

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP (C) No. 5611 of 2007**

1. Guru Ghasidas University A body Corporate Incorporated under the Provisions of Chhattisgarh Vishwa Vidyalaya Adhiniyam, 1973 through its Registrar, Koni Bilspur (Chhattisgarh)
2. Registrar, Guru Ghasidas University, Koni, Bilaspur (Chhattisgarh)

---- Petitioners**Versus**

1. State Chief Information Commissioner, State of Chhattisgarh, Nirmal Chhaya Bhawan, Meera Datar Road, Shankar Nagar, Raipur, District Raipur (CG)
2. Prof. Harish Kumar S/o Shri Ram Singh, aged about 44 years, resident of Laxmi Nivas Parisar, MIG-STD TWO Shiv Ghat Sarkanda Bilaspur, Distt.Bilaspur (CG)

---- Respondents

For Petitioners	:	Mr.Ashish Shrivastava and Mr.Animesh Verma, Advocate
For Respondent No.1	:	Mr.Shyam Tekchandani, Advocate
For Respondent No.2	:	None present

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****02/08/2017**

1. By the impugned order, the State Chief Information Commissioner has imposed penalty of ₹2000/- to the petitioners for not giving desired information and also imposed cost of damages of ₹500/- under Section 19(8) (b) of the Right to Information Act, 2005 (hereinafter called as 'Act of 2005'), against which, this writ petition has been filed.

2. Learned counsel appearing for the petitioner would submit that order imposing penalty and order imposing damages is liable to be set aside as it is contrary to law.
3. On the other hand, learned counsel appearing for respondent No.1 would support the impugned order.
4. I have heard learned counsel appearing for the parties, considered their rival submissions made hereinabove and also gone through the record with utmost circumspection.
5. A careful perusal of the order would show that desired information with the agreement of the parties has been directed to be supplied, which is said to have been supplied to the information seeker.
6. So far as the order imposing penalty of ₹2000/- is concerned, the State Chief Information Commissioner has imposed the penalty finding that desired information has not been supplied to the information seeker, whereas according to Section 20(1) of the Act of 2005, penalty can be imposed only when the information has not been furnished within the time specified under sub-section (1) of Section 7 of the Act of 2005 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information. It appears from the record that some information was supplied and some information was not supplied seeking certain clarification,

therefore, it cannot be said that information was not supplied within the time specified or it was malafidely denied.

7. Section 20 (1) of the Act of 2005 states as under:-

“20. Penalties.-(1) Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause, refused to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall impose a penalty of two hundred and fifty rupees each day till application is received or information is furnished, so however, the total amount of such penalty shall not exceed twenty-five thousand rupees:

Provided that the Central Public Information Officer or the State Public Information Officer, as the case may be, shall be given a reasonable opportunity of being heard before any penalty is imposed on him:

Provided further that the burden of proving that he acted reasonably and diligently shall be on the Central Public Information Officer or the State Public Information Officer, as the case may be.”

8. Section 20(1) of the Act of 2005 would be attracted where information has not been supplied within the time specified under sub-section (1) of Section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading

information.

9. The penalty provisions under Section 20 of the Act of 2005 is only to sensitize the public authorities that they should act with all due alacrity and not hold up information which a person seeks to obtain. It is not every delay that should be visited with penalty. If there is a delay and it is explained, the question will only revolve on whether the explanation is acceptable or not (See : **State of Punjab and others Vs. State Information Commissioner, Punjab and another**¹).
10. The order for penalty for failure is akin to action under Criminal Law. It is necessary to ensure that the failure to supply the information is either intentional or deliberate. Unless and until it is borne on record that any officer against whom order of penalty for failure is sought to be levied and had occasion to comply with the order, and has no explanation or excuse available worth satisfying the forum, possess the knowledge of the order to supply information, an order of penalty cannot be levied (See **A.A. Parulekar Vs. Goa State Information Commission**²).
11. Likewise the information seeker has not established on record that he has suffered damages, therefore, respondent

1 2010 SCC OnLine P&H 3275

2 2010 (1) Mh.L.J.

No.2 is not entitled for damages to the extent of ₹ 500/-. In view of above, order imposing penalty and order imposing damages both are hereby set aside.

12. The writ petition is allowed to the extent indicated hereinabove. No order as to cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge

B/-