

**ODISHA INFORMATION COMMISSION
BHUBANESWAR**

**Present : Shri Sunil Kumar Misra,
State Chief Information Commissioner**

Date 18th November, 2020

Second Appeal No- 3016/2016

Pradyumna Keshari Mohapatra,
At-Amara,
PO-Odangi,
Dist-Balasore.....Appellant

-Vrs-

1. Public Information Officer,
Governor's Secretariat,
Raj Bhawan, Odisha,
Bhubaneswar
2. First Appellate Authority,
Governor's Secretariat,
Raj Bhawan, Odisha,
Bhubaneswar.....Respondents

DECISION

1. Appellant, Pradyumna Keshari Mohapatra, is not present. The PIO and the First Appellate Authority of the Governor's Secretariat, Raj Bhawan, Odisha are also not present.

2. Vide an application in Form-A dated 30.08.2016 submitted before the PIO of the office of the Hon'ble Governor of Odisha, the appellant had requested the PIO to inform him about the follow-up action taken on his application dated 20.05.2016 which he had addressed to the Hon'ble Governor for taking necessary action under Section 17 of the Right to Information Act, 2005 on the basis of the said application. In this connection, the appellant had also asked for copies of all the notes, correspondences, reports, views and decisions of the concerned authorities. Additionally, the appellant had sought to know about the norms set by the office of the Hon'ble Governor for dealing with applications / petitions requesting for actions under

Section 17 of the Right to Information Act 2005 and about the decision-making process including channels of supervision and accountabilities which had been followed for the disposal of his application dated 20.05.2016.

2.1 The PIO-cum-Under Secretary to the Governor sent a letter dated 14.09.2016 to the appellant along with a letter dated 09.09.2016. It was stated in the letter dated 09.09.2016 that the appellant's petition dated 20.05.2016 "does not seem to have been received in the Section"

2.2 Aggrieved with the reply thus received from the PIO, the appellant filed first appeal vide an appeal memo in Form-D dated 17.09.2016. The appellant contended in the first appeal memo that the PIO's reply that his application dated 20.05.2016 had not been received in the office of the Governor of Odisha was incorrect in as much as he (appellant) had sent his application by Registered Post which had also not been returned to him. The appellant requested the First Appellate Authority to direct the PIO to furnish the required information to him. The First Appellate Authority verified the records with regard to receipt of the "alleged petition" in the Governor's Secretariat and action taken thereon. He found that the application had been received in the Governor's Secretariat on 20.05.2016 and had been marked to the Confidential Section as the subject matter of the petition was related to averments made against the order of the State Information Commission in second appeal Case No. 397/2014. He also found that the application was thereafter forwarded to the Odisha State Information Commission vide letter No. 3482/SG(CON) dated 13.06.2016 for taking appropriate action at their end. The First Appellate Authority observed that the appellant could have been supplied with a copy of the said letter in response to his RTI application dated 30.08.2016 had it been marked to the Confidential Section. Instead, the Information was "supplied by the Petition Section where no information existed at all much to the dismay of the appellant". With the above observations, the First Appellate Authority directed the PIO to supply a copy of the letter dated 13.06.2016 to the appellant free of cost.

2.3 Complying with the direction of the First Appellate Authority, the PIO sent a letter dated 09.11.2016 to the appellant enclosing therewith a copy of the letter No. 3482/SG(CON.) dated 13.06.2016. Vide the said letter, the Joint Secretary to the Governor of Odisha had forwarded four petitions, including of the appellant, to the Secretariat of the Odisha Information Commission for appropriate attention.

3. Dissatisfied with the order of the First Appellate Authority, the appellant filed the subject second appeal before this Commission vide an appeal memo in Form-E dated 22.12.2016. The appellant alleged in the second appeal that while the PIO had earlier falsely informed him that his application dated 20.05.2016 addressed to the Hon'ble Governor of Odisha had not been received by the concerned Section, even the letter dated 13.06.2016 subsequently sent as per the direction of the First Appellate Authority was not the required information and, on the contrary, was misleading. The appellant prayed that direction be given to the PIO to furnish the required information to him; and also, such other orders as deemed necessary for proper implementation of the provisions of the RTI Act, 2005 be passed.

4. This case was earlier heard on several dates. During the initial hearings, the First Appellate Authority of the Governor's Secretariat submitted that the Ex-PIO had earlier informed the appellant that his application did not seem to have been received because he had forwarded the application to the Petition Section where the application could not be found even after thorough search. However, the then First Appellate Authority being the Branch Officer of the Confidential Section of Raj Bhavan, where all matters pertaining to statutory authorities were being dealt with, could easily ascertain that the information would have been processed and, therefore, should be available in the Confidential Section. This was not within the knowledge of the Ex-PIO. It was further stated by the First Appellate Authority that a verification of the files in the Confidential Section of Raj Bhavan revealed that several such petitions as the appellant's application dated 20.05.2016 had been earlier received in the year 2013 and the same had been referred to the Secretary to the Odisha State

Information Commission for placing the matter before the Hon'ble Commission. The Hon'ble Commission in their reply observed that :

“the Odisha Information Commission has all the trappings of a Civil Court under the RTI Act and its order are quasi-judicial in nature passed on the basis of facts and documents available on record placed before it by the parties. The aspersions made being baseless, vague and frivolous should be ignored. If the petitioners are not satisfied with the order of the Commission, it is open for them to seek redress before the Hon'ble High Court through writ of certiorari”.

The observations of the Commission were placed before the Hon'ble Governor and the Cases / Petitions submitted before him under Section 17 of the RTI Act, 2005 were being disposed of accordingly.

4.1 The First Appellate Authority of the Governor's Secretariat further stated that no additional information about the appellant's application dated 20.05.2016 was available with the PIO of Raj Bhavan to be provided to the appellant.

4.2 The Commission considered the submissions thus made and observed that the appellant had asked for information vide two points. At the first point, he had sought to have copies of notes, correspondences, reports, views and decisions of the concerned authorities. At the second point, he had sought to be informed about the norms being followed and the decision-making process / channels of supervision and accountability in place for disposal of applications seeking action under Section 17 of the RTI Act, 2005. The Commission further observed that the order dated 17.11.2016 of the then First Appellate Authority as well as the written memorandum filed by the successor First Appellate Authority did not cover the above points. Hence the Commission directed the First Appellate Authority to make further submissions in the matter.

5. Complying with the above direction, the PIO and the First Appellate Authority of the Governor's Secretariat made their further submissions. Apart from

explaining the circumstances in which the Ex-PIO had informed the appellant about the apparent non-receipt of his application dated 20.05.2016 in the Section, the respondents also informed the Commission that the appellant subsequently filed petitions dated 21.05.2018 and 10.07.2018 on similar matter. The same were placed before the Hon'ble Governor and his order was obtained on 03.09.2018. The First Appellate Authority also disposed of the connected first appeal vide an order dated 05.11.2018. Copies of the relevant note-sheets as well as of the order of the First Appellate Authority were sent to the appellant. In this connection, the First Appellate Authority submitted before the Commission copy of the letter dated 19.11.2018 sent to the appellant.

5.1 At the time of the hearing on 01.03.2019, the Commission perused the note-sheets and directed the PIO to handover copies thereof to the appellant who was present at the said hearing. The appellant was also given opportunity to make his counter-submission, if any. The PIO handed over to the appellant copies of the note-sheets on the said hearing date itself, i.e. on 01.03.2019.

6. The appellant submitted his rejoinder dated 18.09.2019 wherein the following contentions were raised:

(i) As the Commission's earlier observation regarding non-furnishing of the required information would show, the Ex-PIO had not acted as per the provisions of Section 5(4) of the Act. The referred PIO had also violated the provisions of the Act by taking a false and incorrect ground that his application dated 20.05.2016 had not been received in the Section. Thus both the Ex-PIO as well as the referred PIO had obstructed in furnishing the required information to him.

(ii) Even the Learned First Appellate Authority violated the provisions of the Act by not directing the PIO to furnish the required information and, instead, by directing the PIO to send a copy of the letter No. 3482/GC(CON)

dated 13.06.2016 which was not only not the required information but was misleading information.

(iii) Even the information / note-sheets sent by the PIO vide letter dated 19.11.2018 were not the required information and, on the contrary, were misleading.

(iv) In the application dated 20.05.2016 along with enclosures addressed to the Hon'ble Governor, some valid grounds of incapacity against the concerned State Information Commissioner of Odisha had been raised. The Office of the Governor's Secretariat of Odisha made an incorrect exposition of Section 17(1) of the Act and did not refer the grounds raised in the application to the Hon'ble Supreme Court for inquiry as per the provision of Section 17(1) of the Act. Consequently, the basic aim of the Right to Information Act, i.e. to secure to the citizens access to information under the control of the public authorities, to promote transparency and accountability in the working of every public authority, and, to hold the Governments and their instrumentalities accountable to the governed became fruitless and infructuous.

(v) The information as per his application in Form-A dated 30.08.2016 ought to have been given even otherwise, as per the provisions of Section 4(1)(b)(iii)/(iv), Section 4(1)(c) and Section 4(1)(d) of the Act.

(vi) As the concerned PIO had not acted reasonably to furnish the required information and, instead, had obstructed in furnishing / refused the required information, the said PIO be directed to provide the required information and penalty as per the provisions of the RTI Act. 2005 also be imposed on him.

6.1 In a further submission dated 10.12.2019, the appellant additionally stated that the statement made in the PIO's letter dated 19.11.2018 to the effect that "as regards the procedure set for disposal of petitions under Section 17 of the RTI

Act, 2005, the provisions contained vide the Section 17 is very clear as to norms of disposal” is misleading.

6.2 Responding to the appellant’s allegation / contentions, the PIO of the Governor’s Secretariat made further submissions vide written memoranda dated 06.01.2020 and 02.06.2020. It was contended by the PIO that in view of the Commission’s earlier opinion that whenever an appellant was not satisfied with the order of the Commission, he could move the Hon’ble High Court, the appellant’s petition to remove the Commissioner was not taken into consideration prima-facie because “dissatisfaction of an appellant with the order of the Hon’ble Commission cannot be treated as the incapacity of the Commission and taken as a ground for his removal”. Further, as information was supplied on the basis of the observations of the Information Commission and of the Hon’ble Governor, the same may not be treated as misleading. It was reiterated by the PIO that no additional information was available in the Confidential Section of Raj Bhavan to be supplied to the appellant.

7. The submissions made by both the parties from time to time have been considered. As mentioned, the appellant made his last submission vide a written memorandum dated 10.12.2019. He has not made any further submission thereafter. He has also not attended the hearings which have taken place since then viz. on 04.06.2020, 12.08.2020 and today. In the circumstances, and as sufficient opportunities have been allowed to both the parties, the Commission proceeds to dispose of the subject second appeal on merits as under:

(i) The appellant’s averment in the second appeal that the PIO in his reply dated 09.09.2016 had falsely informed him that his application dated 20.05.2016 “has not been received” is not factually correct. The PIO’s reply was: “does not seem to have been received in the Section”. The difference between the two cannot be overlooked. As was explained by the respondents later, the Ex-PIO had given his reply after verifying availability or otherwise of the appellant’s application in the Petition section. It was also stated that it was

not within the knowledge of the Ex-PIO that the application dated 20.05.2016 would be available in the Confidential Section. In the Commission's view, the Ex-PIO ought to have exercised the required diligence which he did not do. If only he had done so, he could have referred the matter to the Confidential Section at his level itself. Be that as it may, it is difficult to see how the PIO's reply can be considered as false. At the most, his reply can be treated as incorrect, or as not based on proper verification.

(ii) The appellant has contended that even the First Appellate Authority violated the provisions of the RTI Act, 2005. The Commission cannot comprehend how the Ex-First Appellate Authority can be accused of any such violation. It is he who detected that the appellant's application dated 20.05.2016 would be available in the Confidential Section. He could do so because he was the Head of the Branch Office of the Confidential Section. The First Appellate Authority also succeeded in locating the application which led him to peruse the relevant records. He found that similar applications as the appellant's had been earlier referred to the Odisha Information Commission for its opinion which had also been received. He also found that based on such earlier opinion of the Commission, the appellant's application dated 20.05.2016 was forwarded to the Odisha Information Commission vide a letter dated 13.06.2016. Hence he directed the PIO to send a copy of the said letter dated 13.06.2016 to the appellant. It is apparent that the First Appellate Authority thought that the said letter would suffice to meet the appellant's requirement. The Commission no doubt observed that the above direction of the First Appellate authority was not adequate since the appellant had asked for copies of notes, correspondences, reports, views, decisions etc. At the most, the letter dated 13.06.2016 would cover the correspondences made and views obtained. But not the notes etc. Moreover, the First Appellate Authority's direction did not cover the second part of the information sought by the appellant which was regarding the decision-making process adopted for disposal of applications

under Section 17 and also about the channels of supervision and accountability through which his application had been disposed of. The First Appellate Authority ought to have given categorical direction to the PIO to ascertain availability or otherwise of the above remaining information; and, if available, to send the same to the appellant. As he did not do so, the Commission considers the order of the First Appellate authority as falling short of the requirements. Still, the Commission finds it hard to infer any violation of the statutory provisions in the order of the First Appellate Authority.

(iii) The Appellant has contended that the note-sheets which were subsequently given to him are not the required information. He has also alleged that the same are misleading. The Commission has perused the four note-sheets which were sent to the appellant in connection with his application dated 20.05.2016. It is seen that reference was made in the notes to the earlier petitions in connection with which the views of the Odisha Information Commission had been sought. On the basis of such views, the Joint Secretary to the Hon'ble Governor submitted that "in the instant cases instead of resorting to the appropriate forum, the complainants have submitted complaint petition to Hon'ble Governor. Since the complaints are against the statutory authority and the veracity of the allegations need examination, these may be forwarded to the Secretary to the Odisha State Information Commission for placing the matter before the Commission for appropriate attention". The above note was put up to the Principal Secretary to the Governor, Odisha who placed the same before the Hon'ble Governor and obtained the approval dated 13.06.2016 of the Hon'ble Governor. The Commission finds that these notes in four pages were all that the office of the Governor's Secretariat had in relation to the appellant's application dated 20.05.2016. Therefore, the Commission does not find merit in the appellant's allegation that the notes were misleading. When available information was provided, such an allegation cannot hold good.

(iv) The appellant has stated that the required information are to be disclosed under Section 4 of the Act. Here it is necessary to observe that Section 4(1)(b)(iii) & (iv) have to be understood in the context of the decision-making process and channels of supervision and accountability generally followed and not with reference to each and every application or petition or representation or issue. Section 4(1)(c) relates to formulation of important policies whereas no policy matter is involved here. Section 4(1)(d) deals with providing reasons for administrative or quasi-judicial decisions to affected persons. Reasons have to be understood as reasons as available on or noted in the records and not any other. Moreover, the appellant has not stated anything to show how he can be considered as the affected person vis-a-vis the request made by him for the removal of a Commissioner. Hence, the reliance placed by the appellant on Section 4 has to be held as misplaced.

(v) The Commission has also perused the note-sheets relating to the appellant's subsequent applications dated 21.05.2018 and 10.07.2018 as well as the order dated 05.11.2018 of the First Appellate Authority on the first appeal filed by the appellant in continuation of the above subsequent applications. In the note-sheets relating to these applications of the appellant, reference was made to Section 17 and, in particular, to the ingredients of "proved misbehaviour" or "incapacity" which would justify the removal of the State Chief Information Commissioner or a State Information Commissioner under the above Section. It was stated in the note-sheets that the complaint petitions under consideration did not meet the above ingredients / requirements. "The petitioners under a wrong perception instead of resorting to the remedy available to them under the law in force are approaching the Hon'ble Governor for removal of the State Information Commissioners. In such cases, it is also not necessary to convey the petitioners to resort to the proper legal forum if they are aggrieved by the orders passed by the State Chief Information Commissioner or State Information Commissioner as (being) bona

vide litigants, they must be aware of the legal recourse to their grievances". It was also stated that as the appellant's petition dated 21.05.2018 "only speaks that he is aggrieved by the orders of the State Chief Information Commissioner in the second appeal and the grounds stated by him in the petition do not prima facie come under the ambit of any of the ingredients mentioned under Sub-Section (3) of Section 17 of the Act to proceed under Sub-Section (1) of Section 17 of the Act by the Hon'ble Governor, the petition of Shri Mohapatra does not merit consideration and may be filed". It is seen that the Hon'ble Governor vide signature dated 03.09.2018 approved the notes. The First Appellate Authority in his order dated 05.11.2018 observed that "It is seen that the copy of the note sheet supplied indicates the channel i.e. Personal Secretary, then Principal Secretary, then orders of the Hon'ble Governor. This is the flow chart in the decision making process. There is no necessity of further clarifying it".

Suffice would it to observe that these note-sheets clearly provide the decision-making process adopted by the Governor's Secretariat for dealing with petitions / applications as referred to by the appellant. The appellant is aggrieved that the note-sheets given to him do not meet his requirements because, as per him, the Hon'ble Governor should have referred his application to the Hon'ble Supreme Court. In this connection, it needs to be observed that it is not for this Commission to decide if the Hon'ble Governor was right or wrong in following a certain norm or in adopting a certain process to decide an application made for action under Section 17(1) of the RTI Act. If the Hon'ble Governor in his constitutional wisdom decided to obtain the views of the concerned parties, e.g. the Commission, the propriety or otherwise of the same can also not be adjudicated upon by this Commission. This Commission can only find out if the information as held by the public authority was provided. In the present case, not only that note-sheets in 4 pages relating to the application dated 20.05.2016 have been provided to the appellant, the note-

sheets relating to his subsequent applications dated 21.05.2018 and 10.07.2018 have also been provided.

(vi) As per P Ramanatha Aiyer's "Law Lexicon", the word "false" implies something more than a mere untruth; it is untruth coupled with a lying intent. (Wood V. State, 15 A.M. Ref. 664); or an intent to deceive or to perpetrate some treachery or fraud. In some context, it also implies "intentionally untrue". The word "misleading" means "to lead into error; to lead in a wrong direction; to lead astray" (Section 281 I.P.C). Simply stated, "false" connotes a certain deliberateness to cover up or conceal facts, and, "misleading" connotes an intent to lead astray by not stating the correct facts. When the facts available on records have been furnished thereby not covering up or concealing any fact, and, instead, by stating the correct facts as they exist, no such deliberateness or mischievous intent as connoted by these two words can be inferred. Hence, in the Commission's considered view, the appellant's allegation that the concerned authorities furnished false and misleading information to him can not be upheld.

(vii) The Appellant is no doubt aggrieved that the action which he wanted to be taken was not taken. However, the concerned authorities having provided the information as held by them, i.e. as available on record, this Commission cannot examine the correctness or otherwise of the appellant's further grievance as it does not come within the purview of the RTI Act, 2005. The appellant is at liberty to approach the appropriate judicial forum for redressal of such grievance.

8. With the above observations, the Commission deems it appropriate to close this case and not to proceed further. At the same time, as the concerned Ex-PIO did not exercise due diligence as a result of which there was delay in furnishing information to the appellant, the Commission directs him to show cause why action under Section 20 of the RTI Act, 2005 should not be taken against him for such lack of diligence / lapse on his part.

9. With the above observations and direction, the subject second appeal in so far as relates to furnishing of information stands disposed of. Proceedings under Section 20 of the RTI Act, 2005 in the case of the Ex-PIO shall continue.

Pronounced in open proceedings

Given under the hand and seal of the Commission this day, the 18th
November, 2020.

**State Chief Information Commissioner
18.11.2020**