

May be circulated

91

No. 08/21/2023-1AR
GOVERNMENT OF HARYANA
GENERAL ADMINISTRATION DEPARTMENT
(Administrative Reforms)

MD/HFGCL
21/09/2023
ST-I

Dated: Chandigarh, the 20th September, 2023

To
22/9/2023

1. All the Administrative Secretaries to Govt. of Haryana.
2. All the Head(s) of Department(s) in Haryana.
3. All the Chief Administrators and Managing Directors of Boards/Corporations under Government of Haryana.
4. The Registrar General, Punjab & Haryana High Court, Chandigarh.
5. All the District & Session Judges in the State of Haryana.
6. All the Divisional Commissioners & Deputy Commissioners in the State of Haryana.

Director/Technical
No. 12179.D
CE/Admin.
CE/Fuel
CE/DCRTPP
CE/RGTPP
CE/PTPS
CE/Plg.
CE/REO
CE/Proj
CE/Regulator
SE/Tech.
XEN/Tech.
Personal Assistant

Subject: **Decision of Hon'ble Punjab and Haryana High Court, Chandigarh in CWP No. 17672 of 2023.**

Sir/Madam

I am directed to invite your kind attention to the following portion of the order in CWP bearing No. 17672 of 2023 titled as Rajwinder Singh Vs. State of Punjab and others, where-in the Hon'ble Punjab & Haryana High Court made certain observations:-

"This Court has found that in a large number of cases, the authorities including the first Appellate Authority {(while adjudicating the first statutory appeal under Section 19(1))} and the second Appellate Authority {(while adjudicating the second statutory appeal under Section 19(3))} under the Act, have been passing cryptic and non-speaking orders in violation of the judgments passed by the Honble Supreme Court and various High Courts and also in violation of the mandate of the Act of 2005. It is, thus, found necessary to give the following directions to the first Appellate Authority and Second Appellate Authority under the Act of 2005 to clearly specify the following at the time of finally adjudicating the case:-

- i) The points on which the information is sought by the applicant as per his/her application filed under the Act of 2005.
- ii) The point-wise reply with respect to the information sought.
- iii) A categorical finding as to whether the information on any of the points has been supplied or not and if supplied, the date on which it has been supplied.
- iv) In case, it is the stand of the authorities from whom the information is sought that the information sought under a particular point is not to be supplied on account of any bar contained in any provisions of the Act of 2005 or for any other reason, then after recording the said stand and after considering the submissions made by both the parties with respect to said point/issue, return a finding with respect to the said issue/point.
- v) Any other observation which the authority deems fit in the facts and circumstances of the case to be recorded.

The Chief Secretary to the State of Punjab & Haryana and the Advisor to the Administrator, Chandigarh are directed to circulate the judgment passed in the present case i.e. CWP-17672-2023 titled as "Rajwinder Singh Vs. State of Punjab and others" and the judgment dated 13.07.2023 passed in CWP-1877-2022 titled as "Gagnish Singh Khurana Vs. State of Punjab and others" as well as

CFMS/Diary No. 12179
SPS/MD/HFGCL
Dated 22/09/2023

Diary No. 1315 XEN/Rectt.
Dated 26/09/23

Memo No. 6514
Dated 25/09/23
DS/Estt.
US/NGE
DS/General
DS/T&M
XEN/HR&TRG
XEN/Rectt.

CE/Admn.

Supdt. Trg
25/9
VDC
26/9/23

the "judgment dated 21.07.2023 passed in CWP-15500-2023 titled as "Gopal Krishan Gupta Vs. Central Information Commission and others", to all the authorities constituted under the Act for complying with the same."

2. Copy of the above judgment dated 16.08.2023 has been uploaded at the official website of i.e. <http://csharyana.gov.in/>. Further, the judgments dated 13.07.2023 passed in CWP-1877-2022 titled as "Gagnish Singh Khurana Vs. State of Punjab and others" as well as the "judgment dated 21.07.2023 passed in CWP-15500-2023 titled as "Gopal Krishan Gupta Vs. Central Information Commission and others" can be accessed on website of Hon'ble High Court as well.

3. The above judgments may be brought to the notice of all concerned under your control for necessary compliance.

Yours faithfully,

Rajesh Kumar
(Rajesh Kumar)

Dy. Superintendent, AR
for Chief Secretary to Government, Haryana

Endst. No. 08/21/2023-1AR

Dated, Chandigarh the 20th September, 2023

A copy is forwarded to the Secretary, State Information Commission, SCO No. 70-71 (1st Floor), Sector-8C, Chandigarh for information & necessary action.

[Signature]

(Rajesh Kumar)

Dy. Superintendent, AR
for Chief Secretary to Government, Haryana.

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-15500-2023

Date of decision: - 21.07.2023

Gopal Krishan Gupta

....Petitioner

Versus

Central Information Commission and others

....Respondents

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Gopal Krishan Gupta, petitioner in person.

Mr. Sunil Kumar Sharma, Sr. Panel Counsel,
for UOI-respondents.

VIKAS BAHL, J. (ORAL)

1. This is a civil writ petition filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for setting aside the order dated 28.02.2023 passed by respondent no.2 (Annexure P-11) whereby second appeal under Section 19(3) read with Section 20 of the Right to Information Act, 2005 (in short "RTI Act") and complaint under Section 18(1)(a) to (c) read with Section 20 of the RTI Act, 2005 has been disposed of. Challenge has also been made to the order dated 22.06.2022 (Annexure P-8) and order dated 07.03.2023 (Annexure P-12).

2. Petitioner, who is appearing in person, has submitted that he had filed an application dated 07.02.2022 (Annexure P-1) before the CPIO and after the reply was received from the CPIO, the petitioner being

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dissatisfied had filed first appeal dated 19.03.2022 (Annexure P-3). It is further submitted that since the entire information as sought by the petitioner had not been provided, thus, the petitioner preferred a second appeal dated 21.05.2022 under Section 19(3) read with Section 20 of the RTI Act and copy of the same has been annexed as Annexure P-7 in which several prayers were made by the petitioner including the prayer to direct the CPIO to supply the requisite information and also to impose a penalty of Rs.25,000/- on the concerned CPIO under Section 20(1) of the Act. It is stated that the Central Information Commission, vide order dated 28.02.2023 (Annexure P-11) disposed of the appeal filed by the petitioner after observing that no final pointwise reply was provided to the petitioner and directing the CPIO to provide a final consolidated reply on all the points as provided by the concerned custodians within 7 days from the date of receipt of the order. It is further stated that the Information Commissioner should have kept the appeal pending and after seeking response from the CPIO and after hearing the petitioner as well as all the concerned parties, the Information Commissioner should have then finally adjudicated the matter. It is submitted that after the said appeal was disposed of, the CPIO vide letter dated 07.03.2023 (Annexure P-12) has filed a reply which also does not satisfy the claim of the petitioner. It is submitted that since the appeal has been disposed of by the Information Commissioner, thus, the petitioner does not have any statutory forum under the 2005 Act to pursue his case. It is further submitted that since the appeal filed before the Central Information Commission was the statutory second appeal, thus, it was incumbent upon the Information Commissioner to have considered the entire matter after calling for the

reply from the CPIO and after hearing all the concerned parties. It is stated that in case the Information Commissioner is of the opinion that certain information cannot be provided, in accordance with law, then the reasons for the same are required to be mentioned in the order itself and that in case the Information Commissioner is of the opinion that the petitioner is entitled to the said information and the same is not being provided by the concerned officer, then appropriate action, in accordance with law, is required to be taken. It is further submitted that at any rate, the impugned order dated 28.02.2023 deserves to be set aside to the extent that the appeal has been disposed of without final adjudication of the matter.

3. Learned counsel appearing on behalf of respondents No.1 to 4 has submitted that they have no objection to the said course of action, but has submitted that their pleas be also considered before any final order is passed by the Information Commissioner.

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

5. Relevant portion of the order dated 28.02.2023 (Annexure P-11) is reproduced herein below: -

“The fact is that no final point-wise reply was provided on any of the points to the appellant as per the record.

In view of the same, the CPIO is directed to provide a final consolidated reply on all the points as provided by the concerned custodians within 7 days from the date of receipt of this order.

The appeals are disposed of accordingly.”

6. A perusal of the above-said order would show that after considering the entire matter, the Information Commissioner was of the opinion that no final point-wise reply has been provided to the appellant as per the record and thus, had directed the CPIO to provide a final

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consolidated reply on all the points as provided by the concerned custodians within 7 days from the date of receipt of this order. However, instead of waiting for the reply, the Information Commissioner disposed of the appeal without final adjudication of the matter and that the said procedure is not in accordance with law.

7. A perusal of Section 19 of the RTI Act would show that under sub-Section 3, an aggrieved person has a right to file the second appeal before the Central Information Commission or the State Information Commission and that, under sub-section (8), the Central Information Commission has been given several powers including the power requiring the public authority to compensate the complainant for any loss or detriment suffered or to impose any of the penalties provided under the Act. Section 19 of the RTI Act, is reproduced herein below: -

“19. Appeal.—(1) Any person who, does not receive a decision within the time specified in sub-section (1) or clause (a) of sub-section (3) of section 7, or is aggrieved by a decision of the Central Public Information Officer or State Public Information Officer, as the case may be, may within thirty days from the expiry of such period or from the receipt of such a decision prefer an appeal to such officer who is senior in rank to the Central Public Information Officer or State Public Information Officer as the case may be, in each public authority:

Provided that such officer may admit the appeal after the expiry of the period of thirty days if he or she is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) Where an appeal is preferred against an order made by a Central Public Information Officer or a State Public Information Officer, as the case may be, under section 11 to disclose third party information, the appeal by the concerned third party shall be made within thirty days from the date of the order.

(3) A second appeal against the decision under sub-section (1) shall lie within ninety days from the date on which the decision should have been made or was actually received, with the Central Information

Commission or the State Information Commission: Provided that the Central Information Commission or the State Information Commission, as the case may be, may admit the appeal after the expiry of the period of ninety days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(4) *If the decision of the Central Public Information Officer or State Public Information Officer, as the case may be, against which an appeal is preferred relates to information of a third party, the Central Information Commission or State Information Commission, as the case may be, shall give a reasonable opportunity of being heard to that third party.*

(5) *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.*

(6) *An appeal under sub-section (1) or sub-section (2) shall be disposed of within thirty days of the receipt of the appeal or within such extended period not exceeding a total of forty-five days from the date of filing thereof as the case may be, for reasons to be recorded in writing.*

(7) *The decision of the Central Information Commission or State Information Commission, as the case may be, shall be binding.*

(8) *In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to—*

(a) *require the public authority to take any such steps as may be necessary to secure compliance with the provisions of this Act, including—*

(i) *by providing access to information, if so requested, in a particular form;*

(ii) *by appointing a Central Public Information Officer or State Public Information Officer, as the case may be;*

(iii) *by publishing certain information or categories of information;*

(iv) *by making necessary changes to its practices in relation to the maintenance, management and destruction of records;*

(v) *by enhancing the provision of training on the right to information for its officials;*

(vi) *by providing it with an annual report in compliance with clause (b) of sub-section (1) of section 4;*

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(b) require the public authority to compensate the complainant for any loss or other detriment suffered;

(c) impose any of the penalties provided under this Act;

(d) reject the application.

(9) The Central Information Commission or State Information Commission, as the case may be, shall give notice of its decision, including any right of appeal, to the complainant and the public authority.

(10) The Central Information Commission or State Information Commission, as the case may be, shall decide the appeal in accordance with such procedure as may be prescribed.

8. Section 20 of the RTI Act provides that in case, the Central Information Commission at the time of deciding any complaint or appeal, is of the opinion that the Central Public Information Officer has, without any reasonable cause, not furnished information within the time specified under subsection (1) of Section 7 or has malafidely denied the request for information etc., then, it is empowered to impose a penalty of two hundred and fifty rupees each day till the information is furnished. Section 20 of the RTI Act is reproduced as under: -

“20. Penalties.—(1) Where the Central Information Commission or the 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 16 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 the 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."

9. A conjoint reading of the above reproduced provisions would show that once a second appeal has been filed by an aggrieved person, then, after considering all the aspects, the matter is required to be finally adjudicated. In case, the Information Commissioner is of the opinion that the ingredients, as specified in Section 20 of the RTI Act are met, appropriate action is also required to be taken. In the present case, after prima facie holding in favour of the petitioner with respect to points No. (a) and (b) and after directing the CPIO to file a revised reply, the appeals have been disposed of by respondent No.2 without waiting for the said reply and without finally adjudicating the matter and thus, to the said extent, the impugned order deserves to be set aside

10. Keeping in view the above said facts and circumstances, the present petition is partly allowed and the order dated 28.02.2023 (Annexure P-11) to the extent that the statutory second appeal filed by the

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petitioner has been disposed of, is set aside and a direction is issued to the Central Information Commission to finally adjudicate the said appeal after taking into consideration the final consolidated reply filed by the CPIO as directed by the Information Commissioner in the impugned order and after considering the pleas raised by both the parties in accordance with law.

11. It is made clear that this Court has not opined on the merits of the case and the concerned authority would decide the matter independently, in accordance with law.

(VIKAS BAHL)
JUDGE

July 21, 2023

Davinder Kumar

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

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.

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,

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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

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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***

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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

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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:-*

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(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 PSIEC 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

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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 Harvard 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

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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 bound 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 abovesaid 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

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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.

13.07.2023
pawan/manisha

(VIKAS BAHL)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No

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

CWP-17672-2023

Date of decision: 16.08.2023

Rajwinder Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Amandeep Singh Saini, Advocate for the petitioner.

Mr. Rohit Bansal, Sr. DAG, Punjab
for respondent Nos.1 to 7.

VIKAS BAHL, J. (ORAL)

1. This is a Civil Writ Petition filed under Article 226 of the Constitution of India for the issuance of a writ in the nature of certiorari for setting aside the order dated 06.03.2023 (Annexure P-9) vide which the second appeal of the petitioner has been disposed of by respondent No.2-State Information Commission, Punjab.

2. Learned counsel for the petitioner has submitted that the petitioner had moved an application dated 15.09.2022 (Annexure P-2) under Section 6(2) of the Right to Information Act, 2005 (hereinafter to be referred as "the Act of 2005"), in which, he had sought information on seven points. It is further submitted that when the said information was not provided to the petitioner then he filed the first statutory appeal on

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18.10.2022 (Annexure P-5) and when even the first Appellate Authority did not provide the requisite information to the petitioner then the second statutory appeal dated 29.12.2022 (Annexure P-7) was filed by the petitioner. It is contended that although, the information under point Nos.3, 4 and 6 of the application (Annexure P-2) was not supplied but the State Information Commissioner, Punjab by passing a cryptic and non-speaking order and without even stating the facts of the case, had disposed of the case and closed the same. It is further contended that neither the details of the information which was sought has been mentioned in the impugned order nor it has been stated as to on which points the information has been supplied and on which points the information cannot be supplied and the reasons for the non-supply of the same. It is argued that the State Information Commissioner, Punjab was hearing the statutory second appeal filed by the petitioner under Section 19(3) of the Act of 2005 and was thus, duty bound to pass a reasoned and speaking order and the same having not been done, the impugned order dated 06.03.2023 (Annexure P-9) deserves to be set aside on the said ground alone and the matter deserves to be remanded to the State Information Commissioner, Punjab for passing a fresh order after considering the contentions raised by the petitioner and the respondents and for adjudicating the same.

3. Learned State Counsel appearing on behalf of respondent Nos.1 to 7 has although, tried to justify the impugned order but could not dispute the fact that neither the details of the information sought in the application nor the date on which the information had been supplied nor any reasons have been given before disposing off/closing the second appeal.

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

5. The petitioner had sought the information on seven points under Section 6 of the Act of 2005 by way of filing an application dated 15.09.2022 (Annexure P-2). The relevant portion of the said application is reproduced hereinbelow:-

“Sir,

Please provide certified copies of the documents as per the following regarding the subject matter mentioned above:-

1. Provide certified copy of the application bearing UID no. and Noting regarding the subject matter mentioned above.

2. During the course of investigation of the application bearing UID No. 1679278, provide their names, addresses, date of recording statement and provide the copies of recorded statement.

3. Provide a copy of the probe report of the applicant bearing UID Number 1679278 and inform the date of the probe report.

4. Provide the Name, office address, designation of the probe officer through who conducted the investigation of the application bearing UID No. 1679278.

5. Please provide a copy of the page of the register where the entry has been made in respect of handing over the probe of the application to the probe officer related to the subject matter mentioned above, regarding the receipt of the application through the probe officer and the filing the application in the office.

6. Please provide a copy of the final probe report prepared by the Hon'ble Commissioner of Police regarding the subject matter mentioned above.

7. Regarding the information of the subject matter mentioned above, I want to inspect the record under RTI Act us 2 (j)

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personally, in this regard, I should be allowed to inspect the record and I should be informed about the date, time and place in this respect.”

6. The petitioner being dissatisfied with the order of the authority under the Act of 2005, filed second statutory appeal under Section 19(3) of the Act of 2005 and on 06.03.2023, the State Information Commissioner, Punjab had passed the following order:-

“Order

Heard in the Commission.

2. *The RTI request is dated 15.09.2022. First appeal is dated 18.10.2022. Second appeal has been received in the Commission on 06.01.2023.*

3. *The appellant, Sh. Rajwinder Singh, appeared in person in today’s hearing.*

4. *Sh. Prem Singh, S.I., who appeared with Sh. Surinder Singh, A.S.I., in today’s hearing, states that a reply has been sent to the Commission vide letter No. 890 dated 11.02.2023 (received in the Commission vide Diary No. 4119 dated 13.02.2023.), intimating that the requisite information has already been supplied to the appellant.*

5. *After going over the queries raised by the appellant through his RTI request and the response given by the respondent PIO concerned and finding it satisfactory, the case is announced as disposed of and closed.*

Copies of the orders be sent to the parties.

Sd/-

(xxx xxxx xxx)

State Information Commissioner

Punjab

Date: 6th March, 2023”

7. It is the case of the petitioner that information qua point Nos.3,

4 and 6 of the application dated 15.09.2022 (Annexure P-2) has not been supplied to him even till date. A perusal of the impugned order would show that no reference has been made to the various points on which the information was sought by the petitioner. It has not even been observed in the impugned order that with respect to which Clause/point of the application, the information has been supplied and on which date. In the event, information under a particular Clause/point is not to be supplied on account of any bar contained in any provision of the Act of 2005 or for any other reason, the finding on the said aspect must be recorded, which also has not been done in the present case. It has been vaguely stated that the requisite information has been supplied and that the authority found the response of the PIO to be satisfactory. From a reading of the impugned order, neither the case of the petitioner nor the stand of the respondents is clear, nor it can be ascertained as to information under which clause/point of the application has been supplied and when.

8. This Court vide **judgment dated 13.07.2023** passed in **CWP-1877-2022** titled as **“Gagnish Singh Khurana Vs. State of Punjab and others”** has held as under:-

“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

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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

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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 bound 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”

9. This Court in another **judgment dated 21.07.2023** passed in **CWP-15500-2023** titled as “**Gopal Krishan Gupta Vs. Central Information Commission and others**”, while dealing with a cryptic and non-speaking order passed by the Central Information Commissioner under Section 19(3) read with Section 20 of the Act of 2005, had observed as under:-

“5. Relevant portion of the order dated 28.02.2023 (Annexure P11) is reproduced herein below: -

“The fact is that no final point-wise reply was provided on any of the points to the appellant as per the record.

In view of the same, the CPIO is directed to provide a final consolidated reply on all the points as provided by the concerned custodians within 7 days from the date of receipt of this order.

The appeals are disposed of accordingly.”

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6. A perusal of the above-said order would show that after considering the entire matter, the Information Commissioner was of the opinion that no final point-wise reply has been provided to the appellant as per the record and thus, had directed the CPIO to provide a final consolidated reply on all the points as provided by the concerned custodians within 7 days from the date of receipt of this order. However, instead of waiting for the reply, the Information Commissioner disposed of the appeal without final adjudication of the matter and that the said procedure is not in accordance with law.

7. **A perusal of Section 19 of the RTI Act would show that under sub-Section 3, an aggrieved person has a right to file the second appeal before the Central Information Commission or the State Information Commission and that, under sub-section (8), the Central Information Commission has been given several powers including the power requiring the public authority to compensate the complainant for any loss or detriment suffered or to impose any of the penalties provided under the Act. Section 19 of the RTI Act, is reproduced herein below: -**

“19. Appeal.—(1) Any person who, does not receive a decision within the time specified in sub-section (1) or clause (a) of sub-section (3) of section 7, or is aggrieved by a decision of the Central Public Information Officer or State Public Information Officer, as the case may be, may within thirty days from the expiry of such period or from the receipt of such a decision prefer an appeal to such officer who is senior in rank to the Central Public Information Officer or State Public Information Officer as the case may be, in each public authority:

Provided that such officer may admit the appeal after the expiry of the period of thirty days if he or she is satisfied that the appellant was prevented by sufficient

cause from filing the appeal in time.

(2) Where an appeal is preferred against an order made by a Central Public Information Officer or a State Public Information Officer, as the case may be, under section 11 to disclose third party information, the appeal by the concerned third party shall be made within thirty days from the date of the order.

(3) A second appeal against the decision under sub-section (1) shall lie within ninety days from the date on which the decision should have been made or was actually received, with the Central Information Commission or the State Information Commission: Provided that the Central Information Commission or the State Information Commission, as the case may be, may admit the appeal after the expiry of the period of ninety days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(4) If the decision of the Central Public Information Officer or State Public Information Officer, as the case may be, against which an appeal is preferred relates to information of a third party, the Central Information Commission or State Information Commission, as the case may be, shall give a reasonable opportunity of being heard to that third party.

(5) 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.

(6) An appeal under sub-section (1) or sub-section (2) shall be disposed of within thirty days of the receipt of the appeal or within such extended period not

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exceeding a total of forty-five days from the date of filing thereof as the case may be, for reasons to be recorded in writing.

(7) The decision of the Central Information Commission or State Information Commission, as the case may be, shall be binding.

(8) In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to—

(a) require the public authority to take any such steps as may be necessary to secure compliance with the provisions of this Act, including—

(i) by providing access to information, if so requested, in a particular form;

(ii) by appointing a Central Public Information Officer or State Public Information Officer, as the case may be;

(iii) by publishing certain information or categories of information;

(iv) by making necessary changes to its practices in relation to the maintenance, management and destruction of records;

(v) by enhancing the provision of training on the right to information for its officials;

(vi) by providing it with an annual report in compliance with clause (b) of sub-section (1) of section 4;

(b) require the public authority to compensate the complainant for any loss or other detriment suffered;

(c) impose any of the penalties provided under this Act;

(d) reject the application.

(9) The Central Information Commission or State

Information Commission, as the case may be, shall give notice of its decision, including any right of appeal, to the complainant and the public authority.

(10) The Central Information Commission or State Information Commission, as the case may be, shall decide the appeal in accordance with such procedure as may be prescribed.

8. Section 20 of the RTI Act provides that in case, the Central Information Commission at the time of deciding any complaint or appeal, is of the opinion that the Central Public Information Officer has, without any reasonable cause, not furnished information within the time specified under subsection (1) of Section 7 or has malafidely denied the request for information etc., then, it is empowered to impose a penalty of two hundred and fifty rupees each day till the information is furnished.

Section 20 of the RTI Act is reproduced as under: -

“20. Penalties.—(1) Where the Central Information Commission or the 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 16 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

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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 the 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."

9. A conjoint reading of the above reproduced provisions would show that once a second appeal has been filed by an aggrieved person, then, after considering all the aspects, the matter is required to be finally adjudicated. In case, the Information Commissioner is of the opinion that the ingredients, as specified in Section 20 of the RTI Act are met, appropriate action is also required to be taken. In the present

case, after prima facie holding in favour of the petitioner with respect to points No. (a) and (b) and after directing the CPIO to file a revised reply, the appeals have been disposed of by respondent No.2 without waiting for the said reply and without finally adjudicating the matter and thus, to the said extent, the impugned order deserves to be set aside”

The State Information Commissioner, Punjab, while adjudicating the second statutory appeal filed by the petitioner under Section 19(3) of the Act of 2005 was acting as a quasi judicial authority and was, therefore, required to adjudicate the case after considering the facts of the case, pleas raised by both the parties and was required to record reasons for rejecting the pleas of one party and accepting the pleas of the other party by passing a reasoned order. The order should have been self-explanatory and reasons given in the same should not have been rubber stamp reasons. The same has not been done in the present case and the impugned order passed is cryptic and non-speaking as has been detailed in para 7 of the present order.

10. Keeping in view the abovesaid facts and circumstances, the present Civil Writ Petition is partly allowed and the impugned order dated 06.03.2023 (Annexure P-9) is set aside and the matter is remanded to the State Information Commissioner, Punjab for deciding Appeal Case No.452 of 2023 afresh after giving an opportunity of hearing to the contesting parties. The State Information Commissioner, Punjab, is directed to pass a speaking order dealing with the contentions raised by both the parties. The parties through their counsel are directed to appear before the State Information Commissioner, Punjab, on 24.08.2023.

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11. It is, however, made clear that this Court has not given any final opinion on the merits of the case and it would be open to the State Information Commissioner, Punjab, to consider the case independently and in accordance with law.

12. This Court has found that in a large number of cases, the authorities including the first Appellate Authority {(while adjudicating the first statutory appeal under Section 19(1))} and the second Appellate Authority {(while adjudicating the second statutory appeal under Section 19(3))} under the Act, have been passing cryptic and non-speaking orders in violation of the judgments passed by the Hon'ble Supreme Court and various High Courts and also in violation of the mandate of the Act of 2005. It is, thus, found necessary to give the following directions to the first Appellate Authority and second Appellate Authority under the Act of 2005 to clearly specify the following at the time of finally adjudicating the case:-

- i) The points on which the information is sought by the applicant as per his/her application filed under the Act of 2005.
- ii) The point-wise reply with respect to the information sought.
- iii) A categorical finding as to whether the information on any of the points has been supplied or not and if supplied, the date on which it has been supplied.
- iv) In case, it is the stand of the authorities from whom the information is sought that the information sought under a particular point is not to be supplied on account of any bar contained in any provisions of the Act of 2005 or for any other reason, then, after recording the said stand and after considering the submissions made by both the parties

with respect to said point/issue, return a finding with respect to the said issue/point.

- v) Any other observation which the authority deems fit in the facts and circumstances of the case to be recorded.

13. The Chief Secretary to the States of Punjab & Haryana and the Advisor to the Administrator, Chandigarh are directed to circulate the judgment passed in the present case i.e. CWP-17672-2023 titled as "Rajwinder Singh Vs. State of Punjab and others" and the judgment dated 13.07.2023 passed in CWP-1877-2022 titled as "Gagnish Singh Khurana Vs. State of Punjab and others" as well as the judgment dated 21.07.2023 passed in CWP-15500-2023 titled as "Gopal Krishan Gupta Vs. Central Information Commission and others", to all the authorities constituted under the Act for complying with the same.

16.08.2023
Pawan

(VIKAS BAHL)
JUDGE

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No