

IN THE HIGH COURT OF SINDH, KARACHI

C.P.No.D-6214 OF 2023

Date

Order with signature of Judge

Present:

Mr. Justice Aqeel Ahmed Abbasi, C.J.

Mr. Justice Abdul Mobeen Lakho

**Amir BalochVs.....Pakistan Information
Commission & others**

Date of hearing 22-12-2023

Petitioner Amir Baloch present in person.

ORDER

Abdul Mobeen Lakho, J: Through instant petition the petitioner has sought following relief(s):-

- “(a) Declare the action on the part of Respondent No.1 i.e. not implementation order dated 31.08.2022 passed in Appeal No.2032-06-2022 despite application for implementation of said order by the petitioner is illegal, unlawful, unconstitutional and in violation of various provisions of the Right of Access to Information Act, 2017 and fundamental rights such as Article, 4, 10-A, & 19-A of the Constitution of Pakistan and thus ab-initio null and void and having no legal value in the eye of law.
- (b) To direct the Respondent No.1 to proceed further the application of the petitioner dated 27.10.2022 filed under Section 20(2) of the Right of Access to Information Act, 2017 in accordance with law to meet the ends of justice.”

2. Brief facts as narrated in the memo of petition are that after promulgation of Right to Access to Information Act, 2017, the petitioner submitted an application to the Respondent No.3 on 11.05.2022 under Section 11 (3) of The Right of Access to Information Act 2017 to provide various information to the petitioner and in reply, the Office of Respondent No.3 sent response to the petitioner through a letter No.F.No. 8(9)/2021-L.C dated: 23rd May, 2022, which reads as under:-

“Subject: INFORMATION REQUEST UNDER SECTION 11(3) OF THE RIGHT OF ACCESS TO INFORMATION ACT, 2017”

It is acknowledged that this Secretariat has received your application dated 11.05.2022 on the subject noted above. You have requested for provision of a massive information about this Secretariat. You may retrieve some of the requested information from the official website of this Secretariat (www.na.gov.pk), which are available there in generally accessible form. However, to compile the requested information as per the format given by you requires a search through a large number of records located in different offices. It will take time and other resource. The requested information will be furnished to you as and when compiled in the given format.”

3. The Petitioner being dissatisfied and aggrieved by the aforementioned response of the Respondent No.3, filed an appeal No.2032-06-2022 dated 27-06-2022 under Section 17 of the Right of Access Information Act, 2017 before the Respondent No.1, which appeal was allowed vide order dated August 31, 2022, thereafter, the Petitioner approached the respondent No.1 through application dated 17.10.2022 under Section 20 (2) of the said Act for getting compliance of the order dated 31-08-2022, but the said respondent did not issue any notice to the respondent No.3 for Implementation of the said order. The Section 20(2) of the aforesaid Act is delineated hereunder:-

“20. Powers of the Information Commission.

- (1).....
- (a).....
- (b).....
- (c).....
- (d).....
- (e).....
- (f).....
- (g).....
- (h).....

(2) Non-compliance of a decision of the Information Commission under clause (e) and (f) of sub-section (1) may, if it has not been appealed against within thirty days, be dealt with in the same way as contempt of Court”.

4. Petitioner appearing in person argued that the act of respondent No.1 by not proceeding against the respondent No.3 for non-implementation of order passed in ibid appeal as required under the law is inappropriate, unlawful, without lawful authority and against the Article 19-A & 10-A of the Constitution of Islamic Republic of Pakistan 1973. He further argued that it is statutory mandate of the respondent No.1 to initiate legal proceeding which tantamount to contempt of court proceeding as stipulated under Section 20(2) of the aforesaid Act regarding non-compliance of a decision. According to petitioner appearing in person, the subject matter is related to the Petitioner's right of access to information guaranteed under Article 19-A & right to fair trial as envisaged under Article 10-A & 4 of the Constitution and the violation of said rights is affecting the fundamental rights of Petitioner. He argued that this Court under constitutional jurisdiction has ample powers to issue directions to the respondents to perform their functions properly as required by the law to do so. He further argued that this Court may interfere and issue directions to exercise its statutory mandate envisaged under Section 20 of the Right to Access to Information Act, 2017 for the implementation of the orders of the Respondent No.1.

5. The apprehension of the petitioner with regard to non-implementation of the Order passed by the Commission. It is noted with concern that numerous litigations are pending before this Court, wherein the petitioners are seeking implementation of orders. In these matters the orders are not being implemented by the public bodies defined under the Act, it is ironic that recourse to the writ jurisdiction of this Court is being sought for execution of orders of Commission which have already been mandated with powers to get implement its own order as per prescriptions of Section 19(2)(e) of the Act and it is considered expedient to reproduce the same hereunder:-

“19:- Functions of the Information Commission.

(1).....,

(2) The Information Commission shall, in addition to its functions under sub-section (1) perform the following functions, namely:-

(a).....

(b).....

(c).....

(d).....

(e) ensure implementation of this Act and the record to be made public under this Act.

(Emphasize added)

6. The petitioner finds it very easy to appear before a Court in person, instead of waiting patiently for the agency and or forum (in his case the Commission) to decide the application in a reasonable period of time. The petitioner appearing in person has already adopted proceedings by filing application dated 17.10.2022 under Section 20(2) of the aforesaid Act, which is still pending.

7. It is also observed that the Commission has also been conferred such powers under Section 20 in case of non-compliance of the order passed by it. As per Section 20(2) of aforesaid the Act (reproduced hereinabove) Commission has been conferred powers to initiate contempt proceedings against the delinquent, therefore, resort to the writ jurisdiction under Article 199 of the Constitution for implementation of the Order of the Commission is not maintainable, where specific provisions under the Act for implementation of the edict of the Commission is available.

8. In view of the rationale and deliberation delineated above, the petition was dismissed vide short order dated 22.12.2023 and above are the reasons thereof.

Judge

Chief Justice