CGHC010253682021 2026:CGHC:45031

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HIGH COURT OF CHHATTISGARH AT BILASPUR

AVINASH SHARMA
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WPC No. 4042 of 2021

1 - Sudhir Kumar Kale S/o Shri P.C. Kale Aged About 62 Years Presently Working As- Under Secretary, Department Of Food, Civil - Supplies And Consumer Protection, State Of Chhattisgarh, Atal Nagar, Nava Raipur (Chhattisgarh), District - Raipur (Chhattisgarh) Permanent R/o - Mig-12, Megh Malhar Complex, Veer Savarkar Nagar, Hirapur, Raipur (Chhattisgarh) Police Station - Aamaa Naka, Raipur (Chhattisgarh), Tehsil And District - Raipur (Chhattisgarh)

... Petitioner(s)

versus

1 - Chhattisgarh State Information Commission Through - Secretary, Sector-19, North Block, Nava Raipur Atal Nagar, District - Raipur, Chhattisgarh.

2 - Secretary General Administration Department, State Of C.G., Mahanadi Bhawan, Atal Nagar, Nava Raipur (Chhattisgarh), District - Raipur (Chhattisgarh).

3 - First Appellate Authority Additional Secretary, General Administration Department, State Of C.G., Mahanadi Bhawan, Atal Nagar, Nava Raipur (Chhattisgarh, District - Raipur (Chhattisgarh)

4 - Public Information Officer General Administration Department, State Of C.G., Mahanadi Bhawan, Atal Nagar, Nava Raipur (Chhattisgarh), District - Raipur (Chhattisgarh)

5 - Bhavin Jain B-243, NSC Colony, Opposite Saroj Nursing Home, New Rajendra Nagar, Raipur (Chhattisgarh), Tehsil And District - Raipur (Chhattisgarh)

... Respondent(s)

For Petitioner(s)	:	Mr. Govind Prasad Dewangan, Advocate.
For Respondent No.1	:	Mr. Shayam Sunder Lal Tekchandani, Advocate.
For State/ Respondent	:	Mr. Anway Tiwari, PL.

Hon'ble Mr. Justice Amitendra Kishore Prasad
Order on Board

1. Petitioner by way of this Writ Petition has challenged the order dated 25/06/2021 passed by the Chhattisgarh State Information Commission, Raipur in Complaint Case No. C/1602/2017 (7)/Raipur, whereby a penalty of ₹25,000/- has been imposed under Section 20(1) of the Right to Information Act, 2005 (for short, 'the Act'). The impugned orders arise out of RTI application dated 31/10/2017 filed by respondent No. 05 seeking information relating to the appointment of the State Information Commissioner, which was denied by the petitioner, then serving as Public Information Officer, on the ground of exemption under Sections 8(1)(d) and 8(1)(j) of the Act, relying upon the judgment of the Hon'ble Supreme Court in ***Girish Ramchandra Deshpande vs. CIC passed in Special Leave Petition (Civil) No.27734/2012.***

2. It is the case of the petitioner that despite filing detailed replies and the First Appellate Authority upholding the denial of information, the Commission, without proper consideration of the record and without affording an opportunity of hearing or serving a show cause notice, mechanically imposed the penalty, rendering the impugned order arbitrary, illegal and liable to be set aside and the petitioner has prayed for the following reliefs:-

10.1 That, the Hon'ble Court kindly be pleased to quash/-the setting aside the impugned order dated 25/06/2021 passed by the learned Commissioner, Chhattisgarh State Information Commission, Raipur (C.G.) (Respondent No.-01) passed in Complaint Case C/1602/2017/Raipur (Annexure P/01) (in the interest of justice.

10.2 That, the petitioner further prayed that this Hon'ble Court may kindly be pleased to remand the Complaint Case No. - C/ 1602/2017/Raipur to the Respondent No.-01 and issue a direction to provide reasonable opportunity to being heard to the petitioner and it may be decided on merits in the interest of justice.

10.3 Any appropriate writ, direction or order may also kindly be passed in favour of the petitioner, which this Hon'ble Court deems fit in the circumstances of the case.

10.4 Cost be awarded to the petitioner.

3. Learned counsel for the petitioner submits that the impugned order dated 25.06.2021 passed by respondent No.1, i.e., the Chhattisgarh State Information Commission, Raipur, is wholly unsustainable in law, having been passed in complete violation of the principles of natural justice. It is contended that the petitioner, while discharging duties as Public Information Officer, had duly considered the request of respondent No.5 and rejected the same by invoking the exemption under Section 8(1)(d) and 8(1)(j) of the Act, as the information sought was exempted from disclosure. The said decision was further affirmed by the First Appellate Authority. It is submitted that despite such statutory affirmation, respondent No.5, instead of availing the statutory remedy of Second Appeal under Section 19 of the Act, wrongly invoked

proceedings under Section 18 read with Section 20 of the Act by filing a complaint seeking imposition of penalty, which itself is not maintainable.

4. On the other hand, learned counsel for respondent No.1 submits that the entire proceedings are vitiated as respondent No.5 has wrongly invoked the jurisdiction of the Commission by filing a complaint instead of preferring a Second Appeal under Section 19 of the Act. It is submitted that once the First Appellate Authority had already adjudicated the matter, the only appropriate remedy available was a statutory appeal before the State Information Commission, and therefore, the proceedings initiated in the form of a complaint are contrary to the scheme of the Act. It is further submitted that the impugned penalty order has been passed without proper appreciation of the procedural requirements mandated under the Act.

5. Learned State counsel would support the submission put forth by counsel for Respondent No.1.

6. I have heard learned counsel for the parties and perused the material available on record.

7. From a careful perusal of the record, it is evident that respondent No.5, instead of availing the statutory remedy of Second Appeal under Section 19 of the Act, has erroneously filed a complaint before the State Information Commission, which is not in consonance with the scheme of the Act. Even if the said complaint is treated as a Second

Appeal for the sake of argument, the Commission, before imposing penalty under Section 20(1) of Act, was required to record a categorical finding that the Public Information Officer had, without reasonable cause or with mala fide intent, denied the information or caused obstruction in furnishing the same. Moreover, the mandatory requirement of affording a reasonable opportunity of hearing to the Public Information Officer, as envisaged under Section 20(1) of the Act, appears to have not been complied with in its true spirit. The impugned order does not reflect due consideration of these essential statutory safeguards.

8. In view of the aforesaid legal and factual position, this Court is of the considered opinion that the impugned order suffers from material illegality and procedural infirmity, and is therefore not sustainable in law. Accordingly, the impugned order dated 25.06.2021 passed by respondent No.1 is hereby quashed and set aside.

9. Consequently, the Writ Petition is **allowed.**

Sd/-

(Amitendra Kishore Prasad)
Judge

Avinash