JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT PESHAWAR
JUDICIAL DEPARTMENT,

Writ Petition No.1269-P/2017.

Dr. Arshad Rashid

Vs.

Chief Information Commissioner, Right to Information
Commission (RTIC, KPK, Peshawar, and others.

JUDGMENT

Date of hearing: 11.10.2017

Petitioner(s): By Mr. Awais Ahmad Qadri, advocate.

Respondent(s): Syed Sikandar Hayat Shah, AAG.

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IJAZ ANWAR, J. - Through the instant petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has challenged the order dated 14.03.2016 passed by the respondents No.1 to 3, whereby a fine of Rs.25,000/- has been imposed upon him by the Right to Information Commission (RTIC) and against the order of the learned Additional District Judge, Peshawar dated 24.1.2017, vide which the appeal filed under section 26 (3) (b) of the Right to Information Act, 2013 was dismissed.
2. The respondents were put to notice, they filed their comments. The relevant paras are reproduced:

"That in reply to para-4 and 5 of the writ petition, it is submitted that the petitioner attended the RTI Commission on 20.08.2015 on behalf of DHO Peshawar and undertook to provide the requisite information to the complainant Mr. Kamran Khan by Monday 24 August 2015 and copy of previous proceedings was also handed over to him.

On 3.2.2016 petitioner again attended the proceedings before RTIC but did not comply with the undertaking given before RTIC and did not bring complete information requested by the complainant, inspite of a last chance given to him by the RTIC. In next proceedings he was given another chance to provide information failing which a show cause notice was to be served upon him.

On 09.02.2016 there was no option left with the RTI Commission but to issue a show cause notice to the petitioner regarding imposition of penalty on him under ETI Act, 2013.

The petitioner submitted reply to show cause notice on 29.02.2016 wherein he admitted in para-1 that on behalf of DHO he attended the proceedings of RTIC. In para-2 he further admitted that he undertook to communicate the directions of RTIC to the DHO Peshawar. In succeeding paras he further admitted that last chance was afforded to DHO Peshawar for providing information and DHO was personally made responsible for providing information to the complainant. However as a PIO he directly conveyed the directions of RTIC to DHO Peshawar."
3. Learned counsel for the petitioner mainly argued that the petitioner was merely representing the DHO, Peshawar in the proceedings before the Right to Information Commission (RTIC); therefore, he should not be made to suffer for defiance, if any, shown by the DHO, Peshawar. He further argued that the petitioner has performed his part of the obligation by duly conveying reservations of the Commission about the non provisions of the required documents to the DHO, as such; the fine imposed upon him is not legally sustainable.

4. Learned AAG appearing on behalf of the respondents argued that the petitioner was notified representative of the DHO but he never bothered to comply with the direction of Right to Information Commission and thus was rightly imposed with fine.

5. Arguments heard and record perused.

6. Through the Notification dated 5.11.2011, published in the official gazette; the Provincial Government promulgated the Khyber Pakhtunkhwa Right to Information Act, 2013. The promulgation of Right to Information Act, 2013 has its objects and reasons that every citizen of Pakistan shall have the right of access to information in all matters of public importance, subject to regulation and
reasonable conditions imposed by law. Apart from the promulgation of this Act, Article 19 (a) of the Constitution enjoined upon all public functionaries to provide information about matters of public importance to any person, who claimed the provision of any document. The Khyber Pakhtunkhwa Right to Information Act, 2013 further bound down the public functionaries not to withhold such documents. Similarly, where the requisite information is not provided, the aggrieved person was given a right to file a complaint before the Commission. Section 6 of the Right to Information Act, 2013 mandates that all public bodies are required to notify its official as Public Information Officer. In this particular case, the petitioner was notified as Public Information Officer vide letter dated 29.10.2015 within the meaning of the Act ibid. Section 6 of the Act ibid is reproduced for ready reference:-

"Designation of official.

(1) On commencement of this Act, a public body shall within a period of one hundred and twenty (120) days, designate and notify an office to act as [Public Information Officer] for the purposes of this Act, with whom request for information under this Act may be lodged.

(2) In case no such official has been designated or in the event of the absence or non availability of the [Public Information Officer], the person in charge of the public body shall be the [Public information Officer]."
(3) The [Public Information Officer] shall be responsible for ensuring that requests for information are dealt in accordance with this Act and generally for promoting full compliance by the public body with its obligations under this Act.

7. The record depicts that the respondent No.5 has filed a complaint before the Commission requesting for provision of the following documents:-

1. All class-IV employees who retired during the last five years. The information should contain the date of retirement.

2. All the appointments made against this quota during the last five years containing the name of the appointee, name of his father and date of appointment.

3. Present position of vacant posts.

4. Seniority position of the complainant.

8. The Office of the DHO, Peshawar was directed by the Commission to provide the above documents vide letter dated 30th July, 2015. Thereafter, repeatedly the Office of DHO was given reminders to provide those documents. The petitioner as Public Information Officer attended the proceedings and all the times, he was directed to provide the required documents. The petitioner could not produce a single letter, whereby he could show that he at any stage had requested or conveyed the information to the DHO for production of the documents as required by the
Commission, despite the fact that under section 6(3) of the Act ibid, it was his responsibility to procure the documents, as directed by the Commission.

9. The Khyber Pakhtunkhwa Right to Information Act, 2013 is a beneficial law to all those aggrieved of the mal-administration of the Department, they provide the right to them to have access to all public documents with a view that there is a transparency in affairs of the Department and the people have access to all the documents, so that a trust is developed among the citizens that the government functionaries are acting in accordance with law. However, experience has shown that despite statutory rights of the individual to have access to the public documents, the officials make every efforts that their misdeeds are not disclosed. Here, the information sought and the documents requested were of such a nature that irrespective of the direction of the Commission, the Department is supposed to make public these documents, so that the retired employees know about their placement in the seniority list and the appointments so made in the Class-IV quota.

10. The Act has provided imposition of fine in case any official willfully creates obstructions or hurdles in order to prevent or delay the disclosure of any
information. We, thus, observe that imposition of fine for creating obstruction in the provision of information is reluctantly passed, however, in the instant case, the stubborn attitude of the petitioner in deliberately not providing the documents, has forced the Commission to take strict action, proper opportunity of hearing was provided to the petitioner, he failed to reply or shown good cause for not providing the required documents, hence it can be safely held that he hadn’t performed his legal obligation and as such the fine of Rs.25,000/- in the peculiar circumstances of the case was reasonable.

11. In view of the above, we hold that the learned Additional District Judge, Peshawar in appeal has dealt with all the points and issues involved in the matter elaborately, which needs no interference. We may, however, take a lenient view and observe that the fine imposed shall have no adverse effect on the service career of the petitioner.

12. For the aforesaid observations, this writ petition is dismissed.

Announced.

*T.Shah, PS*  (Deputy to Hon'ble Mr. Justice Qaiser Rashid Khan and Hon'ble Mr. Justice Ijaz Asrar).*