

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Order reserved on: 4.7.2017****Order passed on: 14.7.2017****WPC No. 2876 of 2016**

Krishna Kumar Saini S/o Shri Roshan Lal Saini, Aged About 41 Years
 R/o Arihant Colony, Ward No 1, Gobra Nawapara, Tahsil Abhanpur,
 Distirct Raipur (CG)

---- Petitioner

Versus

1. State Information Commission Through Its Chief Information Commissioner, First Floor Indrawati Block Shashtri Chowk, Raipur, District Raipur (CG)
2. State Of Chhattisgarh Through Its Secretary, Agriculture Department Mahanadi Bhavan, Village Rakhi, New Raipur, District Raipur (CG)
3. Director, Agriculture Department, Labhandi, Raipur, District Raipur (CG)
4. First Appellate Officer/Joint Director, Agriculture Division Raipur, Raipur District Raipur (CG)
5. Public Information Officer/Dy. Director Agricultural Department, Gariyaband Distirct Gariyaband (CG)
6. Riyazuddin Khan Dy.Director, Agricultural Department, Gariyaband, Distirct Gariyaband (CG)

---- Respondents

And**WPC No. 2878 of 2016**

Krishna Kumar Saini S/o Shri Roshan Lal Saini, Aged About 41 Years
 R/o Arihant Colony, Ward No 1, Gobra Nawapara, Tahsil Abhanpur,
 District Raipur (CG)

---- Petitioner

Versus

1. State Information Commission Through Its Chief Information Commissioner, First Floor Indrawati Block Shashtri Chowk, Raipur, District Raipur (CG)
2. State Of Chhattisgarh Through Its Secretary, Agriculture Department Mahanadi Bhavan, Village Rakhi, New Raipur, District Raipur (CG)
3. Director, Agriculture Department, Labhandi, Raipur, District Raipur (CG)
4. First Appellate Officer/Joint Director, Agriculture Division Raipur, Raipur District Raipur (CG)
5. Public Information Officer/Dy. Director Agricultural Department, Gariyaband District Gariyaband (CG)
6. Riyazuddin Khan Dy. Director, Agricultural Department, Gariyaband, District Gariyaband (CG)

---- Respondents

And

WPC No. 2877 of 2016

Krishna Kumar Saini S/o Shri Roshan Lal Saini, Aged About 41 Years
R/o Arihant Colony, Ward No 1, Gobra Nawapara, Tahsil Abhanpur,
District Raipur (CG)

---- Petitioner

Versus

1. State Information Commission Through Its Chief Information Commissioner, First Floor Indrawati Block Shashtri Chowk, Raipur, District Raipur (CG)
2. State Of Chhattisgarh Through Its Secretary, Agriculture Department Mahanadi Bhavan, Village Rakhi, New Raipur, District Raipur (CG)
3. Director, Agriculture Department, Labhandi, Raipur, District Raipur (CG)
4. First Appellate Officer/Joint Director, Agriculture Division Raipur, Raipur District Raipur (CG)
5. Public Information Officer/Dy. Director Agricultural Department, Gariyaband District Gariyaband (CG)

6. Riyazuddin Khan Dy.Director, Agricultural Department,
Gariyaband, District Gariyaband (CG)

---- Respondents

And

WPC No. 2879 of 2016

Krishna Kumar Saini S/o Shri Roshan Lal Saini, Aged About 41 Years
R/o Arihant Colony, Ward No 1, Gobra Nawapara, Tahsil Abhanpur,
District Raipur (CG)

---- Petitioner

Versus

1. State Information Commission Through Its Chief Information
Commissioner, First Floor Indrawati Block Shashtri Chowk,
Raipur, District Raipur (CG)
2. State Of Chhattisgarh Through Its Secretary, Agriculture
Department Mahanadi Bhavan, Village Rakhi, New Raipur,
District Raipur (CG)
3. Director, Agriculture Department, Labhandi, Raipur, District
Raipur (CG)
4. First Appellate Officer/Joint Director, Agriculture Division
Raipur, Raipur District Raipur (CG)
5. Public Information Officer/Dy. Director Agricultural
Department, Gariyaband District Gariyaband (CG)
6. Riyazuddin Khan Dy.Director, Agricultural Department,
Gariyaband, District Gariyaband (CG)

---- Respondents

For Petitioner : Mr. Yogesh Pandey, Advocate
For Respondent No.1 : Mr. Shyam M. Tekchandani, Advocate
For Respondents No.2 & 3 : Mr. Aditya Sharma, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

1. Since common question of law and facts are involved in these writ petitions, they are heard together and being disposed of by this common order.
2. The petitioner herein calls in question legality, validity and correctness of order dated 18.2.2016 (Annexure P/9 in all the cases) passed by respondent No.1/State Information Commission by which the complaints filed by the petitioner under Section 18 of the Right to Information Act, 2005 (hereinafter called as 'Act of 2005') have been disposed off.
3. The petitioner herein filed an application under Right to Information Act before respondent No.5/Public Information Officer for supply of certain information pertaining to District Gariyaband. Respondent No.5 did not provide such information within the stipulated time which led to the petitioner making the first appeal under the Act of 2005 before respondent No.4. First appeal was granted by respondent No.4 on 23.2.2015 and directed respondent No.5/6 to provide such information to the petitioner free of cost within a week. That information was not provided by respondent No.5/6 to the petitioner; therefore, the petitioner preferred the second appeal before respondent No.1/State Information Commission. That was disposed off by respondent No.1 directing the First Appellate Authority to execute the order in its spirit. The State Information Commission also directed the First Appellate Authority to take disciplinary action against respondent No.5/6. The petitioner

being dissatisfied with the order filed complaints under Section 18 of the Act of 2005 before respondent No.1. By the impugned order, respondent No.1 has disposed off the appeal holding that in the second appeal filed by the petitioner disciplinary action has already been proposed, therefore, there is no need to continue with the complaints filed by the petitioner under Section 18 of the Act of 2005. Feeling aggrieved against that order, the petitioner has filed these writ petitions under Article 226 of the Constitution of India.

4. Learned counsel for the petitioner would submit that respondent No.1/State Information Commission has not considered the complaints filed by the petitioner under Section 18 of the Act of 2005 as no such procedure as envisaged in Section 20 (1) of the Act of 2005 has been followed while passing the impugned order, therefore, the impugned order deserves to be set aside.
5. On the other hand, learned counsel for respondent No.1 and learned Panel Lawyer for respondents No.2 and 3/State would support the impugned order.
6. I have heard learned counsel appearing for the parties, considered their rival submissions made hereinabove and also gone through the record with utmost circumspection.
7. It is true that the First Appellate Authority has directed respondent No.5/6 to furnish information which they did not furnish and in second appeal preferred by the petitioner,

respondent No.1/State Information Commission has directed respondent No.4 to initiate departmental inquiry against respondents No.5/6, which is said to have been initiated, but information has not been furnished and therefore, the petitioner instituted complaints under Section 18 of the Act of 2005 and that has been disposed off.

8. At this stage, it would be appropriate to notice Section 20(1) of the Act of 2005 which 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 malafidly 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.”

9. A careful perusal of Section 20(1) of the Act of 2005 would show that if the State Public Information Officer has not fur-

nished information within the time specified under subsection (1) of Section 7 or malafidely denied the request for information, the State Information Commission has power and jurisdiction to impose a penalty till the information is furnished after giving a reasonable opportunity of being heard before any penalty is imposed on the Public Information Officer who is guilty of not giving such information and in that case, the Public Information Officer has an opportunity to establish that he acted reasonably and diligently.

10. While dealing with Section 20(1) of the Act of 2005 the Supreme Court in the matter of **Manohar S/o Mnikrao Anchule Vs. State of Maharashtra and another**¹ has held as under:-

“15. State Information Commissions exercise very wide and certainly quasi judicial powers. In fact their functioning is akin to the judicial system rather than the executive decision making process. It is a settled principle of law and does not require us to discuss this principle with any elaboration that adherence to the principles of natural justice is mandatory for such Tribunal or bodies discharging such functions.

16. The State Information Commission has been vested with wide powers including imposition of penalty or taking of disciplinary action against the employees. Exercise of such power is bound to adversely affect or bring civil consequences to the delinquent. Thus, the provisions relating to penalty or to penal consequences have to be construed strictly. It will not be open to the Court to give them such liberal construction that it would be beyond the specific language of the statute or would be in violation to the principles of natural justice.

¹ (2012) 13 SCC 14

17. The State Information Commission is performing adjudicatory functions where two parties raise their respective issues to which the State Information Commission is expected to apply its mind and pass an order directing disclosure of the information asked for or declining the same. Either way, it affects the rights of the parties who have raised rival contentions before the Commission. If there were no rival contentions, the matter would rest at the level of the designated Public Information Officer or immediately thereafter. It comes to the State Information Commission only at the appellate stage when rights and contentions require adjudication. The adjudicatory process essentially has to be in consonance with the principles of natural justice, including the doctrine of audi alteram partem. Hearing the parties, application of mind and recording of reasoned decision are the basic elements of natural justice. It is not expected of the Commission to breach any of these principles, particularly when its orders are open to judicial review. Much less to Tribunals or such Commissions, the Courts have even made compliance to the principle of rule of natural justice obligatory in the class of administrative matters as well.

22. We may notice that proviso to Section 20(1) specifically contemplates that before imposing the penalty contemplated under Section 20(1), the Commission shall give a reasonable opportunity of being heard to the concerned officer. However, there is no such specific provision in relation to the matters covered under Section 20(2). Section 20(2) empowers the Central or the State Information Commission, as the case may be, at the time of deciding a complaint or appeal for the reasons stated in that section, to recommend for disciplinary action to be taken against the Central Public Information Officer or the State Public Information Officer, as the case may be, under the relevant service rules. Power to recommend disciplinary action is a power exercise of which may impose penal consequences. When such a recommendation is received, the disciplinary authority would conduct the disciplinary proceedings in accordance with law and subject to satisfaction of the requirements of law. It is a 'recommendation' and not a 'mandate' to conduct an enquiry. 'Recommendation' must be seen in contradistinction to 'direction' or 'mandate'. But recommendation itself vests the delinquent Public

Information Officer or State Public Information Officer with consequences which are of serious nature and can ultimately produce prejudicial results including misconduct within the relevant service rules and invite minor and/or major penalty. 23. Thus, the principles of natural justice have to be read into the provisions of Section 20(2). It is a settled canon of civil jurisprudence including service jurisprudence that no person be condemned unheard. Directing disciplinary action is an order in the form of recommendation which has far reaching civil consequences. It will not be permissible to take the view that compliance with principles of natural justice is not a condition precedent to passing of a recommendation under Section 20(2)."

11. 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**).
12. 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

² 2010 SCC OnLine P&H 3275

order of penalty cannot be levied (See **A.A. Parulekar Vs. Goa State Information Commission**³).

13. Reverting back to the facts of the case, it would appear that despite the order of the First Appellate Authority information has not been furnished to the petitioner and the procedure prescribed in Section 20(1) of the Act of 2005 has not been followed by the State Information Commission and complaints under Section 18 of the Act of 2005 have been disposed off merely on the ground that certain department action has already been initiated against respondent No.5/6.
14. In the considered estimation of this Court, the State Information Commission has failed to comply with the procedure prescribed in Section 20(1) of the Act of 2005. Once the information has not been furnished and complaint has been filed under Section 18 of the Act of 2005, then the State Information Commission was required to consider and to form an opinion as to whether the procedure prescribed in Section 20(1) of the Act of 2005 is required to be followed and the State Information Commission has to proceed in accordance with the procedure prescribed in Section 20(1) of the Act of 2005 by giving a reasonable opportunity of hearing to the Public Information Officer. That has not been done in this case and procedure envisaged has not been followed by the State Information Commission while dealing with complaint filed under Section 18 of the Act of 2005.

³ 2010 (1) Mh.L.J.

15. Accordingly, the impugned orders deserve to be and are hereby set aside. Complaints filed by the petitioner under Section 18 of the Act of 2005 are restored to its original number before respondent No.1/State Information Commission for hearing and disposal in accordance with law. Such complaints will be decided within a period of three months from the date receipt/production of certified copy of this order.
16. The writ petitions are allowed to the extent indicated hereinabove. No order as to cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge

B/-