



2024:CGHC:50581

NAFR

## HIGH COURT OF CHHATTISGARH AT BILASPUR

**Order Reserved on 13.08.2024**

**Order Delivered on 20.12.2024**

**WPC No. 2195 of 2024**

**1** - Ramesh Ram Baghel S/o Baital Ram Baghel, Aged About 55 Years Presently Working As Panchayat Secretary, Gram Panchayat Kukurbhuka, Block Patthalgaon, District Jashpur Chhattisgarh.

**... Petitioner**

**Versus**

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

**2** - First Appellate Authority Cum Chief Executive Officer, Janpad Panchayat Patthalgaon, District-Jashpur, Chhattisgarh.

**3** - Akash Bairagahi, R/o Village And Post Gobarsiha (Sariya), District Raigarh Chhattisgarh -496554

**... Respondent(s)**

For Petitioner(s) : Mr. Harish Khuntiya, Advocate

For Respondents No. : Mr. Shyam Sundar Tekchandhani, Advocate

1

For Respondent No. 3 : Mr. Dinesh Yadav, Advocate

**SB: Hon'ble Shri Parth Prateem Sahu, Judge**

### **C A V ORDER**

1. The petitioner has filed this writ petition seeking following reliefs:-

*"10.1 That, the Hon'ble Court may kindly be pleased to set-aside the order dated 03.10.2023 (Annexure P/1) passed by the State Information Commission.*

*10.2 Any other relief which this Hon'ble Court deems fit and proper may also be passed in favour of the petitioner together with cost of the petition."*

SHUBHAM  
DEY

Digitally  
signed by  
SHUBHAM  
DEY

2. By this writ petition, petitioner is challenging the legality and sustainability of the impugned order dated 03.10.2023 (Annexure P/1) passed by the Chhattisgarh State Information Commission, Raipur imposing penalty of Rs. 25,000/- upon the petitioner under the provisions of Section 20 (1) of the Right to Information Act, 2005 (*hereinafter for brevity referred to as the Act, 2005*).
3. Learned counsel for the petitioner submits that the petitioner was holding the post of Panchayat Secretary, Village Panchayat Kukurbhuka, Block – Patthalgaon, District – Jashpur. Respondent No. 3 submitted an application under the Act, 2005 for providing the information of the cash ledger book of 14<sup>th</sup> Commission for the period from 01.04.2020 till 31.12.2021. When the information could not be supplied, he submitted the first appeal on 25.01.2022 and the First Appellate Authority had not passed any order in the said appeal. Being aggrieved, the petitioner filed second appeal/complaint before the Second Appellate Authority on 27.04.2022 along with the application dated 13.12.2021 and copy of the first appeal dated 25.01.2022 enclosing the other supporting documents. After filing of the complaint, the information was supplied as asked for by the Respondent No. 3 and he also acknowledged the receipt of information on 24.01.2023 (Annexure P/4). In the acknowledgment, he has also mentioned that he do not want any proceedings or action on the complaint filed by him before the State Information Commission.
4. It is contention of the counsel for the petitioner that as the applicant seeking information has given an acknowledgment that he do not want any action against the Public Information Officer, petitioner was of the view that the complaint would be withdrawn or dismissed by the State Information Commission, however, the impugned order was passed imposing the penalty. Even after providing the information sought for. It is contention of counsel for the petitioner that before imposing penalty, no

show-cause notice as provided under Section 20 (1) of the Act, 2005 was issued to the petitioner and therefore, also, the order imposing penalty is bad in law.

5. Learned counsel for the Respondent No. 3 submits that the reply is filed pleading therein that the Respondent No. 3 is satisfied with the information supplied by the petitioner and his grievance is settled. Respondent No. 3 gave acknowledgment in this regard on 24.01.2023 (Annexure P/4). The fact of providing information as sought for giving acknowledgment in this regard, regarding his satisfaction to the information and further, that the Respondent No. 3 do not want any action to the complaint could not be placed before the State Information Commission, which led to passing of the order.
6. Learned counsel for Respondent No. 1 submits that the Respondent No. 3 has filed complaint pleading therein that the application seeking information under the Right to Information was not supplied by the Public Information Officer-cum-Secretary, Village Panchayat Kukurbhuka, Janpad Panchayat Patthalgaon. He contended that the complaint was registered, show-cause notice was issued upon which, petitioner appeared before the commission on 08.02.2023. After considering the records and submissions made, the Commission ordered for issuance of show-cause notice under Section 20 (1) & 20 (2) of the Act, 2005. The petitioner has not submitted any reply to the show-cause notice and thereafter, the order impugned was passed which is in accordance with law following the due procedure as provided under the Act, 2005. Hence, the impugned order dated dated 03.10.2023 (Annexure P/1) does not call for any interference.
7. I have heard learned counsel for the respective parties and also perused the documents placed before this Court for perusal.

8. Perusal of the documents enclosed would show that the Respondent No. 3 filed an application seeking information under the Act, 2005. It is also appearing that the information was not supplied within the time as prescribed under the Act, 2005 which led to filing of the appeal by the Respondent No. 3 to the Appellate Authority and when after passing of the order by the Appellate Authority of providing information, it was not supplied to the Respondent No. 3 which made him to file a complaint. The acknowledgment dated 24.01.2023 (Annexure P/2) would show that during pendency of the second appeal, information was supplied to the satisfaction of the Respondent No. 3/applicant therein and he also acknowledged the same, mentioned that he does not want to pursue the complaint.
9. From the acknowledgment (Annexure P/4), it is appearing that the Respondent No. 3 have clearly stated that he do not want to pursue the complaint and made a prayer to close the file. The Respondent No. 1/Commission also submitted its reply pleading therein that the show-cause notice under Section 20 (1) of the Act, 2005 was also directed to be issued and further that the notices have been issued through registered post.
10. Be that as it may, under the provisions of the Act, 2005, the First Appellate Authority or the State Information Commission can impose penalty and may also directed for disciplinary action against the Public Information Officer under Section 20 (2) of the Act, 2005. However, it is pre-condition that before imposing penalty or passing the order of direction for initiating departmental proceedings against the Public Information Officer, he is to be given an opportunity of hearing. The documents placed on record along with the reply filed by the Respondent No. 1/Commission would show that the Respondent No. 1 has filed a copy of the notice of complaint as Annexure R-01/01 and further, the copy of the order-sheets

dated 08.02.2023 as Annexure R-01/04. On the right-hand side corner, it is mentioned "issued on 31.08.2023". Perusal of the order-sheet would show that in compliance of the order dated 08.02.2023, show-cause notice under Section 20 (1) and 20 (2) may have been issued on 31.08.2023.

11. In reply, it is pleaded that the show-cause notice was issued by registered post. The notice is to be sent on the address of the petitioner who is posted in the village in rural area. No document has been enclosed to show that the show-cause notice, if issued before 31.08.2023, was served upon the petitioner on the date fixed i.e. 03.10.2023.

12. The order of penalty for failure to provide information is akin to criminal action to be taken against a person under the law and therefore, it was the duty cast upon the Commission to record that the notice issued for imposing penalty and taking disciplinary action is served upon the person to whom it is issued i.e. the petitioner and even after service of notice, he failed to appear and submit its reply. In the impugned order dated 03.10.2023, no such finding is recorded by the Respondent No. 1/Commission. In absence of such specific finding recorded by the Commission before passing an order of imposing penalty under Section 20 (1) of Act, 2005 that the show-cause notice ordered to be issued by the Commission was issued and served upon the Public Information Officer, more so, when in the order-sheet pursuant to the order dated 08.02.2023, the date of issuance is as reflecting only on 31.08.2023 i.e. more than 06 months from the date of order. Service of notice cannot be presumed. Respondent No. 1 has not filed any document in support of its contentions that notice, if any, issued by what mode and whether, it is served upon prior to date of hearing. It is mandatory that before imposing penalty or passing the order of direction for initiating departmental proceedings

against the Public Information Officer, he is required to be given an opportunity of hearing.

13. In the aforementioned facts of the case, as there is no material available in the record or placed before the Respondent No. 1 to satisfy that the notice was issued and served upon the petitioner before the date of hearing of the case. The impugned order dated 03.10.2023 (Annexure P/1) imposing penalty upon the petitioner under Section 20 (1) is in violation of principles of natural justice.

14. For the foregoing discussion, order impugned dated 03.10.2023 (Annexure P/1) imposing penalty upon the petitioner is not sustainable in the eyes of law. Accordingly, it is **set-aside**.

15. The writ petition stands allowed.

**Sd/-**  
**(Parth Prateem Sahu)**  
Judge

Dey