

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 1371 of 2018**

Kushal Singh Rathod, S/o Late Shri Keshavji Rathod, aged about 59 years,
R/o Steel City, Raipur, District Raipur (C.G.) **---- Petitioner**

Versus

1. Chhattisgarh State Information Commission, under Right to Information Act, 2005, Raipur, District Raipur (C.G.)
2. Jai Prakash Agrawal S/o Unknown, aged about unknown, R/o 15/345, Jawahar Nagar, Raipur (C.G.) **---- Respondents**

For Petitioner	: Mr. Siddharth Rathod, Advocate.
For Respondent No. 1	: Mr. S. S. Tekchandani, Advocate.
For Respondent No. 2	: None.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****16/07/18**

1. The information seeker / respondent No. 2 sought certain information by filing an application under the Right to Information Act, 2005 (for brevity, 'Act of 2005') on 28.04.2016 which was supplied to him by the petitioner being a Public Information Officer on 07.06.2017 after receipt of second appeal filed by respondent No.2. Thereafter, by impugned order dated 09.03.2018, the State Information Commission has imposed penalty of Rs. 25,000/- under Section 20(1) of the Act of 2005 against the petitioner for not providing information within stipulated time. Questioning that order, this instant writ petition has been preferred by the petitioner.

2. Learned counsel appearing for the petitioner would submit that the impugned order is unsustainable and bad in law as no finding has been

recorded in terms of Section 20(1) of the Act of 2005 that the information has been supplied with delay without reasonable cause.

3. On the other hand, Mr. Tekchandani learned counsel appearing for respondent No. 1- State Information Commission, would support the impugned order.

4. None appeared for respondent No. 2 – information seeker.

5. I have heard learned counsel for the parties and perused the impugned order with utmost circumspection.

6. The State Information Commission has exercised the power conferred under Section 20 (1) of the Act of 2005 which states as under :-

“S. 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 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 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.”

(2) xxx xxx xxx

7. This Court in the case of **Smt. Savitri Bhagat v. Chhattisgarh State Information Commission and Others**¹, and other connected matters has held in paragraph 11 and 12 as under :-

“**11.** The penalty provisions under Section 20 of the Act of 2005 is 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 v. State Information Commissioner, Punjab and another**).

12. The order directing 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. 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 v. Goa State Information Commission**).”

¹ WPC No. 914 of 2017

8. Following the principles of law laid down in the aforesaid case, it is quite vivid that the information Commission has not recorded a finding that there is denial of Information or furnishing of information with delay is without reasonable cause which is *sine qua non* for imposing penalty in exercise of power under Section 20(1) of the Act of 2005. Consequently, the impugned order passed by the State Information Commission is hereby set aside and the matter is remitted to the State Information Commission who shall hear the parties and pass a fresh order on the application filed by respondent No. 2 expeditiously, preferably within a period of 45 days from the date of receipt of copy of this order considering the explanation furnished by the petitioner.

Sd/-

(Sanjay K. Agrawal)
Judge