AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Appeal No. 215 of 2020

Judgment reserved on 06/05/2023

Judgment delivered on 12/06/2023

Nitin Singhvi

----Appellant

Versus

1. Chhattisgarh State Information Commission through its Secretary, Chhattisgarh State Information Commission, Sector – 19, North Block, Atal Nagar, District Raipur, Chhattisgarh.
2. Shri S. Jacob, Public Information Officer, Office of Principal Chief Conservator of Forest, Aranya Bhawan, Jail Road, Raipur, District Raipur, Chhattisgarh.

---- Respondents

For Appellant :- Mr. Saurabh Dangi, Advocate

For Respondent 1 :- Mr. Virendra Vaishnav on behalf of Mr. Harsh Wardhan, Advocates

For Respondent 2 :- None

Hon'ble Shri Justice Sanjay K. Agrawal
Hon'ble Shri Justice Arvind Singh Chandel
C.A.V. Judgment

Sanjay K. Agrawal, J.

1. R.V. Raveendran, J., speaking for the Supreme Court in the matter of **CBSE and Another v. Aditya**

Bandhopadhyay[1] pertinently observed qua right to information as under :-

> "The right to information is a cherished right. Information and right to information are tended to be formidable tools in the hands of responsible citizens to fight corruption and to bring in transparency and accountability. The provisions of Right to Information Act should be enforced strictly and all efforts should be made to bring to light under Clause (b) of Section 4(1) of the Act, which relates to securing transparency and accountability of working of public authorities and in discouraging corruption."

2. Feeling deprived of the above-stated right to information on account of delay of 66 days in supplying the information sought by him, the appellant herein filed a complaint under Sections 18(1)(c) and (f) of the Right to Information Act, 2005 (hereinafter 'the Act of 2005') before the respondent No. 1 on the ground that information sought was not provided to him within a period of 30 days as specified under Section 7(1) of the Act of 2005 and it was provided after a delay of 66 days, therefore, as per Section 20(1) of the Act of 2005, a penalty of Rs. 250/- per day should be imposed upon the Public Information Officer (respondent No. 2 herein) which amounts to Rs. 16,500/- (Rs. 250 x 66). However, vide order dated 08/02/2019 (Annexure P/1), the State Information Commission (respondent No. 1 herein) only imposed a penalty of Rs. 2000/- only which was challenged by the appellant before this Court in WPC/78/2020 wherein the learned Single Judge vide

1 (2011) 8 SCC 497

impugned order dated 10/01/2020 (Annexure A/1) rejected the writ petition relying upon the decision rendered by this Court in WPC No. 1405/2017 decided on 18/05/2018 as well as the decision rendered by the Division Bench of this Court in Writ Appeal No. 692/2018 decided on 18/09/2018. This writ appeal has been preferred by the appellant questioning the legality, validity and correctness of the impugned order dated 10/01/2020 (Annexure A/1) passed by the learned Single Judge dismissing the writ petition preferred by the appellant herein, finding no merit.

3. Mr. Saurabh Dangi, learned counsel for the appellant, would submit that the penalty to be imposed upon the Public Information Officer in terms of Section 20(1) of the Act of 2005 is mandatory in nature and once negligence is found to have been made by the Public Information Officer in supplying the information, then the State Information Commission does not have the discretion not to impose penalty in terms of Section 20(1) of the Act of 2005. In the instant case, since there is a delay of 66 days in supplying the information sought by the appellant, therefore a penalty amounting to Rs. 16,500 should have been imposed upon respondent No. 2. He would rely upon the decisions rendered by the Supreme Court in the matters of **Mahaluxmi Rice Mills v. State of U.P.**[2], **Sant Prasad Singh v. Dasu Sinha**[3], **Raghunath**

2 (1998) 6 SCC 590
3 1963 SCC Online Pat 89

Rai Bareja v. Punjab National Bank[4], **State of U.P. v. Babu Ram Upadhyay**[5], **State of Manipur v. Chabungbam Thoibisana Devi**[6] and **Municipal Corpn. Of Delhi v. Gurnam Kaur**[7] to buttress his submission. He would further submit that the decision rendered by the Single Bench of this Court in the matter of **Rajkumar Mishra v. State of Chhattisgarh**[8] further affirmed by the Division Bench of this Court cannot be said to be laying down correct law and he would rely upon the single Bench decision of this Court in the matter of **Rajesh Kumar Patel v. Chief Information Commission through its Commissioner & Ors.**[9] and upon the Lok Sabha Debates qua discussion on the Right to Information Bill, 2004 to support his plea that Section 20(1) of the Act of 2005 is mandatory in nature.

4. Per contra, Mr. Virendra Vaishnav, learned counsel for respondent No. 1, would support the impugned order and submit that the State Information Commission has duly considered the facts and circumstances of the case and has rightly come to the conclusion to impose a penalty of Rs. 2000/- upon respondent No. 2 as there was no deliberate withholding of the information on his part and moreover, he had already retired from service at the time when the complaint of the appellant was

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4 (2007) 2 SCC 230
5 AIR 1961 SC 751
6 (2007) 5 SCC 655
7 (1989) 1 SCC 101
8 WPC No. 1405/2017 decided on 18/05/2018
9 WPC No. 7976 of 2011 decided on 13/09/2019

decided by the State Information Commission, therefore, the instant appeal is liable to be dismissed.

5. We have heard learned counsel for the parties, considered their rival submissions made herein-above and went through the records with utmost circumspection.

6. Admittedly, the appellant herein filed an application under Section 6(1) of the Act of 2005 on 26/04/2017 before respondent No. 2 seeking certain information under the provisions of Right to Information Act. Immediately thereafter, respondent No. 2 forwarded appellant's application to the Chief Conservator of Forest and Project Manager, Achanakmar Tiger Reserve requesting him to supply the information sought by the appellant within a specific time frame. Anyhow, such information could not be supplied to the appellant which led to filing of the first appeal by the appellant on 19/06/2017 before the Appellate Authority as per Section 19 of the Act of 2005. In the meanwhile, appellant received the information on 31/07/2017 with a delay of 66 days. Thereafter, on 21/08/2017, the appellant filed a complaint under Section 18(1)(c) and (f) of the Act of 2005 before respondent No. 1 which was decided vide order dated 08/02/2019 whereby the State Information Commission held that the information sought by the appellant was available at the Office of Principal Chief Conservator of Forest (Wildlife), Raipur,

however, respondent No. 2 had mistakenly forwarded appellant's application to the Chief Conservator of Forest and Project Manager, Achanakmar Tiger Reserve and on account of the negligence of respondent No. 2, delay of 66 days occurred in supplying the information to the appellant and the since the provision contained under Section 20(1) of the Act of 2005 is discretionary in nature and considering that respondent No. 2 has already attained the age of superannuation, a penalty of Rs. 2000/- was imposed against respondent No. 2 by the Commission by recording the following findings :-

"7. प्रकरण में प्रस्तुत श्री जेकब के जवाब का अवलोकन एवं परीक्षण किया गया | अवलोकन पश्चात् ज्ञात हुआ की वांछित जानकारी का संबंच प्रधान मुख्य वन संरक्षक, वन्य प्राणी रायपुर से था ना की मुख्य वन संरक्षक (वन्यप्राणी) एवं परियोजना संचालक अचानकमार टाइगर रिज़र्व बिलासपुर | परन्तु श्री जेकब द्वारा आवेदन पत्र को समझे बगैर ही अचानकमार टाइगर रिज़र्व बिलासपुर को अंतरित कर दिया गया | अंत में प्रथम अपीलीय अधिकारी के निर्देशों उपरांत कार्यालय प्रधान मुख्य वन संरक्षक (वन्यप्राणी) प्रभारी शाखा प्रबंध, के कार्यालयीन ज्ञापन क्र. 4038 दिनांक 28.07.2019 के माध्यम से ही जानकारी प्राप्त हुआ एवं इसी प्राप्त जानकारी को श्री जेकब द्वारा शिकायतकर्ता को पत्र दिनांक 31.07.2017 के माध्यम से प्रेषित किया गया |

8. उपरोक्त तथ्यों के आधार पर यह सिद्ध होता है की वांछित जानकारी तत्कालीन जनसूचना अधिकारी के कार्यालय में ही उपलब्ध थी एवं जनसूचना अधिकारी की लापरवाही से ही आवेदन पत्र अंतरित किया गया जिससे शिकायतकर्ता को वांछित जनकरी प्राप्त करने में विलम्ब हुआ |

9. इस प्रकार यह स्पष्ट है की तत्कालीन जनसूचना अधिकारी द्वारा आवेदन प्राप्ति दिनांक एवं वांछित जानकारी प्रेषित दिनांक 26.04.2017 में कुल 66 दिवस का विलम्ब किया गया है | जनसूचना अधिकारी द्वारा विलम्ब से सूचना प्रेषित करने के सम्बन्ध में अधिनियम की धारा 20(1) के अंतर्गत 250 रु प्रतिदिन

विलम्ब के अनुसार अधिकतम 25000/- अर्थदंड अधिरोपित करने का प्रावधान है |

माननीय छ०ग० उच्च न्यायालय द्वारा प्रकरण क्र. **WA No. 692/2018** राजकुमार मिश्रा बनाम छ०ग० राज्य सूचना आयोग में धारा 20(1) के अंतर्गत अर्थदंड अधिरोपित करने के सम्बन्ध में यह लेख किया है की प्रत्येक विलम्ब में अधिकतम अर्थदंड अधिरोपित करना अनिवार्य नहीं है | यह आयोग के विवेक पर निर्भर करता है की कितना अर्थदंड अधिरोपित करना है |

10. चूंकि प्रस्तुत प्रकरण में तत्कालीन जनसूचना अधिकारी श्री एस जेकब वर्तमान में सेवानिवृत हो चुके है | अतः तत्कालीन जनसूचना अधिकारी की सेवानिवृत्ति की अवस्था को मद्देनजर रखते हुए श्री एस जेकब द्वारा आवेदक को वांछित जानकारी प्रेषित करने में हुए विलम्ब के लिए अधिनियम की धारा 20(1) के तहत श्री एस जेकब पर 2000/- (दो हजार रूपये मात्र) का अर्थदंड अधिरोपित किया जाता है एवं वर्तमान जनसूचना अधिकारी को निर्देशित किया जाता है की भविष्य में सूचना का अधिकार अधिनियम 2005 के अंतर्गत प्राप्त आवेदन पर सावधानीपूर्वक अधिनियम के प्रावधानों के तहत समय सीमा में निराकरण करें |

प्रधान मुख्य वन संरक्षक (वन्यप्राणी प्रबंधन एवं जैव विविधता संरक्षण सह मुख्य वन्यप्राणी अभिरक्षक) छ०ग० को उक्त अर्थदंड की राशि श्री जेकब से शासन के कोष में जमा करने हेतु इस आदेश की प्रतिलिपि प्रेषित की जावे |"

7. Feeling aggrieved by the order passed by the State Information Commission, the appellant preferred a writ petition before this Court which has been dismissed by learned Single Judge vide impugned order dated 10/01/2020 against which the instant appeal has been preferred by the appellant.

8. The question for consideration in the present appeal is, whether the State Information Commission is justified in imposing a penalty of only Rs. 2000/- upon respondent No. 2 holding that the provision contained under Section 20(1) of the Act of 2005 is discretionary in nature or a

penalty of Rs. 16500/- (Rs. 250 x 66) should have been imposed upon respondent No. 2 holding the provision contained under Section 20(1) of the Act of 2005 is mandatory in nature ?

9. At this stage, it would be appropriate to notice the provision contained under Section 20(1) of the Right to Information Act, 2005, which provides 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 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 howsoever, 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."

10. The State Information Commission has been vested with wide powers including imposition of penalty or taking of disciplinary action against the employees. The provisions

relating to penalty or to penal consequences have to be construed strictly. A careful perusal of Section 20(1) of the Act of 2005 would show that at the time of deciding any complaint or appeal, if the Central or State Information Commission is of the opinion that the Central or State Public Information Officer has without any reasonable cause and persistently, failed to receive an application for information or has not furnished information within the time specified under Section 7(1) of the Act of 2005 (i.e. 30 days); or has malafidely denied the request for information or intentionally given incorrect, incomplete or misleading information; or has destroyed information which was the subject of the request or obstructed in any manner in furnishing the information; then it shall impose a penalty of Rs. 250/- each day till application is received or information is furnished, howsoever, the total amount of such penalty shall not exceed Rs. 25000/-.

11. Thus, from the aforesaid provision contained under Section 20(1) of the Act of 2005, it is quite vivid that a clear cut opinion has to be formed by the Commission at the time of deciding any complaint or appeal after hearing the person concerned and unless one of the three findings are recorded that the Public Information Officer has without any reasonable cause and persistently failed to receive an application for information or has not furnished within 30 days under

Section 7(1) of the Act of 2005 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, the Commission shall not impose penalty upon the Public Information Officer.

12. The Supreme Court in the matter of **Manohar v. State of Maharashtra**[10] has held that the State Information Commission has been vested with wide powers including imposition of penalty or taking of disciplinary action against the employees and the provisions relating to penalty or to penal consequences have to be construed strictly. While dealing with Section 20(2) of the Act of 2005, their Lordships have observed in paragraph 16 as under :-

> "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."

13. Their Lordships of the Supreme Court have further held while dealing with initiation of departmental proceeding that the case of default must strictly fall within the specified grounds of the provisions of Section 20(2). This

10 (2012) 13 SCC 14

provision has to be construed and applied strictly. Its ambit cannot be permitted to be enlarged at the whims of the Commission. It has also been held that "negligence" per se is not a ground on which proceedings under Section 20(2) of the Act can be invoked and the Commission must return a finding that such negligence, delay or default is persistent (meaning: continuing for a long time or happening often, especially in a way that is unpleasant or annoying) and without reasonable cause. Paragraphs 31 and 33 of the report state as under:-

> "31. 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. Their Lordships further held that the word “shall” appearing in Section 20(2) of the Act of 2005 before 'recommend' has to be read as “may” and their Lordships observed as under :-

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 concerned authority. 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. ”

15. Reverting to the facts of the present case in light of the aforesaid principle of law laid down by their Lordships of the Supreme Court in **Manohar** (supra), it is quite vivid that admittedly and undisputedly, the information was supplied to the appellant pursuant to the order of the first appellant court with a delay of 66 days against which the appellant filed a complaint against respondent No. 2 before the respondent No. 1 Commission and while deciding the complaint, the State Information Commission has recorded a finding that respondent No. 2, being Public Information Officer, negligently forwarded appellant's application seeking requisite information to the Chief Conservator of Forest and Project Manager, Achanakmar Tiger Reserve instead of sending it to the Principal Chief Conservator of Forest (Wildlife), Raipur where the said information was available and on that account delay of 66 days occurred in supplying the information to the appellant. However, no specific finding has been recorded by the State Information Commission that the negligence on the part of respondent No. 2 is persistent or without reasonable cause. No such finding has been recorded that respondent No. 2 has, without any reasonable cause, refused to receive the application for information or has 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 and in absence of any such specific finding in terms of Section 20(1) of the Act of 2005, the State Information Commission could not have imposed penalty upon respondent No. 2 by merely recording that respondent No. 2 was negligent in supplying the information and particularly when no finding has been recorded that negligence on the part of respondent No. 2 was persistent and without reasonable cause. On the contrary, immediately after the order of the appellant authority, the information sought was supplied to the appellant with a delay of 66 days. Since their Lordships of the Supreme Court in **Manohar** (supra) have clearly held that the provisions relating to penalty or penal consequences have to be construed strictly as it has drastic civil consequences upon the Public Information Commission who is entrusted with supplying the relevant information and in absence of any aforesaid specific finding, we are of the considered opinion that it was not mandatory on the part of the State Information Commission to impose a penalty of Rs. 16,500/- upon respondent No. 2 without recording a specific finding that negligence on the part of respondent No. 2 was persistent and without reasonable cause. As, such, Section 20(1) of the Act of 2005 cannot be held to

be mandatory and in view of the aforesaid discussion, we do not find any merit in this writ appeal and we hereby affirm the order passed by learned Single Judge.

16. In view of the legal analysis made herein-above and in light of the judgment rendered by the Supreme Court in the matter of **Manohar** (supra), construing the word "shall" appearing in Section 20(2) of the Act of 2005, the judgment relied upon by learned counsel for the appellant in the matters of **Mahaluxmi Rice Mills** (supra), **Sant Prasad Singh** (supra), **Raghunath Rai Bareja** (supra), **Babu Ram Upadhyay** (supra), **Chabungbam Thoibisana Devi** (supra) and **Gurnam Kaur** (supra) are clearly distinguishable to the facts of the present case.

17. In view of the aforesaid observations, this writ appeal is hereby dismissed leaving the parties to bear their own cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Sd/-
(Arvind Singh Chandel)
Judge

Harneet

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Appeal No. 215 of 2020

Appellant Nitin Singhvi

Versus

Respondent Chhattisgarh State Information Commission

(English)

Section 20(1) of Right to Information Act, 2005 regarding imposition of penalty has to be construed strictly.

(Hindi)

शास्ति का अध्यारोपण से सम्बंधित सूचना का अधिकार अधिनियम, 2005 की धारा 20 (1) के प्रावधान का सख्ती से पालन करना चाहिए।