

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**W.P. (C) No. 1156 of 2015**

Rameshwar Nath Pandey, S/o Shri Satyanarayan Pandey,
aged about 46 years, presently working as Tahsildar,
Tamnar, District – Raigarh (C.G.)

---- Petitioner**Versus**

1. The State of Chhattisgrh, through : The Secretary,
Department of Revenue & Disaster Management,
Mahanadi bhawan, Mantralaya, P.S. Mandir Hasaud, Naya
Raipur (C.G.)
2. The Chhattisgarh State Information Commission through its
Chairman, Shankar Nagar, Raipur (C.G.)
3. The Collector, District Raigarh (C.G.)
4. Smt. Manjulata Mishra, W/o Late Ramesh Prasad Mishra,
R/o Tukapara Place Road, Raigarh, Tehsil and District
Raigarh (C.G.)

---- Respondents

For Petitioner	: Mr. Ashish Surana, Advocate.
For Respondents No. 1 & 3	: Mr. Gary Mukhopadhyay, G.A.
For Respondent No. 2	: Mr. Shyam Sunder Lal Techandani, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****04/07/2017**

(1) Short question involved in this writ petition is whether the Chhattisgarh State Information Commission is justified in recommending the disciplinary action against the petitioner under Section 20(2) of the Right to Information Act, 2005 (henceforth "Act, 2005").

(2) Aforesaid question arises in following factual backdrop:-

(2.1) The petitioner has joined the post of Tahsildar, Tamnar, District Raigarh with effect from 26.9.2013. According to him, he supplied the requisite information to the respondent No. 4 on 03.06.2015.

(2.2) The respondent No. 2- State Information Commission, by its impugned order dated 30.05.2015, has directed disciplinary action against the petitioner under Section 20(2) of the Act, 2005 for non furnishing such information as applied by respondent No.4, against which instant writ petition has been filed by the petitioner herein on the ground that none of the ingredients as required under Section 20(2) of the Act, 2005 is made out to pass order of recommending disciplinary action by State Information Commission against him.

(3) Shri Ashish Surana, learned counsel for the petitioner would submit that order passed by the State Information Commissioner is contrary to the provisions contained in Section 20(2) of the Act, 2005 as there is no denial of information by the petitioner. He submits that petitioner did not receive any notice or order from the Commission to supply information but as soon as he came to know about passing of the impugned order dated 30.05.2015, he immediately supplied information to respondent No. 4 on 3.6.2015 and, therefore, order passed by the State Information Commission recommending disciplinary action against the petitioner is liable to be set aside.

(4) On the other hand, counsel for the respondent No. 1 while

supporting the impugned order would submit that petitioner or his representative deliberately did not appear before the State Information Commission on 07.03.2014, 22.08.2004 and 20.02.2015 despite the fact that first appellate authority has already directed for furnishing of the information to the petitioner.

(5) I have heard learned counsel appearing for the parties, and considered their rival submissions made hereinabove with utmost circumspection.

(6) The State Information Commission has exercised its power under Section 20(2) of the Act, 2005 by recommending disciplinary action against the petitioner.

(7) Section 20(2) of the Right to Information Act, 2005 states as under:-

20. Penalties.-(1) xxx xxx xxxx

(2) Where the Central Information Officer 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 and persistently, failed 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 recommend for disciplinary action against the Central Public Information Officer or the State Public Information, as the case may be, under the service

rules applicable to him.”

(8) A bare perusal of the provisions contained in Section 20(2) of the Act, 2005 would show that the order of penalty for failure is akin to action under criminal law and, therefore, it is necessary to ensure that the failure to supply the information is either intentional or deliberate. Thus, the State Information Commission while recommending disciplinary action against the petitioner has given a specific finding that there is denial of information without reasonable cause and action is tainted with mala fides.

(9) In the matter of **Manohar Manikrao Anchule Vs. State of Maharashtra & another**¹, their Lordships of the Supreme Court have held that disciplinary action under Section 20(2) of the Act, 2005 ought to be recommended where ingredients of Section 20(2) of the Act, 2005 are satisfied. Paragraphs 26 & 28 states as under:-

“26. From the above dissected language of the provision, it is clear that first of all an opinion has to be formed by the Commission. This opinion is to be formed at the time of deciding any complaint or appeal after hearing the person concerned. The opinion formed has to have basis or reasons and must be relatable to any of the defaults of the provision. It is a penal provision as it vests the delinquent with civil consequences of initiation of and/or even punishment in disciplinary proceedings. The grounds stated in the Section are exhaustive and it is not for the Commission to add other grounds which are not specifically stated in the language of [Section 20\(2\)](#). The section deals with two different proceedings. Firstly, the appeal or

1 AIR 2013 SC 681

complaint filed before the Commission is to be decided and, secondly, if the Commission forms such opinion, as contemplated under the provisions, then it can recommend that disciplinary proceedings be taken against the said delinquent Central Public Information Officer or State Public Information Officer. The purpose of the legislation in requiring both these proceedings to be taken together is obvious not only from the language of the section but even by applying the mischief rule wherein the provision is examined from the very purpose for which the provision has been enacted. While deciding the complaint or the appeal, if the Commission finds that the appeal is without merit or the complaint is without substance, the information need not be furnished for reasons to be recorded. If such be the decision, the question of recommending disciplinary action under [Section 20\(2\)](#) may not arise. Still, there may be another situation that upon perusing the records of the appeal or the complaint, the Commission may be of the opinion that none of the defaults contemplated under [Section 20\(2\)](#) is satisfied and, therefore, no action is called for. To put it simply, the Central or the State Commission have no jurisdiction to add to the exhaustive grounds of default mentioned in the provisions of [Section 20\(2\)](#). The case of default must strictly fall within the specified grounds of the provisions of [Section 20\(2\)](#). This provision has to be construed and applied strictly. Its ambit cannot be permitted to be enlarged at the whims of the Commission.

28. It appears that the facts have not been correctly noticed and, in any case, not in their entirety by the State Information Commission. It had formed an opinion that the appellant was negligent and had not

performed the duty cast upon him. The Commission noticed that there was 73 days delay in informing the applicant and, thus, there was negligence while performing duties. If one examines the provisions of [Section 20\(2\)](#) in their entirety then it becomes obvious that every default on the part of the concerned officer may not result in issuance of a recommendation for disciplinary action. The case must fall in any of the specified defaults and reasoned finding has to be recorded by the Commission while making such recommendations. 'Negligence' per se is not a ground on which proceedings under [Section 20\(2\)](#) of the Act can be invoked. The Commission must return a finding that such negligence, delay or default is persistent and without reasonable cause. In our considered view, the Commission, in the present case, has erred in not recording such definite finding. The appellant herein had not failed to receive any application, had not failed to act within the period of 30 days (as he had written a letter calling for information), had not malafidely denied the request for information, had not furnished any incorrect or misleading information, had not destroyed any information and had not obstructed the furnishing of the information. On the contrary, he had taken steps to facilitate the providing of information by writing the stated letters. May be the letter dated 11th April, 2007 was not written within the period of 30 days requiring respondent No.2 to furnish details of the period for which such information was required but the fact remained that such letter was written and respondent No.2 did not even bother to respond to the said enquiry. He just kept on filing appeal after appeal. After April 4, 2007, the date when the appellant was transferred to Akola, he was not

responsible for the acts of omissions and/or commission of the office at Nanded.”

(10) 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 another²**).

(11) The order is 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 Commission³**).

(12) Following the principle of law laid down by the Supreme Court in the facts of the present case, it would appear that the State Information Commission has not recorded any finding that there is denial of information by the petitioner without reasonable cause or information supplied is tainted with malafide and merely on the ground that petitioner or his representative did not appear on the date of hearing before the first appellate authority, therefore,

² 2010 SCC OnLine P&H 3275

³ 2010 (1) Mh.L.J.

disciplinary action ought not to have been recommended against the petitioner. The negligence per se is not a ground on which the proceeding under Section 20(2) of the Act can be invoked. The Commission must give a finding that such negligence, delay or default is persistent and without reasonable cause.

(13) In view of the aforesaid analysis, the disciplinary action recommended by the State Information Commission under Section 20(2) of the Act, 2005 is clearly in contravention with the provisions of Section 20(2) of the Act, 2005 and being in teeth of judgment of the Supreme Court in the matter of **Manohar Manikrao Anchule** (supra).

(14) As a fall out and consequence of the aforesaid discussion, the writ petition is allowed. Impugned order dated 30.05.2016 is liable to be and is hereby set aside. No order as to costs.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-