

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8988 of 2022

Manish Kumar S/o Sh Prakash Chandra Mandal, Resident of Subhas Nagar,
Po-Kasba, District-Purnea, presently posted as Sub Divisional Magistrate,
Supaul-852131.

... .. Petitioner/s

Versus

1. The State Information Commissioner, Bihar, Patna.
2. The Secretary cum Joint Registrar, State Information Commission, 4th Floor, Suchana Bhawan, Bailey Road, Bihar, Patna.
3. Nimesh Kumar Jha @ Ragho Ji, S/o Ashok Kumar Jha, R/o Vill-Babhani, Po-Dabhari, PS-Supaul, Bihar-852131.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Dhananjay Kumar, Adv. Mr. Kumar Amit, Adv.
For the Respondent/s	:	Mr. Binita Singh, Adv.

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL JUDGMENT

Date : 02-01-2024

Heard learned counsel for the petitioner and learned
counsel for the State Information Commission, Patna, Bihar.

2. By way of this writ petition, the petitioner
has prayed for the following reliefs:-

(a.) To issue an appropriate writ in the nature of certiorari for quashing the order dated 19.11.2020/10.03.2021 which is Annexure-5 & 6 passed in Case No. A9423/2018 by Ld. State Chief Information Commissioner, Bihar, Patna whereby and whereunder show cause has been issued to the petitioner as to why a penalty of Rs.25,000/- be not imposed on the petitioner under Section 20(1) of the Right to Information Act, 2005 (hereinafter referred to as the 'RTI

Act' and further name of the petitioner was forwarded to General Administrative Department for necessary action.

(b.) To pass an order staying the operation of order dated 19.11.2020/ 10.03.2021 passed in Case No. A9423/ 2018 by Ld. State Chief Information Commissioner, Bihar, Patna in Case No. A9423/ 2018."

3. The facts of the present case, as stated in the writ petition, are that the petitioner was working as Sub-Divisional Magistrate-Cum-Public Information Officer, Supaul. The respondent no.1 is a statutory body established by the Government of Bihar in accordance with Section 15 of the Right to Information Act, 2005. An R.T.I. application dated 21.02.2018 was filed by respondent no.3 seeking information with respect to the fact that whether the petitioner had taken any action against the concerned officers, who had not removed encroachment and submitted a false report regarding removal of encroachment. Accordingly, the then Sub-Divisional Officer-Cum-Public Information Officer, Supaul furnished the requisite information dated 05.03.2018 which was duly received by the respondent no.3. The petitioner assumed the charge of Sub-Divisional Officer-Cum-Public Information Officer, Supaul on 26.08.2020. The respondent no.3 preferred a second appeal on 10.08.2018 after disposal of first appeal without any direction to

the Public Information Officer for supply of any fresh information. Thereafter, the petitioner again supplied information on 13.11.2020 against the said RTI application which was received by the respondent no.3 on 17.11.2020. However, the State Chief Information Commissioner, Bihar issued a show cause vide order dated 19.11.2020 to the petitioner seeking explanation as to why a penalty of Rs.25,000/- be not imposed on the petitioner under Section 20(1) of the Right to Information Act, 2005. The name of the petitioner was also forwarded to the General Administrative Department for necessary action. In pursuance of the said show cause, the petitioner has submitted before the authority that information has already been supplied on 05.03.2018/13.11.2020/09.02.2021 by the then Sub-Divisional Officer-Cum-Public Information Officer, Supaul. However, the State Chief Information Commissioner, Bihar vide order dated 10.03.2021 has recommended name of the petitioner to the Principal Secretary, General Administrative Department for necessary action. Hence, this writ petition.

4. Learned counsel for the petitioner submits that the only grievance of the respondent no. 3 was with regard to taking action against the officers who have not removed the

encroachment and in this regard he sought information from the then Sub-Divisional Officer-Cum-Public Information Officer, Supaul, who provided information to the respondent no.3. He further submits that from perusal of the order dated 10.03.2021 it appears that the RTI application was filed on 21.02.2018, which was duly replied by the predecessor of the petitioner on 05.03.2018, whereas the present petitioner has assumed the charges of Sub-Divisional Officer-Cum-Public Information Officer, Supaul only on 26.08.2020.

5. Learned counsel for the petitioner further submits that while passing the impugned orders, the Chief Information Commissioner has not appreciated the fact that the Sub-Divisional Officer-Cum-Public Information Officer, Supaul is not supposed to express his opinion or to take any action against any authority as Section 2(j) of the RTI Act provides that the Right to Information is exercisable only with reference to information and records which are held by or under the control of any public authority.

6. Learned counsel for the petitioner further submits that Ld. Commissioner not appreciated the fact that the sought information once supplied as per the available Government record and the same is duly received by the

applicant/ respondent, the Sub-Divisional Officer-Cum-Public Information Officer, Supaul is not supposed to construct information so as to supply to the applicant.

7. Learned counsel for the petitioner further submits that under the guise of RTI Appeal, the respondent no. 3 is trying to redress his grievances regarding the title suit which is pending before the competent court and the content of the RTI application proves the same.

8. Learned counsel for the petitioner further submits that the respondent no. 3 has also filed an RTI application dated 12.03.2018 for the same land, where he accepted that encroachment has been removed.

9. Lastly, it has been submitted by learned counsel for the petitioner that the impugned order does not satisfy the requirements under Section 20(2) of the Right to Information Act, 2005 and therefore, the same cannot be sustained.

10. Learned counsel for the petitioner relies upon a judgment of the Supreme Court rendered in the case of *Manohar Vs. State of Maharashtra & Anr.* reported in *AIR 2013 SC 681* and submits that the aforesaid decision squarely covers the present case.

11. By making the aforesaid submissions, learned counsel for the petitioner submits that the impugned orders passed by the Chief Information Commissioner are illegal and therefore, this Court may quash the impugned orders in the interest of justice.

12. Learned counsel for the respondent-State Information Commission has defended the impugned orders and has submitted that the impugned orders have been passed in accordance with law.

13. I have considered the submission of the parties and perused the materials on record. It is the contention of the petitioner that the impugned order does not satisfy the requirements of Section 20(2) of the Right to Information Act, 2005. In a Similar situation, the Hon'ble Supreme Court in the case of *Manohar Vs. State of Maharashtra & Anr.* (supra) has held in paragraph no. 25, 26, 27, 28 as under:

“25. Vide letter dated 12th February, 2008, the appellant was informed by the Excise Department, Nanded, when he was posted at Akola that hearing was fixed for 25th February, 2008. He submitted a request for adjournment which, admittedly, was received and placed before the office of the State Information Commission. In addition thereto, another officer of the Department had appeared, intimated the

State Information Commission and requested for adjournment, which was declined. It was not that the appellant had been avoiding appearance before the State Information Commission. It was the first date of hearing and in the letter dated 25th February, 2008, he had given a reasonable cause for his absence before the Commission on 25th February, 2008. However, on 26th February, 2008, the impugned order was passed. The appellant was entitled to a hearing before an order could be passed against him under the provisions of Section 20(2) of the Act. He was granted no such hearing. The State Information Commission not only recommended but directed initiation of departmental proceedings against the appellant and even asked for the compliance report. If such a harsh order was to be passed against the appellant, the least that was expected of the Commission was to grant him a hearing/reasonable opportunity to put forward his case. We are of the considered view that the State Information Commission should have granted an adjournment and heard the appellant before passing an order under Section 20(2) of the Act. On that ground itself, the impugned order is liable to be set aside. It may be usefully noticed at this stage that the appellant had a genuine case to explain before the State Information Commission and to establish that his case did not call for any action within the provisions of Section 20(2). 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 :

(a) at the time of deciding any complaint or appeal;

(b) 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);

(c) malafidely denied the request for information or intentionally given incorrect, incomplete or misleading information; or

(d) destroyed information which was the subject of the request or obstructed in any manner in furnishing the information;

(e) then it shall recommend for disciplinary action against the stated persons under the relevant service rules.

26. *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.

27. Now, let us examine if any one or more of the stated grounds under Section 20(2) were satisfied in the present case which would justify the recommendation by the Commission of taking disciplinary action against the appellant. The appellant had received the application from respondent no.2 requiring the information sought for on 3rd January, 2007. He had, much within the period of 30 days (specified under Section 7), sent the application to the concerned department requiring them to furnish the requisite information. The information had not been received. May be after the expiry of the prescribed period, another letter was written by the department to respondent no.2 to state the period for which the information was asked for. This letter was written on 11th April, 2007. To

this letter, respondent no.2 did not respond at all. In fact, he made no further query to the office of the designated Public Information Officer as to the fate of his application and instead preferred an appeal before the Collector and thereafter appeal before the State Information Commission. In the meanwhile, the appellant had been transferred in the Excise Department from Nanded to Akola. At this stage, we may recapitulate the relevant dates. The application was filed on 3rd January, 2007, upon which the appellant had acted and vide his letter dated 19th January, 2007 had forwarded the application for requisite information to the concerned department. The appeal was filed by respondent no.2 under Section 19(1) of the Act before the Collector, Nanded on 1st March, 2007. On 4th March, 2007, the appeal was forwarded to the office of the Excise Department. On 4th April, 2007, the appellant had been transferred from Nanded to Akola. On 11th April, 2007, other officer from the Department had asked respondent no.2 to specify the period for which the information was required. 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.

28. It appears that the facts have not been correctly noticed and, in any case, not in their entirety by the State Information Commission. It had formed an opinion that the appellant was negligent and had not performed the duty cast upon him. The Commission noticed that there was 73 days delay in informing the applicant and, thus, there was negligence while performing duties. If one examines the provisions of Section 20(2) in their entirety then it becomes obvious that every default on the part of the concerned officer 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. In our considered view, the Commission, in the present case, has erred in not recording such definite finding. The appellant herein had not failed to receive any

application, had not failed to act within the period of 30 days (as he had written a letter calling for information), had not malafidely denied the request for information, had not furnished any incorrect or misleading information, had not destroyed any information and had not obstructed the furnishing of the information. On the contrary, he had taken steps to facilitate the providing of information by writing the stated letters. May be the letter dated 11th April, 2007 was not written within the period of 30 days requiring respondent no.2 to furnish details of the period for which such information was required but the fact remained that such letter was written and respondent no.2 did not even bother to respond to the said enquiry. He just kept on filing appeal after appeal. After April 4, 2007, the date when the appellant was transferred to Akola, he was not responsible for the acts of omissions and/or commission of the office at Nanded.”

14. In the opinion of this Court, the present case is also squarely covered by the law laid down by the Hon’ble Supreme Court in the aforesaid decision.

15. Moreover, from perusal of the impugned order, it appears that there is no finding that there was any negligence, delay or default without a reasonable cause. There must be a finding that the negligence was intentional and

therefore, further order can be passed for imposition of penalty and recommendation for necessary action. However, the impugned order does not show that there has been any consideration by the Chief Information Commissioner on this point. He has come to a *prima facie* opinion that there was a negligence on the part of the petitioner and the same was with a *mala fide* intention.

16. In view of the aforesaid discussions and also considering the law laid down by the Hon’ble Supreme Court in the case of *Manohar Vs. State of Maharashtra & Anr.* (supra), the impugned orders are not sustainable.

17. In these circumstances, this writ application is allowed. Accordingly, the impugned orders dated 19.11.2020 and 10.03.2021 passed by the State Chief Information Commissioner, Bihar, Patna, in Case No. A9423/ 2018 are hereby set aside.

(Sandeep Kumar, J.)

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CAV DATE	NA
Uploading Date	
Transmission Date	