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**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE VIVEK JAIN
ON THE 30th OF NOVEMBER, 2023
WRIT PETITION No. 3161 of 2018**

BETWEEN:-

**THE STATE OF M.P. THR. SECRETARY GENERAL
ADMINISTRATION DEPARTMENT VALLABH BHAWAN,
BHOPAL (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI SANJEEV KUMAR SINGH - GOVERNMENT ADVOCATE)

AND

- 1. AJAY DUBEY S/O NOT MENTION L-2 B.D. FLATS C
SECTOR SHAHPURA, BHOPAL (MADHYA
PRADESH)**
- 2. STATE INFORMATION COMMISSIONER BHOPAL
BHOPAL (MADHYA PRADESH)**

.....RESPONDENTS

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*This petition coming on for admission this day, the court passed the
following:*

ORDER

The present writ petition has been filed by the State of Madhya Pradesh, challenging the order dated 09.11.2017 (Annexure P-2) passed by the State Information Commission, Madhya Pradesh.

2. The impugned order of the State Information Commission directs the State of Madhya Pradesh to appoint Public Information Officers in the Chief Minister's Secretariat and in the office of the Chief Secretary of the State. The aforesaid direction has been passed in terms of section 19 (8) of the Right to

Information Act 2005 (for short “Act”).

3. The learned counsel for the State raised a preliminary ground of attack on the order, that the order is ostensibly passed under section 19 (8) of the Act, and the said provision vests jurisdiction to pass such order only while hearing an appeal. In the present case, the respondent No.1 had simply submitted a complaint, and thus, the Commission could only have exercised jurisdiction under Section 18 and 20 of the Act, and not under Section 19 (8).

4. The issue of jurisdiction is taken up first. It is argued by the State that while hearing appeal, under section 19 (8), the Commission can exercise the following jurisdiction :-

(8) In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to— (a) require the public authority to take any such steps as may be necessary to secure compliance with the provisions of this Act, including— (i) by providing access to information, if so requested, in a particular form; **(ii) by appointing a Central Public Information Officer or State Public Information Officer, as the case may be;** (iii) by publishing certain information or categories of information; (iv) by making necessary changes to its practices in relation to the maintenance, management and destruction of records; (v) by enhancing the provision of training on the right to information for its officials; (vi) by providing it with an annual report in compliance with clause (b) of sub-section (1) of section 4; (b) require the public authority to compensate the complainant for any loss or other detriment suffered; (c) impose any of the penalties provided under this Act; (d) reject the application.

(emphasis supplied)

5. It is argued that the direction to appoint a Public Information Officer could be given only under section 19 (8), while hearing the appeal, and not otherwise. This was a case of the Commission hearing a complaint, and not an appeal. Thus, the direction is devoid of jurisdiction.

6. It is true that the Commission was hearing a complaint, and the reference to section 19 (8) seems to be erroneous. However, before setting aside the order on that ground only, it is to be seen whether the Commission otherwise has the jurisdiction or not, and that the provision has only been erroneously mentioned.

7. The Commission entertains complaints under section 18 and the section 20 provides for penalties as a result of findings of complaints. The argument of learned counsel for the State is that the Commission could only have passed order in terms of section 20 if it found that the State has not properly complied the provisions of the Act, and could not have passed an order to appoint the Public Information Officer, which power is there only in section 19 (8).

8. Sections 18 (a) and section 20 are relevant, which are as under :-

"18. Powers and functions of Information Commissions.—

(1) Subject to the provisions of this Act, it shall be the duty of the Central Information Commission or State Information Commission, as the case may be, to receive and inquire into a complaint from any person,-

(a) who has been unable to submit a request to a Central Public Information Officer or State Public Information Officer, as the case may be, either by reason that no such officer has been appointed under this Act, or because the Central Assistant Public Information Officer or State Assistant Public Information Officer, as the case may be, has refused to accept his or her application for information or appeal under this Act for forwarding the same to the Central Public Information Officer or State Public Information Officer or senior officer specified in sub-section (1) of section 19 or the Central Information Commission or the State Information Commission, as the case may be;

(emphasis supplied)

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 time 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 however, 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.

(2) 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 and persistently, failed to receive an application for information or has not furnished information within the time 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 recommend for disciplinary action against the Central Public Information Officer or the State Public Information Officer, as the case may be, under the

service rules applicable to him.

9. The argument of the State, that the Commission, even after having found that there is violation of the Act, cannot pass any direction to remove the violation, but can only award penalty, seems to be too drastic to be accepted.

10. The interpretation that as a consequence of complaint entertained in terms of section 18, the Commission cannot pass any remedial direction, runs counter to the purpose of the Act of 2005.

11. This issue was raised before the Allahabad High Court (Lucknow Bench) also, in **Writ Petition No. 3262 (MB) of 2008 (Public Information Officer Vs. State Information Commission, U.P. and others)**. The Division Bench of the Allahabad High Court held as under :-

“Section 18 of the Act is a provision, which allows the applicant who has been refused information or who believes that complete information has not been given, or who has been denied the information by simply delaying the information, to make a complaint to the Commission, Central or State, as the case may be, who would make an enquiry into the said complaint.

Section 19 (8) (a) is in general terms, which confers power upon the Commission, may be the Central or the State, to require the public authority to take any step as may be, necessary to secure compliance under the said Act including providing access in a particular form to the information asked for. This means that the Commission can direct for supplying the necessary information in such form, as may be required, therefore, there cannot be any dispute that in the appeal proceedings, the information which has not been given by the Public Information Officer can be directed to be supplied. What would be the position, in case a complaint has been made under Section 18 of the Act, regarding refusal of information etc. is a matter which requires consideration.

Section 18 is a provision which gives a statutory avenue for vindicating the grievance of the persons, who asked for

such information, but the same has not been given. To keep a check and control upon the functioning of the Public Information Officers, so that they may not go berserk and violate the statute, capriciously and arbitrarily, Section 18 has been enacted. In case the Commission finds that the concerned officer has violated the provisions of the Act, in discharging the duties under the Act and has illegally, wrongfully or malafidely refused the information, he can be subjected to a penalty, which may be, namely, Rs.250/- per day, till the information is provided or to a maximum of Rs.25000/-. In case the intention of the provision of the aforesaid Act was only to punish the guilty information officer, there would have been no occasion under Section 18(3) to confer powers upon the Commission, which are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908 (5 of 1908), requiring discovery and inspection of documents and requisitioning any public record or copies thereof from any court or office, and for specifically providing under sub-clause (4) of Section 18 that notwithstanding anything inconsistent contained in any other Act of Parliament or State Legislature, as the case may be, the Central Information Commission or the State Information Commission, as the case may be, may, during the inquiry of any complaint under this Act, examine any record to which this Act applies which is under the control of the public authority, and no such record may be withheld from it on any grounds. The obvious intention and the purpose of the aforesaid powers being vested with the Commission in the matter of enquiry is to confer all such powers upon the Commission, which can compel the erring officers to disclose and supply the information, which cannot be withheld for any reason whatsoever under the provisions of the Act. Of course, an enquiry on such a complaint naturally would mean to enquire as to whether the information was rightly refused, delayed or was incorrectly given, and for that matter, the power, as given in sub-clauses (3) and (4) of Section 18 the Act, have to be used and on finding that the information was wrongly refused or illegally withheld or was incorrectly or malafidely refused, the Commission cannot be stopped from issuing direction for giving the necessary information.

The purpose of holding enquiry would be of no meaning if only punishment is given to the erring officer, as it would not serve the purpose of the Act and the power so conferred upon the Commission, requiring requisitioning of any public record or copies thereof from any court or office, shall also have only a limited purpose to find out as to whether the punishment should be awarded to the erring officer or not. This is not the intention of the Act or the provisions of Section 18.

Section 20 which prescribes the penalties, takes into account both 'complaint' and 'appeal', says that the Central Information Commission or the State Information Commission, as the case may be, while deciding any complaint or appeal, if satisfied that the application has wrongly been refused from being entertained or the information has not been given for the reasons given therein, impose the penalty as prescribed, meaning thereby that at the time of either deciding a complaint or an appeal, the Commission has the power to impose penalty and that this penalty would be imposed till the application is received or information is furnished. This clarifies that the penalty can be imposed by the Commission while deciding the complaint or while deciding the appeal. Such penalty can be imposed for such term, till the application is received or information sought for is given, as the case may be, @ Rs.250/- each day, subject to a maximum of Rs.25,000/-.

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Section 18 is a substantive provision regarding lodging and enquiring into a complaint, whereas Section 20 is the consequence of such an enquiry. The whole purpose of making an enquiry on a complaint being given by the affected person, shall stand defeated, if the two provisions are read in isolation or they are given a meaning which does not further the object of the Act. From a harmonious construction of the aforesaid provisions keeping in mind the purpose for which they have been enacted, it can be safely concluded that the powers of the Commission under Section 18 are not restricted only to make enquiry and award punishment, but they also extend for issuing direction for receiving the application or for giving the

necessary information under the provisions of the Act. Any other interpretation would not be in consonance with the scheme of the Act and shall also amount to restricting and curtailing the power of the Commission by judicial interpretation.

The Act contains two types of information; first which is to be suo motu provided without even being asked for under Section 4 and the other information, which is to be given when asked for. Of course, there is a third classification, which exempts certain information from being disclosed and a corollary to the said exemption is such information, which though stands protected, but can be disclosed by the competent authority, if satisfied that it is in larger public interest to disclose such information.

Any interpretation to any of the provisions of the Act, if leads to absurdity or may lead to defeat the very purpose of the Act, has to be avoided. There is no attempt to twist the words or the phraseology used, but for correct interpretation of provision of Section 18, it cannot be read in isolation, but has to be seen in the light of the consequences of a complaint of Section 18, as given in Section 20 of the Act, besides also the purpose and object of the Act for which it has been enacted.

12. I am in agreement with the aforesaid view. The interpretation suggested by the State cannot be accepted that the Commission cannot pass a direction or order (other than penalty) while entertaining a complaint which it can pass otherwise under the Act. Thus, the preliminary ground on the jurisdiction of the Commission is over-ruled.

Now taking up the merits of the order of the Commission.

13. The grievance of the respondent No.1 was that the State of Madhya Pradesh has not appointed a Public Information Officer in the Chief Minister's Secretariat and the office of the Chief Secretary.

14. The said direction of the Commission is attacked by the State on the ground that the Chief Minister's Secretariat and the office of the Chief Secretary

are formally under the General Administration Department. Thus, any applicant desiring a information from these two offices can apply to the General Administration Department and the PIO of the General Administration Department can send the requisition to these two offices and obtain information from these offices, and then can supply to the applicant. The relevant pleadings in para 6.4 and 6.5 are as under :-

"6.4 For that, application received under Right to Information Act in the office of Chief Secretary is efficiently and properly decided as per Right to Information Act by Public Information Officer. There is no requirement to appoint a separate public information office for the office of Chief Secretary because office of Chief Secretary is part of GAD.

6.5 For that, as far as appointment of separate public information officer in the office of Chief Minister is concerned, files are sent to the office of Chief Minister and after approval of Chief Minister from various departments and after considering the same by the office of Chief Minister, said files are sent back to the concerned Department. Whenever information is asked from the office of Chief Minister, application is processed and thereafter information sought is given by the Public Information Officer appointed in GAD (Right to Information Cell). Public Information Officer obtained information from Chief Minister's office and thereafter provide information. There is no hurdle or difficulty in obtaining information from the Chief Minister Secretariat and therefore there is no requirement for designating or appointing a in-house separate public information officer in the office of Chief Minister."

15. Upon a bare perusal of these pleadings, it is clear that the State has rightly not come up with a defence that these two offices are exempt from the RTI Act being not "public authority". No exemption is claimed. Rather, it is stated that the applicant may apply to the General Administration Department and the said PIO of General Administration Department will send the matter to

the Chief Minister's Secretariat or Chief Secretary's office and then supply the information to the applicant. Even a document has been filed as Annexure P-3 which is a annual report of the General Administration Department, and which shows that the Chief Minister and the Chief Secretary are also functioneries of the General Administration Department.

16. The Chief Minister and the Chief Secretary may have been brought under the cloak of General Administration Department to avoid creating a separate administrative department. However, it is not in dispute and it has been categorically held by the Commission that there is a separate Secretariat of the Chief Minister headed by a separate Principal Secretary. Even the Chief Secretary has his own office. Even the State counsel is not in a position to dispute this position.

17. The Act does not mandate that one administrative department can have only one PIO. For example, if the entire Police Department or the Revenue Department has only one PIO in the State, the results would be disastrous.

18. It is not the case of the State that the Chief Minister and the Chief Secretary do not have their separate offices and Secretariats. The only submission of the State is that since these two authorities of the State are formally under the General Administration Department, hence, the application has to be submitted to General Administration Department which will then forward to the office of these concerned authorities, obtain information and supply to the applicant.

19. The above circuitous route being suggested by the State is nothing, but an attempt to insulate the office of the Chief Minister and the Chief Secretary from the purview of RTI Act. This goes contrary to the intention of

the Act and cannot be given stamp of approval.

20. Thus, the present petition is **dismissed** and the order passed by the State Information Commission is affirmed.

21. However, before parting with the matter, it is necessary to mention here that this order will not be given the meaning and import that every information available in the office of Chief Minister and Chief Secretary would be available under RTI Act. In other words, the information can only be supplied as per the provisions of the Act of 2005 and the exemptions as laid down under section-8 and other provisions of the Act will apply with full force.

22. This court is also conscious of the fact that the Chief Minister takes oath of office and secrecy and every deliberation concerning affairs of the State cannot be disclosed. Some of the deliberations and communications may be privileged communications. In the case of **R.K. Jain Vs. Union of India, reported in 1993 (4) SCC 119**, the Supreme Court of India has dealt with the issue of secrecy of business of the State and deliberations of the Cabinet, in detail. The said judgement has been affirmed in a recent constitution Bench judgement in the case of **Central Public Information Officer, Supreme Court of India Vs. Subhash Chandra Agrawal, reported in 2020 (5) SCC 481**.

23. Thus, this order is restricted only to the issue of appointment of PIO in the Secretariat of the Chief Minister and office of Chief Secretary. Needless to mention, the legality, necessity, feasibility and desirability of disclosure of any particular information sought from such offices shall be in the domain of the statutory authorities as per the Act whose discretion which will not be affected by this order in any manner.

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