

**HIGH COURT OF MADHYA PRADESH: BENCH AT
INDORE**
SINGLE BENCH: HON'BLE SHRI JUSTICE VIVEK RUSIA

WRIT PETITION No.476/2018

Petitioner : Dr.Pushendra Sharma s/o Shankarlal
Sharma

Versus

Respondents : State of M.P & others

Shri S.C.AGrawal, learned counsel for the
petitioner.

Shri A.Dhanodkar, learned Dy.A.G for the
respondents/State.

Shri P.S.Kushwaha, learned counsel for the
respondent No.7, 8 & 9.

O R D E R

(Passed on 06.11.2019)

Petitioner has filed the present petition being aggrieved by the order dated 27.10.2017 passed by the M.P State Information Commission by which a penalty of Rs.25,000/- has been imposed on the petitioner under section 21(1) of the Right to Information Act, 2005 (hereinafter referred to as 'the RTI Act') for not deciding the application dated 29.11.2014 in time.

Facts of the case in short are as under:

2. Petitioner was posted as Chief Medical & Health Officer (CMHO), district Ratlam from 16.07.2012 to 18.09.2015. He retired from service after attaining the age of superannuation on 31.10.2016. During the aforesaid tenure as CMHO the petitioner was made the Information Officer

under the RTI Act. One Ritesh Chopra, respondent No.5 submitted an application dated 04.09.2014 to the petitioner for supply of certain information. However, the aforesaid information was not supplied within time, hence he preferred a first appeal before the first appellate authority and vide orders dated 22.01.2015 & 02.02.2015 the appellate authority had directed the petitioner to provide the necessary information to Respondent No.5. Despite above orders when the aforesaid information was not provided to him he approached the State Information Commission, Bhopal by way of second appeal. The State Information Commission has registered Case No.A-1917/2015 and issued notice to the petitioner for appearance on 01.09.2017. On 01.09.2017 petitioner did not appear before the State Information Commission, therefore, the matter was fixed on 09.10.2017. On 09.10.2017 also he did not remain present and the matter was again fixed on 27.10.2017. The petitioner submitted a reply on 27.10.2017 to the State Information Commission justifying his action by making allegation against Dr.Ganraj Gaud, the Nodal Officer and Sandeep Talodiya and Bhanupratap Singh Dodiya, the Dealing Clerks. According to the petitioner, they were In-charge of the RTI section and they did not brought the application submitted by respondent No.5 to his knowledge, therefore, he could not supply the information within time. On the aforesaid defence, the Commission issued a notice to respondents No.6 to 9. Shri Sandeep Talodiya on behalf of the respondent filed a reply

by submitting that from the period when the petitioner took charge of CMHO till he was arrested by Lokayukt Police for taking bribe he did not decide any application pending in his office as Public Information Officer. Being a Clerk he used to go into his office for necessary approval for supply of documents but he has not passed any order and he is the victim of the atrocities of the petitioner. He has got him suspended on 13.07.2015 on false charges. Being a low paid employee he can't dare to disobey the directions of the CMHO. It was the duty of the petitioner to provide information being a Public Information Officer. Learned State Information Commission has found the reply of respondents satisfactory and held that the petitioner being a Public Information Officer was duty bound to provide the necessary information to respondent No.5, hence a penalty of Rs.25,000/- has been imposed upon the petitioner.

3. Shri S.C.Agrawal, learned counsel for the petitioner submits that though the petitioner was the Public Information Officer but the respondents No.6 to 9 were the Nodal Officer and In-Charge of the RTI section. It was their duty to bring the application to the knowledge of the petitioner. It was also their duty to collect the information from the respective sections/offices for providing information to the respondent No.5. It is very difficult for any Public Information Officer to personally collect the information from various offices and departments and he has to be dependent on the subordinate staff, hence the penalty has wrongly been

imposed upon him. He further submits that now the petitioner is out of employment and penalty of rs.25,000/- is on the higher side. Even if this Court comes to the conclusion that he did not perform his duties of the Public Information Officer, the minimum penalty amount be imposed upon him.

4. Learned Govt. Advocate appearing on behalf of the respondents/State submits that the petitioner being a Public Information Officer was statutorily liable to provide the necessary information to the applicant. It was his duty to supervise the working of the subordinate staff. As per the RTI Act the application is liable to be submitted directly to the Public Information Officer and after receipt of the information he could have directed the respondents No.6 to 9 for collection of documents. He has failed to provide any documents or record that he has dealt the application with due diligence. The very purpose of enacting the RTI Act is frustrated if the applications are not timely considered by the Public Information Officer.

5. Learned counsel appearing for the respondent No.7, 8 & 9 submits that in order to save him, the petitioner is trying to shift his responsibility upon subordinate staff. No such direction has ever been given to the Nodal Officer as well as to them by the petitioner for collecting the information as demanded by respondent No.5. The Public Information Officer is personally responsible for dealing with all applications submitted under the RTI Act. He cannot shift

his statutory duties to his subordinate officers. The subordinate officers cannot be held responsible unless a direction in writing has been given to them by the Public Information Officer. No such material has been produced by the petitioner, hence the answering respondents have rightly been exonerated, therefore, no interference is called for in the impugned order.

Appreciation & conclusion.....

6. It is not in dispute that respondent No.5 submitted an application under the RTI Act for supply of certain information in the office of the petitioner. It is also not in dispute that at that relevant point of time, the petitioner was holding the charge of the Public Information Officer. Under section 5 of the RTI Act he was bound to decide the application within 30 days. Since no order was passed on the application, respondent No.5 preferred an appeal before the first appellate authority. When the information was not provided to respondent No.5 he preferred a second appeal to the State information Commission. Chapter-2 of the RTI Act deals with the right to information and obligation of public authorities. Under section 3 all the citizens have a right to information. As per section 4 every public authority shall maintain all its record in such a manner in order to facilitate the right to information under the Act. Under sub section (2) it shall be a constant endeavor of every public authority to take step in accordance with the requirement of sub section (1) to provide as much as information suo moto

to the public. Section 5 provides the designation of the Public Information Officer. An application is liable to be submitted by any person seeking the information to the Public Information Officer with a request in writing accompanying such fee as may be prescribed for supply of information to the Central Public Information Officer or the State Public Information Officer, as the case may be. Where an application is made to the public authority for information which is held by any other public authority the public authority to which such application is made, shall transfer the application to other public authority not later than 5 days from the date of receipt of the application. As per section 7 the Public Information Officer is duty bound to dispose of the application as expeditiously as possible and in any case within 30 days of the receipt of the request and if the Public Information Officer fails to give its decision on the request within the specified period the Information Officer, as the case may be, shall be deemed to have refused the request, therefore, under section 6 & 7 it is for the Public Information Officer to take necessary steps within the time frame for disposal of the application.

7. There is no bar in section 6 & 7 that the Information Officer cannot keep the staff for his assistance in order to give effective disposal of the applications but it is the duty of the Public Information Officer to direct them time to time for collecting such information or to do some ministerial work in order to provide the information. But he should not be

solely dependent on them and later on he cannot take the defence that they did not perform their duties to provide the information to him. It is the duty and responsibility of the Public Information Officer to receive the application and then instruct the subordinate officers to do some other ministerial work. In the present case, no such material has been produced by the petitioner to establish that he personally dealt with the application or instructed the respondents No.6 to 9 to collect the necessary information from the concerned section or public authority in order to provide them within the time to respondent No.5. He has barely taken a defence that the respondents No.6 to 9 being the Nodal Officer and Assistant Grade-III did not bring the application of the respondent No.5 to his knowledge, therefore, learned State Commission has rightly held that the petitioner being the Public Information Officer did not provide the necessary information within time to respondent No.4.

8. Now the issue is whether the commission has rightly imposed the maximum amount of penalty. Section 20 provides the imposition of penalty by the Central or State Information Commission, as the case may be, at the time of deciding any complaint or appeal. If the Commission is of the opinion that the concerned Public Information Officer without any reasonable cause has refused to receive any application for information or has not furnished the information within the time specified under sub section (1)

of section 7 or mala fide denied the request for information or knowingly given incorrect, incomplete or misleading information which was subject of the request it shall impose a penalty of Rs.250/- each day till the application is received or the information is furnished so however the total amount of such penalty shall not exceed Rs.25,000/- In view of the above provision, the maximum amount of penalty of Rs.25,000/- is liable to be imposed if the Information Commission is of the opinion that the Public Information Officer has either refused to receive the application or mala fide denied the request or knowingly gave an incorrect, incomplete or misleading information. For not providing information in time the rate of penalty is Rs.250/- per day subject to maximum of Rs.25,000/-. As per section 7 (1), the Information Officer is liable to dispose of the application within 30 days from the date of receipt of the request. As per section 7(2) if the application is not decided within the period specified under sub section (1) the Information Officer shall be deemed to have refused the application and that gives the right to the applicant to prefer an appeal to the Senior Public Information Officer. As per section 19 (1) any person who does not receive a decision within the time as specified in sub section (1) or clause (a) of sub section (3) of section 7 or is aggrieved by the decision of the Public Information Officer may within 30 days prefer an appeal to such officer who is senior in the rank to the Public Information Officer, therefore, after 30 days the application

is deemed to have been treated as rejected. The penalty to the Public Information Officer in such case can be imposed at the rate of Rs.250/- per day for 30 days only which would be Rs.15,000/-. The petitioner has not filed any document in this petition to establish that when the respondent No.5 has preferred an appeal and in the appeal any order has been passed for providing the information to him by the petitioner. Even in the impugned order the State Commission has not disclosed the date of filing of application, dates of first appeal and second appeal or any order has been passed by the appellate authority or Commission for supply of information to the respondent No.5. It is also not clear when the information was provided to him either by the petitioner or by the successor Public Information Officer. The fact remains that the petitioner has retired from service and the Commission has not assigned any reason in order to impose maximum amount of penalty. It is not a case that there was any mala fide intention on the part of the petitioner or he has provided any incorrect, incomplete or misleading information, therefore, maximum amount of penalty is not liable to be imposed on him. It is a case of non-supply of information within 30 days, therefore, the maximum amount of penalty which can be imposed at the rate of Rs.250/- for 30 days, hence the penalty amount of Rs.25,000/- is reduced to Rs.15,000/-. By letter dated 20.08.2017 the petitioner himself sought two months' time to deposit the penalty amount. Thereafter he approached this Court,

therefore, the petitioner is directed to deposit the above penalty amount within a period of one month from today, failing which the respondents No.1 to 3 shall be free to recover the amount in accordance with the provision of section 20.

9. In the result, the petition is partly allowed.

