

(2026) 02 KL CK 1687

In the High Court Of Kerala

Case No : Writ Petition (C) No. 25153 Of 2023

The Principal, Svrhm Medical College, Nemom,
Thriuvananthapuram

APPELLANT

Vs

State Information Commission, Represented By Its Secretary

RESPONDENT

Date of Decision : 09-02-2026

Acts Referred:

Right to Information Act, 2005 — Section 2(k), 2(l), 8(1)(j), 12(5), 12(6), 15, 15(1), 15(2), 15(5), 19, 19(3), 19(6), 19(8), 20, 20(1)

Citation : (2026) 02 KL CK 1687

Hon'ble Judges : Harisankar V. Menon, J

Bench : Single Bench

Advocate : P.M.Saneer, Tony George Kannanthanam, Kurian George Kannanthanam, M.Ajay, Sunil Nath

Final Decision : Allowed

Judgement

Harisankar V. Menon, J

1. The petitioners are stated to be the Principal and State Public Information Officer (SPIO) attached to a college. The 3rd respondent herein presented an application under the Right to Information Act, 2005 (hereinafter referred to as the 'Act') to the 2nd petitioner seeking information regarding admissions made in 2021 and those admitted to the college. The 2nd petitioner, in his capacity as the SPIO, gave Ext.P2 in reply, providing information on some of the queries, while declining to provide information as regards the remaining questions since, according to him, this information amounts to personal information which does not require to be disclosed. Aggrieved by the decision, the 3rd respondent preferred an appeal before the first appellate authority; however, the same was dismissed, as evidenced by Ext. P4 communication. Therefore, a further appeal was instituted before the 1st respondent by the 3rd respondent herein, which led to Ext.P8 order being issued by the said authority. While issuing Ext.P8 order, apart from directing the 2nd petitioner herein to provide answers to various

queries raised by the 3rd respondent, a proposal to levy penalty under Section 20(1) of the Act was also intimated to the petitioners, as evidenced by paragraph 10 of the order. In obedience to the directions, the 2nd petitioner provided various details to the 3rd respondent and also informed the 2nd respondent about the compliance thereof, through Ext.P10. In Ext.P10, the 2nd petitioner also explained the reason why he originally refused to provide answers to some of the queries, apart from seeking to explain certain observations made in Ext.P8 as regards his appointment. The 2nd respondent thereafter issued Ext.P11 notice informing the 2nd petitioner that the explanations offered were not satisfactory, hence the appeal 'requires to be heard once more'. On that basis, the matter was heard again by the 2nd respondent, leading to the issuance of Ext.P12, imposing a penalty of Rs.15,000/- under the provisions of the Act. The 2nd respondent also made certain observations as regards the admissions made in the college while deciding to impose penalty, since, according to him, procedures were not transparent. Advice to the Government Secretary for carrying out an enquiry as regards the functioning of the college is also made by the 2nd respondent.

2. It is seeking to challenge Ext.P12 issued as above that the petitioners have instituted this writ petition.

3. Heard Sri.Kurian George Kannathanam, the learned senior counsel for the petitioners, and Sri.M.Ajay, the learned Standing Counsel for the 1st respondent.

4. According to Sri.Kannathanam, the impugned order at Ext.P12 requires to be set aside since,

i. The same amounts to a 'rehearing', for which there is no enabling provision under the Act.

ii. The same has been issued by the 2nd respondent-State Information Commissioner and not by the State

Information Commission.

iii. According to him, the State Information Commissioner and the State Information Commission are visualised separately under the statute, as is clear from the definition clauses.

iv. He would also rely on Section 19(3) of the Act to contend that the appeal requires to be considered by the State Information Commission alone, and insofar as Ext.P12 has been issued by the 2nd respondent acting as the 'Commission', the impugned proceedings require to be set aside.

v. He would also contend that the levy of penalty under the impugned order is beyond the scope of Section 20 of the Act.

5. Per contra, Sri.Ajay would state that:

i. The impugned order is in tune with the provision of the statute.

ii. He would rely on the judgment of the Apex Court in *Namit Sharma v. Union of*

India [(2013) 1 SCC 745] as reviewed by the Apex Court in Union of India v. Namit Sharma [(2013) 10 SCC 359] to contend that the State Information Commission could work individually.

iii. He also relied on the judgment of this Court in W.P.(C) No.30696 of 2008 in support of the afore contention.

6. I have considered the rival contentions as well as the connected records.

7. The following issues arise for consideration in this writ petition:-

i. Is the order at Ext.P12 amounting to a 'rehearing' and if so, does the Act provide for such rehearing?

ii. Is the impugned order at Ext.P12 issued by the State Information Commission?

iii. Is the 2nd respondent entitled/empowered to issue an order in the nature of Ext.P12?

iv. Is the imposition of penalty under Section 20(1) of the Act, against the 2nd petitioner, justified?

v. Are the observations made in Ext.P12 as regards the affairs in the educational institution, beyond the scope of the Act?

8. As already noticed, the petitioners contend that the order at Ext.P12 virtually amounts to a 'rehearing' which is not visualised under the Act. It is with reference to the provisions of Section 19 of the Act that the State Information Commission proceeds to consider an appeal filed before it. The provisions of sub-section (3) to Section 19 provide for an appeal to be instituted before the Commission. Sub-section (6) thereto provides for disposing of the appeal so filed. Sub-section (8) thereto provides for the powers of the Commission, including the power to impose penalties 'provided under this Act'. Section 20, providing for penalty states that the Central Information Commission or the State Information Commission may, at the time of deciding a complaint/appeal, also impose a penalty as prescribed thereunder. The proviso thereto requires the State Information Commission to provide an opportunity of hearing to the SPIO. Therefore, from a reading of Section 20 of the Act, it is clear that the State Information Commission has to decide the appeal and thereafter form an opinion as to whether the SPIO is required to be proceeded against in accordance with the mandates thereunder. The Act also requires the SPIO to be provided an opportunity of hearing after the State Information Commission has decided to invoke the power under Section 20. In other words, atleast as regards a penalty under Section 20, the statute visualises two-tier proceedings. In the first-tier proceedings, the appeal is considered, deciding to require the public authority to provide the information called for. It is only thereafter that the question whether the SPIO has refused either to receive an application for information or to furnish the information with mala fide intention can be considered. Therefore, once the decision is taken on the appeal alone, the question of invoking the provisions of

Section 20(1) arises. It is on that basis, while issuing Ext.P8 order, at paragraph 10, the 2nd petitioner was informed of the proposal to initiate steps under Section 20(1) for the reasons stated thereunder. After considering the objections/explanation filed by the 2nd petitioner, the communication at Ext.P11 has been issued informing that the explanation offered being unsatisfactory, the matter requires to be considered again. The phraseology in Ext.P11 that the appeal is being 'reheard' in the afore circumstances may not be the correct one. Actually, the Commission is only proceeding to consider whether the penalty is required to be imposed under the provisions of the Act in the subsequent stage of proceedings. It is in the afore basis that the order at Ext.P12 requires to be understood. In the light of the afore, I am of the opinion that there was no 'rehearing' and therefore, the first question raised as above does not require to be answered.

9. In coming to the afore conclusion, I am fortified by the judgment of this Court in W.P(C) No.30696 of 2008 dated 16.11.2018, wherein a similar issue was considered by this Court, finding as under:

"5. With regard to the first argument, it can be seen that present proceedings leading to order passed under Section 20 is part of the original order passed in the complaint. This order cannot be segregated from the original order. What was done by the Chief Information Commissioner was that an opportunity was given to the petitioner before imposing penalty."

In the light of the afore, the first challenge raised against the order at Ext.P12 requires to be rejected, and I do so.

10. The second and third issues arising for consideration are as to whether the 2nd respondent, who is only the State Information Commissioner, can act independently and proceed to impose penalty on the petitioner. Section 2(k) and (l) of the Act provides for the definition of the terms 'State Information Commission' and 'State Information Commissioner' as under:

"(k) "State Information Commission" means the State Information Commission constituted under sub-section (1) of Section 15;

(l) "State Chief Information Commissioner" and "State Information Commissioner" mean the State Chief Information Commissioner and the State Information Commissioner appointed under sub-section (3) of Section 15;"

Therefore, the fact that the statute visualises the State Information Commission and the State Information Commissioner separately is beyond any dispute. Section 15 of the Act provides for the constitution of the State Information Commission. The provisions of Section 15, to the extent relevant herein, are as follows:

"15. Constitution of State Information Commission.-

(1) Every State Government shall, by notification in the Official Gazette,

constitute a body to be known as the

(name of the State) Information Commission to exercise the powers conferred on, and to perform the functions assigned to, it under this Act.

(2) The State Information Commission shall consist of-

(a) the State Chief Information Commissioner, and

(b) such number of State Information Commissioners, not exceeding ten, as may be deemed necessary.

(3) The State Chief Information Commissioner and the State Information Commissioners shall be appointed by the Governor on the recommendation of a committee consisting of—

(i) the Chief Minister, who shall be the Chairperson of the committee;

(ii) the Leader of Opposition in the Legislative Assembly; and

(iii) a Cabinet Minister to be nominated by the Chief Minister.

Explanation.- For the purposes of removal of doubts, it is hereby declared that where the Leader of Opposition in the Legislative Assembly has not been recognised as such, the Leader of the single largest group in opposition of the Government in the Legislative Assembly shall be deemed to be the Leader of the Opposition.

(4) The general superintendence, direction and management of the affairs of the State Information Commission shall vest in the State Chief Information Commissioner who shall be assisted by the State Information Commissioners and may exercise all such powers and do all such acts and things which may be exercised or done by the State Information Commission autonomously without being subjected to directions by any other authority under this Act.

(5) The State Chief Information Commissioner and the State Information Commissioners shall be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance."

Thus, sub-section (1) of Section 15 provides for the constitution of a body to be known as the State Information Commission. Sub-section (2) thereto provides that the Commission so constituted shall consist of the State Chief Information Commissioner and the State Information Commissioners, not exceeding ten. A reading of sub-section (4) would also show that the State Chief Information Commissioner can act only for the general superintendence, directions, and management of the affairs of the Commission. The State Information Commissioners may also assist the Chief Information Commissioner in the afore activity. Therefore, it is the functions mentioned under sub-section (4) alone that could be carried out by the State Chief Information Commissioner and the State Information Commissioners individually.

11. With respect to an appeal provided under Section 19 to the State Information Commission also, the position is not different as is spelt out under sub-section (3) thereto, as under:

“(3) A second appeal against the decision under sub-section (1) shall lie within ninety days from the date on which the decision should have been made or was actually received, with the Central Information Commission or the State Information Commission:”

Thus, the appeal is to be filed to the State Information Commission and not to the State Information Commissioner. Therefore, in my opinion, on a combined reading of Section 15(2) and Section 19(3), an appeal filed before the State Information Commission is required to be considered and disposed of by the State Information Commission itself, and not individually by the State Information Commissioner. However, since the petitioner has not challenged the first order at Ext.P8, which is also one passed by the State Information Commissioner, and the challenge is being limited only to the second order at Ext.P12, this Court is only proceeding to consider the vires of the said order.

12. Sri. Ajay, the learned counsel for the Commission, has sought to rely on the judgment of the Apex Court in *Namit Sharma (supra)* as reviewed by the Apex Court in *Union of India v. Namit Sharma (supra)*. Therefore, the question arises as to whether Ext.P12 order is to be sustained in the light of the afore judgment.

13. In *Namit Sharma (supra)* Apex Court considered the challenge raised against the provisions of Section 12(5) and (6) as well as Section 15(5) of the Act providing for the constitution of the Central and State Information Commissions, respectively. Noticing that the provision did not specify the basic qualifications for being appointed as Information Commissioner, the Apex Court held that the knowledge and experience in different fields referred to in the provision would presuppose a graduate who possesses basic qualifications in the field concerned. The Apex Court also went on to hold that the Commission would also require to work in benches comprising of a judicial member and one other member in the specified fields mentioned in the statute. In paragraph 108.8 of the judgment, the Apex Court directed that henceforth the Commissions shall work in benches of two members each- one being a judicial member and the other as an expert member, further holding that the judicial member should be a person possessing a degree in law, having a judicially trained mind and experience in performing judicial functions. Though this was the ultimate direction issued by the Apex Court, Sri. Ajay seeks to rely on the observation in paragraph 105 of the judgment: “such judicial member could work individually or in benches of two, one being a judicial member, while the other being a qualified person from the specified fields to be called an expert member”.

14. But in my opinion, the reliance placed on the afore judgment would not save the situation since admittedly the afore judgment has been reviewed by the Apex Court in *Union of India v. Namit Sharma (supra)*, having found that the directions

issued earlier require to be recalled. Therefore, the Apex Court, after recalling the directions issued earlier, issued fresh directions under paragraph 39 of the judgment, of which paragraph 39.6 is also relied on by Sri. Ajay, which reads as under:-

"39.6. We also direct that wherever Chief Information Commissioner is of the opinion that intricate questions of law will have to be decided in a matter coming up before the Information Commission, he will ensure that the matter is heard by an Information Commissioner who has wide knowledge and experience in the field of law."

In my opinion, the Apex Court only clarified that whenever intricate questions of law require to be decided, the matter requires to be considered by a Commissioner who has the required knowledge in the field of law. The Apex Court did not have occasion to consider the question as to whether the appellate power under Section 19(3) read with Section 20(1) of the Act can be exercised by the State Information Commissioner when he acts individually. A decision is only an authority for what it actually decides and it is the essence of the decision that is to be taken as its ratio and not every observations made there, as has been observed by the Apex Court in *State of Orissa v. Sudhansu Sekhar Misra and Others* [AIR 1968 SC 647] and *Union of India v. Dhanwanti Devi* [(1996) 6 SCC 44]. As already found under Section 15(2), the constitution of the State Information Commission had been categorically laid down as to include the State Chief Information Commissioner and such number of State Information Commissioners as deemed necessary. In the light of the afore, the State Information Commissioner could not have exercised the power under Section 20(1) of the Act, leading to the issuance of Ext.P12 order.

15. Sri.Kannathanam, learned senior counsel for the petitioners, relies on the judgment of a Division Bench of this Court in *Principal, KMCT Medical College and Others v.Fee Regulatory Committee and Others* [2019 (3) KHC 384], wherein this Court considered the question as to whether the admission and fee regulatory committee for medical education in Kerala requires all the members to be present while passing orders. A Division Bench of this Court, while considering the afore question, found as under:-

"23. Another contention put forward by the counsel for the Writ Petitioners is that, the impugned orders are all passed by two or three members of the Committee and not by all the members thereof sitting together. In some cases, the matter was heard by two or three members, but the impugned orders are signed by five members. None of the orders have been passed by the Committee with its full quorum. Reliance is placed on the Division Bench decision of this Court in *K.S.F. Dental College Managements Consortium v. State of Kerala* (Supra) particularly paragraphs 65 to 69 thereof, to point out that S.5(3) of the Act 15 of 2017 that fixed the quorum has been set aside and the said decision has become final. It is therefore contended that, the impugned orders are all liable to be set aside.

24. S.5(3) of Act 15 of 2017 had fixed the quorum for meeting of the AFRC to be four. The Chairperson or in his absence, a members of the committee elected from among the members present in the meeting is permitted to preside over the meeting, as per S.5(2). As per S.3, the Committee is constituted of as many as ten members of whom as many as five are high Government officials. The Division Bench has in K.S.F. Dental College Managements Consortium v. State of Kerala (Supra) found the composition of the Committee to be unwieldy. However, S.5(3) that prescribed the quorum to be 4 has been set aside by the Division Bench as unsustainable. The resultant position is that, no quorum is prescribed for the meeting of the Committee. Therefore, all the members thereof would have to be present.

In my opinion, the principles laid down by the Division Bench would also apply to the case at hand also. No quorum has been prescribed under Section 15 of the Act, and therefore, all the Commissioners would have to be present, so as to sustain an order.

16. In the light of the afore, I am of the opinion that the order at Ext.P12 requires to be set aside.

17. Submissions were also made with reference to the sustainability of Ext.P12 order in the light of the provision under Section 20(1) providing for the levy of penalty in the circumstances prescribed therein. Section 20 (1) of the Act reads as follows:-

"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 mala fidely 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."

True, under sub-section (1), the State Information Commission has the power to impose penalty when an SPIO without any reasonable cause has not furnished

the information sought for, or with mala fide intention denied the request for information. In other words, it is incumbent upon the Commission to consider whether there was a 'reasonable cause' or 'mala fide denial' at the hands of the SPIO. A perusal of Ext.P2 would show that certain information was not provided, relying on Section 8(1)(j) of the Act. In other words, the SPIO has referred to the prohibition under Section 8(1)(j) as per which personal information does not require to be provided. However, the 2nd respondent has referred to the provisions of Section 11 of the Act and held that the procedure prescribed thereunder ought to have been followed. In other words, the 2nd petitioner had offered an explanation for not providing certain information, and merely for the reason that the 2nd respondent did not accept this explanation, the provisions of Section 20(1) are not attracted. This is especially so when the 3rd respondent did not have a case that refusal to provide information in full was deliberate/with mala fide intentions. In my opinion, the mere allegation that the refusal to provide answers was mala fide, is insufficient. It is only in a situation where the refusal was without providing any explanation that the provisions of Section 20(1) would apply. Merely because the statute empowers the imposition of penalty that does not require it to be mechanically levied. Ultimately, it is a discretion vested on the authorities, to be exercised judiciously, taking note of the attending circumstances. The penalty is not to be levied when the breach alleged stems from a bona fide belief that certain information does not require to be provided. Therefore, in my opinion, the penalty is only to be set aside.

18. This Court also notices the explanation offered along with the apology before the 2nd respondent, as evidenced by Ext.P10, about which there is no consideration/whisper in the final order at Ext.P12. Therefore, the penalty imposed as above requires to be set aside for that reason also.

19. The last issue arising for consideration is the sustainability or otherwise of the direction made in the impugned proceeding for carrying out an enquiry under the provisions of the Act. A reading of the preamble to the Act would show that the statute only provides for extending the right to information for citizens from public authorities to promote transparency and accountability. The provisions of Chapter IV or V of the Act also do not provide for any power to carry out a roving enquiry and thereafter issue advice to the Government. The provisions of Section 19(8) of the Act, already referred to, do not confer any such power on the 2nd respondent. If that be so, the directions contained in Ext.P12, advising the Government to conduct an enquiry into the affairs of the college, also require to be set aside.

On the whole, I am of the opinion that the petitioners are entitled to succeed. Therefore, the writ petition would stand allowed, setting aside Ext.P12 issued by the 2nd respondent.