213 **IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

CWP-1877-2022
Date of decision: 13.07.2023

GAGNISH SINGH KHURANA

...PETITIONER

VS

STATE OF PUNJAB AND ORS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. H.C. Arora, Advocate and
Ms. Sunaina, Advocate for the petitioner.

Mr. Rohit Bansal, Sr. DAG, Punjab
for respondent Nos.1 and 4.

Mr. Sanjeev K. Sharma, Advocate
for respondent Nos.2 and 3.

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VIKAS BAHL J. (ORAL)

1. Prayer in the present Civil Writ Petition, filed under Article 226 of the Constitution of India is for the issuance of a writ in the nature of certiorari for quashing the order dated 20.07.2021 (Annexure P-6) passed by respondent No.4-Punjab State Information Commission, Chandigarh, vide which the second appeal preferred by the petitioner has been disposed of and closed. Further prayer for quashing the order dated 04.10.2021 (Annexure P-9) passed by respondent No.4-Punjab State Information Commission, Chandigarh has also been made.

2. Learned counsel for the petitioner has submitted that the petitioner had submitted an application dated 11.11.2019 to respondent No.2,

seeking the following information:-

> *"(i) Kindly provide the certified copy of Brochure released by PSIEC before the allotment of Phase VIII, Focal Point, Ludhiana.*
>
> *(ii) Kindly provide the minutes of meeting of PSIEC on which these amenities were added in the advertisement plan before the allotment.*
>
> *(iii) Kindly provide the certified information on the map where the space for the amenities mentioned in brochure was space was marked. Kindly support your answer by providing the copy of Map.*
>
> *(iv) Kindly provide the certified copy of the Budget expenditure out of the total budget which was earmarked for the provision of amenities mentioned in brochure. Support your answer with total budget papers.*
>
> *(v) Kindly provide the details of all expenditure done by PSIEC in lieu of the amenities mentioned in aforesaid brochure. Support your answer with certified copy of account statements, vouchers etc."*

3. Learned counsel for the petitioner has further submitted that in terms of Section 7 of the Right to Information Act, 2005 (hereinafter to be referred as "the Act of 2005"), it was the obligation of the Public Information Officer to have supplied the requisite information within a period of 30 days but however, respondent No.2 did not supply the requisite information to the petitioner for a considerable amount of time which even went beyond 30 days and thus, the petitioner filed first appeal under Section 19(1) of the Act of 2005. It is contended that since, even thereafter the requisite information was not supplied, the petitioner, after waiting for a period of 52 days, preferred the second appeal before respondent No.4 under Section 19(3) of the Act of 2005

read with Punjab State Right to Information Rules, 2017 and has referred to the copy of the said second appeal which is annexed as Annexure P-3 with the writ petition to highlight the fact that several prayers were made in the said second appeal. It is argued that as per the provisions of Section 20 of the Act of 2005, in case, the State Information Commission is of the opinion that at the time of deciding any complaint/appeal, the State Public Information Officer has, without any reasonable cause, refused to receive an application for information or has not furnished the same within the specified time or malafidely denied the same or had destroyed the information then, the State Information Commission would impose a penalty as stipulated in the said Section and also take appropriate action. It is further argued that on 27.05.2021, respondent No.4-Commission took cognizance of an affidavit dated 26.05.2021 filed by respondent No.2 which stated that the record demanded by the petitioner from the Punjab Small Industries and Export Corporation (PSIEC) was not traceable/available in the office record and thereafter, vide the impugned order dated 20.07.2021, the State Information Commission, by passing a cryptic and non-speaking order, merely on the basis of the said affidavit, disposed of and closed the statutory appeal of the petitioner. The same was done in spite of the fact that it was specifically recorded that the petitioner was not satisfied with the information provided and without dealing with the submissions of the petitioner. It is argued that respondent No.4 had, believed the contents of the affidavit on face value without considering the circumstances on account of which it was stated that the record was not traceable/available. It is contended that the information sought more so, under points No.1, 2 and 3 of the application could not be

stated to have been not available and at any rate, the said information could not have been destroyed without following the proper procedure and without entering the factum of destruction of such information in the relevant register. It is argued that no such query was put by respondent No.4 to the concerned officer who had signed the affidavit nor any effort was made to enquire as to on what basis the officer had given the affidavit that the information was not traceable/available and as to whether the said information had been lost or destroyed or was never available in the office and in case, the same had been lost or destroyed then whether any DDR was got recorded regarding the same or if the procedure for destruction of record was followed or not. Learned counsel for the petitioner has relied upon a judgment dated 13.09.2013 passed by the Delhi High Court in WP(C) No.3660 of 2012 titled as "Union of India Vs. Vishwas Bhamburkar" (Annexure P-8), and has highlighted paras 7 and 8 of the said judgment which are reproduced herein below:-

> *"7. This can hardly be disputed that if certain information is available with a public authority, that information must necessarily be shared with the applicant under the Act unless such information is exempted from disclosure under one or more provisions of the Act.* ***It is not uncommon in the Government departments to evade disclosure of the information taking the standard plea that the information sought by the applicant is not available. Ordinarily, the information which at some point of time or the other was available in the records of the Government, should continue to be available with the concerned department unless it has been destroyed in accordance with the rules framed by that department for destruction of old record****. Therefore, whenever an information is sought and it is not readily available, a thorough attempt needs*

to be made to search and locate the information wherever it may be available. It is only in a case where despite a thorough search and inquiry made by the responsible officer, it is concluded that the information sought by the applicant cannot be traced or was never available with the Government or has been destroyed in accordance with the rules of the concerned department that the CPIO/PIO would be justified in expressing his inability to provide the desired Information. ***Even in the case where it is found that the desired information though available in the record of the Government at some point of time, cannot be traced despite best efforts made in this regard, the department concerned must necessarily fix the responsibility for the loss of the record and take appropriate departmental action against the officers/officials responsible for loss of the record. Unless such a course of action is adopted, it would be possible for any department/office, to deny the information which otherwise is not exempted from disclosure, wherever the said department/office finds it inconvenient to bring such information into public domain, and that in turn, would necessarily defeat the very objective behind enactment of the Right to Information Act.***

8. Since the Commission has the power to direct disclosure of information provided, It is not exempted from such disclosure, ***it would also have the jurisdiction to direct an Inquiry into the matter wherever it is claimed by the PIO/CPIO that the information sought by the applicant is not traceable/readily traceable/currently traceable.*** *Even in a case where the PIO/CPIO takes a plea that the information sought by the applicant was never available with the Government but, the Commission on the basis of the material available to it forms a prima facie opinion that the said information was in fact available with the Government,* ***it would be justified in directing an inquiry by a responsible officer of the department/office***

concerned, to again look into the matter rather deeply and verify whether such an information was actually available in the records of the Government at some point of time or not. After all, it is quite possible that the require Information may be located if a thorough search is made in which event, it could possible to supply it to the applicant. Fear of disciplinary action, against the person responsible for loss of the information, will also work as a deterrence against the willful suppression of the information, by vested interests. It would also be open to the Commission. to make an inquiry itself instead of directing an inquiry by the department/office concerned. *Whether in a particular case, an inquiry ought to be made by the Commission or by the officer of the department/office concerned is a matter to be decided by the Commission in the facts and circumstances of each such case."*

4. Learned counsel for the petitioner has submitted that the impugned order passed, apart from being cryptic and non-speaking, is also in violation of the law laid down in the above said judgment and that an application (Annexure P-7) to re-open the matter was filed by the Association, of which the petitioner was the General Secretary, but the same was rejected vide order dated 04.10.2021 (Annexure P-9). It is further contended that at any rate, the impugned order being non-speaking deserves to be set aside and the matter deserves to be decided afresh. It is also submitted that respondent No.4 is a quasi-judicial authority which, under Section 19(3) of the Act of 2005, is enjoined to decide the second statutory appeal filed by the petitioner by passing a speaking order after noting and dealing with all the arguments of both the sides, which has not been done in the present case.

5. Learned State Counsel, who is appearing on behalf of

respondents No.1 and 4, has submitted that respondent No.1 and 4 are not the contesting parties in the present matter.

6. Learned counsel appearing on behalf of respondents No.2 and 3 has submitted that as per the reply filed by respondent Nos.2 and 3 before this Court, the information with respect to all the 5 points was supplied to the present petitioner and with respect to point Nos.1, 2 and 3, it has been stated that there was no brochure prepared and there was no proceeding of meeting available/prepared. It is further submitted that as far as information at points No.4 and 5 is concerned, the same has been duly supplied and for the said purpose, reference had been made to Annexure R-2/3. It is contended that in view of the same, the authority has rightly closed the matter as nothing survives in the case and that there is no violation of any provision and even the said allotment is of the year 1994 and is thus a very old allotment.

7. Learned counsel for the petitioner, in rebuttal, has submitted that the stand of the respondent Nos.2 and 3 before this Court is false and incorrect inasmuch as the petitioner has a photocopy of the brochure released by PSIEC and even with respect to the minutes of the meeting sought, the stand of the respondent Nos.2 and 3 is self-contradictory and it has not been stated as to whether the said minutes were never prepared or were prepared and are not available as they have been destroyed or lost and if given an opportunity, the petitioner would be able to demonstrate before the authority that the said reply is not in accordance with law and appropriate enquiry regarding the same is required to be initiated. It has been fairly submitted by learned counsel for the petitioner that as far as point Nos.4 and 5 is concerned, said information has already been supplied, and thus, the

petitioner wishes to press for information only qua point Nos.1, 2 and 3 and would press the same before the authority if given an opportunity.

8. This Court has heard learned counsel for the parties and has perused the paper book.

9. Impugned order dated 20.07.2021 (Annexure P-6) passed by the authorities is reproduced hereinbelow:-

> *"**ORDER***
>
> *This order may be read with reference to the previous order dated 27.05.2021. During the last hearing respondent has sent an affidavit as directed by the Commission vide diary no. 11501 dated 26.05.2021 mentioning therein that no such information is traceable/available in office record.*
>
> *2. **Today again Sh. Gagnish Khurana states that he is not satisfied with the information provided.***
>
> *3. I have gone through the affidavit as submitted by the respondent and have agreed with the same. Hence, the appeal case filed by the appellant is disposed of and closed. Copy of the order be sent to the parties.*
>
> *Sd/-*
>
> ***20.07.2021*** ***(Preety Chawla)***
>
> *State Information Commissioner*
>
> *Punjab"*

10. A perusal of the same would show that in spite of the fact that the petitioner has stated that he is not satisfied with the information provided, the State Information Commissioner chose to close the proceedings only on the basis of an affidavit submitted by the respondents. The order dated 27.05.2021 of which reference has been given in the abovesaid order dated 20.07.2021 is reproduced hereinbelow:-

> *"**ORDER***

This order may be read with reference to the previous order dated 07.04.2021, vide which the respondent was directed to provide copy of Brochure and Minutes of the Meeting to the appellant.

2. Today the appellant states that no information has been given to him so far.

3. The respondent Sh. Sunil Kumar states that they have sent an affidavit to the Commission Office.

4. The perusal of the file shows that the respondent has sent an affidavit as directed by the Commission vide diary No.11501 dated 26.05.2021 mentioning therein that the record demanded by the appellant of PSIEC has been searched and no such information is traceable/available in office record. The same is taken on record.

5. In view of the above the reply filed by the respondent appears to be convincing, but on the request of the appellant the case is adjourned on 20.07.2021 at 11.00 AM through CISCO-Webex (Video-Conferencing application) at 11.00 AM. Copy of the orders be sent to the parties."

11. A perusal of the above order would show that it was specifically recorded that the petitioner herein had stated that no information had been provided to him. Reference in the said order was also made to the affidavit dated 26.05.2021, which has been annexed as Annexure P-5 with the paper-book. Relevant portion of the said affidavit is reproduced hereinbelow:

"I, J.S Randhawa, PIO, PSIEC Limited, Sector-17, Chandigarh do hereby solemnly affirm and declare as under:-

1. That RTI applicant Sh. Gagnish Singh Khurana vide his RTI application dated 11.11.2019 has sought the information at point no. 1 & 2 as under:-

(i) Kindly provide the certified copy of brochure released by PSIEC before the allotment of Phase VIII, Focal Point, Ludhiana.

(ii) Kindly provide the minutes of meeting of PSIEC on which these amenities were added in the advertisement plan before the allotment.

2. ***That the record of PSIEĊ has been searched and no such information is traceable/ available in office record.***

Deponent"

12. In the above said affidavit, it has been stated that the information is not traceable/available in the office record without clarifying as to whether the brochure was ever issued or not or that the same was issued but is not traceable and in case, same was not traceable whether any DDR with respect to its loss was registered or in case, the same was destroyed as to whether the due procedure for destroying the same had been followed or not. Similarly, the said affidavit is also vague with respect to point No.2, in which, copies of the minutes of meeting of PSIEC with respect to adding of amenities was sought. The judgment of the Delhi High Court in the case of Union of India (Supra), relevant paras of which have been reproduced hereinabove, had observed that it is not uncommon in the Government departments to evade disclosure of the information by taking the standard plea that the information sought by the applicant is not available and in case, such a plea is taken, then the authority under the Act of 2005, should make necessary enquiries into the aspect as to whether a thorough search has been conducted or not and as to whether it is a case where originally, the information was available with the authority but subsequently, the same has been destroyed in accordance with the Rules framed by the Department or that same has been lost and after

considering all the said aspects, in case, the authority comes to the conclusion that though, the said information was available but could not be traced then the responsibility of the person who has lost the record is required to be fixed. It was further observed that unless the same is done, it would be possible for any department/office to deny the information sought by conveniently stating that the same is not available and the same would defeat the very objective behind the enactment of the Act of 2005. A perusal of the impugned order would show that the above aspects have not even been remotely considered. In the order passed, no reference to the facts of the case has been made nor the details of the information sought by the applicant has been mentioned, nor the fact as to whether any information on any of the points had been given or not has been stated. Even the contesting claims of both the petitioner as well as respondent Nos.2 and 3 have neither been noticed nor been answered. The relevant law including the judgment of the Delhi High Court in the abovesaid case has not been taken into consideration. Respondent No.4 is a quasi judicial authority which was required to adjudicate the said statutory second appeal filed by the petitioner under Section 19(3) of the Act of 2005 and was required to state the facts of the case, the pleas raised by the relevant parties and the reasons for rejecting the pleas of one party and for accepting the pleas of the other while passing the final order. Same having not been done, the impugned order, thus, deserves to be set aside solely on the ground that same is non-speaking and cryptic.

13. It is a matter of settled law that quasi judicial authorities must record reasons in support of its conclusion and insistence on recording of reasons is meant to serve the wider principle of justice that justice must not

only be done but also appear to have been done and that recording of reasons is indispensable in the decision making process and the same facilitates the process of judicial review by the Superior Courts and it is also necessary to give reasons for sustaining the litigants' faith in the justice delivery system. It has further been repeatedly held that reasons so given in support of a decision must be cogent and clear and should not be "rubber stamp reasons". Reference in this regard may be made to the judgment of the Hon'ble Supreme Court in case titled as ***"M/s Kranti Associates Pvt. Ltd. & Anr. Vs. Sh. Masood Ahmed Khan & Others"*** reported as ***2010(3) SCC (Civil) 852***, in which it has been held as under:-

> *"xxx xxx*
>
> *51. Summarizing the above discussion, this Court holds:*
>
> *a.* ***In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.***
>
> *b.* ***A quasi-judicial authority must record reasons in support of its conclusions.***
>
> *c.* ***Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.***
>
> *d.* ***Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.***
>
> *e.* ***Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.***
>
> *f.* ***Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.***

g. ***Reasons facilitate the process of judicial review by superior Courts.***

h. The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.

i. ***Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.***

j. ***Insistence on reason is a requirement for both judicial accountability and transparency.***

k. If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

l. ***Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or `rubber-stamp reasons' is not to be equated with a valid decision making process.***

m. It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harward Law Review 731-737).

n. ***Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence.*** *See (1994) 19 EHRR 553, at 562 para 29 and Anya vs. University of*

Oxford, 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

o. In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".

Xxx xxx"

14. Reference may also be made to the judgment of the Hon'ble Division Bench of this Court in case titled as "***Banarsi Das Cotton Mills (P) Ltd. Vs. State of Haryana and another***", reported as ***1997(1) PLR 17***, in which, it has been held as under:-

"xxx xxx

3. Although the impugned order/notice has been challenged on various grounds, we are of the opinion that the same is liable to be quashed on the short ground it does not contain reasons. ***There can be no manner of doubt that while deciding the appeal the Higher Level Screening Committee acts as a quasi judicial authority and it is duty bond to record reasons in support of its decision. The recording of reasons and communication thereof is imperative for compliance of the principles of natural justice which must inform the proceedings of every quasi judicial body and even in the absence of a statutory provision or administrative instructions requiring recording of reasons in support of the orders, the quasi judicial authority must pass speaking orders so as to stand the test of scrutiny.***

4. ***In Testeels Ltd. v. N.M. Desai, Conciliation Officer, A.I.R. 1970 Gujarat 1 (F.B.),*** *Full Bench of the Gujarat High*

Court held that the jurisdiction of the High Court under Article 226 and that of the Supreme Court under Article 136 of the Constitution of India cannot be stultified by administrative authorities by passing non-speaking orders.

5. ***The requirement of recording of reasons and communication thereof by quasi judicial authorities has been emphasised in several judgments of the Supreme Court including a Constitution Bench Judgment in S.N. Mukherjee v. Union of India, A.I.R. 1990 S.C. 1984.***

*6. Similar view has been expressed by a Division Bench of this Court in C.W.P. No. 10769 of 1995 (**Haryana Cotton Mills P. Ltd. Tohana v. State of Haryana and Ors.), decided on 8.12.1995.***

7. In view of the above legal position, we quash the rejection of the petitioner's appeal by the Higher Level Screening Committee and direct that Higher Level Screening Committee shall reconsider the appeal filed by the petitioner and pass a fresh order after giving opportunity of hearing to the petitioner. The High Level Screening Committee is further directed to decide the appeal afresh by passing a reasoned order within a period of one month after issuing notice to the petitioner for a specific date of hearing, on receipt of a copy of this order. The registry of this Court is directed to send a copy of this order to respondent No. 2.

xxx xxx"

15. Keeping in view the above said facts and circumstances and also the law laid down in the abovecited judgments, the present Civil Writ Petition is partly allowed and the order dated 20.07.2021 (Annexure P-6) as well as order dated 04.10.2021 are set aside and the matter is remanded to the Punjab State Information Commission for deciding the appeal Case No.AC-950-2020

afresh after giving an opportunity of hearing to the contesting parties.

16. Respondent No.4 is directed to pass a speaking order dealing with the contentions raised by both the parties. Parties through their counsel are directed to appear before respondent No.4 on 20.07.2023.

17. It is made clear that this Court has not given any final opinion on the merits of the case and it would be open to respondent No.4 to consider the case independently and in accordance with law.

(VIKAS BAHL)
JUDGE

13.07.2023
pawan/manisha

Whether speaking/reasoned Yes/No
Whether reportable Yes/No