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Citation : CDJ 2026 Ch HC 045

Court : High Court of Chhattisgarh

Case No : WPC No. 3610 of 2022

Judges : THE HONOURABLE MR. JUSTICE AMITENDRA KISHORE PRASAD

Parties : T.A. Khan Versus State Of Chhattisgarh Through The Secretary, General Administration Department, Chhattisgarh & Others

Appearing Advocates : For the Petitioner: Akash Pandey, Advocate. For the Respondents: R1 & R3, S.S. Choubey, Govt. Advocate, R2, Shyam Sunder Lal Tekchandani, Advocate, R4, None.

Date of Judgment : 05-05-2026

Head Note :

Right to Information Act, 2005 -

Comparative Citation:
2026 CGHC 20923,

Judgment :

1. The present petition challenges the order dated 09.05.2022 whereby respondent No. 2, in second appeal under the Right to Information Act, 2005 (for short, 'RTI Act'), imposed a penalty of â,¹25,000/- under Section 20(1) on the petitioner for alleged incomplete and delayed information, despite the petitioner having furnished all available information after due transfer of the application to concerned sections. The petitioner has prayed for following reliefs :-

"10.1 To call for the records of the case for the kind perusal of this Hon'ble Court.

10.2 To issue an appropriate writ or order and declare that the order dated 09.05.22 (Annexure P-1) passed by respondent no.2 is bad in law.

10.3 To issue an appropriate writ or order and quash the order dated 09.05.22 (Annexure P-1) passed by respondent no.2 and further to quash any recovery proceedings on the basis of Annexure P-1 in the interest of justice.

10.4 Any other relief deemed fit in the facts and circumstances of the case may also be granted."

2. Learned counsel for the petitioner submits that the petitioner has assails the impugned order dated 09.05.2022 as being wholly arbitrary, illegal and contrary to the scheme of the RTI Act. It is submitted that the petitioner, while functioning as Public Information Officer in the office of CCF, Durg, acted strictly in accordance with law upon receipt of the RTI application dated 10.04.2019 by promptly transferring the same to the concerned sections, namely Audit and Store, which were the custodians of the information sought. The Audit Section furnished the available information comprising 12 pages, which was duly supplied to the applicant, whereas the Store Section categorically reported that no such information was available on record. It is contended that the petitioner cannot be penalized for non-availability of information which does not exist or is not held by the public authority, and there was neither any deliberate withholding nor malafide intention attributable to the petitioner.

3. It is further submitted that upon filing of the first appeal, the First Appellate Authority, without recording any finding of deliberate lapse, merely directed that if any further information is traceable, the same be provided, even by transferring the application to other concerned offices, thereby acknowledging that the issue was essentially of availability of records rather than any fault on the part of the petitioner. It is emphasized that in the interregnum, the petitioner stood transferred from the post of Public Information Officer to SDO Forest, Dongargarh, and thus had no further control over the records or the subsequent compliance process.

4. Learned counsel contends that the respondent No. 4, instead of pursuing compliance before the competent authority, hastily preferred a second appeal accompanied by allegations seeking initiation of departmental proceedings and imposition of penalty. It is argued that the State Information Commission, while entertaining the second appeal, initially issued notice to the then incumbent Public Information Officer and only at a later stage, without affording a proper and effective opportunity of hearing to the petitioner, proceeded to fasten liability upon him. Such action, it is urged, is in gross violation of the principles of natural justice. It is further contended that the sine qua non for invoking penalty under Section 20(1) of the RTI Act is a clear finding of malafide denial of information or unreasonable delay without sufficient cause. In the present case, no such finding has been recorded by the Commission. On the contrary, the material on record clearly demonstrates that the petitioner had acted diligently and within the statutory framework. The impugned order proceeds on mere assumptions and surmises, ignoring the factual position that whatever information was available had already been furnished, and the remaining was non-existent.

5. Learned counsel thus submits that the impugned order suffers from non-application of mind, is punitive in nature without any legal foundation, and amounts to penalizing the petitioner for circumstances beyond his control. The same, therefore, deserves to be quashed as being unsustainable in law. Reliance has further been placed upon the judgment rendered by the Division Bench of this Court in Nitin Singhvi v. Chhattisgarh State Information Commission and another (WA No.215/2020 decided on 12.06.2023), wherein it has been categorically held that imposition of penalty under Section 20(1) of the RTI Act is not automatic and can be sustained only upon a clear finding of malafide denial or unreasonable delay without sufficient cause. It is submitted that the said judgment fortifies the petitioner's case inasmuch as, in the present matter, there is neither any deliberate withholding of information nor any contumacious conduct attributable to the petitioner, and therefore, the impugned penalty is wholly unsustainable in law.

6. On the other hand, learned State counsel, opposing the petition, submits that the impugned order dated 09.05.2022 has been passed strictly in accordance with the provisions of the RTI Act and does not warrant any interference. It is contended that the respondent No. 4 was constrained to prefer a second appeal under Section 19 of the RTI Act on account of incomplete and delayed information furnished by

the petitioner, and the State Information Commission, after affording due opportunity of hearing and considering the entire material on record, has rightly imposed a penalty of â‚¹25,000/- under Section 20(1) of the RTI Act. It is further submitted that merely transferring the application to different sections does not absolve the petitioner of his statutory obligation as the Public Information Officer, who is duty-bound to ensure that complete and timely information is furnished to the applicant. The fact remains that the information sought was not supplied in its entirety within the stipulated period, thereby attracting the consequences contemplated under the RTI Act. The First Appellate Authority had also directed the petitioner to take necessary steps to secure and provide the remaining information, including transfer to other concerned departments, which clearly indicates that the response initially furnished was deficient.

7. Learned counsel emphasizes that the Commission has exercised its powers under Sections 18, 19 and 20 of the RTI Act after due application of mind and upon being satisfied that there was delay and deficiency in furnishing the information without sufficient cause. It is argued that the burden to demonstrate reasonable and diligent conduct lies upon the Public Information Officer, which the petitioner has failed to discharge. The impugned order, thus, reflects a well-reasoned exercise of statutory jurisdiction and does not suffer from any illegality, arbitrariness or procedural impropriety. It is, therefore, submitted that the present petition is devoid of merit, based on misconceived grounds, and is liable to be dismissed at the threshold.

8. Learned counsel for respondent No. 2 submits that the information was sought by respondent No. 4 and, in terms of Section 6(3) of the RTI Act, it was incumbent upon the petitioner, if the information was not available with him, to transfer the application to the concerned authority where such information was available. It is contended that the petitioner failed to discharge this statutory obligation, resulting in incomplete and delayed supply of information. Therefore, the State Information Commission has rightly passed the impugned order imposing penalty, which calls for no interference.

9. Despite service of notice, none appears on behalf of respondent No. 4 at the time of hearing.

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

11. It is noted that the Hon'ble Division Bench of this Court, while considering a similar issue in Nitin Singhvi (supra), has elaborately examined the scope and ambit of imposition of penalty under Section 20(1) of the RTI Act. The Division Bench has held that the power to impose penalty is not automatic or mechanical, but is conditioned upon the existence of cogent material demonstrating that the Public Information Officer has, without reasonable cause, either refused to furnish information, caused undue delay, or acted in a malafide manner. It has been further held that mere delay or inability to furnish certain information, particularly when such information is not available on record or lies with another authority, would not ipso facto attract penal consequences. The Court has emphasized that before imposing penalty, the Information Commission is under a statutory obligation to record a clear and reasoned finding with respect to the existence of malafide intent or lack of reasonable cause, and must also afford an effective opportunity of hearing to the concerned officer. The burden cast upon the Public Information Officer under the proviso to Section 20(1) is to establish that he acted reasonably and diligently; however, once such explanation is furnished and remains uncontroverted, the Commission cannot proceed to impose penalty in a routine manner.

12. It has further been observed that where the Public Information Officer has taken steps in compliance with the provisions of the Act, such as transferring the application to the concerned department under Section 6(3) of the RTI Act or furnishing such information as is available on record, the same would constitute a reasonable and sufficient cause, insulating him from penal action. The Division Bench has

cautioned that the penal provisions under the Act, being quasi-criminal in nature, must be invoked with due care and only in cases where the conduct of the officer is found to be contumacious or deliberately obstructive. In light of the aforesaid principles, the Division Bench set aside the penalty imposed therein, holding that in the absence of any finding of malafide or deliberate lapse, the order of penalty could not be sustained by observing as follows :-

"12. The Supreme Court in the matter of Manohar v. State of Maharashtra, (2012) 13 SCC 14 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 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."

13. Reverting to the facts of the present case, this Court finds that the impugned order dated 09.05.2022 passed by respondent No. 2 cannot be sustained in the eyes of law. A careful consideration of the material available on record would reveal that the petitioner, while discharging his duties as Public Information Officer, had acted in accordance with the statutory scheme of the RTI Act.

Upon receipt of the application dated 10.04.2019, the petitioner promptly transferred the same to the concerned sections, namely Audit and Store, which were the custodians of the information sought. The Audit Section furnished the available information, which was duly supplied to respondent No. 4, whereas the Store Section categorically informed that no such information was available on record. Thus, the petitioner cannot be faulted for non- supply of information which admittedly did not exist or was not held by the concerned office.

14. It is further evident that the First Appellate Authority, while considering the grievance of respondent No. 4, did not record any finding of malafide or deliberate lapse on the part of the petitioner, but merely directed that if any further information is traceable, the same be provided or the application be transferred to the appropriate authority. This itself indicates that the issue pertained to availability and traceability of records rather than any intentional default on the part of the petitioner. Moreover, it is not in dispute that during the relevant period, the petitioner had been transferred from the post of Public Information Officer, and therefore, had no effective control over subsequent compliance.

15. In light of the law laid down by the Division Bench in Nitin Singhvi (supra), as well as the principles enunciated by the Hon'ble Supreme Court in Manohar (supra), it is manifest that imposition of penalty under Section 20(1) of the RTI Act is not automatic and must be preceded by a clear and reasoned finding of malafide denial of information or delay without reasonable cause. In the present case, no such finding has been recorded by the State Information Commission. The impugned order proceeds in a

mechanical manner, without adverting to the explanation furnished by the petitioner or the factual position that the information, to the extent available, had already been supplied.

16. This Court is of the considered opinion that the conduct of the petitioner does not fall within the mischief contemplated under Section 20(1) of the RTI Act. There is nothing on record to suggest that the petitioner had either deliberately withheld information, furnished misleading information, or acted in a contumacious manner so as to warrant imposition of penalty. On the contrary, the steps taken by the petitioner in transferring the application and facilitating supply of available information clearly demonstrate due diligence and bona fide discharge of his duties.

17. The State Information Commission, while exercising quasi-judicial powers entailing civil consequences, was under an obligation to record specific findings with regard to absence of reasonable cause and existence of malafide intent. The failure to do so vitiates the impugned order. The penalty imposed, therefore, appears to be punitive without any legal foundation and is liable to be interfered with in exercise of writ jurisdiction.

18. Consequently, the writ petition deserves to be and is hereby allowed. The impugned order dated 09.05.2022 (Annexure P-1) passed by respondent No. 2 is quashed and set aside, including any consequential recovery proceedings initiated pursuant thereto.

19. No order as to costs.