

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 3728 of 2010**

Dr. Praveen Agrawal, aged about 54 years, S/o Late Shri Ramnarayan Agrawal, Jan Suchana Adhikari, Office of Mukhya Chikitsa & Swastha Adhikari, Durg, C.G.

---- Petitioner

Versus

1. Shri Inder Chand Soni, Samajik Karya Karta, Jawahar Chowk, Durg, C.G.
2. Rajya Suchana Ayukta, Chhattisgarh Rajya Suchana Ayog, Nirmal Chhaya Bhava, Meera Datar Road, Shanker Nagar, Raipur C.G.

---- Respondents

For Petitioner	:	Mr. Vinod Kumar Sharma, Advocate.
For Respondent No.2	:	Mr. Shyam Sunder Lal Tekchandani, Advocate.
For Respondent No. 1	:	None present, though served.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****05/02/18**

1. The petitioner is a Public Information Officer posted in the office of the Chief Medical and Health Officer, Durg. The Second Appellate Authority / Chhattisgarh State Information Commission directed him to supply information sought for by respondent No. 1 herein but he did not supply the said information and it is alleged that the notice dated 03.11.2009 was issued to him but he did not submit his reply right in time and consequently, in exercise of power under Section 20(1) of the Right to Information Act, 2005 (for brevity "Act of 2005") by order dated 13.04.2010, penalty of sum of Rs.10,000/- has been imposed in each of the 13 cases upon the petitioner, feeling aggrieved against which this writ petition has been preferred.

2. Mr. Vinod Kumar Sharma, learned counsel appearing for the petitioner would submit that notices of penalty were never served to the petitioner and even otherwise the requirement under Section 20(1) of the Act of 2005 is non-supply of information has to be deliberate or intentional and without being satisfied of such requirement, the order of penalty has been passed which is *per-se* illegal.

3. Per contra, learned State counsel would oppose the submissions made by learned counsel for the petitioner and would support the order impugned.

4. I have heard learned counsel for the parties, considered their rival submissions made herein above and gone through the records with utmost circumspection.

5. It is not in dispute that before the State Information Commission, the petitioner has appeared and he was directed to supply information to respondent No. 1 free of cost which according to the Commission was not served to respondent No. 1 and subsequently notice dated 03.11.2009 imposing penalty of Rs. 10,000/- was issued in each of the cases to the petitioner.

6. 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.”

7. A careful perusal of Section 20(1) of the Act of 2005 would show that if the Public Information Officer has not furnished information within the time specified under sub-section (1) of Section 7 or malafidly 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.

8. 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:-

1 (2012) 13 SCC 14

“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.

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)."

9. The penal provisions under Section 20 of the Act of 2005 are 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**).

10. The order imposing penalty for failure is akin to action under Criminal Law. It is necessary to ensure that the failure to supply the information is

2 2010 SCC OnLine P&H 3275

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 Commission**³).

11. Reverting to the facts of the case, it appears that despite the order of the State Information Commission, the petitioner did not supply the requisite information pursuant to the First Appellate Authority leading to filing of second appeal before the Second Appellate Authority in which the said authority directed the petitioner to supply information free of cost but the petitioner did not appear before the Commission and the Commission on 03.11.2009 said to have issued notice for imposition of penalty of Rs. 10,000/- in each of 13 cases to the petitioner. It is nowhere apparent from the record that the notice was served to the petitioner and the order of penalty has been passed based on assumption that the notice has been served to the petitioner and no finding has been recorded that he deliberately or intentionally did not supply the information. Such an order is contrary to the provisions contained in Section 20(1) of the Act of 2005. The Information Commission must have recorded a finding that the petitioner has malafidely denied request of information which is not the case here. Simply because notice has been issued and the notice has not been replied will not lead to inference that the information has been withheld intentionally and deliberately. In my considered opinion, after full fledged enquiry, the order of

3 2010 (1) Mh.L.J.

penalty could have been passed. In fact, proper procedure has not been adopted by the Commission for imposition of penalty, if any. Therefore, the impugned order passed holding imposition of penalty upon the petitioner in each of the 13 cases to the extent of Rs.10,000/- is set aside. The Commission is at liberty to proceed in accordance with law.

12. The writ petition is allowed to the extent indicated herein above. No cost(s).

SD/-
(Sanjay K. Agrawal)
Judge