2026:AHC:45131-DB

**AFR**

**Reserved on 28.01.2026**
**Delivered on 27.02.2026**

**HIGH COURT OF JUDICATURE AT ALLAHABAD**

**WRIT - C No. - 27261 of 2007**

Shailesh Kumar Yadav Ips

.....Petitioner(s)

Versus

Union Of India And Others

.....Respondent(s)

| | | |
|---|---|---|
| Counsel for Petitioner(s) | : | C.B. Yadav, Nisheeth Yadav, Rajesh Kumar Singh |
| Counsel for Respondent(s) | : | A.S.G.I., S.C., Santosh Kumar Mishra, Vinay Kumar Singh |

**Court No. - 1**

**HON'BLE AJIT KUMAR, J.**
**HON'BLE SWARUPAMA CHATURVEDI, J.**

**(Per Swarupama Chaturvedi J.)**

**1.** Heard Sri C.B. Yadav, learned Senior Advocate assisted by Sri Nisheeth Yadav, learned counsel appearing for the petitioner, Sri Santosh Kumar Mishra, learned counsel appearing for respondents concerned and Sri Vinay Kumar Singh, learned counsel appearing for respondent no.1, Union of India.

**2.** This writ petition has been filed under Article 226 of the Constitution of India, seeking reliefs against the orders passed under the Right to Information Act, 2005. The petitioner prays for issuance of a writ, order or direction in the nature of certiorari for quashing the orders dated 08.02.2007 and 19.03.2007 passed by Dr O. P. Kejriwal, Information Commissioner, Central Information Commission. The petitioner further seeks issuance of a writ, order or direction in the nature of mandamus commanding the respondents not to give effect to the aforesaid orders dated 08.02.2007 and 19.03.2007, so far as they relate to the petitioner. The petitioner also prays for issuance of a writ, order or direction in the nature of mandamus directing the respondents to drop the entire proceedings initiated against the petitioner in pursuance of the above mentioned order dated 19.03.2007.

**3.** The brief fact of the matter is that at the relevant time, the Petitioner, an IPS officer was serving on deputation as the Regional Passport Officer (RPO), as well as Public Information Officer (PIO) in Ghaziabad. On 26.03.2006, respondent no.4, submitted an application under the Right to Information Act, 2005, seeking some information regarding duplicate passports, submission forms, procedures and time limits. The Petitioner endorsed the application on the same day, however, the application was returned to the applicant on 14.06.2006, by the Assistant Public Information Officer (APIO) due to the reason that the accompanying demand draft was drawn in favour of "Public Information, Ghaziabad" rather than the "Public Information Officer read with Passport Officer". Thereafter Respondent No. 4, resubmitted the application with the corrected draft on 26.06.2006. The Petitioner marked it to "PRO-I and the APIO, on 04.08.2006, directed the applicant to furnish a "Key Number" and "File Number," stating that the website could not be operated without these details. Aggrieved by this non-furnishing of information respondent no.4 filed a complaint under Section 18 of the RTI Act with the Central Information Commission (CIC), which has resulted into impugned orders challenged before this court in this petition.

**4.** The impugned order dated 08.02.2007 records that the information required by respondent no.4 has already been furnished by the petitioner vide letter dated 19.12.2006 and two weeks time was sought from the Commission to resolve the issue with the complainant, which got expired on 24.01.2007, however the PIO and RPO Ghaziabad did not produce any note of satisfaction. The order further records that the Commission decided to initiate penal action against the PIO under section 20(1) of the RTI Act 2005 for the delay of more than four months in providing the information, for which the penalty notice is being issued separately. With this observation the Central Information Commissioner passed the order dated 08.02.2007,where CIC made recommendation to the Chief Passport Officer and Joint Secretary, (CPV Division), Ministry of External Affairs to hold the enquiry into the matter and take strictest action against Regional Passport Officer, Ghaziabad under the intimation to the Commission at the earliest and in no case later than 31.03.2007.

**5.** Learned counsel for the petitioner submitted that it is a matter for fact

that the impugned orders have been passed after hearing the petitioner but at the same time it is passed in complete violation of the principles of natural justice. He further submitted that the impugned order dated 08.02.2007 was passed arbitrarily and with *mala fide* intentions, which recommended the action against petitioner even before the petitioner files his explanation to the show cause issued to him regarding penalty imposition, which is also for the same allegation due to which the recommendation to the government is made to take action against petitioner in a time bound matter. Learned counsel further submitted that the impugned order dated 19.03.2007 is also bad in law as the CIC has failed to consider the explanation offered by the petitioner against the show cause notice while passing the order for imposing the maximum amount of penalty against the petitioner.

**6.** Learned counsel argued that the petitioner, by utilizing the "State Level Coordination Committee" guidelines, which allow RPOs to coordinate with the Local Intelligence Unit (LIU), instructed the Deputy Superintendent of Police (LIU) to approach the applicant regarding his satisfaction with the information provided. An LIU Sub-Inspector visited the applicant, who subsequently sent a letter to the CIC on 14.01.2007, stating that he had received the information and the controversy was resolved, subject to certain conditions regarding the improvement of the Passport Office's attitude. He further submitted that on 06.01.2007 the letter was sent by respondent no.4 to the concerned registrar of the Central Information Commission, bringing to his notice that information sought by the respondent has been received by him, and as such, as requested by the petitioner, the controversy has been resolved.

**7.** Learned counsel also argued regarding imposition of penalty, and submitted that the petitioner replied to the show-cause notice on 26.02.2007, however, the CIC, vide the impugned order dated 19.03.2007, imposed a penalty of Rs. 25,000/-, which is severe penalty and observed incorrectly that there is deployment of police to the applicant's residence which is amounted to intimidation and defamation, and thereafter recommended disciplinary action by the Ministry of External Affairs. He contends that the directions to the concerned department to hold enquiry was not desirable on the part of the

Commission to proceed against the petitioner under section 20(1) of the Act of 2005 without waiting the report of the enquiry which was directed to be conducted by the Chief Passport Officer. He has reiterated that the order imposing penalty vide order dated 19.03.2007 was passed by the CIC without waiting the report from the Chief Passport Officer who was the highest authority of the office occupied by the petitioner at the relevant time.

**8.** Learned counsel for the petitioner relied upon the enquiry report and argued that the Chief Passport Officer has already held the enquiry and submitted its report on 21.03.2007. The report stated that if any mistake has been committed, it was on account of severe shortage of staff, increased work burden and continue pressure to clear the back-log of Passports in the office of Regional Passport Officer, Ghaziabad. He has further contended that the report clearly states that no officer can be blamed, and therefore, the decision taken by the Central Information Commission to impose penalty upon the petitioner was not advisable, The report further demonstrated that the office of Regional Passport Officer, Ghaziabad is already overburdened as it was receiving about 400 applications for issuing passport every day, and if any *bonafide* mistake has been done, the same cannot be treated any misconduct because it is neither deliberate nor intentional.

**9.** Learned counsel argued that the CIC did not indicate and advert as to how the petitioner is liable for delay caused therein and if the delay is caused by the machinery deployed therein, the petitioner cannot be blamed and no penalty can be imposed against him, especially when the enquiry report demonstrates that it was the situation which was responsible for the delay and no individual was to be held liable. Passing the impugned order to impose penalty without even waiting for the last date to conclude the enquiry as per its own order, indicates the element of malice, unfairness and arbitrariness.

**10.** Learned counsel for the petitioner further submitted that in a separate matter, respondent nos. 2 and 3, who was the same person, had passed an order dated 23.01.2009 imposing a penalty of Rs. 25,000/- upon the petitioner. He further stated that the said order came to be passed at a time when the petitioner, after completing his deputation in the Passport

Office, was serving at the All India Institute of Medical Sciences, New Delhi. By the said order, the Director (Admin), All India Institute of Medical Sciences, New Delhi was directed to ensure compliance by recovering the penalty amount of Rs. 25,000/- in two installments from the salary of the petitioner and to remit the same to the Commission by way of demand draft to the Assistant Registrar, Central Information Commission, with a further direction that the first installment should reach the Commission by 10.03.2009 and the second installment by 10.04.2009.

**11.** The petitioner assailed the above-mentioned order before this court in Writ C No. 9948 of 2009, wherein this court observed that there was no finding of any *mala fide* conduct on the part of the petitioner *qua* the alleged delay in supply of information. Though this court declined to interfere in exercise of jurisdiction under Article 226 of the Constitution of India to set aside the order but the penalty was reduced from Rs. 25,000/- to Rs. 5,000/-. Against this order, the petitioner preferred Special Leave to Appeal (C) No. 10430 of 2009 before the Supreme Court, which was allowed by the order dated 07.07.2014. The Supreme Court observed that while the High Court had reduced the penalty, it had also recorded that the delay occurred on account of proper arrangements not having been made in the office regarding the records of applications received and placed before the petitioner, and that such delay was not alleged to be deliberate. The Supreme Court, being satisfied that the imposition of penalty was not justified, set aside the order of the High Court as well as the penalty order passed by the Central Information Commission. Learned counsel asserted that the similar order by the same person against the petitioner, demonstrates that respondent CIC, Mr Kejriwal, was unfairly and arbitrarily targeting the petitioner and was misusing the office of the Central Information Commission in a high-handed manner.

**12.** On the other hand, learned counsel for the respondents no. 2 and 3 placed reliance upon the counter affidavit filed on behalf of respondent no.2 and 3 and submitted that there was a delay of 145 days in providing information. He argued that the penalty imposed was not extreme penalty and the respondent no.2 under the RTI Act, could have imposed heavier penalty. He took the stand that the decision to impose penalty was taken

after giving full opportunity to the petitioner and the petitioner participated in the penalty proceedings before the Commission on 11.03.2007. He has further contended that respondent no.2 was not satisfied with the explanation of the petitioner and by a detailed and speaking order dated 19.03.2007 imposed a penalty of Rs.25,000/- on the petitioner.

**13.** As per learned counsel for respondents, respondent no.2 took serious view of the defamatory statements made by the petitioner and the scant regard shown to the members of the public and statutory body. He placed emphasis on paragraph 11 of the penalty order dated 19.03.2007, where respondent number two clearly observe as under :

> *"The Commission was mortified to observe that the passport officer and PIO, Shailesh Kumar Yadav, happens to be an officer from the Indian police services does not have any respect for the RTI act 2005, not does he have any respect for the members of the public or statutory body like the Central information commission. It is because of such officials that the general public perception about our bureaucracy being insensitive and high-handed gains strength."*

**14.** He further submitted that after above observation, the impugned order recorded that the reply of the show cause notice did not have explanation, but it was full of lame excuses and abuses. He further argued that the PIO was responsible under the RTI Act and the error of subordinate officer did not absolve the PIO of the duty to ensure timely response. He further argued that the reasons given for delay were lame and the penalty was mandatory under Section 20(1) for delay without reasonable cause.

**15.** In rejoinder, learned counsel for the petitioner submitted that the submissions advanced on behalf of the respondent, when read with the tenor of the impugned orders, revealed a pre-determined approach. It was urged that the observations recorded therein traveled beyond objective adjudication and reflected a clear mindset, which was averse to the petitioner. He further contended that the undue haste with which the orders were passed, without proper appreciation of the material on record, strengthened the apprehension of bias. He emphasized particularly on the fact that the authority invoked both facets of Section 20, namely, the imposition of penalty as well as the recommendation to the Government

for action against petitioner, without awaiting the enquiry report or expiry of the last date given for providing the report. According to the counsel of the petitioner, such simultaneous recourse, at a premature stage, demonstrates undue anxiety to proceed against the petitioner. It was thus submitted that cumulatively these circumstances, give rise to a reasonable likelihood of unfairness and vitiated the decision-making process, rendering the impugned orders arbitrary and unsustainable in law.

**16.** On the basis of the pleadings and submissions, the issue for consideration before this Court is whether imposition of the maximum penalty in the facts of the case was justified along with recommendation to the government to take action within a negligible time gap, and it is also to be determined that whether the question of penalty without first considering the enquiry report is legally justified.

**17.** Having heard learned counsel for the parties at length and upon careful perusal of the pleadings and documents on record, the core controversy appears as the power of the Commission to impose penalty and make recommendations, and therefore, we proceed to examine Section 20 of the Right to Information Act, 2005, which reads as under:

> *"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."*

**18.** Upon a careful reading of the above provision, it becomes evident that the power to impose penalty is not for every delay or deficiency in furnishing information. The provision mandates that the Commission must first form an opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has acted without reasonable cause in refusing to receive the application, in failing to furnish information within the stipulated time, or has acted mala fide, knowingly furnished incorrect or misleading information, destroyed the requested information, or otherwise obstructed its disclosure. The existence of one of these jurisdictional facts is a necessary condition for the imposition of penalty.

**19.** Further, the first proviso incorporates the principles of natural justice by requiring that a reasonable opportunity of hearing be afforded before any penalty is imposed. It is a matter of fact that the second proviso places the burden upon the concerned officer to demonstrate that he acted reasonably and diligently. Thus, while the statute shifts the evidentiary burden on petitioner, it does not dispense with the foundational requirement that the Commission must record a clear and reasoned finding as to absence of reasonable cause or presence of mala fide

conduct and the enquiry report, which got submitted timely, could have been used for the determination of the reason for delay.

**20.** Moving further, Sub-section (2) of section 20 operates in related yet in a distinct circumstance. Sub-section (1) contemplates monetary penalty for specified lapses, sub-section (2) empowers the Commission to recommend disciplinary action where the failure is not only without reasonable cause but also persistent. The expression recommend used in sub-section (2) is also significant, as it indicates that the Commission does not itself initiate or impose disciplinary punishment, but merely sets in motion the process under the applicable service rules.

**21.** Therefore, we are of the considered view that Section 20 provides a mechanism, that is, imposition of monetary penalty upon satisfaction of the statutory conditions, and recommendation for disciplinary action in cases of persistent and unjustified professional default. The exercise of such power must necessarily be preceded by objective consideration of the explanation offered and supported by cogent reasons reflecting application of mind.

**22.** Recommendations under Section 20 is intended to guide the administration and facilitate corrective action, however, when expressed in mandatory and time-bound language, they risk assuming the character of a binding direction. The statute does not empower the Commission to issue directions that override the discretion or functions of the administrative authorities. To make recommendations of binding nature would be seen as extension of the Commission’s powers beyond the statutory scheme.

**23.** The Supreme Court in a similar fact of the case, ***Manohar vs State of Maharashtra, (2012) 13 SCC 14,*** discussed various aspects of Section 20 of the RTI Act 2005, and observed that:

> *“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 officer concerned 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 mala fide 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..."*

**24.** In ***Manohar (supra),*** the Supreme Court analysed the term "recommend" provided in Section 20 and held that:

*"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..."*

**25.** The Supreme Court in ***Manohar (supra)***, has examined the scope and ambit of Section 20 of the Right to Information Act, 2005 and thereafter it was held that every default on the part of a Public Information Officer does not automatically trigger the imposition of penalty or a recommendation for disciplinary action. While the State Information Commission in that case was found negligence due to a delay of 73 days, the Supreme Court held that mere negligence or delay is not a ground for proceedings under Section 20(2). The Commission must record a reasoned opinion that the default was both persistent and without reasonable cause. Further, the Court emphasized that the term recommend in Section 20(2) must be read as "may" rather than "shall," highlighting that the Commission is not obliged to recommend disciplinary action if the officer is able to show reasonable cause or if the default is not persistent. Each case must therefore be examined on its own facts, and the Commission's opinion must be based on objective findings rather than assumptions or mere delay.

**26.** While dealing with identical issue, High Court of Punjab and Haryana has considered the amount of penalty being Rs. 25,000/- imposed upon the petitioner in case of ***Yudhister vs State Information Commission, Haryana and Others, 2017 SCC OnLine P&H 6592***. While dealing with the matter, the High Court has observed that it is settled principle of law that *a hammer is not to be used to swat a fly* and further observed that the petitioner appears to have not committed any act warranting disciplinary proceedings. The penalty in that case was already recovered from the petitioner but the disciplinary proceeding which was directed got set-aside by the High Court.

**27.** Applying the above principles to the facts at hand, it is to be determined whether orders passed by CIC and petitioner's alleged defaults fulfil the conditions prescribed under Section 20(1) and (2) of the Right to Information Act, 2005. The fact of the present case clearly show that at no stage, there was any allegation or observation supported by any evidence, by any authority or the Central Information Commission that there was any deliberate act or omission by the petitioner in supplying the

information desired by the complainant. Instead, the fact finding inquiry report has clearly given justification for the delay at institutional level, which was more of infrastructure problem than has anything to do with the petitioner and the report in fact clearly says that the reason for delay shall not be assigned to any of the Officer.

**28.** On a careful consideration of the facts in the present case in the light of Section 20 of the Right to Information Act, 2005 and the principles enunciated by the Supreme Court in ***Manohar (supra),*** it is evident that the imposition of penalty upon the petitioner by the Central Information Commission *vide* order dated 19.03.2007 cannot be sustained. The petitioner had replied to the show-cause notice on 26.02.2007, and the enquiry directed to be conducted by the Chief Passport Officer was still in progress when the Commission imposed a penalty of Rs. 25,000/- and recommended disciplinary action. The enquiry report, submitted on 21.03.2007, clearly establishes that any inadvertent lapses, if at all, were attributable to severe shortage of staff, increased work pressure, and the extraordinary volume of applications being processed daily at the Regional Passport Office, Ghaziabad, and not due to any mala fide, deliberate, or intentional conduct by the petitioner.

**29.** In the facts and circumstances of the present case, there was no persistent default, nor was there any absence of reasonable cause, as contemplated under Section 20(1) and (2) of the RTI Act. The Commission’s action in imposing maximum monetary penalty and recommending disciplinary action without awaiting the report, reflects a procedural impropriety and an element of arbitrariness. In view of the statutory scheme and settled judicial principles, the penalty imposed on the petitioner was unjustified, especially when the complainant has later send the letter stating that he has received the required information.

**30.** Close scrutiny of the impugned order reveals that penalty order reveals that respondent no. 2 and 3 had already formed a prejudiced view against the petitioner even before a proper enquiry could be conducted. In paragraph 11 of the order dated 19.03.2007, respondent no. 2 described the petitioner in highly disparaging terms, noting that he does not have any respect for the members of the public or statutory body like the Central Information Commission, and further attributing to him the cause

of public perception that bureaucracy is insensitive and high-handed. Such observations demonstrate that respondent no.2 approached the matter with a pre-determined opinion and a mindset already hostile to the petitioner, rather than an objective assessment of the facts.

**31.** The order imposing penalty dated 19.03.2007 has also observed in paragraph 13 that the Commission only wishes that it had the powers to dismiss the services of such ill-behaved, bureaucrats, and direct the foreign secretary to initiate disciplinary proceeding immediately on receipt of this order, against the PIO and Passport Officer, Ghaziabad, Shailesh Kumar Yadav. Proceeding to determine the penalty and also recommending action to the Government without awaiting the completion of the enquiry undermines the procedural safeguards enshrined in the statute.

**32.** The language used in both impugned orders travel far beyond consideration of statutory defaults under Section 20 of the RTI Act and indicates a lack of impartiality, reflecting that the penalty and disciplinary recommendation were influenced by bias and personal disapprobation, rather than grounded in reasoned findings. Such conduct may give rise to a reasonable apprehension of bias or pre-judgment, thereby offending the principles of natural justice. Fairness, and due consideration of evidence are indispensable before any punitive or consequential action is taken.

**33.** Further, the order dated 07.07.2014 passed by the Supreme Court in ***Shailesh Kumar Yadav vs Union of India and Others, Special Leave to Appeal (C) No. 10430 of 2009,*** demonstrates that there is no allegation or observation for deliberate act or omission on the part of the petitioner, and therefore the respondent nos. 2 and 3 are not justified to impose penalty on the petitioner. Similar order is being passed against petitioner by same respondent officer in its order dated 19.03.2007 impugned in the present case and, therefore, the rational of the Supreme Court’s order in Special Leave to Appeal (C) No. 10430 of 2009 applies to this case as well and the impugned penalty order is not justified.

**34.** We are of the considered view that Section 20 of the RTI Act confers power to impose a penalty on officers who deliberately obstruct or delay the supply of information, however, the exercise of this power must be

reasoned, proportionate, and preceded by a fair enquiry. Issuing the maximum penalty in tandem with a recommendation for Government action within a negligible time gap suggests undue haste and raises concerns of arbitrariness. While the Commission is entrusted with enforcement, it must ensure that its decisions are grounded in careful consideration of facts, statutory limits, and procedural fairness. The imposition of penalty and related recommendations must not appear rushed, prejudged, or compromise the statutory safeguards and the rule of law.

**35.** For the foregoing reasons, having regard to the statutory scheme under Section 20 of the Right to Information Act, 2005, the enquiry report of the Chief Passport Officer, and the circumstances demonstrating bias and pre-determined opinion on the part of respondent no. 2, this Court is satisfied that order dated 08.02.2007 and order dated 19.03.2007 passed by the Information Commissioner, Central Information Commission were unjustified, arbitrary, and contrary to law. Consequently, both the impugned orders dated 08.02.2007 and 19.03.2007 are quashed.

**36.** Thus this writ petition stands **allowed** as above with no order as to cost.

**(Swarupama Chaturvedi,J.)  (Ajit Kumar,J.)**

**February 27, 2026**
#Vikram/-

Digitally signed by :-
VIKRAM GUPTA
High Court of Judicature at Allahabad