

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

WRIT PETITION NO. 3529 OF 2007

Ishwarsingh Raybhan Manza,
Age 39 years, Occu. Service as
the Deputy Registrar (Academic),
Dr. Babasaheb Ambedkar Marathwada
University, Aurangabad.

....Petitioner.

Versus

1. {State of Maharashtra}
(Deleted in view of order dated
25.6.2007).
Secretary,
State Information Commissioner
Office, 13 Floor, New Administrative
Building, In front of Mantralaya,
Mumbai 400 032.
2. The Registrar,
Dr. Babasaheb Ambedkar Marathwada
University, Aurangabad.
3. Smt. Sandhya Sakharampant Asegaonkar,
C/o. Brudukkar Niwas,
Behind Secondary School,
Vidyanagar, Parli-Vaijnath,
Dist. Beed.

....Respondents.

Mr. S.G. Chapalgaonkar, Advocate for petitioner.

Mrs. V.N. Patil/Jadhav, A.G.P. for respondent/State.

**CORAM : T.V. NALAWADE AND
SANGITRAO S. PATIL, JJ.**

DATED : June 15, 2017.

ORAL JUDGMENT : [PER T.V. NALAWADE, J.]

. The petition is filed to challenge the order made by
the State Commissioner for information in appeal

No.2007/RIA/Appeal/CR/181/2007 by which fine, penalty came to be imposed on petitioner of Rs.25,000/-, who was Information Officer, Registrar of University. The learned counsel for the petitioner is heard. The learned A.G.P. is heard. One counsel Shri. S.S. Deshmukh is appointed by original complainant, present respondent No. 3. He did not turn up on yesterday and so, the matter was adjourned to today. Today also he did not turn up.

2. The learned counsel for petitioner has argued on procedural aspect. He submitted that before imposing penalty, the procedure as laid down in first proviso of section 20 of Right to Information Act 2005 was not followed by the Commissioner and that has caused prejudice and so, the order needs to be set aside. It is true that in section 20 power is given to the Information Commissioner to impose penalty if he forms opinion that the information was not furnished within the time specified in section 7 or malafidely, there was refusal to supply the information. However, this power is subject to the first proviso mentioned in the same section, which is as under :-

“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.”

3. In the aforesaid provision, there is mention that reasonable opportunity needs to be given of being heard to the person like present petitioner before penalty is imposed on him. This Court has gone through the decision given by the Information Commissioner. The reasoning is only in respect of the order which could have been made in favour of respondent No. 3, the lady who had applied for information and the reasoning can be taken as justification for making the order in favour of lady. Nowhere it is mentioned in the reasoning that when the opinion was formed by the Commissioner that it was necessary to impose penalty as provided in section 20 of the aforesaid Act, the present petitioner was called and he was asked to have his say even orally on this point. It can be said that there was possibility that petitioner could have convinced the Commissioner on this point. Considering this possibility, it can be further said that prejudice is necessarily caused to the petitioner by not giving him opportunity of having his say on the point of penalty. On this point, the learned counsel for petitioner has placed reliance on the case reported as **2015(3) Mh.L.J.**

900 [Dr. Hedgewar Seva Samiti, Kolada, Dist. Nandurbar and Anr. Vs. Purushottam s/o. Ramdas Joshi and Ors.]

and also some observations made by the Apex Court in the case reported as **AIR 2013 SUPREME COURT 681 [Manohar**

Manikrao Anchule Vs. State of Maharashtra and Anr.].

There cannot be dispute over the propositions made by the learned counsel for the petitioner that the procedure given in proviso of section 20 needs to be followed before imposing penalty. If such procedure is not followed, the order cannot sustain in law. The matter is of 2007 and nothing can be achieved by remanding back the matter to Commissioner and asking him to follow the procedure.

4. In the result, the petition is allowed. The order under challenge is set aside.

Rule is made absolute in aforesaid terms.

[SANGITRAO S. PATIL, J.]

[T.V. NALAWADE, J.]

ssc/