

th. Reader
Branch.

PUNJAB
STATE INFORMATION COMMISSION
SCO NO.84-85, SECTOR 17-C,
CHANDIGARH

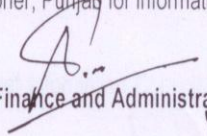
To

All the Ld. State Information Commissioners,
Punjab, Chandigarh.

Memo.No. 17/1/2011-SA-Admn-PSIC/ 2079 ✓
Chandigarh, dated the 7.08.2015

Subject : Minutes of the 27th Meeting of the Full Commission of the State
Information Commission, Punjab-30.07.2015 at 1.00 P.M.

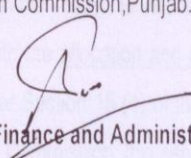
Please find enclosed minutes of the 27th meeting of the Full Commission of
the State Information Commission, Punjab held on 30.07.2015 at 01.00 P.M. under the
chairmanship of the Hon'ble Chief Information Commissioner, Punjab for information.


Manager Finance and Administration.

Endst.No. 17/1/2011-SA-Admn-PSIC/ 2080 Chandigarh, dated the 7.08.2015

A copy is forwarded to the following for information and necessary action:-

1. Secretary to the CIC for the kind information the Hon'ble Chief
Information Commissioner, Punjab.
2. Private Secretary to Secretary to the Commission, Punjab.
3. Deputy Registrar, State Information Commission, Punjab.


Manager Finance and Administration.

MINUTES of 27TH MEETING OF FULL COMMISSION OF STATE INFORMATION COMMISSION PUNJAB HELD ON 30.07.2015 AT 01.00 P.M. UNDER THE CHAIRMANSHIP OF HON'BLE CHIEF INFORMATION COMMISSIONER, DR. S.S.CHANNY, IAS (RETD.) IN HIS OFFICE ROOM.

The following were present:-

1. Sh. Chander Parkash, State Information Commissioner Punjab
2. Sh. Surinder Awasthi, State Information Commissioner Punjab
3. Sh. H.P.S.Mann, State Information Commissioner Punjab
4. Sh. R.S.Nagi, State Information Commissioner Punjab
5. Sh. S.P.Singh , State Information Commissioner Punjab
6. Sh. Parveen Kumar, State Information Commissioner Punjab.
7. Sh. Ajit Singh Chanduraian, State Information Commissioner, Punjab.
8. Sh. Nidharak Singh Brar, State Information Commissioner Punjab
9. Sh. Yashvir Mahajan, State Information Commissioner Punjab

In Attendance

- 1.Sh. K.R.Gupta, Deputy Registrar, SICP.

Before the Agenda Items were to be discussed Hon'ble Chief Information Commissioner, Punjab welcomed all the members.

The following issues were discussed and decided:-

Agenda Item No.1

Allocation and transfer of cases in the Commission.

While taking up the First Item, the Hon'ble State Chief Information Commissioner apprised the Full Commission that to deal with the allocation and transfer of cases in the Commission, there is a statutory provision under Section 15 (4) of the Right to Information Act, 2005 which deals with the functioning of the Commission, this section reads as follows:-

The general superintendence, direction and management of the affairs of the State Information Commission shall vest in the State Chief Information Commissioner who shall be assisted by the State Information Commissioners and may exercise all such powers and do all such acts and things which may be exercised or done by the State Information

Commission autonomously without being subjected to directions by any other authority under this Act.

The above said section clearly empowers the State Chief Information Commissioner, to exercise the powers of general superintendence, direction and management of the affairs of the State Information Commission. It also says that such powers shall vest in the State Chief Information Commissioner who shall be assisted by the State Information Commissioners and may exercise all such powers and do all such acts and do all things which may be done by the State Information Commission autonomously without being subjected to directions by any other authority under this Act.

The above provision gives sufficient powers to the State Chief Information Commissioner to allocate the work, withdraw any case at any stage from any Bench or to transfer the case from one Bench to another in case he finds it appropriate to do so.. He also explained that the State Chief Information Commissioner may be first amongst the equals on the judicial side but on the administrative side, he is to run the affairs of the Commission. The provision under Section 15 (4) of the Act *ibid* provides for "assistance" only of the State Information Commissioners but does not ask for "consultation" of other members to run the affairs of the Commission being the lone head on the administrative side.

The Chief Information Commissioner also pointed out that as a matter of fact in the history of the Commission, the cases have been transferred from one bench to another and where the cases were being heard by the smaller benches the larger benches have been constituted keeping in view the facts and merits of the cases. None of the Commissioners/Benches have ever objected to that practice. He quoted the case of CC-172/2014 titled as 'Nasib Kaur vs. PIO/Principal Secretary to Government of Punjab, Departments of Housing and Urban Development' which was being heard by the Bench of Hon'ble State Information Commissioner, Shri Surinder Awasthi and the then officiating Hon'ble Chief Information Commissioner transferred it to the Larger Bench comprising of Shri Narinderjit Singh, Shri Harinder Pal Singh Mann and Shri Surinder Awasthi , Hon'ble State Information Commissioners. He also shared the information pertaining to other cases

like CC- No.2762/2014 titled Naresh Kumar Gupta Vs. PIO/I.H.R.A., Jaito, Distt.Faridkot and CC No.2699/2014 titled Shri Madan Lal vs. Nagar Council, Jaito which were earlier listed before the Bench of Shri Chander Parkash, Hon'ble State Information Commissioner and later on transferred to the Bench of Hon'ble Chief Information Commissioner on the application of Shri Naresh Kumar Gupta, representative of the PIO/Municipal Council, Jaito. These two cases were transferred from Shri Chander Parkash, Hon'ble SIC to Hon'ble CIC after seeking the comments of the Hon'ble member. In another case, a similar application/representation was made to Hon'ble CIC by Shri Naresh Kumar Gupta, about the case listed before the Bench of Shri Chander Parkash, Hon'ble SIC, the file was accordingly called from the Bench of Shri Chander Parkash, Hon'ble SIC and the Hon'ble CIC decided that the hearing of that particular case must be continued by the Bench of Shri Chander Parkash, Ld. SIC.

The Hon'ble CIC also shared with the Full Commission that it is very usual practice for all the Hon'ble Members may be sitting in the Single Bench or in a Division Bench or the Larger Bench and at different stages of proceedings have been making such requests to the Hon'ble CIC for recusing himself/themselves as a matter of convenience and their requests have been acceded to in routine.

The Hon'ble CIC also shared with the Full Commission that Shri Surinder Awasthi, Hon'ble SIC in the recent past has also sent two different notes saying that Hon'ble CIC should not ask for his comments for deciding the transfer application and again asking the CIC as to why comments have been asked for while considering the transfer application.

After appraising the above said position, the Hon'ble Chief Information Commissioner requested the Hon'ble Members to express their views. There was a long debate. At the end all the members except Shri Surinder Awasthi, Hon'ble State Information Commissioner who desired to submit his dissenting note by 3.8.2015, were unanimous in their opinion while saying that to run the affairs of the Commission in a proper manner the statute itself provides for all such powers to the State Chief Information Commissioner with

regard to the allocation and transfer of the cases which come to the Commission for adjudication.

Except Sh. Surinder Awasthi Hon'ble State Information Commissioner all the Hon'ble State Information Commissioners stated that this issue was also discussed in the previous meeting of Full Commission on 03.06.15 and they have already shown their agreement that whenever any of the Appellants/Complaints or Respondents moves an application for transfer of the case, it may be decided by the Hon'ble State Chief Information Commissioner at his own level and they do not want to comment where any of the party to the reference makes an application for transfer of the case with one reason or the other. They reiterated their earlier stand that such applications may be decided by Hon'ble State Chief Information Commissioner who have general superintendence and control under Section 15 (4) of the RTI Act 2005, and they do not have any objection for any transfer if made. They also shared that why they should have any vested interest to adjudicate any particular case and especially if any of the party has any apprehension of injustice.

Sh. Surinder Awasthi Hon'ble State Information Commissioner showed the disagreement for transfer of case at the last stage. All the other State Information Commissioners present in the meeting rejected the contention of Sh. Surinder Awasthi and stated that they do not have any vested interest to retain any case where any of the parties has expressed their no confidence to get it decided by that bench due to some reason given in writing. All the other 8 members also stated that in the light of their above stand there is no requirement to make any policy etc. for transfer of cases and the system already in vogue should continue. Sh. Surinder Awasthi also stated that the Bench is performing judicial function and no case file can be parted with. This assertion of Sh. Surinder Awasthi is misconceived as it has been held by the Hon'ble Apex Court in Review Petition (C) No. 2309/2012 in Writ Petition (C) No. 210 of 012 that function of Commission is not a judicial function but an administrative function. Thus the plea that any complaint or second appeal file is a judicial file is also incorrect.

It was also made clear as it has been held by the Hon'ble Apex Court in the Review Petition (c) No.2309/2012 in Writ Petition (C) No. 210 of 2012 "While deciding whether a citizen should or should not get a particular information "which is held by or under the control of any public authority", the Information Commission does not decide a dispute between two or more parties concerning their legal rights other than their right to get information in possession of a public authority. This function obviously is not a judicial function, but an administrative function conferred by the Act on the Information Commissions."

In addition to above the Hon'ble Chief Information Commissioner also shared the following two judgments with regard to the transfer of case from one bench to another:-

2010(10) SCC 320 STATE OF UP AND ORS V/S CHAUBEY AND ORS

The Chief Justice enjoys a special status and he alone can assign work to a judge sitting alone and to the judges sitting in Division Bench or Full Bench. He has jurisdiction to decide which case will be heard by which Bench. If the judges were free to choose their jurisdiction or any choice was given to them to do whatever case they may like to hear and decide, the machinery of the court would collapse and the judicial work of the court would cease by generation of internal strife on account of hankering for a particular jurisdiction or a particular case. The Court held that a Judge or a Bench of Judges can assume jurisdiction in a case pending in the High Court only if the case is allotted to him or them by the Chief Justice. Strict adherence of this procedure is essential for maintaining judicial discipline and proper functioning of the court. No departure from this procedure is permissible.

The Ld. Chief Information Commissioner also discussed that the contentious issue regarding transfer of cases from one bench to another with reference to 'Right to Information Act' and Judgments of Hon'ble Supreme Court supra and shares the following judgment:-

Hon'ble Patna High Court in case titled Saiyed Hussain Abbas Rizwi Versus The State Information Commission cites as 2010 AIR (Patna) 57 has observed the following:-

“10. A plain reading of the provision of Section 15(4) shows that the general superintendence, direction and management of the affairs of the State Information Commission vests in the State Chief Information Commissioner. Thus, the power to manage the affairs of the Commission is entrusted to the State Chief Information Commissioner. Affairs of the State Information Commission would include the very object for which the Commission has been created, that is, to entertain appeals and decide the same. Thus, how the affairs of the Commission would be managed is as per the discretion of the State Chief Information Commissioner. To clear any ambiguity as to the status of the other State Information Commissioners, who are members of the Commission as well, it is stipulated that they shall assist the Chief Information Commissioner. The Section further provides that they, the State Information Commissioners shall have all such powers and would be competent to do all such things which could be done by the State Information Commission. Thus, it is clear that the Commission is constituted of the State Chief Information Commissioner and State Information Commissioners. It does not necessarily follow that in all its functions all members of the Commission must jointly participate. That is left to the State Chief Information Commissioner, to decide.

Further with regard to the above said issue **Hon'ble Bombay High Court has observed in case titled “2010(5) R.C.R.(Civil) 948 cited Shri Lokesh Chandra vs. State of Maharashtra.”**

“12. If other Commissioner says that his powers with regard to Section 15(4) are coextensive then perhaps there would be chaos. The general superintendence has to be by the Head alone and the right to issue directions must vest in the Head. If the Section is interpreted in the way as suggested by Mr. Bhuihar then other Commissioner may issue

directions as he wishes which may be contradictory. The law does not require the Chief Commissioner to even consult the other Commissioners with regard to the management of the affairs of the Commission. Had there been a clause of consultation then perhaps the argument of Shri Bhuibhar could have been accepted. The words used are assistance and not consultation. The Legislature in its wisdom has used the word assistance and assistance, as already said, means helping hand alone and not the exercise of power unilaterally.

Just to establish the view point that the Hon'ble Chief Information Commissioner is the master of roaster. He shared another judgment of the Hon'ble Supreme Court of India which reads as follows:-

13. The Supreme Court in State of Rajasthan v. Prakash Chand reported in 1998(1) R.C.R.(Criminal) 322 : (1998)1 SCC 1 has held that on the judicial side Chief Justice is the first amongst equals and on administrative side the Chief Justice is the master of the roster. It is, therefore, clear that though the Chief Justice is the first amongst equals on judicial side, he is in fact unequal on the administrative side. He alone can decide, who should sit in the Division Bench and who should sit in single and what type of work a puisne judge should deal with. Such type of power is certainly conferred on Chief Information Commissioner alone by Section 15(4) of the Right to Information Act.

15. It must, therefore, be held that the Chief Information Commissioner has right to decide which appeals are to be heard by whom. That is his statutory right and his prerogative under the statue. Respondent No. 3 is bound to hear only those appeals which may be made over to him and cannot make a grievance for withdrawal of any appeal from him by the Chief Information Commissioner. The order passed by the Chief Information Commissioner on 5/2/2007 cannot be faulted with. The objections of 18 the petitioners must be upheld and the order passed by respondent No. 3 on those objections ought to be set aside. The petition allowed.”

He also made a mention that in case there is a fear in the mind of the complainant/appellant/respondent to remove that fear it will be in the interest of justice to transfer a case otherwise even if the justice is done by the concerned Bench and without commenting or finding any biased the concerned Bench may or may not have. It has been found by the Hon'ble Courts that rising above the apprehension of the justice-seeker and to avoid suspicion in the mind of the complainant/ appellant/ respondents which otherwise may leave him with brooding sense of having suffered injustice. It will be in the interest of justice to transfer a case from Bench to another Bench.

In support of the above assertion , he cited another judgment delivered in the following case:-

2015 (1) RCR (Cri) 897 KANAKLATA V/S STATE OF (NCT) OF DELHI & ORS.

We must hasten to add that we are not in the least suggesting that the Presiding Officer of the trial Court is totally incapable of adopting a fair approach while passing a fresh order but then the question is not whether the judge is biased or incapable of rising above the earlier observations made by her. The question is whether the apprehension of the complainant is reasonable for us to direct a transfer. Justice must not only be done but must seem to have been done. A lurking suspicion in the mind of the complainant will leave him with a brooding sense of having suffered injustice not because he had no case, but because the Presiding Officer had a preconceived notion about it. On that test we consider the present to be a case where the High Court ought to have directed a transfer.

Keeping in view the above said, all the members by majority agreed to go ahead with the prevalent practice as the cases are being transferred in the past and keeping in view the request of the appellants, complainants, respondents and of Hon'ble Members while following the practice having been in vogue in the

Commission, the State Chief Information Commissioner will be deciding such cases from time to time.

Dissent Note

Shri Surinder Awasthi, Hon'ble State Information Commissioner, who promised in the meeting to send his dissenting note by 3.8.2015, has sent it on 4.8.2015. A copy of his note is enclosed as Annexure-A.

Agenda Item No.2

Website upgradation and Maintenance

All the Hon'ble members shared the progress regarding upgradation and maintenance of Website of the Commission. The suggestions given by them will be taken note to bring improvement. The office will look at other websites of the Commissions and add more features, if possible, in addition to that already going on in the Commission.

Agenda Item No.3

Finalization of Annual Report for the year 2014

Hon'ble State Information Commissioners were requested to supply a copy each of the landmark decisions given by them during the year 2014 and recommendations/suggestions if any, as provided under section 25(3) (g) of the RTI Act, 2005. It was further requested that details of any seminars/workshops, if any, attended by them during the year 2014 in connection with the implementation of RTI Act, 2005, may also be supplied alongwith literature/photographs. They were requested to expedite such information as we need it to finalize the Annual Report for the year 2014, at the earliest.

The meeting ended with a vote of thanks to the chair.

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Annexure A /

Subject: Meeting of Full Commission dated 30.07.2015 with reference to letter dated 03.08.2015.

Ref: In continuation of my earlier reply dated 03.08.2015 Deputy Registrar/ SICP may please refer to No. PSIC/Legal/2015/ 14560, dated 03.08.2015, on the subject cited above.

It is preposterous to expect me to file a dissenting note to a resolution which is yet to be put in black and white.

During the full bench meeting on last Thursday ie. 30.07.2015, it was claimed that the Chief Information Commissioner has inherent powers u/s 15(4) in the RTI Act to allocate, reallocate or recall the cases at any stage, even if the judgment is reserved by a bench. Also, excerpts from a judgment purported to have been delivered by Hon'ble Supreme Court too was hurriedly read out to bolster the claim but it was not tabled despite my pleadings nor it was furnished despite my repeated request to furnish the said citation for my perusal nor its details were given so that I could trace it and be enlightened in its light on the issue.

I am reproducing Section 15(4) of RTI Act here:

"The general superintendence, direction and management of the affairs of the State Information Commission shall vest in the State Chief Information Commissioner who shall be assisted by the State Information Commissioners and may exercise such powers and do all such acts and things which may be exercised or done by the State Information Commission autonomously without being subjected to directions by any other authority under the Act".

Recd at
12.30 PM
on 4/8/15

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DX

My esteemed colleagues desired that all powers should be given the CIC but I had serious reservations. The proposal was akin to a usual one liner resolutions adopted by the Working Committee of Political Parties that all powers are given to the party high command or party president.

The functioning of the political parties is strikingly different as these need unified Command while working of a statutory Commission is broad based. And I am of strong conviction that such tendencies of concentrating all powers in one individual should be curbed.

Evidently, the general superintendence etc. is vested with the CIC who shall be assisted by SICs. Here the term "shall be assisted" is used in the same spirit as is used in Art.74(1) or 163(1) of Indian Constitution which states that " There shall be council of ministers to "aid and advice" the President or Governor respectively. Obviously, the CIC should be assisted or vice versa that the SICs should assist the CIC- it is mandatory and not optional that the Chief Information Commissioner should perform his functions of "general superintendence, direction and management of the affairs of the State Information Commission", in consultation and assistance of the SICs. He is first amongst equals and not the boss to call shots on all issues unilaterally.

Coming to the specifics, I concede that the Chief Information Commissioner is master of the roster and can allocate the different departments and a class of cases to any bench.

However, once the departments and cases are allocated, notices of hearing have been issued and hearings begin, the cases lose their "general character" and the files become "judicial files" and should be treated as such and differently from the cases which are awaiting allocation. And the judicial files can't be summoned by the CIC in routine without specifying the reason for the same.

As for the transfer of cases, there are set rules for transfer of ongoing cases which should be strictly adhered to.

However, the present controversy over the transfer of cases triggered when the CIC started summoning judicial files on the requests of well placed IAS or IPS PIOs and then quietly transferring the same without intimating to the concerned Commissioner. Moreover, such PIOs had gone to the extent of making unsubstantiated and wild allegations against the concerned Commissioners of being biased or of gross incompetence yet their requests were entertained, transfers effected, even without taking formal or informal comments or consent of the Commission. This tendency would erode the credibility of the Commission and the process has already set in. Even the

other party to the case, which is effected by the transfer, is not even issued notice or heard.

In backdrop of this, I am of the considered opinion that

- The allocation of departments to different benches is the prerogative of the Chief Information Commission and the roster once adopted should be strictly adhered to.
- Also, the CIC is free to constitute benches and allocate them the cases as he deems fit.
- However once the cases are allotted, the role of CIC is limited. In general, the transfer of cases should be discouraged and avoided.
- The request for transfer of cases should be considered by a Committee constituted for the purpose and such requests, sans any allegation should be considered and disposed of on merit.
- However, the request for transfer of cases on mere allegation of perceived bias or outright allegations against the Commissioners be considered or effected only after obtaining the consent or where the Commissioner concerned has some reservations, his comments too may be sought before taking a final call on the same.
- In no case, the request for transfer be entertained after a show-cause notice has been issued i.e. at the penultimate stage of the case. This would tantamount to gross intervention in the judicial/ adjudicating function of the concerned bench. If the concerned party has any grievances, the party is free to approach the appellate authority i.e. Hon'ble Punjab and Haryana High Court.

Surinder Awasthi
(Surinder Awasthi)
State Information Commissioner
04.08.2015

11.30 am

DR