

ORISSA INFORMATION COMMISSION  
BHUBANESWAR

Present: Shri Tarun Kanti Mishra,  
State Chief Information Commissioner

Date:- 20<sup>th</sup> May, 2011

Second Appeal No. 263 / 2008

Bala Krishna Parida,  
Plot No.1107/D, Sector-6,  
Markat Nagar, Cuttack..... Appellant

- Vrs -

1. Public Information Officer,  
Cuttack Development Authority,  
Arunodaya Bhawan, Cuttack-753 012
2. First Appellate Authority,  
Cuttack Development Authority,  
Arunodaya Bhawan, Cuttack-753 012 ..... Respondents

Decision

1. Appellant Bala Krishna Parida is absent on call. However, his representative Advocate Saroj Kumar Mohanty is present. Gyanendra Prasad Samal, PIO-cum-Law Officer, Cuttack Development Authority (CDA), Cuttack and Krutibas Nayak, P.A., ITDA, Baliguda and ex-First Appellate Authority, CDA and Bijay Kumar Dhal, IAS (Retd.), ex-Vice Chairman, CDA are absent.

2. Appellant Bala Krishna Parida had filed form-A application dated 16.07.2008 under Section 4(1) of Right to Information Act, 2005 on deposit of Rs.10.00 to obtain information on the enquiry report of the Chairman, CDA, as per the direction of Orissa High Court in OJC No.13714/1999 on 22.02.2008 including the order sheet and his written statement submitted on 22.05.2008 before the Chairman, CDA. The then Vice-Chairman, CDA in file No.Adm.MS-40/2007 of Establishment Section observed that supply of this information is not permissible under Section 8(1)(j) of Right to Information Act, 2005. Accordingly, PIO intimated the appellant on 11.08.2008 about the rejection of the application. The appellant had thereafter gone on appeal before the

First Appellate Authority-cum-Secretary, CDA. On hearing the appellant and others, the First Appellate Authority upheld the decision of the Vice Chairman, CDA vide his order dated 08.09.2008. Aggrieved, the appellant approached the Commission.

3. The appellant submitted before the Commission that both, the First Appellate Authority-cum-Vice Chairman, CDA, and the PIO have violated the provisions of Right to Information Act, 2005 and that he had been denied to obtain the information. On hearing both the parties and on perusal of records, the Commission was of the view that there is a wilful refusal of information to the appellant. The Commission held that Bijay Kumar Dhal, IAS, the then Vice Chairman, CDA and Krutibas Nayak, OAS, the then First Appellate Authority and Secretary, CDA (now P.A., ITDA, Baliguda) are *prima facie* responsible for such lapses which attract penal action under section 20(1) of Right to Information Act, 2005. Both of them were directed by the Commission to appear on 22.03.2011 with their respective show cause memoranda to explain as to why penalty shall not be imposed on them.

4. Bijay Kumar Dhal and Krutibas Nayak appeared and explained their action. Krutibas Nayak was also heard on 28.04.2011. The Commission also perused the relevant file in which orders were passed regarding supply of information to the appellant. All that the appellant sought to obtain was the enquiry report of the Chairman, CDA and the written statement submitted by him on 22.05.2008 before the Chairman. Clearly there was no ground to refuse the information he sought to obtain. In the office note dated 28.07.2008 it was stated that the information solicited by the appellant does not come within the exempted categories of information under the Act and that the information may be supplied. But Krutibas Nayak the then Secretary, CDA decided to seek the opinion of the Law Officer, who in his note dated 05.08.2008 observed that such information does not come under the scope of Sections 8 and 9 of the Right to Information Act, 2005. He advised that the information may be supplied to the appellant. Krutibas Nayak without giving any opinion submitted the file to the Vice Chairman CDA. In his order

dated 08.08.2008 Bijay Kumar Dhal, IAS, the Vice Chairman, CDA observed that supply of this information is not permissible under Section 8(1)(j). His decision was implemented and the information was refused to be furnished to the appellant. It is obvious that Shri Dhal had passed a wrong order, which is contrary to the advice tendered by the Law Officer. Shri Dhal should have recorded a speaking order while disagreeing with the Law Officer. In its absence, it appears that the refusal is wilful. Such a wrong decision was faithfully carried out by the PIO, and, subsequently, the First Appellate Authority followed suit. Since the decision came from the head of the office, the inability of the PIO and the First Appellate Authority to take a contrary view is understandable.

5. The Commission holds Bijay Kumar Dhal, IAS (Retd.), Ex-Vice Chairman, CDA guilty under Section 20(1) of the Right to Information Act, 2005, of not providing the information to the appellant. Since the delay is over 100 days, he is liable to pay a penalty of Rs.25,000/-. He is directed to deposit the penalty amount in Government treasury under head "0070-Other Administrative Services-60-Other Services-118-Receipt under Right to Information Act, 2005-0014-Collection of Fees and Fines-02178-Fees and Fines under Right to Information Act, 2005" within 30 days of receipt of this order, failing which the penalty amount shall be recovered from him by the respective Public Authority in 10 equal, monthly, consecutive instalments from his pension/provisional pension beginning from the month of July, 2011 payable in August, 2011. If the Public Authority fails to recover the penalty amount, the same shall be recovered from him under Rule 13 Orissa Right to Information Rules, 2005. The concerned Public Authority will inform the Secretary, Orissa Information Commission the fact of such recovery. With these directions, the case is closed.

Pronounced in open proceedings

Given under the hand and seal of the State Commission this day, the  
20<sup>th</sup> May, 2011.

State Chief Information Commissioner  
20.052011