

HIGH COURT OF CHHATTISGARH, BILASPUR**Order reserved on : 15.05.2018****Order delivered on : 18.05.2018****Writ Petition (C) No.1405 of 2017**

Rajkumar Mishra S/o Late Ganesh Prasad Mishra, Aged about 46 years, R/o. Haldibadi, Chirmiri, Thana-Chirmiri, Tah. Khadgawa, District Koriya (CG)

----Petitioner**Versus**

1. Chhattisgarh State Information Commission, through Secretary, Chhattisgarh State Information Commission, Indravati Khand, 1st Floor, Shashtri Chowk, Raipur (CG)
2. District Education Officer, Baikunthpur, District Koriya (CG)

---- Respondents

For Petitioner	:	Rajkumar Mishra in person
For Respondent No.1	:	Mr.Shyam Tekchandani, Advocate
For Respondent No.2	:	Mr.Anand Dadariya, Dy.Govt.Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**C.A.V.Order**

1. The petitioner made an application on 29.8.2011 under the provisions of the Right to Information Act, 2005 (hereinafter called as "the Act of 2005") for supply of information to the Public Information Officer/District Education Officer, Baikunthpur. The said information was not supplied to the petitioner within a period of one month as prescribed leading to filing of first appeal in which he remained unsuccessful. In second appeal filed by the petitioner before the State Information Commission, the

information was supplied to the petitioner on 5.12.2012. Learned Commission noted the fact of supply of information and held that there was delay of 15 months in supplying the information and in exercise of power conferred under Section 20 (1) of the Act of 2005 imposed a penalty of ₹ 10,000/- to respondent No.2 and also awarded damages of ₹ 500/- to the petitioner under Section 19(8) of the Act of 2005.

2. The petitioner herein calls in question order dated 19.6.2013 passed by learned Commission imposing a penalty of ₹ 10,000/- under Section 21 (1) of the Act of 2005 stating inter-alia that maximum penalty of ₹ 25,000/- ought to have been imposed by the petitioner against respondent No.2 as there was delay of 15 months in supplying the information. He relied upon the judgment of the High Court of Himachal Pradesh in the matter of **Sanjay Hindwan v. State Information Commission and others**¹, which has been followed by the High Court of Punjab and Haryana in **Sham Lal Singla v. State of Punjab & others**², decided on 18.11.2016.
3. On the other hand, learned counsel for respondents No.1 and 2 would submit that power conferred under Section 20(1) of the Act of 2005 is discretionary in nature, which cannot be interfered with in exercise of jurisdiction under Article 226 of the Constitution of

¹ 2013 (AIR) H.P. 30

² CWP No.6419 of 2013(O&M)

India, as such, the impugned order is strictly in accordance with law.

4. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the records with utmost circumspection.
5. In order to decide the question raised at the Bar, 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 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.”

6. A focused glance of the aforesaid provision would show that power and jurisdiction have been conferred to the Commission to impose penalty if the Public Information Officer without any reasonable cause refused to receive an application for information or failed to furnish information within the time specified under sub-section (1) of Section 7 of the Act of 2005. Likewise, if the Public Information Officer malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information, it shall impose a penalty of two hundred and fifty rupees each day till application is received or information is furnished.
7. The question for consideration would be whether the provisions relating to imposition of penalty can be said to be mandatory.
8. The words 'impose a penalty of ₹ two hundred and fifty rupees' per day is of great importance, which has to read in juxtaposition with the words 'without reasonable cause, malafidely or knowingly or obstructed'.
9. A Division Bench of the Delhi High Court in the matter of **Anand Bhushan v. R.A. Haritash**³ considered the question and held that penalty prescribed under Section 20 of the Act is discretionary in nature and not mandatory by holding as under:-

3 ILR (2012) IV Delhi 657

“15. We may at the outset notice that a Division Bench of this Court in judgment dated 6th January, 2011 in LPA 782/2010 titled **Central Information Commission v. Department of Posts**, inspite of the argument raised that that Single Judge ought not to have reduced the penalty imposed by the CIC but finding sufficient explanation for the delay in supplying information, upheld the order of the Single Judge, reducing the penalty. Though Section 20(1) uses the word 'shall', before the words 'impose a penalty of Rs. two hundred and fifty rupees' but in juxtaposition with the words 'without reasonable cause, malafidely or knowingly or obstructed.' The second proviso thereto further uses the words, 'reasonably and diligently'. The question which arises is when the imposition of penalty is dependent on such variables, can it be said to be mandatory or possible of calculation with mathematical precision. All the expressions used are relative in nature and there may be degrees of, without reasonable cause, malafide, knowing or reasonableness, diligence etc. We are unable to bring ourselves to hold that the aforesaid provision intends punishment on the same scale for all degrees of neglect in action, diligence etc. The very fact that imposition of penalty is made dependent on such variables is indicative of the discretion vested in the authority imposing the punishment. The Supreme Court in **Carpenter Classic Exim P. Ltd. V. Commr. of Customs (Imports)**⁴ was concerned with Section 114 A, Customs Act, 1962 which also used the word 'shall' in conjunction with expression 'willful mis- statement or suppression of facts'; it was held that provision of penalty was not mandatory since discretion had been vested in the penalty imposing authority. Similarly in **Superintendent and Remembrancer of Legal Affairs to Government of West Bengal V. Abani Maity**⁵, the words 'shall be liable for confiscation' in section 63 (1) of Bengal Excise Act, 1909, were held to be not conveying an absolute imperative but merely a possibility of attracting such penalty inspite of use of the word 'shall'. It was held that discretion is vested in the court in that case, to impose or not to impose the penalty.”

4 (2009) 11 SCC 293

5 (1979) 4 SCC 85

I am in full agreement with a view expressed by a Division Bench of Delhi High Court in **Anand Bhushan** (supra) and follow the principles of law laid down therein.

10. Reverting to the facts of the present case, learned Commission after having noted the fact of delay in supplying the information took a decision to impose penalty of ₹10,000/- in exercise of discretionary power conferred under Section 20(1) of the Act of 2005, which cannot be held to be perverse or arbitrary warranting interference by this Court under Article 226 of the Constitution of India.
11. There is yet another reason for not interfering with the order of learned Commission. The penalty proceedings are akin to contempt proceedings, the settled position with respect thereto is that after bringing the facts to the notice of the Court, it becomes a matter between the Court and the contemnor and the informant or contempt petitioner has no role further in the contempt proceedings.
12. A Division Bench of the Delhi High Court in the matter of **Ankur Mutreja v. Delhi University**⁶ speaking through A.K. Sikri, Acting Chief Justice (as then His Lordship was) held as under:-

“11. The penalty proceedings are akin to contempt proceedings, the settled position with respect whereto

is that after bringing the facts to the notice of the Court, it becomes a matter between the Court and the contemnor and the informant or the relator who has brought the factum of contempt having been committed to the notice of the Court does not become a complainant or petitioner in the contempt proceedings. His duty ends with the facts being placed before the Court though the Court may in appropriate cases seek his assistance. Reference in this regard may be made to *Om Prakash Jaiswal v. D.K. Mittal*⁷, *Muthu Karuppan, Commr. of Police, Chennai v. Parithi Ilamvazhuthi*⁸ and Division Bench judgment of this Court in *Madan Mohan Sethi v. Nirmal Sham Kumari*⁹. The said principle applies equally to proceedings under Order XXXIX, Rule 2A of the Civil Procedure Code, 1908 which proceedings are also penal in nature. ”

The above-stated decision of the Delhi High Court has been followed subsequently in **Anand Bhushan** (supra).

13. There is yet another reason for not entertaining the writ petition.

The information seeker is only entitled for damages and cost, if any, as there is no provision in the Act of 2005 for payment of penalty or part thereof recovered from Erring Information Officer to the information seeker and therefore information seeker cannot as a matter of right claim audience in the penalty proceedings which are between the Commission and Erring Information Officer, as such, matter of penalty is between the Commission and Erring Information Officer in which the petitioner/information seeker has no right and legislature has made a special provision

7 (2000) 3 SCC 171

8 (2011) 5 SCC 496

9 MANU/DE/0423/2011

in the shape of Section 18 of the Act of 2005 for addressing complaint of aggrieved information seeker which is suggestive of the fact that the aggrieved information seeker cannot resort to the provisions contained in Section 20 of the Act of 2005.

14. In view of the aforesaid submission, the judgment rendered by the High Court of Himachal Pradesh in **Sanjay Hindwan** (supra) followed by the High Court of Punjab and Haryana in **Sham Lal Singla** (supra) is clearly distinguishable to the facts of the present case.
15. On the basis of aforesaid analysis, cost of penalty of ₹ 10,000/- imposed upon respondent No.2 by learned Commission cannot be enhanced to the extent of ₹ 25,000/-. There is no reason to interfere with the order of the Commission in exercise of jurisdiction under Article 226 of the Constitution of India.
16. Accordingly, the writ petition deserves to be and is hereby dismissed leaving the parties to bear their own cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge

B/-

HIGH COURT OF CHHATTISGARH AT BILASPUR
Writ Petition (C) No.1405 of 2017

Petitioner

Rajkumar Mishra

Versus

Respondents

Chhattisgarh State Information
Commission and another

(English)

Information seeker under Right to Information Act, 2005 cannot resort to penalty proceeding under Section 20 of the Act of 2005.

(हिन्दी)

सूचना का अधिकार अधिनियम, 2005 के अन्तर्गत सूचना चाहने वाला 2005 के अधिनियम की धारा 20 के अन्तर्गत कार्यवाही का आश्रय नहीं ले सकता।