

HIGH COURT OF CHHATTISGARH AT BILASPURWPC No. 1796 of 2012

State of Chhattisgarh, through the Secretary, Department of Law & Legislative Affairs, D.K.S.Bhawan, Mantralaya, Raipur (C.G.).

---Petitioner

Versus

1. Inder Chand Soni, Social Worker, Jawahar Chowk, Durg (C.G.).
2. Chhattisgarh State Information Commission, Nirmal Chhaya Bhavan, Meera Datar Road, Shanker Nagar, Raipur (C.G.).

---Respondents

For petitioner/State	:	Shri Shashank Thakur, Government Advocate.
For respondent No.2	:	Shri Shyam Sunder Lal Tekchandani, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

19/07/2018

1. The challenge in the present Writ Petition is to the order Annexure-P/1 dated 06/06/2012 passed by the State Information Commission whereby the petitioner is directed to provide the information which has been sought by the respondent No.1 as per Annexure-P/2 and further has also penalize the Public Information Officer (In short "PIO") under Section 19-8-B with a fine of Rs.500/- for not providing the information to the respondent No.1 and also force him to prefer an appeal before the State Information Commission.
2. The notices in this case were issued to the respondent No.1 who in spite of proper service has chosen not to contest the case on merits. Hence, this Court proceeds to decide the appeal with the available materials on

record and also assistance provided by the counsel appearing for the petitioner as well as the respondent No.2.

3. For proper adjudication of the present Writ Petition, it would be relevant at this juncture to refer to the information which has been sought for by the respondent No.1 from the PIO which for ready reference is reproduced herein under:-

“चाही गई जानकारी का विवरण:—

वर्तमान में विभाग/कार्यालय में पदस्थ **समस्त प्रथमश्रेणी व द्वितीय श्रेणी के अधिकारियों** के नाम तथा उनकी समस्त पदस्थापनाओं के स्थान, कार्यकाल व पदोन्नतियों का पूर्ण सत्य व स्पष्ट ब्यौरा उपलब्ध करावें. शासकीय सेवा आरंभ करने की तिथी से अब तक का। (उपरोक्त जानकारीयों विधी एवं विधायी कार्य विभाग मंत्रालय में पदस्थों के संबंध में चाही गई है)''

4. The PIO vide his order Annexure-P/3 dated 20/04/2010 rejected the application on the ground that, firstly the information sought for being information pertaining to 3rd party which could not be provided to the applicant in view of clause 33 & 34 of the circular issued by the Department of Personal Training (DOPT) under Central Government of India wherein the said clauses specifically empowers the authorities concerned not to disclose 3rd party information to the seeker of the information and also as per clause 10 of the said circular.

5. The respondent No.1 thereafter preferred an appeal before the respondent No.2 who vide order Annexure-P/1 dated 06/06/2012 allowed the appeal and coming down heavily upon the authorities of the State directed them to release the information and also penalized the PIO with a fine of

Rs.500/- under Section 19-8-B of the Right to Information Act, 2005 (In short “the Act, 2005”).

6. The contention of the State counsel/petitioner is that, firstly the order of penalizing the PIO is bad in law for the simple reason that, no opportunity of hearing was given to the PIO before he was penalized vide Annexure-P/1. He further referred to the proviso clause 2 of Section 20 of the Act, 2005 whereby it has been specifically envisaged that, before penalizing an officer, the commission is duty bound to afford a reasonable opportunity of explanation to the area officer. The impugned order to that extent therefore was said to be quashed. He further contended that, even otherwise, the Commission should have consider the aspect as to whether the information which have been sought for by the respondent No.1 are one which could not be provided under the provision of the Act, 2005 as they are all 3rd party information which are all otherwise of no use to him. It was further contended that, the information which have been sought for by the respondent No.1 were those which clearly falls within the ambit of exemption from disclosure of information as stipulated under Section 8 of the Act, 2005.

7. The counsel appearing for the respondent No.2 however tried to justify the order passed by the respondent No.2 by submitting that the information would not fall within the exemption category under Section 8 of the Act, 2005 and the information sought were only public information which under the Act, 2005 every citizen as a right to know and therefore the decision cannot be held to be bad in law or erroneous in any manner.

8. Given the aforesaid facts and circumstances of the case, it would be relevant at this juncture to refer to Section 8-1-j which for ready reference is reproduced herein under:-

“8-1-j :- information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:”

9. Simultaneously, it would also be relevant at this juncture to refer to proviso clause 1 of Section 20 of the Act, 2005 which for ready reference is reproduced herein under:-

“20. Penalties.-(1) XXXX it shall impose a penalty of two hundred 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:”

10. A bare perusal of the aforesaid 2 provisions itself would clearly reflect that, so far as the information which relates to personal information and which has no relationship to any public activity or interest at such, those are all information which would fall within the exempted category under Section 8 of the Act, 2005.

11. Further, merely because the PIO has rejected the information and appeal which has been preferred against him by itself would not empowers the Commission to impose penalty against the PIO, the law itself requires that, before issuance of the order of penalty, the Commission is required to give a reasonable opportunity of hearing before imposing any penalty.

12. In continuation to the aforesaid legal position it would also be relevant at this juncture to refer to the guidelines which have been issued by the Government of India, Ministry of the Personnel, Public Grievances and Pensions, Department of Personnel & Training wherein clause 10 deals with the information which can be sought by a citizen. For ready reference it has been reproduced herein under:-

“10. A citizen has a right to seek such information from a public authority which is held by the public authority or which is held under its control. This right includes inspection of work, documents and records, taking notes, extracts or certified copies of documents or records, and taking certified samples of material held by the public authority or held under the control of the public authority. It is important to note that only such information can be supplied under the Act which already exists and is held by the public authority or held under the control of the public authority. The Public Information Officer is not supposed to create information, or to interpret information, or to solve the problems raised by the applicants, or to furnish replies to hypothetical questions.”

13. Likewise, in the same circular, clause 33 and 34 which deals with third party information and disclosure of third party information are as under:-

"33. Third Party Information.

Third party in relation to the Act means a person other than the citizen who has made request for information. The definition of third party includes a public authority other than the public authority to whom the request has been made."

"34. Disclosure of Third Party Information.

Information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, is exempt from disclosure. Such information should not be disclosed unless the competent authority is satisfied that larger public interest warrants the disclosure of such information."

14. At this juncture, it would also be relevant to refer to the judgment of the Hon'ble Supreme Court in the case of **Manohar s/o Manikrao Anchule v. State of Maharashtra & Anr. [2012 13 SCC 14]** wherein in paragraphs 15, 16 & 17, it 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.

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."

15. The Supreme Court further in another of its judgment passed in the case of **Girish Ramchandra Deshpande v. Central Information Commissioner [2013 1 SCC 212]** wherein in paragraphs 11 to 15 it has held as under:-

"11. The petitioner herein sought for copies of all memos, show cause notices and censure/punishment awarded to the third respondent from his employer and also details viz. movable and immovable properties

and also the details of his investments, lending and borrowing from Banks and other financial institutions. Further, he has also sought for the details of gifts stated to have accepted by the third respondent, his family members and friends and relatives at the marriage of his son. The information mostly sought for finds a place in the income tax returns of the third respondent. The question that has come up for consideration is whether the above-mentioned information sought for qualifies to be “personal information” as defined in clause (j) of Section 8(1) of the RTI Act.

12. We are in agreement with the CIC and the courts below that the details called for by the petitioner i.e. copies of all memos issued to the third respondent, show cause notices and orders of censure/punishment etc. are qualified to be personal information as defined in clause (j) of Section 8(1) of the RTI Act. The performance of an employee/officer in an organization is primarily a matter between the employee and the employer and normally those aspects are governed by the service rules which fall under the expression “personal information”, the disclosure of which has no relationship to any public activity or public interest. On the other hand, the disclosure of which would cause unwarranted invasion of privacy of that individual. Of course, in a given case, if the Central Public Information Officer or the State Public Information Officer of the Appellate Authority is satisfied that the larger public interest justifies the disclosure of such information, appropriate orders could be passed but the petitioner cannot claim those details as a matter of right.

13. The details disclosed by a person in his income tax returns are “personal information” which stand exempted from disclosure under clause (j) of Section 8(1) of the RTI Act, unless involves a larger public

interest and the Central Public Information Officer or the State Public Information Officer or the Appellate Authority is satisfied that the larger public interest justifies the disclosure of such information.

14. The petitioner in the instant case has not made a bona fide public interest in seeking information, the disclosure of such information would cause unwarranted invasion of privacy of the individual under Section 8(1)(j) of the RTI Act.

15. We are, therefore, of the view that the petitioner has not succeeded in establishing that the information sought for is for the larger public interest. That being the fact, we are not inclined to entertain this special leave petition. Hence, the same is dismissed.”

16. In the given facts, particularly the information which has been sought for by the respondent No.1 as per Annexure-P/2 it would clearly reflect that, the respondent No.1 was not seeking information confined to a particular officer, but it appears that he for reasons best known wanted the information in respect of the entire class - 1 and 2 officers posted in the office of the Law and Legislative Department of the State of Chhattisgarh. The very first line of the application seeking information sought for discloses this aspect. The respondent No.1 has not given any reasons as to why this information is required by him, neither has he disclosed as to what is the larger public interest in which he was seeking this information so as to bring it outside the purview of Section 8-1-j of the Act, 2005.

17. In the absence of any such information provided by the respondent No.1, merely because he has moved an application seeking certain information would not by itself bring it under the purview of a right of citizen

to seek information under the Act, 2005 particularly when the application of the respondent No.1 itself is as vague as it can be with no reason and purpose from the information sought for is disclosed.

18. Given the aforesaid facts and circumstances of the case, this Court is of the opinion that, the impugned order of the respondent No.2 dated 06/06/2010 thus appears to be prima-facie are in contravention both to the provision of Section 8-1-j as also to the provision of Section 20 of the Act, 2005 and the same being not sustainable deserve to be and are accordingly set-aside/quashed.

19. Admittedly before issuance of the impugned order the commission had not called upon the PIO to explain as to why he should not be penalized as is required under Section 20 of the Act, 2005. The impugned order is bad in law on this ground alone.

20. The order of the commission is also in contravention to the circular issued by the Government of India Ministry of Personnel, Public Grievance and Pensions, Department of Personnel and Training.

21. It is held that the respondent No.1 is not entitled for the information as has been sought for vide Annexure-P/2 which originally was rejected by the PIO.

22. Upholding the order of PIO, the present Writ Petition stands allowed and disposed off.

Sd/-
(P. Sam Koshy)
JUDGE