

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 1316 of 2012**

1. State of Chhattisgarh, through the Secretary, Department of Law and Legislative Affairs, DKS Bhawan, Mantralaya, Raipur (C.G.)
2. Public Information Officer, Secretariat, Department of Law and Legislative Affairs, DKS Bhawan, Mantralaya, Raipur (C.G.)
3. Anil Sinha, Assistant Public Information Officer Secretariat, Department of Law and Legislative Affairs, DKS Bhawan, Mantralaya, Raipur (C.G.)

----Petitioners**Versus**

1. Chhattisgarh State Information Commission, Through Commissioner, Nirmal Chhaya Bhavan, Meeradatar Road, Shankar Nagar, Raipur (C.G.)
2. Inderchand Soni, Social Worker, Jawahar Chowk, Durg, Distt. Durg(C.G.)

---- Respondents

For Petitioners	: Mr. D.R. Minj, Dy. Govt. Advocate.
For Respondent No. 1	: Mr. Shyam Sunder Lal Tekchandani, Advocate.
For Respondent No. 2	: Ms. Aditi Singhvi, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****02/07/2018**

Heard.

1. Respondent No. 2- Inderchand Soni sought information from Assistant Public Information Officer, petitioner No. 3 herein and also sent Rs.10/- for getting that information through money order. The said money order was not accepted by petitioner No. 3 relying upon the provisions contained in Chhattisgarh Soochna Ka Adhikar (Shulk avam Mulya Viniyam) Niyam, 2005 (un-amended) and later on information was supplied by the Public Information Officer free of cost to respondent No. 2.

2. Being dissatisfied with the non-acceptance of money order sent by respondent No. 2 for getting information, he preferred appeal under Section 18 of the Right to Information Act, 2005 (henceforth "Act, 2005") before the Chhattisgarh State Information Commission, respondent No. 1 herein stating that as per provisions of Section 19(8)(b) of the Act, 2005, he may be compensated in lieu of delay caused by petitioner No. 3 in disposing of the application filed by respondent No. 2 under the Act of 2005.

3. Respondent No. 1, by the impugned order dated 12.04.2012, imposed penalty of Rs.5,000/- upon petitioner No. 3 under Section 20(1) of the Right to Information Act, 2005, against which, instant writ petition has been filed questioning the same.

4. I have heard learned counsel appearing for the parties.

5. At this stage, it would be appropriate to notice Section 20(1) of the Act, 2005, which states as under:-

"20(1). **Penalties.**-(1) Where the Central Information Commission or 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 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 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, 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 by."

6. The order of 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. (See :

A.A. Parulekar v. Goa State Information Commission, (2010) 1 Mah LJ 931).

7. In the instant case, no such finding has been recorded and the State Information Commission proceeded to levy penalty of Rs.5,000/- merely on the ground that money order sent by respondent No. 2 was returned by the Assistant Public Information Officer (petitioner No. 3) and by which the State Government suffered loss. There is no such finding that failure to supply the information sought by respondent No. 2 is either intentional or deliberate, therefore, I am of the view that penalty could not have been imposed under Section 20(1) of the Act, 2005 upon petitioner No. 3 herein.

8. In view of above, the impugned order dated 12.04.2012 passed by Chhattisgarh State Information Commission is liable to be and is hereby set aside.

9. Accordingly, the writ petition is allowed to the extent indicated hereinabove.

Sd/-
(Sanjay K. Agrawal)
Judge

D/-

