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HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 1315 of 2012**

1. State Of Chhattisgarh, through the Secretary, Deptt. Of Law And Legislative Affairs, DKS Bhawan, Mantralaya, Raipur C G
2. Public Information Officer Secretariat, Deptt. Of Law And Legislative Affairs, DKS Bhawan, Mantralaya, Raipur C G
3. Anil Sinha Assistant Public Information Officer Secretariat, Deptt. Of Law And Legislative Affairs, DKS Bhawan, Mantralaya, Raipur C G

---- Petitioner**Versus**

1. Chhattisgarh State Information Commission, through Commissioner, Nirmal Chhaya Bhavan, Meeradatar Road, Shankar Nagar, Raipur, CG
2. Inderchand Soni Social Worker, Jawahar Chowk, Durg, Distt. Durg CG.

---- Respondent**WPC No. 1798 of 2012**

1. State Of Chhattisgarh, through the Secretary, Deptt. Of Law And Legislative Affairs, DKS Bhawan, Mantralaya, Raipur C G
2. Public Information Officer Secretariat, Deptt. Of Law And Legislative Affairs, DKS Bhawan, Mantralaya, Raipur C G
3. Anil Sinha Assistant Public Information Officer Secretariat, Deptt. Of Law And Legislative Affairs, DKS Bhawan, Mantralaya, Raipur C G

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1. Chhattisgarh State Information Commission, through Commissioner, Nirmal Chhaya Bhavan, Meeradatar Road, Shankar Nagar, Raipur, CG
2. Inderchand Soni Social Worker, Jawahar Chowk, Durg, Distt. Durg CG.

---- Respondent

For Petitioners/State	Shri Shashank Thakur, Govt. Advocate
For Respondent No.1	Shri Shyam Sunder Lal Tekchandani, Advocate
For Respondent No.2	Ms Aditi Singhvi, Advocate

Order On Board

By

Prashant Kumar Mishra, J.

10/09/2018

1. Challenge thrown in these petitions is to the orders passed by the Chhattisgarh State Information Commission (henceforth 'the Commission') in case Nos.1075/2011 & 1073/2011 imposing penalty of Rs.5,000/- in each case on the Assistant Public Information Officer Shri Anil Sinha, the petitioner No.3 herein in both the petitions.

2. Admittedly, before imposing penalty on the petitioner No.3 the Commission has not issued any show cause notice to him, which the Commission was bound to do in view of the law laid down by the Supreme Court in **Manohar S/o Manikrao Anchule v State of Maharashtra and Another**¹ wherein the following has been held in paras 17, 22 & 23 :

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

¹ (2012) 13 SCC 14

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 with the principle of rule of natural justice obligatory in the class of administrative matters as well.

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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).

3. In view of the settled legal position, the impugned orders passed by the Commission in case Nos.1075/2011 & 1073/2011 are hereby set aside and the matter is remitted back to the Commission for passing fresh order on the issue after affording due opportunity of hearing to the petitioner No.3 and all other parties.
4. In the result, both the writ petitions are allowed to the extent indicate above. No order as to cost(s).

Sd/-

Judge
Prashant Kumar Mishra

Gowri