

HIGH COURT OF CHHATTISGARH AT BILASPUR**Writ Petition (S) No. 1602 of 2013**

Suresh Singh S/o Late D.P. Singh, Aged about 41 years, Working as District Program Officer, Women and Child Development Department, P.S. Civil Line, Bilaspur, Chhattisgarh.

---Petitioner

Versus

1. C.G. State Information Commission, Through its State Information Commissioner, C.G. State Information Commission, Raipur, Distt. Raipur, Chhattisgarh.
2. Additional Collector (Appellate Authority under the Right to Information Act, 2005), Distt. Durg, Chhattisgarh.
3. District Programme Officer, Women and Child Development Department, Durg, Chhattisgarh.
4. Sheikh Kareem R/o Kasaridih, Street No. 1, P.S. City Kotwali, Distt. Durg, Chhattisgarh.

---Respondents

Writ Petition (S) No. 1603 of 2013

Suresh Singh S/o Late D.P. Singh, Aged about 41 years, Working as District Program Officer, Women and Child Development Department, P.S. Civil Line, Bilaspur, Chhattisgarh.

---Petitioner

Versus

1. C.G. State Information Commission, Through its State Information Commissioner, C.G. State Information Commission, Raipur, Distt. Raipur, Chhattisgarh.
2. Additional Collector (Appellate Authority under the Right to Information Act, 2005), Distt. Durg, Chhattisgarh.
3. District Programme Officer, Women and Child Development Department, Durg, Chhattisgarh.
4. Sheikh Kareem R/o Kasaridih, Street No. 1, P.S. City Kotwali, Distt. Durg, Chhattisgarh.

---Respondents

Writ Petition (S) No. 1604 of 2013

Suresh Singh S/o Late D.P. Singh, Aged about 41 years, Working as District Program Officer, Women and Child Development Department, P.S. Civil Line, Bilaspur, Chhattisgarh.

---Petitioner

Versus

1. C.G. State Information Commission, Through its State Information Commissioner, C.G. State Information Commission, Raipur, Distt. Raipur, Chhattisgarh.
2. Additional Collector (Appellate Authority under the Right to Information Act, 2005), Distt. Durg, Chhattisgarh.
3. District Programme Officer, Women and Child Development Department, Durg, Chhattisgarh.
4. Sheikh Kareem R/o Kasaridih, Street No. 1, P.S. City Kotwali, Distt. Durg, Chhattisgarh.

---Respondents

For Petitioner :- Mr. Vinod Deshmukh, Advocate
For Respondent 1 :- Mr. Shyam Sunder Tekchandani,
Advocate
For Respondents 2 and 3/State :-
Mr. Animesh Tiwari, Dy. A.G.
For Respondent 4 :- Mr. Devarshi Thakur, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal
Order on Board (Th. Video Conferencing)

03/09/2021

1. Since common question of law and fact is involved in all these writ petitions, they have been heard together and are being decided by this common order.
2. The petitioner herein calls in question order dated 23/01/2013 (Annexure P/1) in all these three petitions passed by respondent No. 1 in three different appeals being A/430/2012, A/431/2012 and A/432/2012, respectively granting the said appeals filed by respondent No. 4 and imposing penalty of Rs. 25,000/- upon the petitioner in each of the appeals under Section 20(1) of the Right to Information Act, 2005 for not providing the requisite information to respondent No. 4 and further directing to

provide the required information to respondent No. 4 free of cost.

3. Mr. Vinod Deshmukh, learned counsel for the petitioner, would submit that the procedure envisaged under Section 20(1) of the RTI Act, 2005 has not been followed while passing the impugned order. In these appeals preferred by respondent No. 4 before the respondent No. 1, notices were issued to the petitioner and the case was fixed on 23/01/2013, but since the notices were received by the petitioner on the same day i.e. on 23/01/2013, therefore, he could not appear and without awaiting his appearance, the impugned order was passed, as such, it deserves to be set aside.

4. Mr. Shyam Sunder Tekchandani, learned counsel for respondent No. 1 and Mr. Devarshi Thakur, learned counsel for respondent No. 4 would support the impugned order.

5. Mr. Animesh Tiwari, learned State counsel appearing on behalf of respondents No. 2 and 3, would also support the impugned order and submit that the said order passed by learned State Information Commissioner is strictly in accordance with law and it has rightly been

passed, as such, the instant writ petitions deserve to be dismissed.

6. I have heard learned counsel for the parties at length and perused the records.

7. At this stage, it would be appropriate to notice Section 20(1) of the Right to Information Act, 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 malafidly 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."

8. A careful perusal of Section 20(1) of the Act of 2005 would show that if the State Public Information Officer has not furnished information within the time specified under sub-section (1) of Section 7 or malafidely denied the request for information, the State Information Commission has power and jurisdiction to impose a penalty till the information is furnished after giving a reasonable opportunity of being heard before any penalty is imposed on the Public Information Officer who is guilty of not giving such information and in that case, the Public Information Officer has an opportunity to establish that he acted reasonably and diligently.

9. While dealing with Section 20(1) of the Act of 2005 the Supreme Court in the matter of **Manohar S/o Mnikrao Anchule Vs. State of Maharashtra and another**¹ has held as under:-

“15. 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

1 (2012) 13 SCC 14

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 to 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 to 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 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)."

10. 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 Vs. State Information Commissioner, Punjab and another²**).

11. The order is 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 Vs. Goa State Information Commission³).

12. Reverting to the facts of the present case in light of the principle of law laid down by the Supreme Court in the aforesaid judgments, it is quite vivid that the second appellate authority/respondent No. 1 finding that the requisite information has not been supplied to respondent No. 4, issued notices to the petitioner by order dated 22/12/2012 (Annexure P/15) and fixed the matter for 23/01/2013 and it is the case of the petitioner that the notices were served to him on 23/01/2013 itself and therefore, he could not appear before the appellate authority as at that time he was transferred from Durg to Bilaspur and on the next date when he informed the Commission about his receipt of notices on 23/01/2013 and prayed for time, nothing was heard by respondent No. 1 and thereafter, all of a sudden notice dated 27/02/2013 was received by him directing him to deposit the penalty of Rs. 25,000/- separately in three cases. As such, the impugned order dated 23/01/2013 (Annexure P/1) is in teeth of provisions contained under Section 20(1) of the

³ 2010 (1) Mh.L.J.

Act of 2005. The petitioner has not been afforded reasonable opportunity to explain his case as to why requisite information was not supplied to respondent No. 4. Accordingly, the impugned order dated 23/01/2013 (Annexure P/1) to the extent of imposing the penalty of Rs. 25000/- upon the petitioner passed in the all the three appeals is hereby set aside. It is made clear that the portion of the impugned order directing requisite information to be supplied to respondent No. 4 free of cost has not been interfered by this Court.

13. These writ petitions are allowed to the extent indicated herein-above. No cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet