

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P. (C) No. 1038 of 2007

Dr. Dilip Kumar Prasad Petitioner
Versus
The State of Jharkhand & others Respondents

CORAM: HON'BLE MR. JUSTICE APARESH KUMAR SINGH
For the Petitioner : Mr. Sanjoy Piprawall
For the Respondent : None

13/13.12.2012 Heard counsel for the petitioner. Respondents, on notice have appeared also but no one is present today on their behalf to contest the case.

In the instant writ petition the order dated 25.1.2007 passed by learned Information Commissioner in Appeal No. 39 of 2006 has been challenged by the petitioner who was the then Chairman of the Jharkhand Public Service Commission(J.P.S.C). According to the petitioner, the respondent no. 2 – applicant sought for certain information through his application dated 21.8.2006 contained in Annexure 1/1 addressed to the Public Information Officer of J.P.S.C., Ranchi under the Right to Information Act, 2005. As per the counsel for the petitioner, out of 7 informations that were sought for , 4 of them were already provided but the rest information under serial no. 5,6, and 7 of the application could not be provided as they were related to personal information of other persons which is protected under Section 8(1)(J) of the Act of 2005.

Learned counsel for the petitioner has relied upon the judgment of the Hon'ble Supreme Court of India in the case of *Girish Ramchandra Deshpande Vrs. Central Information Commissioner & others* in *Special Leave Petition(Civil) No. 27734 of 2012* vide judgment dated 3.10.2012 reported in *Judgment Today 2012 (9) SCC 585*. Learned counsel for the petitioner submits that the personal information sought for by the applicant in respect of other persons through his application as contained in serial no. 5,6 and 7 related to the address of the successful persons, their personal address and the merit list with marks prior to the interview etc. It is submitted that the vide communication dated 25.1.2007 (Annexure-7) made by the

Under Secretary cum Public Information Officer, J.P.S.C to the Under Secretary, State Information Commission, it was informed that the information sought for by the applicant under serial no. 5,6 and 7 could not be given as per the decision of the Commission. The respondent No. 2, applicant had preferred an appeal no 39 of 2006 against the Public Information Officer, J.P.S.C. alleging non-disclosure of information as aforesaid. It is submitted that from the impugned order dated 25.1.2007 itself it would appear that by the letter dated 25.1.2007 it was brought to the knowledge of the learned Information Commissioner that information in respect of serial no. 5,6 and 7 sought for by the applicant could not be provided as per the decision of the commission. However, learned Information Commissioner instead of examining the merits of the contention that whether information sought for by the applicant were in the nature of personal information or not, straightway proceeded to issue notice upon the then Chairman of the Commission himself as to why penalty under Section 20 of the Act of 2005 be not imposed. It is further submitted that the Commission, being a constitutional body is represented through Secretary of the Commission. In that circumstances, learned Information Commissioner, should have first issued notice upon the Secretary of the Commission to show cause as to why the said information has not been disclosed and as to why he not be treated as deemed Public Information Officer of the Commission under Section 5(5) of the Act of 2005. Even otherwise the decision conveyed by the Under Secretary cum Public Information Officer of J.P.S.C was not by the Chairman but by the Commission itself. As such, learned Information Commissioner committed serious error in issuing notice to the Chairman of the Commission to show cause as to why penalty under Section 20 of the Act of 2005 be not imposed upon him. Learned counsel for the petitioner, therefore, submits that the impugned notice straightway issued upon the Chairman of the Commission was not in accordance with law and the petitioner being aggrieved moved

before this Court in the present writ petition wherein the impugned order has already been stayed earlier vide order dated 28.2.2007. It is further submitted that petitioner is no longer the Chairman of the Commission and as such the impugned order itself directing against the said Chairman is *non-est* and cannot be given effect to.

Although, the respondent- Information Commissioner has filed counter affidavit justifying his stand but no one appears on behalf of the said respondent today to oppose the prayer made on behalf of the petitioner.

I have heard learned counsel for the petitioner and gone through the relevant materials on the record including the impugned order. It appears from the facts brought on record and narrated herein above that in an appeal preferred before the Information Commission by the applicant- respondent no. 2, the Under Secretary cum Public Information Officer of J.P.S.C has appeared and brought it to the knowledge of the Commission that informant sought for by the applicant in respect of serial no. 5,6 and 7 in the application could not be provided on the basis of the decision of the Commission as they related to personal information of third parties. From perusal of the aforesaid application also it appears that the applicant had sought details of the addresses of the other successful persons which obviously are personal information under Section 8(1)(J) of the Act of 2005. Such information could have also caused unwarranted interference in the privacy of the individual concerned and applicant has failed to satisfy the Public Information Officer that under what larger public interest information has been sought for. When the matter was brought to the notice of the Commission by the Public Information Officer, J.P.S.C. the very question whether these information were in the nature of personal information or not were required to be first dealt with before straightway issuing of notice upon the Chairman of the Commission as to why penalty be not imposed upon him under Section 20 of the Act of 2005. Therefore, it appears that the issuance of notice vide order dated 25.1.2007 upon the then Chairman of

J.P.S.C is not sustainable in law and without proper application of mind. In that view of the matter, impugned order dated 25.1.2007 is quashed.

However, it will be open for the Commission to proceed ahead after giving opportunity to the parties in Appeal no. 39 of 2006 to satisfy the requirements for providing information sought for in accordance with law.

This writ petition is allowed.

(Aparesh Kumar Singh, J.)