

HIGH COURT OF CHHATTISGARH, BILASPUR**WP (C) No. 7060 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. Deputy Secretary, Chhattisgarh Suchana Ayog, Nirmal Chhaya Bhawan, Meera Datar Road, Shankar Nagar, Raipur, District Raipur (CG)
3. Smt. Anshu Singh, W/o Prof. Harish Kumar, 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 Respondents No.1 & 2	:	Mr.Shyam Tekchandani, Advocate

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

1. Respondent No.3 made an application for certain information from the petitioner-University on 28.5.2007 and on 30.5.2007 first appeal was preferred and thereafter on 1.6.2007 second appeal was preferred before the State Information Commission, in which notices were issued to the petitioners which the petitioners received on 18.6.2007

and ultimately the impugned order has been passed directing supply of information of imposing damages and issuance of show-cause notice for imposing penalty, against which, this writ petition has been filed.

2. Learned counsel for the petitioner would submit that as per order of the State Chief Information Commissioner and as per interim order dated 16.1.2008, necessary information has been furnished to the information seeker i.e. respondent No.3. He would further submit that order imposing damages under Section 19 (8) (b) of the Right to Information Act, 2005 (hereinafter called as 'Act of 2005') is unsustainable in law and order issuing show-cause notice for imposing penalty is also bad in law.
3. On the other hand, learned counsel for respondents No.1 and 2 would support the impugned order.
4. No one appeared on behalf of respondent No.3 despite notice.
5. I have heard learned counsel appearing for the parties, considered their rival submissions made hereinabove and also gone through the record with utmost circumspection.
6. From perusal of the impugned order, it appears that information was sought by application dated 28.5.2007, first appeal was preferred on 30.5.2007 and thereafter second appeal was also preferred on 1.6.2007 without

waiting for statutory period as prescribed under Section 7(1) of the Act of 2005. It is not the case of respondent No.3 that life and liberty is involved, therefore, information must be supplied within 48 hours. At this stage, no relief can be granted as information has already been supplied to respondent No.3.

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 another¹**).
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 Commission²**).
11. As observed earlier, it is the case where the first appeal

1 2010 SCC OnLine P&H 3275

2 2010 (1) Mh.L.J.

was preferred without waiting the statutory period prescribed under sub-section (1) of Section 7 of the Act of 2005. It is not the case where information has been malafidely denied and it is also not the case where complete information has been denied, therefore, no proceeding for penalty can be initiated against the petitioner-University.

12. So far as the order imposing damages is concerned, there is neither any pleading nor any material to hold that respondent No.3 has caused loss on account of information, which is allegedly not supplied to her.
13. In view of above, the impugned order passed by the State Chief Information Commissioner imposing damages of ₹ 500/- and order issuing show-cause notice for imposing penalty is set aside. Rest of the order will remain intact.
14. The writ petition is allowed to the extent indicated hereinabove. Amount deposited by the petitioners be refunded to them. No order as to cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge

B/-