

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.09.2020

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 15564 of 2011

Mahendran

... Petitioner

-vs-

1. The Tamil Nadu Information Commission
Rep. By its Assistant Registrar
Kmadhenu Super Market, I-Floor
New No.378, (273) Anna Salai
Theynampet, Chennai.

2. Manikandan Vattthan Chettiar
Advocate
263, Additional Law Chambers
High Court, Chennai - 600 104.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records relating to the proceedings in case No.27703B/0-8/09 dated 30.08.2010 on the file of the First Respondent, quash the same.

For Petitioner : Mr. N. Manokaran

For Respondents : Mr. Niranjan Rajagopalan (For R1)

O R D E R

(through video conference)

Heard Mr. N. Manokaran, Learned Counsel for the Petitioner, Mr. Niranjan Rajagopalan, Learned Standing Counsel appearing for the First Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner, who was holding the post of Additional Superintendent of Police (Crime), District Police Office, Erode District, at the time of filing the Writ Petition viz., 29.06.2011 is aggrieved by order in Case No.27703B /O-8/09, dated 28.08.2010 passed by the First Respondent, which has been served on him on 29.09.2010.

3. The contention of the Petitioner is that the impugned order entails adverse civil consequences to him, but neither the principles of natural justice nor the procedure prescribed under Section 20 of the Right to Information Act, 2005 (hereinafter referred to as the 'Act' for short) has been followed before it was passed.

4. In order to examine the said contentions, it would be necessary to extract the impugned order, which reads as follows:-

"The Commission had ordered that information has to be given as per the RTI in Case No.27703 B and therein it has been pointed out that statement made at the Enquiry were not believable and it was clearly observed that no earnestness was shown by the Superintendent of Police, Erode in the case and the action was ordered against the last known custodian of record and supply the information as the case diary was not provided and to take action for reconstruction from other records in the Police Station if need be. It was also pointed out that to the query on what action was taken up by the Superintendent of Police, question 15 which asked about the party having received the stolen properties who has not been charge sheeted on that offence and the query also asked about how the person was acquitted after the High Court has quashed the case and this missing information is to be supplied within a week. The Petitioner's complaint is that he has not received the reply or the copy of the complaint of the Petitioner. It is seen a blank statement was made that files were sent and action has been taken against the loss of the Case Diary in the Police Station and what is taken seems to have been is mild action, merely but show some action, under Section 3(a) of the relevant Rule. Losing the Case Diary is a very serious offence particularly when there is an underlying complaint of some serious hanky panky, and the Commission has ordered serious action on that issue under RTI and the Director General of Police to take action by a Senior Officer to examine if there is any prima facie in the case and instead supplying some laconic irrelevant reply as seen in this case is warranting action under relevant Police and Criminal Law. So it is apparent to the Commission that still no earnestness has been shown by the Public Authority (i.e., the Superintendent of Police, Erode) concerned in this case and the explanation called for has also not been received by

the Commission nor the Director General of Police's report on what Police action in this case as suggested in the last paragraph and this is seriously regretted by the Commission.

Queries regarding what the Superintendent of Police did, how the person could be acquitted after he case was ordered quashed by the High Court has not been covered and non supply of the information cannot be hidden behind this excuse. So it is clear in this case that there is a continued violation of RTI Act despite the judgment and the Commission concludes that malafide cannot be ruled out as the entire query revolves on what action taken in this serious misdemeanor and illegality, at any rate that there is a motive not to part with information is clear.

The Commission therefore, is forced to let action as per Section 20(1) and 20(2) of RTI proceed and take on record that no proper reply has been filed to say why this mandatory provisions should not be with held.

The Director General of Police is directed to:

(a) recover the maximum penalty as payable under law that has become payable in this case for non supply of information, that it be recovered and remitted into the Government treasury and report the fact within 4 weeks of this order.

(b) the concerned officers are charge sheeted under serious sections of the disciplinary Rules for continued violation of the RTI Act under Section 20 (2);

(c) the Director General of Police is also directed to supply the other information asked for of him as mentioned in the earlier judgment itself and send a report in this regard within 3 weeks, lest the Commission should be compelled to require his presence before the Bar of the Commission in Person."

A bare reading of the impugned order reveals that there is substantial force in the contentions raised by the Petitioner.

5. In this regard, it would be appropriate to refer to Section 20 of the Act, which reads as follows:-

"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) 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 and persistently, failed 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 recommend for disciplinary action against the Central Public Information Officer or the State Public Information Officer, as the case may be, under the service rules applicable to him."

The Hon'ble Supreme Court of India in Manohar -vs- State of Maharashtra [(2012) 13 SCC 14] has explained in detail the manner in which the State Information Commission has to exercise its powers conferred by Section 20 of the Act, as follows:-

"15. The 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 of 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 with 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 officer concerned. 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).

....
25. Thus, the principle is clear and settled that right of hearing, even if not provided under a specific statute, the principles of natural justice shall so demand, unless by specific law, it is excluded. It is more so when exercise of authority is likely to vest the person with consequences of civil nature.

....
28. Now, we would deal with the other contention on behalf of the appellant that the order itself does not satisfy the requirements of Section 20(2) and, thus, is unsustainable in law. For this purpose, it is necessary for the Court to analyse the requirement and scope of Section 20(2) of the Act. Section 20(2) empowers a Central Information Commission or the State Information Commission:

28.1. (i) At the time of deciding any complaint or appeal;

28.2. (ii) If it 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 and persistently, failed to receive an application for information or has not

furnished information within the time specified under sub-section (1) of Section 7 (i.e. 30 days);

28.3. (iii) Mala fide denied the request for information or intentionally given incorrect, incomplete or misleading information; or

28.4. (iv) Destroyed information which was the subject of the request or obstructed in any manner in furnishing the information;

28.5. (v) Then it shall recommend for disciplinary action against the stated persons under the relevant service rules.

29. From the above dissected language of the provision, it is clear that first of all an opinion has to be formed by the Commission. This opinion is to be formed at the time of deciding any complaint or appeal after hearing the person concerned. The opinion formed has to have basis or reasons and must be relatable to any of the defaults of the provision. It is a penal provision as it vests the delinquent with civil consequences of initiation of and/or even punishment in disciplinary proceedings. The grounds stated in the section are exhaustive and it is not for the Commission to add other grounds which are not specifically stated in the language of Section 20(2). The section deals with two different proceedings. Firstly, the appeal or complaint filed before the Commission is to be decided and, secondly, if the Commission forms such opinion, as contemplated under the provisions, then it can recommend that disciplinary proceedings be taken against the said delinquent Central Public Information Officer or State Public Information Officer. The purpose of the legislation in requiring both these proceedings to be taken together is obvious not only from the language of the section but even by applying the mischief rule wherein the provision is examined from the very purpose for which the provision has been enacted. While deciding the complaint or the appeal, if the Commission finds that the appeal is without merit or the complaint is without substance, the information need not be furnished for reasons to be recorded. If such be the decision, the question of recommending disciplinary action under Section 20(2) may not arise. Still, there may be another situation that upon perusing the records of the appeal or the complaint, the Commission may be of the opinion that none of the defaults contemplated under Section 20(2) is satisfied and, therefore, no action is called for. To put it simply, the Central or the State Commission have no jurisdiction to add to the exhaustive grounds of

default mentioned in the provisions of Section 20(2). The case of default must strictly fall within the specified grounds of the provisions of Section 20(2). This provision has to be construed and applied strictly. Its ambit cannot be permitted to be enlarged at the whims of the Commission.

30.If the appellant was given an opportunity and had appeared before the Commission, he might have been able to explain that there was reasonable cause and he had taken all reasonable steps within his power to comply with the provisions. The Commission is expected to formulate an opinion that must specifically record the finding as to which part of Section 20(2) the case falls in. For instance, in relation to failure to receive an application for information or failure to furnish the information within the period specified in Section 7(1), it should also record the opinion if such default was persistent and without reasonable cause.

31.If one examines the provisions of Section 20 (2) in their entirety then it becomes obvious that every default on the part of the officer concerned may not result in issuance of a recommendation for disciplinary action. The case must fall in any of the specified defaults and reasoned finding has to be recorded by the Commission while making such recommendations. "Negligence" per se is not a ground on which proceedings under Section 20(2) of the Act can be invoked. The Commission must return a finding that such negligence, delay or default is persistent and without reasonable cause....

....

33. All the attributable defaults of a Central or State Public Information Officer have to be without any reasonable cause and persistently. In other words, besides finding that any of the stated defaults have been committed by such officer, the Commission has to further record its opinion that such default in relation to receiving of an application or not furnishing the information within the specified time was committed persistently and without a reasonable cause. Use of such language by the legislature clearly shows that the expression "shall" appearing before "recommend" has to be read and construed as "may". There could be cases where there is reasonable cause shown and the officer is able to demonstrate that there was no persistent default on his part either in receiving the application or furnishing the requested information. In such circumstances, the law does not require recommendation for disciplinary proceedings to be made. It is not the legislative mandate that

irrespective of the facts and circumstances of a given case, whether reasonable cause is shown or not, the Commission must recommend disciplinary action merely because the application was not responded to within 30 days. Every case has to be examined on its own facts. We would hasten to add here that wherever reasonable cause is not shown to the satisfaction of the Commission and the Commission is of the opinion that there is default in terms of the section it must send the recommendation for disciplinary action in accordance with law to the authority concerned. In such circumstances, it will have no choice but to send recommendatory report. The burden of forming an opinion in accordance with the provisions of Section 20(2) and principles of natural justice lies upon the Commission."

It is apparent on the face of the record of the impugned order that the decision-making process in the present case has not been in accordance with the mandatory requirement in that authoritative pronouncement. In such circumstances, it is not possible to sustain the impugned order, which is set aside and the matter remitted to the First Respondent for fresh consideration.

6. The case shall be listed for hearing before the First Respondent on 03.12.2020, and the Petitioner, the Second Respondent and all other parties concerned shall appear on that date without fail. If the First Respondent is not in a position to take up the matter for hearing on that date, it shall inform them of the date of hearing to which it is adjourned in the prescribed manner. The First Respondent shall afford full opportunity of hearing to all parties concerned following the prescribed procedure in consonance with the principles of natural justice and pass reasoned orders dealing with each of the contentions raised by the parties on merits and in accordance with law. Though obvious, it is made clear that First Respondent shall not be inhibited or influenced by the impugned order, which has been set aside.

7. Accordingly, the Writ Petition is disposed on the aforesaid terms. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

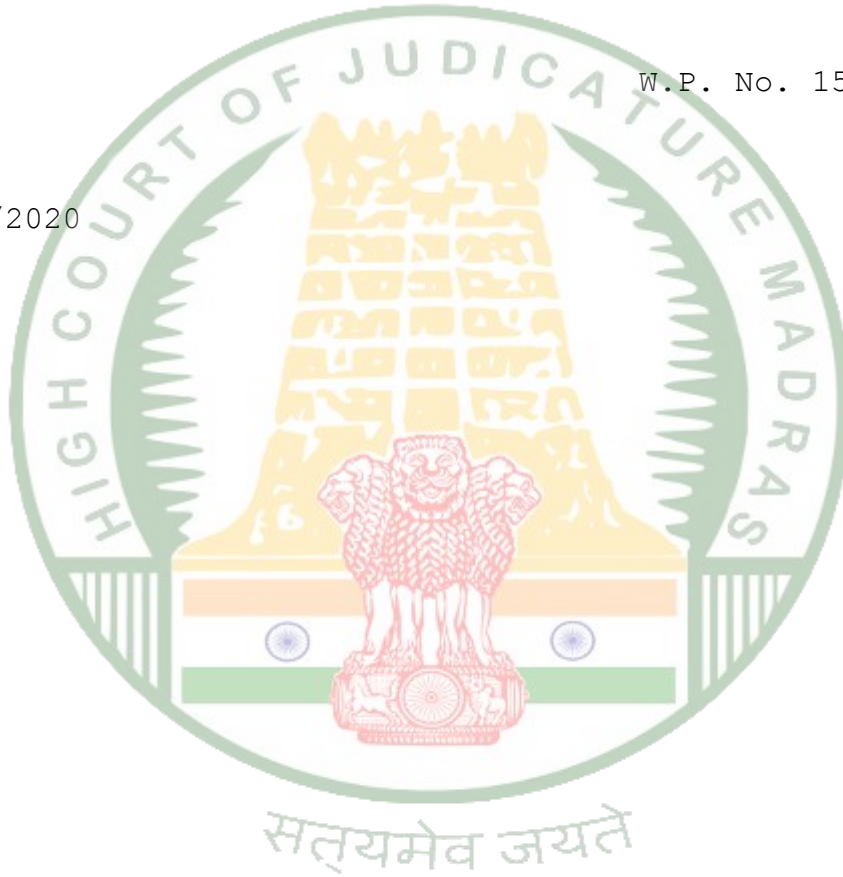
To

The Assistant Registrar,
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+lcc to M/s.N.Manokaran, Advocate Sr.31222

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