

BDPPS

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
PUBLIC INTEREST LITIGATION NO.248 OF 2014**

Mr. Vijay Kirshna Kumbhar)
Age: 52 years, Occ; Journalist)
R/at : A-6, Anupama Co-Op. Hsg. Soc.,)
Bodygate, Aundh, Pune 411 007) Petitioner.

V/s

1. The State of Maharashtra)
)
2. The Chief Information Commissioner,)
of Maharashtra.)
)
3. Shri Ravindra Jadhav,)
The State Information Commissioner,)
Amravati,)
However, at present serving as)
State Information Commissioner, Pune)
(which is in challenge in caption PIL))
Copy to be served on the official address)
Add: New Administrative Building,)
4th Floor Opp. Vidhan Bhavan,)
Pune 400 001)
)
4. Principal Secretary,)
General Administration Dept.) Respondents

Mr. Rahul S. Kadam for the Petitioners.
Mr. S.K. Nair a/w Mr. Suresh Kabra i/b S.K. Nair & Co. for Respondent No.2.
Mr. Vishal Thadani, Assistant Government Pleader for the State.

**CORAM: V. M. KANADE &
MRS. SWAPNA S. JOSHI, JJ**

DATE: 3rd October, 2016

ORAL JUDGMENT: (Per V.M. Kanade, J.)

1. Heard Mr. Kadam, the learned Counsel appearing on behalf of the Petitioner, Mr. Thadani the learned Assistant Government Pleader on behalf of the State and Mr. Nair, the learned Advocate appearing on behalf of Respondent No.2. - Chief Information Commissioner of Maharashtra

2. An interesting question of law falls for consideration before this Court in this PIL and the question is : whether the State Chief Information Commissioner has a power to transfer the State Information Commissioners from one place to another by exercising power vested in him under Section 15(4) of the Right to Information Act, 2005 (hereinafter referred to as “the said Act”)

3. Brief facts which are relevant for the purpose of deciding this Petition are as under:-

4. One Mr. Ravindra Jadhav, who was appointed as State Information Commissioner pursuant to the Notification issued under Section 15(3) of the said Act and was posted at Amravati, was transferred by the State Chief Information Commissioner by an order

dated 02/07/2014. Respondent No.3 did not challenge the said order of transfer. However, Petitioner who is a public activist and RTI activist has filed this PIL questioning the authority of the State Chief Information Commissioner in issuing the order of transfer. We are satisfied that the Petitioner is a responsible public activist and therefore we have permitted him to file this Petition as PIL.

5. Mr. Kadam, the learned Counsel appearing on behalf of the Petitioner, has submitted that if the entire Scheme of the said Act and the provisions contained therein are taken into consideration, it would be clear that such power of transfer is not vested in the State Chief Information Commissioner under section 15(4) but it is vested in the Governor and the Committee which is constituted under Section 15(1) for the purpose of appointing these persons at particular regions. He submitted that whenever appointments are made pursuant to the recommendations made by the special Committee which is constituted under Section 15(1) and 15(2) of the said Act, Governor grants his approval and, thereafter, a Notification is issued for appointment of the State Chief Information Commissioner and other State Information Commissioners. He submitted that while making appointment, the region where the State Information Commissioner is to be posted is mentioned in the order of appointment. He submitted that, that being the position, it is not open for the State Chief Information Officer to transfer the State Information Commissioner from a particular place where he has been appointed to any other

place. He submitted that this could be done only by seeking permission of the specially constituted Committee and thereafter by seeking approval of the Governor. He has invited our attention to various provisions of the said Act in support of his submissions.

6. The learned Counsel for the Petitioner then relied upon two judgments; one of this Court in *Lokesh Chandra & Anr. vs. State of Maharashtra & Ors.*¹ and the other of Delhi High Court in *Delhi Development Authority vs. Central Information Commission and Another*². He has relied on paras 12 and 13 of the Judgment of this Court in *Lokesh Chandra & Anr.* (supra) and on paras 24, 25, 31 and 32 of the Judgment of the Delhi High Court in *Delhi Development Authority* (supra). He has also submitted that the learned Advocate General, when an opinion was sought from him on an identical issue, had given an opinion that the placement upon resignation of a person appointed as State Information Commissioner, cannot be made by the State Chief Information Commissioner but it had to be relegated to the specially constituted Committee and only after the approval was granted, such an appointment could be made.

7. On the other hand, Mr. Nair, the learned Counsel appearing on behalf of Respondent No. 2 – Chief Information Commissioner of Maharashtra invited our attention to the reply filed by Respondent No.2 and submitted that so far as administrative decisions are

1 AIR 2009 Bombay 147

2 Judgment delivered on 21.05.2010 in WP(C) 12714/2009

concerned, State Chief Information Commissioner is empowered under Section 15(4) to take decisions for the internal administration for smooth functioning of the Commission. Mr. Thadani, the learned Assistant Government Pleader also invited our attention to the affidavit-in-reply filed by the State and he has also pointed out that upon correct interpretation of Section 15(4), it would be apparent that such power of transfer can be exercised by the State Chief Information Officer.

8. Before we advert to the rival submissions made by the learned Counsels appearing on behalf both the parties, we are of the view that it would be relevant to take a look at relevant provisions of the said Act.

9. Right to Information Act, 2005 was passed and it came into force on 12/10/2005. It is a Central Act and it applies to both, the Central Government and the State Government. Section 2 of the said Act defines what the “appropriate Government” is in relation to the public authority. Similar provisions have been made in respect of the Central Government and State Government. Section 12 lays down the manner in which the Central Information Commission is to be constituted. A corresponding provision is to be found in Section 15 so far as the State Information Commission is concerned. The said provisions are identical and are couched in the same language save and except the authorities under the Central Government and the

State Government. It would be profitable to reproduce the relevant sub-sections of Section 15. The said relevant sub-sections (1), (2), (3), (4) and (7) of Section 15 read as under:-

“15. Constitution of State Information Commission.- (1) Every State Government shall, by notification, in the Official Gazette, constitute a body to be known as (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).....

(6).....

(7) The headquarters of the State Information Commission shall be at such place in the State as the State Government may, by notification in the Official Gazette, specify and the State Information Commission may, with the previous approval of the State Government, establish offices at other places in the State.”

10. Perusal of Section 15 clearly discloses the manner in which the State Information Commission has to be appointed. Sub-section (1) mentions that the State Government by a Notification in the Official Gazette constitute a body to be known as Maharashtra Information Commission to exercise powers conferred on, and to perform the functions assigned to it under this Act. Sub-section (2) mentions that there shall be (a) the State Chief Information Commissioner; and (b) such number of State Information Commissioners, not exceeding ten, as may be deemed necessary. Sub-section (3) lays down the manner in which these appointments have to be made. It mentions that the State Chief Information Commissioner and the State Information Commissioners shall be appointed by the Governor on a 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. Upon a recommendation being made by them, Governor grants his approval and then a Notification is issued appointing them as State Chief Information Commissioner and State Information Commissioners. Sub-section (4) empowers the State Chief Information Commissioner with the general power of superintendence, direction and management of the affairs of the State Information Commission. Sub-section (7) refers to the place at which the headquarters of the State Information Commission is to be situated.

11. Upon a conjoint reading of sub-sections (1), (2), (3) and (4) of Section 15 of the said Act, it is apparent that the power to appoint the State Chief Information Commissioner and all the State Information Commissioners is vested in specially constituted Committee, which then makes recommendations which are forwarded to the Governor who accepts the recommendations and the State Government then issues the Notification. The aforesaid sub-sections of Section 15 therefore do not empower the Committee which is constituted to designate the place at which these Commissioners are to be appointed. The function of the specially constituted Committee is over as soon as it selects the State Chief Information Commissioner and State Information Commissioners. For the purpose of internal management of the said Commission, power is vested in the State Chief Information Commissioner to decide the general administration, management and superintendence of the Commission. It is therefore not possible to accept the submission made by the learned Counsel for the Petitioner that since the Notification which is issued mentions the place at which each State Commissioner is to be appointed, the State Chief Information Commissioner does not have an authority to transfer the State Information Commissioners from one place to another. Reliance is placed on sub-section (4) of Section 16 and it is submitted that the State Chief Information Commissioner or the State Information Commissioner, if he wants to resign, has to give by writing under his hand, letter addressed to the Governor. It is submitted that therefore the State Chief Information Commissioner does not have an authority

to transfer the State Information Commissioner and only the Governor could do so. Reliance is also placed on Section 17 of the said Act which speaks about removal of State Chief Information Commissioner or State Information Commissioner.

12. In our view both these provisions will not apply to the facts of the present case since sub-section (4) of Section 16 speaks about the manner in which the resignation is to be given by the State Chief Information Commissioner or State Information Commissioner and Section 17 speaks about the procedure which is to be followed for removal of the Chief Information Commissioner or State Information Commissioner. Both these provisions will have no application to the facts of the present case. There is therefore no substance in the submission made by Mr. Kadam, the learned Counsel appearing on behalf of the Petitioner.

13. So far as the opinion which is given by the learned Advocate General on this issue and which is annexed to the Petition is concerned, we respectfully disagree with the said opinion which has been given by him.

14. Reliance has been placed by the learned Counsel for the Petitioner on two judgments; one of this Court in *Lokesh Chandra & Anr* (supra) and the other of the Delhi High Court in *Delhi Development Authority* (supra). In our view, these judgments do not

support the case of the Petitioner and, in fact, go against him. In the case of *Lokesh Chandra & Anr* (supra) facts are narrated in para 2 of the said judgment which reads as under:-

“2. The facts are as follows-

Respondent No.4 herein applied to respondent No.6 – the Public Information Officer, General Administration Department, Mumbai to supply the information of assets and liabilities of the petitioners. Respondent No.4 was informed by respondent No.6 that such information cannot be supplied as that would invade the privacy of individual. An appeal was preferred before the first appellate authority, who also rejected the appeal. Respondent No.4, therefore, preferred second appeal before the State Information Commissioner, Nagpur Division. The Commissioner directed the information to be supplied. The order was challenged before this court by the petitioners and this court set aside the order and directed the Commissioner to decide the preliminary objections raised by the petitioners in the second appeal before the Commissioner. Respondent No. 3 – State Information Commissioner rejected the objection. He found that the Chief Information Commissioner had no right to issue an administrative order that Chief Information Commissioner would alone hear the appeals in such matters. The petitioners feel aggrieved by the said order.”

In the said case therefore when the State Information Commissioner

directed the information to be supplied, the order was challenged in the High Court, which directed the Commissioner to decide preliminary objection raised by the Petitioner. The State Information Commissioner rejected the objection. He found that Chief Information Commissioner had no right to issue an administrative order that Chief Information Commissioner would alone hear the appeals in such matters. In the context of these facts the learned Single Judge of this Court has observed in paras 12 and 13 of his judgment as under:-

“12. If other Commissioner says that his powers with regard to Section 15(4) are co-extensive then perhaps there would be chaos. The general superintendence has to be by the Head alone and the right to issue directions must vest in the Head. If the Section is interpreted in the way as suggested by Mr. Bhuihar then other Commissioner may issue directions as he wishes which may be contradictory. The law does not require the Chief Commissioner to even consult the other Commissioners with regard to the management of the affairs of the Commission. Had there been a clause of consultation then perhaps the argument of Shri Bhuihar could have been accepted. The words used are assistance and not consultation. The Legislature in its wisdom has used the word assistance and assistance, as already said, means helping hand alone and not the exercise of power unilaterally.

13. The Supreme Court in *State of Rajasthan v. Prakash Chand* reported in (1998) 1 SCC 1 : (AIR 1998 SC 1344) has held that on the judicial side Chief Justice is the first amongst equals and on administrative side the Chief Justice is the master of the roster. It is, therefore, clear that though the Chief Justice is the first amongst equals on judicial side, he is in fact unequal on the administrative side. He alone can decide, who should sit in the Division Bench and who should sit single and what type of work a puisne judge should deal with. Such type of power is certainly conferred on Chief Information Commissioner alone by Section 15(4) of the Right to Information Act.”

15. In our view, there cannot be any dispute about the ratio laid down by the learned Single Judge on the question raised before him. In fact, an observation is made by the learned Single Judge regarding the scope of power which is to be exercised by the State Chief Information Commissioner, which reveals that State Chief Information Commissioner can exercise functions such as general superintendence, issuance of directions for management of the State Information Commission. The ratio of this judgment therefore is of no assistance to the Petitioner.

16. The second judgment on which the reliance is placed by the learned Counsel for the Petitioner is of the Delhi High Court in *Delhi Development Authority* (supra). In this case, certain regulations

were framed by the Central Information Commission. The contention was that such regulations should not be framed by the Central Information Commission. In this context, the Delhi High Court, after noting Sections 12 and 15 of the said Act, framed three questions for determination which are found in para 12 of the said judgment. Para 12 of the said judgment reads as under:-

“12. In this writ petition, the following questions need to be determined:-

(1) Whether the Central Information Commission has the power, under the RTI Act and the Rules made thereunder to appoint a committee of persons other than the members of the Commission, to inquire into the implementation of the obligations cast upon a public authority, such as the DDA by virtue of Section 4 of the RTI Act?

(2) Whether the Chief Information Commissioner had the power to make the Central Information Commission (Management) Regulations, 2007

under Section 12(4) of the RTI Act and particularly regulations with regard to the subject matter of Chapter IV thereof, namely, 'registration, abatement or return of the appeal'?

(3) Whether the Central Information Commission had the power to issue a direction requiring the presence of the Vice-Chairman, DDA in the proceedings before it?

The answers to these questions are:-

(1) No.; (2) No; and (3) No. The reasons for the same are given below:-”

It is in this context the Division Bench of the Delhi High Court in paras 31 and 32 of its judgments has observed that there was no power prescribed under the Act to make regulations and, secondly, it came to the conclusion that Chief Information Commissioner does not have power to make Rules because he is neither the appropriate Government nor is a competent authority. It also observed that if at all Rules and Regulations are framed, they have to be laid before the House of Parliament as provided under Section 29. In our view, ratio

of this judgment also does not help the Petitioner's case in any way whatsoever. In the present case, no regulations have been framed by the State Chief Information Commissioner and he has only exercised his power of general superintendence under Section 15(4) of the said Act. We do not therefore see any substance in the submission made by the learned Counsel appearing on behalf of the Petitioner.

17. It has to be remembered that the said Act was passed in order to ensure that there is transparency in the functioning of the Governments and their instrumentalities and in a democratic country citizens are required to be informed about the manner in which the Governments and their authorities function, so that there is no scope for arbitrary action and also to contain corruption and lastly to hold Governments and their instrumentalities accountable to the governed. State Information Commission is therefore expected to act without fear or favour and in an independent manner without being influenced by the Executive and State Authorities. The scheme of the Act therefore reveals that the function of the specially constituted Committee is to make recommendations for appointments to the Governor and after approval is sought for such recommendations from the Governor, a Notification is issued. The functioning and management of the Commission is not expected to be tinkered or interfered with by the Committee which appointed it. The State Chief Information Commissioner is expected to act in an independent manner and therefore power is vested in him to have general

superintendence over the functioning of the State Information Commission. In our view, therefore, the State Chief Information Commissioner has power under section 15(4) of the said Act to transfer the State Information Commissioner from one region to another for the purpose of ensuring that the Commission functions in a smooth manner. If there is any curb on his authority, the very aim and object of having the State Information Commission would be rendered nugatory and would be defeated. We do not see therefore any substance in the submissions made by the learned Counsel for the Petitioner.

18. Petition is dismissed. Interim order passed by this court stands vacated.

(MRS. SWAPNA S. JOSHI, J.)

(V.M. KANADE, J.)