

THE HON'BLE SRI JUSTICE MUMMINENI SUDHEER KUMAR

WRIT PETITION NO.15627 OF 2022

ORDER:

This Writ Petition is filed seeking a Writ of Mandamus to declare the inaction of the first respondent i.e. the State Information Commission in adjudicating Second Appeal No.1787/SIC-KSR/SA-419/2022 dated 07.02.2022 filed by the petitioner, as arbitrary, illegal and violative of principles of natural justice and sought a consequential direction to direct the first respondent to dispose of the appeal pending before it.

2. The facts of the case are that the petitioner made an application before the second respondent under Section 6(1) of the Right to Information Act, 2005 ("the Act, 2005" for brevity), seeking certain information, as narrated in the said application. As the second respondent, neither furnished the information requested by the petitioner nor passed any order rejecting the request of the petitioner within 30 days, as prescribed under Section 7(1) of the Act, 2005, the petitioner filed an appeal before the third respondent under Section 19(1) of the Act, 2005.

Thereupon, the third respondent issued notice vide RTI-Appeal/58/2021 dated 22.10.2021 to the petitioner as well as the second respondent fixing the date of hearing as 30.10.2021 and heard the matter, but failed to pass any orders thereon. Thereafter, having failed to get any response from the third respondent within the time prescribed under sub-Section (6) of Section 19 of the Act, 2005, the petitioner filed S.A.No.1787/SIC-KSR/SA-419/2022 on 07.02.2022 before the first respondent.

3. Unfortunately, even at this stage, there is no response from the first respondent as well within the time prescribed under Section 19(6) of the Act, 2005. The thirty-days' time for disposal of the Second Appeal by the first respondent had expired by 07.03.2022. Therefore, the petitioner herein approached this Court by filing the present Writ Petition on 25.03.2022 questioning the inaction of the first respondent and seeking disposal of the Second Appeal pending before the first respondent.

4. Heard Mr. Bathula Raj Kiran, learned counsel for the petitioner and the learned Assistant Government Pleader

and with their consent, the Writ Petition is being disposed of at the admission stage.

5. It is unfortunate that the State Information Officer, the first appellate authority and also the second appellate authority have failed to discharge a statutory duty cast upon them under the provisions of the Act, 2005.

6. The Right to Information Act, 2005, was enacted by the Parliament while repealing Freedom of Information Act, 2002, bringing important changes such as establishment of an appellate machinery with investigating powers to review decisions of the Public Information Officers and introducing penal provisions for failure to provide information as per law, provisions to ensure maximum disclosure and minimum exemptions, consistent with the constitutional provisions and effective mechanism for access to information and disclosure by authorities.

7. Section 7 of the Act, 2005 mandates that on receipt of a request under Section 6 of the Act, 2005, the Public Information Officer shall provide the information, as expeditiously as possible and, in any case, within 30 days

of receipt of the request or reject the request for any of the reasons permissible under the Act.

8. Section 19(1) of the Act, 2005 provides for a remedy of appeal in case of non-furnishing of information within 30 days or rejection of such request by the Information Officer. Under Section 19(6) of the Act, 2005, the appellate authority is also mandated to dispose of the appeal within 30 days of receipt of the appeal or within such extended period not exceeding a total of 45 days from the date of filing of appeal. Further, Section 19(3) of the Act, 2005 provides for further appeal i.e. Second Appeal to the Information Commission, which is also obligated to dispose of the said Second Appeal within 30 days on receipt of the appeal. The Information Commission is also conferred with various powers including the power to impose any of the penalties provided under Section 20 of the Act, 2005. The time schedules fixed under the Act from stage to stage and the finality given to the order of the Information Commission under Section 19(7) of the Act, 2005 makes it clear that the intention of the Legislature is to see that the information sought for by a citizen is furnished without fail

within the time schedule prescribed under the Act. But, unfortunately, in the instant case, even the first respondent, who is empowered with a power to impose penalties, also failed to act in accordance with law and as required under the provisions of the Act, 2005 and thereby, compelling the petitioner to approach this Court by invoking extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

9. It is settled law that the Right to Information, subject to reasonable restrictions, as provided under the Act, 2005, is considered as a Fundamental Right guaranteed under Article 19 of the Constitution of India. The respondents herein failed to discharge their duty cast upon them and thereby, infringed the Fundamental Right of the petitioner guaranteed under Article 19 of the Constitution of India.

10. It is a fit case where exemplary costs could be imposed upon the respondents for their failure to adhere to the statutory provisions, which are mandatory in nature. However, for the time-being, a lenient view is taken and while sensitizing the first respondent of its statutory obligations, this Writ Petition is disposed of at the

admission stage directing the first respondent to adjudicate the Second Appeal No.1787/SIC-KSR/SA-419/2022 dated 07.02.2022 pending before it in accordance with law and also to examine the necessity of exercising power under Section 19(8)(c) read with Section 20 of the Right to Information Act, 2005 and dispose of the said Second Appeal within a period of two (2) weeks from the date of receipt of a copy of this order.

There shall be no order as to costs. Miscellaneous applications, if any, pending shall stand closed.

(MUMMINENI SUDHEER KUMAR, J)

28th March 2022
RRB