Manohar vs State Of Maharashtra & Anr on 13 December, 2012

Author: Swatanter Kumar

Bench: Madan B. Lokur, Swatanter Kumar

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 9095 OF 2012
(Arising out of SLP(C) No.7529 of 2009)

Manohar s/o Manikrao Anchule ... Appellant

Versus

State of Maharashtra & Anr. ... Respondents

J U D G M E N T

Swatanter Kumar, J.

1. Leave granted.

2. The present appeal is directed against the judgment dated 18th December, 2008 of the High Court of Bombay at Aurangabad vide which the High Court declined to interfere with the order dated 26th February, 2008 passed by the State Information Commissioner under the provisions of the Right to Information Act, 2005 (for short 'the Act').

3. We may notice the facts in brief giving rise to the present appeal. One Shri Ram Narayan, respondent No.2, a political person belonging to the Nationalist Congress Party, Nanded filed an application on 3rd January, 2007, before the appellant who was a nominated authority under Section 5 of the Act and was responsible for providing the information sought by the applicants. This application was moved under Section 6(1) of the Act.

4. In the application, the said respondent No.2 sought the following information:

> "a. The persons those who are appointed/selected through a reservation category, their names, when they have appointed on the said post.
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> b. When they have joined the said post.
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> c. The report of the Caste Verification Committee of the

persons those who are/were selected from the reserved category.

d. The persons whose caste certificate is/was forwarded for the verification to the caste verification committee after due date. Whether any action is taken against those persons? If any action is taken, then the detail information should be given within 30 days."

5. The appellant, at the relevant time, was working as Superintendent in the State Excise Department and was designated as the Public Information Officer. Thus, he was discharging the functions required under the provisions of the Act. After receiving the application from Respondent No.2, the appellant forwarded the application to the concerned Department for collecting the information. Vide letter dated 19th January, 2007, the appellant had informed respondent No.2 that action on his application has been taken and the information asked for has been called from the concerned department and as and when the information is received, the application could be answered accordingly. As respondent No.2 did not receive the information in furtherance to his application dated 3rd January, 2007, he filed an appeal within the prescribed period before the Collector, Nanded on 1st March, 2007, under Section 19(1) of the Act. In the appeal, respondent No.2 sought the information for which he had submitted the application. This appeal was forwarded to the office of the appellant along with the application given by respondent No.2. No hearing was conducted by the office of the Collector at Nanded. Vide letter dated 11th April, 2007, the then Superintendent, State Excise, Nanded, also designated as Public Information Officer, further wrote to respondent No.2 that since he had not mentioned the period for which the information is sought, it was not possible to supply the information and requested him to furnish the period for which such information was required. The letter dated 11th April, 2007 reads as under :

"... you have not mentioned the period of the information which is sought by you. Therefore, it is not possible to supply the information. Therefore, you should mention the period of information in your application so that it will be convenient to supply the information."

6. As already noticed there was no hearing before the Collector and the appeal before the Collector had not been decided. It is the case of the appellant that the communication from the Collector's office dated 4th March, 2007 had not been received in the office of the appellant. Despite issuance of the letter dated 11th April, 2007, no information was received from respondent No.2 and, thus, the information could not be furnished by the appellant. On 4th April, 2007, the appellant was transferred from Nanded to Akola District and thus was not responsible for performance of the functions of the post that he was earlier holding at Nanded and so also the functions of Designated Public Information Officer.

7. Respondent No.2, without awaiting the decision of the First Appellate Authority (the Collector), filed an appeal before the State Information Commission at Aurangabad regarding non-providing of the information asked for. The said appeal came up for hearing before the Commission at Aurangabad who directed issuance of the notice to the office of the State Excise at Nanded. The Nanded office informed the appellant of the notice and that the hearing was kept for 26th February,

2008 before the State Information Commission at Aurangabad. This was informed to the appellant vide letter dated 12th February, 2008. On 25th February, 2008, the applicant forwarded an application through fax to the office of the State Information Commissioner bringing to their notice that for official reasons he was unable to appear before the Commissioner on that date and requested for grant of extension of time for that purpose. Relevant part of the letter dated 25th February 2008 reads as under:

> "...hearing is fixed before the Hon'ble Minister, State Excise M.S.Mumbai in respect of licence of CL-3 of Shivani Tq. and Dist. Akola. For that purpose it is necessary for the Superintendent, State Excise, Akola for the said hearing. Therefore, it is not possible for him to remain present for hearing on 26.2.2008 before the Hon'ble Commissioner, State Information Commission, Aurangabad. Therefore, it is requested that next date be given for the said hearing."

8. The State Information Commission, without considering the application and even the request made by the Officer who was present before the State Information Commission at the time of hearing, allowed the appeal vide its order dated 26th February, 2008, directing the Commissioner for State Excise to initiate action against the appellant as per the Service Rules and that the action should be taken within two months and the same would be reported within one month thereafter to the State Information Commission. It will be useful to reproduce the relevant part of the order dated 26th February, 2008, passed by the State Information Commissioner:

> "The applicant has prefer First appeal before the Collector on 1.3.2007, the said application was received to the State Excise Office on 4.3.2007 and on 11.4.2007 it was informed to the applicant, that he has not mentioned the specific period regarding the information. The Public Information Officer, ought to have been informed to the applicant after receiving his first application regarding the specific period of information but, here the public information officer has not consider positively, the application of the applicant and not taken any decision. On the application given by the applicant, the public information officer ought to have been informed to the applicant on or before 28.1.2007 and as per the said Act, 2005 there is delay 73 days for informing the applicant and this shows that, the Public Information Officer has not perform his duty which is casted upon him and he is negligent it reveals after going through the documents by the State Commission. Therefore, it is order that, while considering above said matter, the concerned Public Information Officer, has made delay of 73 days for informing to the applicant and therefore he has shown the negligence while performing his duty. Therefore, it is ordered to the Commissioner of State Excise Maharashtra State to take appropriate action as per the Service Rules and Regulation against the concerned Public Information Officer within the two months from this order and thereafter, the compliance report will be submitted within one month in the office of State Commission. As the applicant has not mentioned the specific period for information in his original application and therefore, the Public Information Officer was unable to supply him information. There is no order to the Public Information Officer to give

> information to the applicant as per his application. It is necessary for all the applicant those who want the information under the said Act, he should fill up the form properly and it is confirmed that, whether he has given detail information while submitting the application as per the proforma and this would be confirm while making the application, otherwise the Public Information Officer will not in position to give expected information to the applicant. At the time of filing the application, it is necessary for the applicant, to fill-up the form properly and it was the prime duty of the applicant.

As per the above mentioned, the second appeal filed by the applicant is hereby decided as follows:

> O R D E R
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> 1. The appeal is decided.
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> 2. As the concern Public Information Officer has shown his negligence while performing his duty, therefore, the Commissioner of State Excise, State of Maharashtra has to take appropriate action as per the service rules within two months from the date of order and thereafter, within one month they should submit their compliance report to the State Commission."

9. The legality and correctness of the above order was challenged by the appellant before the High Court by filing the writ petition under Article 226 of the Constitution of India. The appellant had taken various grounds challenging the correctness of this order. However, the High Court, vide its order dated 18th December, 2008, dismissed the writ petition observing that the appellant ought to have passed the appropriate orders in the matter rather than keeping respondent No.2 waiting. It also noticed the contention that the application was so general and vague in nature that the information sought for could not be provided. However, it did not accept the same.

10. It is contended on behalf of the appellant that the order of the State Information Commission, as affirmed by the High Court, is in violation of the principles of natural justice and is contrary to the very basic provisions of Section 20 of the Act. The order does not satisfy any of the ingredients spelt out in the provisions of Section 20(2) of the Act. The State Information Commission did not decide the appeal, it only directed action to be taken against the appellant though the appeal as recorded in the order had been decided. It can, therefore, be inferred that there is apparent non-application of mind.

11. The impugned orders do not take the basic facts of the case into consideration that after a short duration the appellant was transferred from the post in question and had acted upon the application seeking information within the prescribed time. Thus, no default, much less a negligence, was attributable to the appellant.

12. Despite service, nobody appeared on behalf of the State Information Commission. The State filed no counter affidavit.

13. Since the primary controversy in the case revolves around the interpretation of the provisions of Section 20 of the Act, it will be necessary for us to refer to the provisions of Section 20 of the Act at this stage itself. Section 20 reads as under:

> "Section 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:
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> 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.
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> (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."

14. State Information Commissions exercise very wide and certainly quasi judicial powers. In fact their functioning is akin to the judicial system rather than the executive decision making process.

15. It is a settled principle of law and does not require us to discuss this principle with any elaboration that adherence to the principles of natural justice is mandatory for such Tribunal or bodies discharging such functions.

16. The State Information Commission has been vested with wide powers including imposition of penalty or taking of disciplinary action against the employees. Exercise of such power is bound to adversely affect or bring civil consequences to the delinquent. Thus, the provisions relating to penalty or to penal consequences have to be construed strictly. It will not be open to the Court to give them such liberal construction that it would be beyond the specific language of the statute or would be in violation to the principles of natural justice.

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 to the principle of rule of natural justice obligatory in the class of administrative matters as well. In the case of A.K. Kraipak & Ors. v. Union of India & Ors. [(1969) 2 SCC 262], the Court held as under :

> "17. ... It is not necessary to examine those decisions as there is a great deal of fresh thinking on the subject. The horizon of natural justice is constantly expanding... The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it.... The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules namely: (1) no one shall be a judge in his own case (Nemo debet esse judex propria causa) and (2) no decision shall be given against a party without affording him a reasonable hearing (audi alteram partem). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice. Till very recently it was the opinion of the courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is now questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi- judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an

> administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry. As observed by this Court in Suresh Koshy George v. University of Kerala the rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice had been contravened the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case.

18. In the case of Kranti Associates (P) Ltd. & Ors. v. Masood Ahmed Khan & Ors. [(2010) 9 SCC 496], the Court dealt with the question of demarcation between the administrative orders and quasi-judicial orders and the requirement of adherence to natural justice. The Court held as under :

> "47. Summarising the above discussion, this Court holds:
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> (a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.
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> (b) A quasi-judicial authority must record reasons in support of its conclusions.
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> (c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.
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> (d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-

judicial or even administrative power.

(e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(g) Reasons facilitate the process of judicial review by superior courts.

(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important

for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or "rubber-stamp reasons" is not to be equated with a valid decision-making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision- makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor.)

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See Ruiz Torija v. Spain EHRR, at 562 para 29 and Anya v.

University of Oxford, wherein the Court referred to Article 6 of the European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of 'due process'."

19. The Court has also taken the view that even if cancellation of the poll were an administrative act that per se does not repel the application of the principles of natural justice. The Court further said that classification of functions as judicial or administrative is a stultifying shibboleth discarded in India as in England. Today, in our jurisprudence, the advances made by the natural justice far exceed old frontiers and if judicial creativity blights penumbral areas, it is also for improving the quality of Government in injecting fair play into its wheels. Reference in this regard can be made to Mohinder Singh Gill v. Chief Election Commissioner [(1978) 1 SCC 405].

20. Referring to the requirement of adherence to principles of natural justice in adjudicatory process, this Court in the case of Namit Sharma v. Union of India [2012 (8) SCALE 593], held as under:

> "97. It is not only appropriate but is a solemn duty of every adjudicatory body, including the tribunals, to state the reasons in support of its decisions. Reasoning is the soul of a judgment and embodies one of the three pillars on which the very foundation of natural justice jurisprudence rests. It is informative to the claimant of

> the basis for rejection of his claim, as well as provides the grounds for challenging the order before the higher authority/constitutional court. The reasons, therefore, enable the authorities, before whom an order is challenged, to test the veracity and correctness of the impugned order. In the present times, since the fine line of distinction between the functioning of the administrative and quasi-judicial bodies is gradually becoming faint, even the administrative bodies are required to pass reasoned orders. In this regard, reference can be made to the judgments of this Court in the cases of Siemens Engineering & Manufacturing Co. of India Ltd. v. Union of India & Anr. [(1976) 2 SCC 981]; and Assistant Commissioner, Commrcial Tax Department Works Contract and Leasing, Kota v. Shukla & Brothers [(2010) 4 SCC 785]."

21. 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.

22. 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). In the case of Udit Narain Singh Malpharia v. Additional Member, Board of Revenue, Bihar [AIR 1963 SC 786], the Court stressed upon compliance with the principles of natural justice in judicial or quasi-judicial proceedings. Absence of such specific requirement would invalidate the order. The Court, reiterating the principles stated in the English Law in the case of King v. Electricity Commissioner, held as under :

> "The following classic test laid down by Lord Justice Atkin, as he then was, in King v. Electricity Commissioners and followed by this Court in more than one decision clearly brings out the meaning of the concept of judicial act:

> "Wherever anybody of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs." Lord Justice Slesser in King v. London County Council dissected the concept of judicial act laid down by Atkin, L.J., into the following heads in his judgment: "Wherever any body of persons (1) having legal authority (2) to determine questions affecting rights of subjects and (3) having the duty to act judicially (4) act in excess of their legal authority — a writ of certiorari may issue." It will be seen from the ingredients of judicial act that there must be a duty to act judicially. A tribunal, therefore, exercising a judicial or quasi-judicial act cannot decide against the rights of a party without giving him a hearing or an opportunity to represent his case in the manner known to law. If the provisions of a particular statute or rules made thereunder do not provide for it, principles of natural justice demand it. Any such order made without hearing the affected parties would be void. As a writ of certiorari will be granted to remove the record of proceedings of an inferior tribunal or authority exercising judicial or quasi-judicial acts, ex hypothhesi it follows that the High Court in exercising its jurisdiction shall also act judicially in disposing of the proceedings before it."

23. Thus, the principle is clear and settled that right of hearing, even if not provided under a specific statute, the principles of natural justice shall so demand, unless by specific law, it is excluded. It is more so when exercise of authority is likely to vest the person with consequences of civil nature.

24. In light of the above principles, now we will examine whether there is any violation of principles of natural justice in the present case.

25. Vide letter dated 12th February, 2008, the appellant was informed by the Excise Department, Nanded, when he was posted at Akola that hearing was fixed for 25th February, 2008. He submitted a request for adjournment which, admittedly, was received and placed before the office of the State Information Commission. In addition thereto, another officer of the Department had appeared, intimated the State Information Commission and requested for adjournment, which was declined. It was not that the appellant had been avoiding appearance before the State Information Commission. It was the first date of hearing and in the letter dated 25th February, 2008, he had given a reasonable cause for his absence before the Commission on 25th February, 2008. However, on 26th February, 2008, the impugned order was passed. The appellant was entitled to a hearing before an order could be passed against him under the provisions of Section 20(2) of the Act. He was granted no such hearing. The State Information Commission not only recommended but directed initiation of departmental proceedings against the appellant and even asked for the compliance report. If such a harsh order was to be passed against the appellant, the least that was expected of the Commission was to grant him a hearing/reasonable opportunity to put forward his case. We are of the considered view that the State Information Commission should have granted an adjournment and heard the appellant before passing an order Section under 20(2) of the Act. On that ground itself, the impugned order is liable to be set aside. It may be usefully noticed at this stage that the appellant had a genuine case to explain before the State Information Commission and to establish that his

case did not call for any action within the provisions of Section 20(2). Now, we would deal with the other contention on behalf of the appellant that the order itself does not satisfy the requirements of Section 20(2) and, thus, is unsustainable in law. For this purpose, it is necessary for the Court to analyse the requirement and scope of Section 20(2) of the Act. Section 20(2) empowers a Central Information Commission or the State Information Commission :

> (a) at the time of deciding any complaint or appeal;
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> (b) if it 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 (i.e. 30 days);
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> (c) malafidely denied the request for information or intentionally given incorrect, incomplete or misleading information; or
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> (d) destroyed information which was the subject of the request or obstructed in any manner in furnishing the information;
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> (e) then it shall recommend for disciplinary action against the stated persons under the relevant servicerules.

26. From the above dissected language of the provision, it is clear that first of all an opinion has to be formed by the Commission. This opinion is to be formed at the time of deciding any complaint or appeal after hearing the person concerned. The opinion formed has to have basis or reasons and must be relatable to any of the defaults of the provision. It is a penal provision as it vests the delinquent with civil consequences of initiation of and/or even punishment in disciplinary proceedings. The grounds stated in the Section are exhaustive and it is not for the Commission to add other grounds which are not specifically stated in the language of Section 20(2). The section deals with two different proceedings. Firstly, the appeal or complaint filed before the Commission is to be decided and, secondly, if the Commission forms such opinion, as contemplated under the provisions, then it can recommend that disciplinary proceedings be taken against the said delinquent Central Public Information Officer or State Public Information Officer. The purpose of the legislation in requiring both these proceedings to be taken together is obvious not only from the language of the section but even by applying the mischief rule wherein the provision is examined from the very purpose for which the provision has been enacted. While deciding the complaint or the appeal, if the Commission finds that the appeal is without merit or the complaint is without substance, the information need not be furnished for reasons to be recorded. If such be the decision, the question of recommending disciplinary action under Section 20(2) may not arise. Still, there may be another situation that upon perusing the records of the appeal or the complaint, the Commission may be of the opinion that none of the defaults contemplated under Section 20(2) is satisfied and, therefore, no action is called for. To put it simply, the Central or the State Commission have no jurisdiction to add to the exhaustive grounds of default mentioned in the provisions of Section 20(2). The case of default must strictly fall within the specified grounds of the provisions of

Section 20(2). This provision has to be construed and applied strictly. Its ambit cannot be permitted to be enlarged at the whims of the Commission.

27. Now, let us examine if any one or more of the stated grounds under Section 20(2) were satisfied in the present case which would justify the recommendation by the Commission of taking disciplinary action against the appellant. The appellant had received the application from respondent No.2 requiring the information sought for on 3rd January, 2007. He had, much within the period of 30 days (specified under Section 7), sent the application to the concerned department requiring them to furnish the requisite information. The information had not been received. May be after the expiry of the prescribed period, another letter was written by the department to respondent No.2 to state the period for which the information was asked for. This letter was written on 11th April, 2007. To this letter, respondent No.2 did not respond at all. In fact, he made no further query to the office of the designated Public Information Officer as to the fate of his application and instead preferred an appeal before the Collector and thereafter appeal before the State Information Commission. In the meanwhile, the appellant had been transferred in the Excise Department from Nanded to Akola. At this stage, we may recapitulate the relevant dates. The application was filed on 3rd January, 2007, upon which the appellant had acted and vide his letter dated 19th January, 2007 had forwarded the application for requisite information to the concerned department. The appeal was filed by respondent no.2 under Section 19(1) of the Act before the Collector, Nanded on 1st March, 2007. On 4th March, 2007, the appeal was forwarded to the office of the Excise Department. On 4th April, 2007, the appellant had been transferred from Nanded to Akola. On 11th April, 2007, other officer from the Department had asked respondent no.2 to specify the period for which the information was required. If the appellant was given an opportunity and had appeared before the Commission, he might have been able to explain that there was reasonable cause and he had taken all reasonable steps within his power to comply with the provisions. The Commission is expected to formulate an opinion that must specifically record the finding as to which part of Section 20(2) the case falls in. For instance, in relation to failure to receive an application for information or failure to furnish the information within the period specified in Section 7(1), it should also record the opinion if such default was persistent and without reasonable cause.

28. 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 concerned officer 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 malafidely 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. On the contrary, he had taken steps to facilitate the providing of information by writing the stated letters. May be the letter dated 11th April, 2007 was not written within the period of 30 days requiring respondent No.2 to furnish details of the period for which such information was required but the fact remained that such letter was written and respondent No.2 did not even bother to respond to the said enquiry. He just kept on filing appeal after appeal. After April 4, 2007, the date when the appellant was transferred to Akola, he was not responsible for the acts of omissions and/or commission of the office at Nanded.

29. Another aspect of this case which needs to be examined by the Court is that the appeal itself has not been decided though it has so been recorded in the impugned order. The entire impugned order does not direct furnishing of the information asked for by respondent No.1. It does not say whether such information was required to be furnished or not or whether in the facts of the case, it was required of respondent No.2 to respond to the letter dated 11th April, 2007 written by the Department to him. All these matters were requiring decision of the Commission before it could recommend the disciplinary action against the appellant, particularly, in the facts of the present case.

30. 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. We would hasten to add here that wherever reasonable cause is not shown to the satisfaction of the Commission and the Commission is of the opinion that there is default in terms of the Section it must send the recommendation for disciplinary action in accordance with law to the concerned authority. In such circumstances, it will have no choice but to send recommendatory report. The burden of forming an opinion in accordance with the provisions of Section 20(2) and principles of natural justice lies upon the Commission.

31. We are of the considered opinion that the appellant had shown that the default, if any on his part, was not without reasonable cause or result of a persistent default on his part. On the contrary, he had taken steps within his power and authority to provide information to respondent No.2. It was for the department concerned to react and provide the information asked for. In the present case, some default itself is attributable to respondent No.2 who did not even care to respond to the letter of the department dated 11th April, 2007. The cumulative effect of the above discussion is that we are unable to sustain the order passed by the State Information Commission dated 26th February,

2008 and the judgment of the High Court under appeal. Both the judgments are e set aside and the appeal is allowed. We further direct that the disciplinary action, if any, initiated by the department against the appellant shall be withdrawn forthwith.

32. Further, we direct the State Information Commission to decide the appeal filed by respondent No.2 before it on merits and in accordance with law. It will also be open to the Commission to hear the appellant and pass any orders as contemplated under Section 20(2), in furtherance to the notice issued to the appellant. However, in the facts and circumstances of the case, there shall be no orders as to costs.

.....,J.

[Swatanter Kumar] .....,J.

[Madan B. Lokur] New Delhi;

December 13, 2012