

(2018) 09 CHH CK 0140

Chhattisgarh High Court

Case No: Writ Petition (C) No. 1315, 1798 Of 2012

State Of Chhattisgarh And Ors

APPELLANT

Vs

Chhattisgarh State Information
Commission And Ors

RESPONDENT

Date of Decision: Sept. 10, 2018

Hon'ble Judges: Prashant Kumar Mishra, J

Bench: Single Bench

Advocate: Shashank Thakur, Shyam Sunder Lal Tekchandani, Aditi Singhvi

Final Decision: Allowed

Judgement

Prashant Kumar Mishra, J

1. Challenge thrown in these petitions is to the orders passed by the Chhattisgarh State Information Commission (henceforth 'the Commission') in case

Nos.1075/2011 & 1073/2011 imposing penalty of Rs.5,000/- in each case on the Assistant Public Information Officer Shri Anil Sinha, the petitioner

No.3 herein in both the petitions.

2. Admittedly, before imposing penalty on the petitioner No.3 the Commission has not issued any show cause notice to him, which the Commission

was bound to do in view of the law laid down by the Supreme Court in Manohar S/o Manikrao Anchule v State of Maharashtra and Another (2012)

13 SCC 14 wherein the following has been held in paras 17, 22 & 23 :

17. The State Information Commission is performing adjudicatory functions where two parties raise their respective issues to which the State

Information Commission is expected to apply its mind and pass an order directing disclosure of the information asked for or declining the same. Either

way, it affects the rights of the parties who have raised rival contentions before the Commission. If there were no rival contentions, the matter would rest at the level of the designated Public Information Officer or immediately thereafter.

It comes to the State Information Commission only at the appellate stage when rights and contentions require adjudication. The adjudicatory process essentially has to be in consonance with the principles of natural justice, including the doctrine of audi alteram partem. Hearing the parties, application of mind and recording of reasoned decision are the basic elements of natural justice. It is not expected of the Commission to breach any of these principles, particularly when its orders are open to judicial review. Much less to Tribunals or such Commissions, the Courts have even made compliance with the principle of rule of natural justice obligatory in the class of administrative matters as well.

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22. We may notice that proviso to Section 20 (1) specifically contemplates that before imposing the penalty contemplated under Section 20 (1), the Commission shall give a reasonable opportunity of being heard to the concerned officer. However, there is no such specific provision in relation to the matters covered under Section 20 (2). Section 20 (2) empowers the Central or the State Information Commission, as the case may be, at the time of deciding a complaint or appeal for the reasons stated in that section, to recommend for disciplinary action to be taken against the Central Public Information Officer or the State Public Information Officer, as the case may be, under the relevant service rules. Power to recommend disciplinary action is a power exercise of which may impose penal consequences. When such a recommendation is received, the disciplinary authority would conduct the disciplinary proceedings in accordance with law and subject to satisfaction of the requirements of law. It is a 'recommendation' and not a 'mandate' to conduct an enquiry.

'Recommendation' must be seen in contradistinction to 'direction' or 'mandate'. But recommendation itself vests the delinquent Public Information Officer or State Public Information Officer with consequences which are of serious nature and can ultimately produce prejudicial results including

misconduct within the relevant service rules and invite minor and/or major penalty.

23. Thus, the principles of natural justice have to be read into the provisions of Section 20 (2). It is a settled canon of civil jurisprudence including

service jurisprudence that no person be condemned unheard. Directing disciplinary action is an order in the form of recommendation which has far

reaching civil consequences. It will not be permissible to take the view that compliance with principles of natural justice is not a condition precedent to

passing of a recommendation under Section 20 (2).

3. In view of the settled legal position, the impugned orders passed by the Commission in case Nos.1075/2011 & 1073/2011 are hereby set aside and

the matter is remitted back to the Commission for passing fresh order on the issue after affording due opportunity of hearing to the petitioner No.3 and

all other parties.

4. In the result, both the writ petitions are allowed to the extent indicate above. No order as to cost(s).