

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.10.2020

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 23615 of 2013
and
W.M.P. No. 1 of 2013

S.Kanaga Sabapathy

... Petitioner

-vs-

1. State Chief Information Commissioner,
Tamil Information Commission,
No. 2, Theagarayar Salai,
Near Alaiyamman Koil,
Teynampet,
Chennai - 600 018.
2. The Public Information Officer &
The Secretary Public (RHIII) Department,
Government of Tamil Nadu Secretariat,
Fort St. George,
Chennai - 600 009.
3. Deputy Secretary to Government/Public Information Officer,
Public (Special - B) Department,
Fort St. George,
Chennai - 600 009.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the Impugned Order made in Order No. 36010/SCIC/2012 dated 09.10.2012 of the First Respondent, quash the same and consequently direct the Respondents herein to furnish the information requested by the Petitioner in his application dated 27.02.2012.

For Petitioner : Mr. V.Ravi

For Respondents: Mr. Niranjan Rajagopalan (for R1)
Standing Counsel

Mr. D. Sathyaraj,
Additional Government Pleader
(for R2 & R3)

O R D E R
(through video conference)

Heard Mr. V.Ravi, Learned Counsel for the Petitioner, Mr. Niranjan Rajagopalan, Learned Standing Counsel for the First Respondent and Mr. D.Sathyaraj, Learned Additional Government Pleader for the Second and Third Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner made an application dated 27.02.2012 under Section 6(1) of the Right to Information Act, 2005 (hereinafter referred to as the 'Act' for short) to the Chief Secretary to the Government of Tamil Nadu requesting to inform the programme particulars of Thiru. Vellakoil M.P.Saminathan, former Minister for Highways and Minor Ports on 10.06.2007 and 10.07.2007. In response thereto, Letter No. 8004/RH.III/2012-1 dated 07.03.2012 was sent by the Under Secretary to Government and Public Information Officer, Public (RH.III) Department, Secretariat, Chennai - 600 009 to the Public Information Officer/Under Secretary to Government, Public (Special - B) Department, Chennai - 600 009 transferring the aforesaid application made by the Petitioner stating that it relates to that Department and the Petitioner had been sent a copy of the same. Thereafter, the Deputy Secretary to Government/Public Information Officer, Public (Special - B) Department, Secretariat, Chennai - 600 009 by Letter No. 536/Special.B/2012-1 dated 27.03.2012 informed the Petitioner that the programme particulars of Thiru. Vellakoil M.P.Saminathan, former Minister for Highways and Minor Ports on 10.06.2007 and 10.07.2007 were not available with that Department. Aggrieved thereby, the Petitioner had filed complaint under Section 18 of the Act before the First Respondent, viz., State Information Commission, requesting to enquire into the complaint and for a direction to the Third Respondent to furnish the information to the Petitioner that he had requested. Though the First Respondent by Order No. 9501/ A/2012 dated 04.06.2012 initially required the Second Respondent to send his remarks on the comments made by the Petitioner within three weeks from the date of receipt of copy of that order, by another Order No. 36010/SCIC/2012 dated 09.10.2012, the Petitioner was informed by the First Respondent as follows:-

"The Petitioner has not exhausted the provision of making first appeal under Section 19(1) of the RTI Act before approaching the Commission with second appeal under Section 19(3). Hence the petition is dismissed."

The instant Writ Petition has been filed challenging the said order.

3. There is substantial force in the contention of the Learned Counsel for the Petitioner that the aforesaid course of action followed by the First Respondent is not in accordance with law. At this juncture, reference must be made to the decision of the Hon'ble Supreme Court of India in Chief Information Commissioner -vs- State of Manipur [(2011) 15 SCC 1], where the distinction in the nature of remedies under Sections 18 and 19(3) of the Act before the State Information Commission has been clearly explained in the following words:-

"29. If we look at Section 18 of the Act it appears that the powers under Section 18 have been categorized under clauses (a) to (f) of Section 18(1). Under clauses (a) to (f) of Section 18(1) of the Act the Central Information Commission or the State Information Commission, as the case may be, may receive and inquire into complaint of any person who has been refused access to any information requested under this Act [Section 18(1)(b)] or has been given incomplete, misleading or false information under the Act [Section 18(1)(e)] or has not been given a response to a request for information or access to information within time limits specified under the Act [Section 18(1)(c)]. We are not concerned with provision of Section 18(1)(a) or 18(1)(d) of the Act. Here we are concerned with the residuary provision under Section 18(1)(f) of the Act.

30. Under Section 18(3) of the Act the Central Information Commission or State Information Commission, as the case may be, while inquiring into any matter in this Section has the same powers as are vested in a civil court while trying a suit in respect of certain matters specified in Section 18(3)(a) to (f). Under Section 18(4) which is a non-obstante clause, the Central Information Commission or the State Information Commission, as the case may be, may examine any record to which the Act applies and which is under the control of the public authority and such records cannot be withheld from it on any ground.

31. It has been contended before us by the respondent that under Section 18 of the Act the Central Information Commission or the State Information Commission has no power to provide access to the information which has been requested for by any person but which has been denied to him. The only order which can be passed by the Central Information Commission or the State Information Commission, as the case may be, under Section 18 is an order of penalty provided under Section 20. However, before such order is passed the

Commissioner must be satisfied that the conduct of the Information Officer was not bona fide.

32. We uphold the said contention and do not find any error in the impugned judgment of the High court whereby it has been held that the Commissioner while entertaining a complaint under Section 18 of the said Act has no jurisdiction to pass an order providing for access to the information.

33. In the facts of the case, the appellant after having applied for information under Section 6 and then not having received any reply thereto, it must be deemed that he has been refused the information. The said situation is covered by Section 7 of the Act. The remedy for such a person who has been refused the information is provided under Section 19 of the Act. A reading of Section 19(1) of the Act makes it clear.

34. Section 19(1) of the Act is set out below:-

"19. Appeal. - (1) Any person who, does not receive a decision within the time specified in sub-section (1) or clause (a) of sub-section (3) of section 7, or is aggrieved by a decision of the Central Public Information Officer or the State Public Information Officer, as the case may be, may within thirty days from the expiry of such period or from the receipt of such a decision prefer an appeal to such officer who is senior in rank to the Central Public Information Officer or the State Public Information Officer as the case may be, in each public authority:
Provided that such officer may admit the appeal after the expiry of the period of thirty days if he or she is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time."

35. A second appeal is also provided under sub-section (3) of Section 19. Section 19(3) is also set out below:-

"19.(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:

Provided that the Central Information Commission or the State Information Commission, as the case may be, may admit the appeal after the expiry of the period of ninety days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time."

36. Section 19(4) deals with procedure relating to information of a third party. Sections 19(5) and 19(6) are procedural in nature.

37. Under Section 19(8) the power of the Information Commission has been specifically mentioned. Those powers are as follows:-

"19(8). In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to,--

(a) require the public authority to take any such steps as may be necessary to secure compliance with the provisions of this Act, including--

(i) by providing access to information, if so requested, in a particular form;

(ii) by appointing a Central Public Information Officer or State Public Information Officer, as the case may be;

(iii) by publishing certain information or categories of information;

(iv) by making necessary changes to its practices in relation to the maintenance, management and destruction of records;

(v) by enhancing the provision of training on the right to information for its officials;

(vi) by providing it with an annual report in compliance with clause (b) of sub-section (1) of section 4;

(b) require the public authority to compensate the complainant for any loss or other detriment suffered;

(c) impose any of the penalties provided under this Act;

(d) reject the application."

38. The procedure for hearing the appeals has been framed in exercise of power under clauses (e) and (f) of sub-section (2) of Section 27 of the Act. They are called the Central Information Commission (Appeal

Procedure) Rules, 2005. The procedure of deciding the appeals is laid down in Rule 5 of the said Rules. Therefore, the procedure contemplated under Section 18 and Section 19 of the said Act is substantially different.

39. The nature of the power under Section 18 is supervisory in character whereas the procedure under Section 19 is an appellate procedure and a person who is aggrieved by refusal in receiving the information which he has sought for can only seek redress in the manner provided in the statute, namely, by following the procedure under Section 19. This Court is, therefore, of the opinion that Section 7 read with Section 19 provides a complete statutory mechanism to a person who is aggrieved by refusal to receive information. Such person has to get the information by following the aforesaid statutory provisions. The contention of the appellant that information can be accessed through Section 18 is contrary to the express provision of Section 19 of the Act.

....

42. We are of the view that Sections 18 and 19 of the Act serve two different purposes and lay down two different procedures and they provide two different remedies. One cannot be a substitute for the other.

43. It may be that sometime in statute words are used by way of abundant caution. The same is not the position here. Here a completely different procedure has been enacted under Section 19. If the interpretation advanced by the learned counsel for the respondent is accepted in that case Section 19 will become unworkable and especially Section 19(8) will be rendered a surplusage. Such an interpretation is totally opposed to the fundamental canons of construction.

47. It is well-known that the legislature does not waste words or say anything in vain or for no purpose. Thus a construction which leads to redundancy of a portion of the statute cannot be accepted in the absence of compelling reasons. In the instant case there is no compelling reason to accept the construction put forward by the respondents.

48. Apart from that the procedure under Section 19 of the Act, when compared to Section 18, has several safeguards for protecting the interest of the person who has been refused the information he has sought.

Section 19(5), in this connection, may be referred to. Section 19(5) puts the onus to justify the denial of request on the Information Officer. Therefore, it is for the officer to justify the denial. There is no such safeguard in Section 18. Apart from that the procedure under Section 19 is a time-bound one but no limit is prescribed under Section 18. So out of the two procedures, between Section 18 and Section 19, the one under Section 19 is more beneficial to a person who has been denied access to information.

49. There is another aspect also. The procedure under Section 19 is an appellate procedure. A right of appeal is always a creature of statute. A right of appeal is a right of entering a superior forum for invoking its aid and interposition to correct errors of the inferior forum. It is a very valuable right. Therefore, when the statute confers such a right of appeal that must be exercised by a person who is aggrieved by reason of refusal to be furnished with the information."

It is specific case of the Petitioner that he has made a complaint under Section 18 of the Act, and despite the authoritative pronouncement of the Hon'ble Supreme Court of India holding the field, it was certainly improper on the part of the First Respondent to have dismissed the same requiring the Petitioner to exhaust the remedy by way of first appeal under Section 19(1) of the Act, by treating as if the Petitioner had filed a second appeal under Section 19(3) of the Act.

4. In that view of the matter, it is not possible to sustain the impugned order, which is consequently set aside and the matter is remitted to the First Respondent and shall be listed for hearing on 03.12.2020, when the Petitioner and the Second and Third Respondents shall appear on that date without fail. If the First Respondent is not in a position to take up the matter for hearing on that date, it shall inform to all parties concerned of the date of hearing to which it is adjourned in the prescribed manner. Though obvious, it is clarified that no view has been expressed by this Court on the correctness or otherwise on the merits of the contentions raised by the Petitioner on his entitlement to claim relief in the complaint made under Section 18 of the Act. The First Respondent shall afford full opportunity of hearing to all parties concerned following the prescribed procedure in consonance with the principles of natural justice and shall pass reasoned orders dealing with each of the contentions raised by the parties on merits and in accordance with law and communicate the decision taken to them under written acknowledgment.

5. In the result, the Writ Petition is ordered on the aforesaid terms. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

vjt/dm

To

1. State Chief Commissioner,
Tamil Information Commission,
No. 2, Theagarayar Salai,
Near Alaiyamman Koil,
Teynampet,
Chennai - 600 018.
2. The Public Information Officer &
The Secretary Public (RHIII) Department,
Government of Tamil Nadu Secretariat,
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3. Deputy Secretary to Government/Public Information Officer,
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RLD(CO)
SP(02/11/2020)