

IN THE HIGH COURT OF JUDICATURE AT PATNA

CWJC No.16065 of 2008

BIHAR PUBLIC SERVICE COMMISSION through its Public Information Officer, Shri Kumar Uday Shankar Sinha, S/o Late C.N. Sinha, R/o Mohalla – Vednagar, Rukunpura, Bailey Road, P.O. B.V. College, P.S. Rukunpura, District-Patna.

-----Petitioner

Versus

1. THE STATE INFORMATION COMMISSION through its Joint Registrar, Soochna Bhawan, 4th Floor, Bailey Road, Patna.
2. The Assistant Registrar, the State Information Commission, Soochna Bhawan, 4th Floor, Bailey Road, Patna.
3. Sri Anil Kumar, Bank Colony, Club Road, Ara, District- Bhojpur, Pin Code- 802301.

----- Respondents

For the Petitioner: - Mr. P. K. Shahi, Sr. Advocate
Mr. Sanjay Pandey , Adv.
Mr. Vikash Kumar, Adv.

For the State Information Commission: - Mr. Lilit Kishore, Sr. Adv.
Mrs. Binita Singh, Adv

For the Respondent No. 3 :- Mr. Awadhesh Kumar, Adv.

3. 11.12.2008

I.A. No. 7111 of 2008

The interlocutory application has been filed for bringing on record and challenging the order dated 22.7.2008 passed by the State Information Commission in Case No. 8084/08-09.

In the facts and circumstances of the case, the prayer for amendment is allowed.

I.A. No. 7111 of 2008 is, accordingly, disposed of.

Heard learned Advocate General appearing for the Bihar Public Service Commission, learned Additional Advocate General No. 3 appearing for the State Information Commission and learned counsel for the respondent no. 3.

The petitioner, Bihar Public Service Commission seeks quashing of the order dated 22.7.2008 as also the order dated

11.9.2008 passed in Case No. 8084/08-09 by the State Information Commission by which the petitioner was directed to provide the information to the applicant-respondent no. 3 till 8.9.2008 by the earlier order and by the subsequent order a direction to impose monetary fine of Rs. 13,000/- with effect from 22.7.2008 and in case of violation of the order, the monetary fine of Rs. 250/- per day was to continue and fixed the next date of hearing on 26.11.2008.

The respondent no. 3 had filed an application before the Chairman, Bihar Public Service Commission on 17.8.2007 requesting the verification of marks of two of the papers and further gave reminder on 10.9.2007 and thereafter he sought information under the Right to Information Act, 2005 from the Public Information Officer, B.P.S.C. by filing an application on 29.11.2007 and also seeking information regarding the action taken on the said application. He again filed another application on 8.4.2007 for making available the photocopy of the answer books of two papers. Not satisfied with the information provided by the petitioner, the respondent no. 3 filed an appeal before the First Appellate Authority, B.P.S.C. on 22.5.2008 and subsequently filed second appeal on 27.5.2008 before the Information Commission under Section 19 of the Right to Information Act for seeking a direction to the B.P.S.C. to furnish the information sought for, scrutiny/verification of the two answer books relating to the Law of Contract and Torts and the Evidence and Procedural Law and also to intervene in the matter and award some exemplary punishment to the erring officials of the B.P.S.C. It appears that

during the course of proceedings the information sought by the respondent no. 3 was provided but the answer books were not supplied, the B.P.S.C. making a claim that the same was exempt on account of fiduciary relationship. Ultimately, the two orders impugned in this case came to be passed by the Commission by which apart from the direction to supply the answer books a penalty as indicated above has been imposed.

Learned Advocate General appearing for the B.P.S.C. fairly submits that in view of the provisions of Section 3 read with Sections 8 and 9 of the Right to Information Act, the B.P.S.C. cannot refuse to supply the copy of the answer books as the same does not appear to be covered by the exemption mentioned in Section 8 of the Act. It is submitted that at best Clause (e) of Sub-Section 8 may be applicable to the case which relates to exemption of information available to a person on account of fiduciary relationship but ultimately he does not seriously press the said point and submits that the B.P.S.C. is willing to supply the copy of two papers as sought for by the respondent no. 3 within a period of two to three weeks from today.

It is further submitted by learned Advocate General that the Commission functions under severe infrastructural constraints and acted under a bona fide view in the said matter since at least before the coming into force of the Right to Information Act, it was not required even by the Courts to supply copies of answer sheets to any of the examinees nor there is any such provision in the Rules and Regulations of the B.P.S.C. It was in such circumstances that the said

stand had been taken by the B.P.S.C. in the present matter. It is further submitted that as a matter of fact, the B.P.S.C. on its own has started disclosing a number of informations so that the candidates do not even have to approach the Information Commission in such matters.

It is also submitted by learned Advocate General that under Section 20 of the Act before an order imposing penalty can be passed two preconditions must be satisfied, the first being that a reasonable opportunity of being heard ought to be provided to the Public Information Officer and, secondly, the order in question must disclose that the ingredients provided in Section 20 are present before the same can be passed. It is urged by learned Advocate General that neither a reasonable opportunity of being heard was provided to the petitioner nor the order discloses any of the ingredients of Section 20 so as to show any application of mind by the Information Commission. Thus, according to the learned Advocate General, the impugned orders are in breach of the requirements of Section 20 of the Act and cannot be permitted to stand although he submits that so far as the supply of copy is concerned, the Commission would supply the same to the respondent no. 3.

Learned Additional Advocate General No. 3 appearing for the State Information Commission states that from the order dated 18.6.2008, it is evident that the petitioner had been directed to show cause as to why the penalty ought not to be imposed upon him and thus the provisions of Section 20 are not violated. However, the

learned Additional Advocate General No. 3 was unable to show the compliance with the ingredients of Section 20 by either the order dated 22.7.2008 or the order dated 11.9.2008.

This Court is, therefore, of the view that the orders do not show the application of mind, regarding the ingredients of Section 20 of the Act being present in the instant matter, while passing the same and for the said reason they cannot be permitted to stand and are accordingly quashed.

The writ application is, accordingly, allowed subject to the direction that the B.P.S.C. shall supply a certified copy of the answer books demanded by the petitioner, as undertaken by the learned Advocate General on its behalf, within a period of three weeks from today.

P. Kumar