

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.09.2020

CORAM

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

W.P. No. 14166 of 2013

and

W.M.P. No. 1 of 2013

P.Jagadeesan

S/o. S.Palaniappan

B/76, Government Officer's Colony

Karumathur,

Coimbatore - 641 008.

.... Petitioner

-vs-

1. The Tamilnadu Information Commission

Rep. By its Registrar

No.2, Thiyagarayar Salai

Teynampet, Chennai - 600 018.

2. The Director of Town Panchayats

Kuralagam, Chennai.

3. Mr. V.John Sagaya Albert

No.12/36 J, Vivekanandar Veethi

Krishnapuram, Somanur 641 668

Coimbatore.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the proceedings of the First Respondent in its Case No.52349/Enquiry/D/2012 dated 22.03.2013 and quash the same.

For Petitioner : Mr. V.Vijay Shankar

For Respondents: Mr. Niranjan Rajagopalan (For R1)

Mr. D.Sathyaraj (For R2)
Special Government Pleader

O R D E R

(through video conference)

Heard Mr. V.Vijay Shankar, Learned Counsel for the Petitioner, Mr. Niranjana Rajagopalan, Learned Standing Counsel for the First Respondent, Mr. D.Sathyaraj, Learned Special Government Pleader for the Second and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner, who was holding the post of Executive Officer of the Karumathampatti Town Panchayat, Coimbatore District, at the time of filing of the Writ Petition on 13.05.2013, is aggrieved by the order in Case No.52349/Enquiry/D/2012 dated 22.03.2013 passed by the First Respondent, which has been served him on 22.04.2013.

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. Though it has been mentioned in the impugned order that the Petitioner had been issued notices for appearance on the hearings on 08.02.2013 and 22.02.2013, which is disputed by the Petitioner, the First Respondent has not produced any proof by way of acknowledgment card from the postal department or otherwise for having served such notices on the Petitioner, till today.

4. 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.

5. The case shall be listed for hearing before the First Respondent on 03.12.2020, and the Petitioner, the Third 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.

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

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

1. The Registrar,
Tamilnadu Information Commission
No.2, Thiyagarayar Salai
Teynampet, Chennai - 600 018.

2. The Director of Town Panchayats
Kuralagam, Chennai.

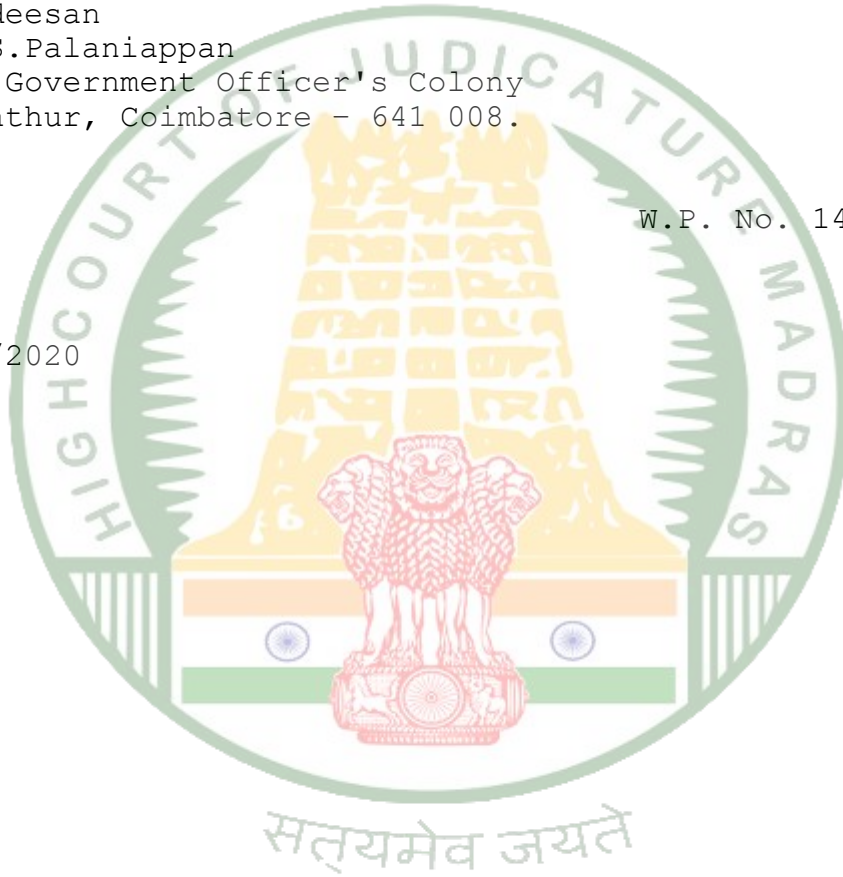
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