus, after issuing the aforesaid Show Cause Notice and carefully examining the written reply submitted by the Respondent – PIO, thereby ensuring that due opportunity of hearing is afforded to the Respondent – PIO, this Commission is of the considered the view that the PIO is liable to be inflicted the penalty as per the Section 20 (1) of the 2005 Act. It would be profitable to reproduce the bare provisions of Section 20 of the 2005 Act:

20. Penalties.—(1) *Where the Central Information Commission or 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 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.

26. Upon a detailed reading of Section 20(1) of the 2005 Act it comes forth that the RTI Act mandates the Commission to impose penalty on the PIO where has without reasonable cause:

- i. *Refused to receive a RTI application;*
- ii. *Not furnished information within the time specified under Section 7(1) of the RTI Act i.e., 30 days.*
- iii. *Malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information, or destroyed information which was the subject of the request;*
- iv. *Obstructed in any manner in furnishing the information.*

27. It deserves to be mentioned that the main purpose of the RTI Act is to provide the complete information within the time prescribed under the RTI Act or whether the information has been supplied at all or not. If there is delay in supplying the information or the information is not supplied at all, then the Commission is empowered to ascertain whether there is any reasonable cause for such delay or non – disclosure of information. Where the Commission determines that there is no reasonable explanation for the same, it shall impose a penalty on the PIO in the manner prescribed u/s. 20(1) of the RTI Act.

28. It is to be further noted that the burden of proving that denial of information by the PIO was justified and reasonable rests on the PIO himself as per the provisions of the Section 19(5) of the RTI Act which stipulates as follows:

“In any appeal proceedings, the onus to prove that a denial of a request was justified shall be on the Central Public Information Officer or State Public Information Officer, as the case may be, who denied the request.”

Under the RTI Act, every Public Authority is required to designate as many officer as PIO in all administrative officers or units under it, as may be necessary, to provide information to persons requesting for information

under the RTI Act. Therefore a duty is cast upon the PIO to uphold the citizens' fundamental right to information by providing the complete information sought within the prescribed time period. However if the PIO fails to discharge this obligation, he is liable to be penalised in accordance with Section 20(1) of the 2005 Act.

29. In the instant case on one hand vide letter dated 22.04.2020 the PIO had submitted that all the file noting pertaining to letter no. RCS/Admin-1/H-13/2099 dated 12.03.2020 were supplied to the Appellant, on the other hand a totally contrary stand was taken by the PIO wherein vide letter dated 24.05.2021 submitted before this Commission that no file noting pertaining to the aforesaid letter no. 2099 dated 12.03.2020 were available with the Department. Therefore the PIO can be seen to be blowing hot and cold at the same time. Upon carefully going through the written reply dated 13.07.2021 submitted in response to Show Cause Notice by the PIO, the Commission is of the view that no plausible explanation has been rendered by the PIO to explain or justify the contradictory stands taken by the PIO with regard to file noting pertaining to letter no. RCS/Admin-1/H-13/2099 dated 12.03.2020.
30. In the view of above, the Commission must proceed with the procedure laid down in Section 20 of the Act to initiate penalty proceedings against errant PIO. Penalty of **Rs.25,000/-** is imposed upon concerned PIO(By Name) to be deducted from his salary in two monthly instalments.
31. Penalty amount to be deposited in the Government treasury under head **0070-Other Administrative Services-60-Other Services-800-Other Receipts-86-Fees under the Right to Information Act.**
32. A compliance report to this effect shall be sent to the Commission by the PIO within 30 days from receipt of this order.

The appeal is disposed of, accordingly.

Chandigarh
Dated: 21.09.2021

Sd/-
(Maninder Singh Patti)
State Information Commissioner, Pb.