

Dr. Nazrul Islam vs State Of West Bengal & Ors on 31 August, 2016

In the High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side
WP 27355 (W) of 2012
Dr. Nazrul Islam
-Vs.-
State of West Bengal & Ors.

Coram : The Hon'ble Justice Arijit Banerjee
For the Petitioner : In person
For the State : Mr. Pranab Kr. Dutta, Adv.
Mr. Prithu Dudharaj, Adv.
For Union of India : Mrs. Chandreyi Alam, Adv.
Heard On : 06.10.2015, 07.01.2016, 21.01.2016
10.06.2016, 30.06.2016
CAV On : 30.06.2016
Judgment On : 31.08.2016

Arijit Banerjee, J.:-

(1) The petitioner has filed this application primarily for enforcing an

order dated 15 December, 2009 passed by the West Bengal Information

Commission (in short the 'Commission') (respondent No. 2) whereby the Home (Political) Department of the State of West Bengal was directed to pay compensation of Rs. 50,000/- to the petitioner for the detriment and harassment caused to him. The petitioner also prays for a direction on the Commission to supply information to him under the Right to Information Act, 2005, (in short 'RTI Act') after disposing of the pending appeals preferred by him under Sec. 19(3) of the Said Act. (2) The petitioner had written a letter dated 23 May, 2006 to the then Chief Minister of West Bengal making allegations of corrupt/irregular/illegal practices on the part of certain IPS and IAS officers of the State.

(3) On 4 June, 2007, the petitioner made an application under the RTI Act requesting the State Public Information Officer (in short 'SPIO') and Joint Secretary, Home (RTI) Department of the State Government primarily relating to actions taken, if any, against the State Government officers mentioned in the petitioner's letter addressed to the Chief Minister.

(4) Not receiving any response to his application within the statutorily prescribed time period, the petitioner filed a first appeal and in view of the silence on the part of the Appellate Authority, preferred a second appeal before the Commission. Being aggrieved

by the delay in disposal of the second appeal the petitioner filed a writ petition being WP No. 6323(W) of 2009 in this Court which was disposed of by this Court by directing the commission to decide the 12 appeals and one complaint filed before it by the petitioner within four weeks.

(5) Subsequent to the said order of this Court the Commission held two hearings on 7 September, 2009 whereby it observed that not the SPIO alone but the entire Public Authority was at fault in the matter regarding steadfast compliance of the provisions of the RTI Act. The Commission ordered the Public Authority of Home (RTI) Department to show cause why the petitioner shall not be compensated in terms of Sec. 19(8)(b) of the RTI Act for the detriment and harassment suffered by him. The SPIO, Home (Political) Department filed a reply dated 3 December, 2009 to the said show cause notice on behalf of the Public Authority.

(6) By its order dated 15 December, 2009 the Commission observed that the Home Department had dealt with the petitioner's query under the RTI Act in a highly irregular and improper and casual way ignoring the fact that the provisions of the said Act are mandatory, time specific and exacting in nature. The Commission noted that the objective of bringing in a practical regime of right to information for citizens is to ensure access to information under the control of the Public Authorities for promoting transparency and accountability in their working and that such objective has been frustrated in the petitioner's case. The operative portion of the Commission's order is extracted hereinunder:-

"The Commission considers that the Home Department, being one of the most important departments of functioning in the Government, shall have to pay a price for such procrastination. The inaction of the public authority in the instant case appears to be impersonal because the officers involved in the process acted within their limited spheres without showing any urgency to go beyond to implement the spirit of the Act in practice. Here the public authority failed to understand and implement the provisions of the Act in its true spirit which it could have if it had gone beyond normal bureaucratic practices.

The Commission therefore orders in exercise of its power conferred upon it by the provisions u/s 19(8) (b) of the RTI Act, 2005 that the public authority of Home (Political) Department shall, within a period of one month, pay a compensation of Rs. 50,000/- (Rupees fifty thousands) to Dr. Islam in the form of a demand draft/banker cheque for the detriment and harassment caused to him."

(7) In view of the non-compliance with the said order by the Home Department, the petitioner wrote a letter dated 2 March, 2010 to the Commission requesting it to look into the matter and take necessary action. Under cover of letter dated 12 March, 2010 the Commission forwarded the said letter of the petitioner to the Dy. Secretary, West Bengal State Public Information Officer, Home (RTI) Department. (8) Since there was

complete silence on the part of the Home Department, the petitioner made an application dated 18 May, 2010 under the RTI Act requesting the SPIO, Home Department to furnish information about the action taken by the Home Department on the order dated 15 December, 2009 passed by the Commission. On the failure of the SPIO to furnish such information, the petitioner preferred a first appeal dated 18 June, 2010 before the Appellate Authority. That also being in vain, the petitioner preferred a second appeal dated 13.08.2010 before the Commission. Thereafter, the petitioner submitted a complaint dated 25 November, 2010 before the Commission. It appears that the petitioner sent several reminders to the Commission including those dated 17 April, 2012 and 21 August, 2012 but the same did not elicit any response.

(9) It appears that the petitioner made fresh RTI applications dated 17 April, 2012, 20 April, 2012 and 22 August, 2012 before the SPIO in connection with the above matter each of which are pending in second appeal before the Commission. It appears that four second appeals are pending before the Commission apart from one complaint. (10) Being aggrieved by the Home Department's failure to comply with the Commission's order for payment of compensation to the petitioner and also by the failure on the part of the Commission to dispose of the second appeals and complaint, the petitioner has filed the instant writ application praying for the orders mentioned at the beginning of this judgment.

(11) The petitioner, who appeared in person, submitted that at each and every step he has been harassed by the Home (RTI) Department. Untrue and frivolous reasons were cited by the Department for not answering the petitioner's applications under the RTI Act. The attitude of the Department has been wholly cavalier and indifferent and by its inexplicable inaction the Department has frustrated the object of the RTI Act. He submitted that the Commission after hearing all the parties concerned has come to a finding that there has been gross negligence on the part of the Department which has caused detriment and harassment to the petitioner and has rightly directed the Department to pay compensation to the petitioner. He prayed for an order directing the State Government to act in terms of the Commission's order dated 15 December, 2009 and also directing the Commission to dispose of the second appeals and complaint of the petitioner pending before it.

(12) Learned Senior Counsel appearing for the State Government drew this court's attention to an observation of the Commission in its order dated 15 December, 2009 to the effect that the inaction of the Public Authority in the instant case appears to be impersonal. He submitted that the Commission could not arrive at a categorical finding regarding the liability of the State as impersonal machinery and the view taken or opinion expressed by the Commission was only tentative.

I am not in agreement with such submission of learned Counsel. The order of the Commission has to be read as a whole. On a meaningful reading of the order it is clear

that the Commission came to a definite finding upon hearing all the parties concerned that there was gross laches and negligence on the part of the said Departments causing detriment and harassment to the petitioner which warranted award of compensation to the petitioner.

(13) Learned Senior Counsel has also urged two legal points which deserve consideration. These are, firstly, that the order of the Commission under consideration is without jurisdiction; and secondly, the order was passed in breach of the principles of natural justice and is therefore null and void.

(14) Learned Counsel submitted that the Commission in its order has come to a finding that the SPIO was responsible for providing information and that he has failed and neglected to discharge his statutory duty. Having arrived at such a finding, it was not open to the Commission to saddle the State Government with payment of compensation under Sec. 19(8)(b) of the RTI Act. Sec. 19(8)(b) vests the Commission with the power to require the Public Authority to compensate the complainant for any loss or detriment suffered. However, submitted learned Counsel, that the order of the Commission does not disclose the nature of loss or detriment suffered by the petitioner. He further submitted that the petitioner could not specify the queries which had been made by him and did not disclose the RTI application forming the basis of the order dated 15 December, 2009. He submitted that the non-furnishing of information sought for by the petitioner did not occasion any loss or detriment, pecuniary or otherwise, to the petitioner. By taking recourse to Sec. 19(8)(b) of the RTI Act the Commission committed a jurisdictional error. At best, the Commission could have imposed penalty on the SPIO under Sec. 20 of the RTI Act. Sec. 19(8)(b) of the Act has no manner of application in the facts of the instant case.

(15) Learned Counsel then argued that even if it be contended that the order was passed under Sec. 20 of the RTI Act, the same would be void for breach of the principles of natural justice, since Sec. 20 specifically requires that the SPIO shall be given a reasonable opportunity of being heard before any penalty is imposed on him. In this connection, learned Counsel relied on a decision of the Apex Court in the case of M/s. R. B. Shreeram Durga Prasad and Fatehchand Nursing Das-vs.-Settlement Commission (IT & WT), (1989) 1 SCC 628. In particular he relied on paragraph 7 of the judgment wherein it was observed, inter alia, as follows:-

"7. We are definitely of the opinion that on the relevant date when the order was passed, that is to say, 24th August, 1977 the order was a nullity because it was in violation of principles of natural justice. See in this connection, the principles enunciated by this Court in State of Orissa v. Dr. (Miss) Binapani Dei and Ors., [1967] 2 SCR 625 as also the observations in Administrative Law by H.W.R. Wade, 5th Edition, pages 3 10-311 that the act in violation of the principles of natural justice or a quasi-judicial act in violation of the principles of natural justice is void or of no value. In Ridge v. Baldwin,

[1964] A.C. 40 and Anisminic Ltd. v. Foreign Compensation Commission, [1969] 2 A.C. 147 the House of Lords in English has made it clear that breach of natural justice nullifies the order made in breach. If that is so then the order made in violation of the principles of natural justice was of no value....."

Learned Counsel also relied on a decision of the Hon'ble Apex Court in the case of Manohar s/o Manikrao Anchule-vs.-State of Maharashtra, (2012) 13 SCC 14, in support of his contention that before passing an order a judicial or quasi-judicial authority must afford an opportunity to the persons who will be adversely affected by the order or for whom an order will have civil consequences. In that case, the Apex Court observed that the State Information Commissions exercise very wide and quasi-judicial powers. Their functioning is akin to the judicial system rather than the executive decision-making process. Adherence to the principles of natural justice is mandatory for such tribunals or bodies discharging such functions. It was further observed that the provisions in the RTI Act relating to penalty or penal consequences have to be construed strictly and it will not be open to the Court to give them such liberal construction that it would be beyond the specific language of the statute or would be in violation of the principles of natural justice.

(16) I have carefully considered the rival contentions of the respective parties and my decision is as follows.

(17) The Parliament recognized that proper and efficient functioning of a democracy requires an informed citizenry and transparency of information and that such transparency is vital for checking corruption and to hold governance and their instrumentalities accountable to the citizen of the country. The Parliament was also conscious that random and uncontrolled revelation of information is likely to conflict with other public interests including efficient operations of the governance, optimum use of limited fiscal resources and preservation of confidentiality of sensitive information. In its endeavour to balance out and harmonize these conflicting interests while preserving the paramountcy of the democratic idea, the Parliament enacted the RTI Act. The object of the RTI Act is to set out a practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of public authorities. Sec. 4 of the Act imposes an obligation on public authorities to maintain its records duly catalogued and indexed in a manner and form which facilitates the right to information under the Act. Sec. 6 of the Act entitles a person desirous of obtaining any information under the Act, to make a request in writing to the Central or State Public Information Officer specifying the particulars of the information sought by him. The applicant is not required to give any reason as to why he is requesting for the information. Sec. 7 of the Act requires the Public Information Officer to either provide the information or reject the request for any of the reasons specified in Secs. 8 and 9 within 30 days of receipt of

the request. If the Officer fails to give decision on the request within 30 days, he shall be deemed to have refused the request. Under Sec. 19, if a person does not receive a decision within 30 days or is aggrieved by a decision of the Public Information Officer, he may prefer an appeal to an Officer who is senior in rank to the Public Information Officer in that Public Authority. A second appeal is provided for against the order passed in the first appeal before the Central Information Commission or the State Information Commission as the case may be. The powers of the Information Commission are enacted in Sub-Sec. 9 of Sec. 19 which includes the power to require the Public Authority to compensate the complainant for any loss or other detriment suffered and/or to impose any of the penalties provided under the RTI Act. Sec. 20 of the Act empowers the Information Commission to impose penalty on the Public Information Officer if the Commission is of the opinion that the Officer without any reasonable cause refused to receive an application for information or has not furnished the information sought for within the specified time under Sec. 7(1) or mala fide denied the request for information or knowingly has 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. Sec. 22 of the Act is a non-obstante clause giving overriding effect to the provisions of the Act. Under Sec. 25, the Information Commission is required after the end of each year to prepare a report on the implementation of the provisions of the Act during that year and forward a copy thereof to the appropriate Government.

(18) From the scheme of the RTI Act as briefly discussed above, it will be evident that the Central Legislature realized the importance of free flow and availability of information to the members of the public for smooth, efficient and transparent working of a democracy where the Government is by the people, of the people and for the people. Easy and reasonable access to information pertaining to functioning of the Public Authorities including the wings of the Government is also essential to contain corruption and mal-practice. The Parliament has thus not only recognized the people's right to information but has carefully devised the means and mechanism for enforcing such right. (19) In the instant case, the petitioner applied to the State Information Officer for certain information. Being aggrieved by the stoic silence and inaction on the part of the Officer, he preferred a first appeal. When the first appellate authority also did not respond, he approached the State Information Commission. This happened in respect of several applications made by the petitioner before the State Information Officer. When about nine such second appeals came to be pending before the State Information Commission without any prospect of being disposed of within a reasonable time, the petitioner had to knock at the door of this Court by way of a writ petition. This court directed the Commission to dispose of the second appeals and a complaint of the petitioner within the prescribed time period as indicated above. In the course of

disposing of the said appeals the Commission upon considering the facts and circumstances of the case, required the Home Department to show cause as to why it should not be ordered to pay compensation to the petitioner for the loss and detriment suffered by him due to the indolence, indifferent and inaction on the part of the State Information Officer and the first Appellate Authority, who are both Officers of the Home Department. The State Information Officer submitted reply to the show cause notice on behalf of the Home Department. Upon considering such reply and after hearing several representatives of the State Government including the SPIO and Deputy Secretary, Home Department and the Special Secretary, Home Department & Appellate Authority, the Commission directed the Home (Political) Department to pay compensation of Rs. 50,000/- to the petitioner for the detriment and harassment caused to him.

(20) The State Government has not challenged the Commission's order dated 15 December, 2009 whereby it has been directed to pay compensation to the petitioner. The State Government is, therefore, not entitled to raise a plea to resist enforcement of the order of compensation that the order is wrong on merits or does not indicate the nature or extent of loss, detriment or harassment suffered by the petitioner. In any event, the harassment and detriment suffered by the petitioner due to complete nonchalant and irresponsible attitude of the Home Department, (RTI) verging on being mala fide and wholly unbecoming of a public authority, is writ large on the factual canvass of this case.

(21) As regards the Learned Senior Counsel's contention that the Commission's order under consideration suffers from jurisdictional error, I am afraid, I have to reject the point. The Home Department of the State is undoubtedly a Public Authority. The Department has appointed SPIO and a first Appellate Authority who are officers of the Department. If such Officers did not discharge their duties, the department must own up responsibility for the same. The Department must accept the liability for any negligent act of commission or omission on the part of its officers in the course of their employment or discharge of their duty. This is akin to vicarious liability, a well-recognized tortious principle of law. It is the Department who has to compensate a citizen for any loss, detriment or harassment suffered by him by reason of failure of its officers to perform their duty. It makes little difference whether such duty is statutory or non-statutory. It does not lie in the mouth of the Department to say that it is an inanimate or impersonal entity and responsibility and liability should be fixed only on its officers. The Department must make good the loss suffered by a citizen by non-discharging of their duties by the Department's recalcitrant and indolent officers and, thereafter the Department is at liberty to take appropriate steps against its erring officers and bring them to books. In fact, the Department should recover from its concerned officers the compensation that the Department has to pay to the affected citizen.

(22) In view of the aforesaid, I am of the opinion that by not imposing penalty on the concerned officers under Sec. 20 of the RTI Act and instead by awarding compensation against the Home Department under Sec. 19 of the Act, the Commission has not committed any error of law, far less a jurisdictional error which would render its order void and unenforceable.

(23) As regards the point of breach of principles of natural justice urged by Learned Senior Counsel, I am afraid, I am unable to agree with that point either. No penalty has been imposed on any officer under Sec. 20 of the Act and hence the question of complying with the statutory requirement of giving an opportunity of hearing does not arise. It is pertinent to note that in contrast to Sec. 20 of the RTI Act, Sec. 19 does not require that a Public Authority against whom the Commission awards compensation, must be given a prior hearing. However, this becomes an academic issue since, in fact, full hearing was given to representatives of the various Government Departments including the Home Department as indicated above and as would be manifest from the order of the Commission under consideration read with the Commission's order dated 20 November, 2009. There can be no two opinions about the fact that a quasi-judicial authority or a tribunal like the State Information Commission must scrupulously observe the principles of natural justice and that an order or an act of a quasi-judicial authority in violation of the principles of natural justice is null and void. Indeed, there are several pronouncements of the Supreme Court to this effect and as such the same is the law of the land. However, in the facts of the present case, I find it impossible to hold that the Commission passed the order awarding compensation to the petitioner in breach of the principles of natural justice. (24) Learned Counsel relied on a decision of a Learned Single Judge of this Court in the case of Basanti Bang-vs.-Debajyoti Boral, The District Inspector of Schools, Secondary Education (S.E.), 2016 (1) CHN (Cal) 293, wherein it was held that an action in contempt is always an action in personam. If an individual's conduct is not justifiable or pardonable, then the State ought not to use precious public resources to defend such an individual in a contempt proceeding even if that individual is an employee of the State Government and holds some position of authority.

In my opinion, this decision has no manner of application to the facts of the instant case. If at all, it supports the view that I have taken that the State should make its officers personally liable, for whose negligence and non-discharge of duty the State is directed to pay compensation to an affected citizen. The said decision does not absolve the State of liabilities that it may incur vis-a-vis a citizen for the wrongful acts of its officers.

(25) For the reasons aforesaid, this writ petition succeeds. The Home (Political) Department is directed to pay to the petitioner compensation of Rs. 50,000/- as awarded by the State Information Commission by its order dated 15 December, 2009

along with simple interest at the rate of 10 per cent per annum from 15 January, 2010 till date of payment within 4 weeks from date. The State Government shall also pay to the petitioner costs of this application assessed at Rs. 20,000/- for causing unnecessary further harassment to the petitioner by compelling him to approach this Court for enforcing the order of the State Information Commission which is perfectly legal and valid and ought to have been complied with by the State Government. Further, the State Information Commission is directed to dispose of the petitioner's second appeals and complaint pending before it, if any, within a period of two months from the date of communication of this order to it.

(26) WP 27355 (W) of 2012 is accordingly disposed of. (27) Urgent certified photocopy of this judgment and order, if applied for, be given to the parties upon compliance of necessary formalities.

(Arijit Banerjee, J.)