

OD 3

WPO/1512/2023
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

SUBRATA GOSWAMI
VS
THE STATE CHIEF INFORMATION COMMISSIONER
WEST BENGAL INFORMATION COMMISSION

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date: 2Second August, 2023.

Appearance:
Mr. Pratyush Patwari, Adv.
. . .for the petitioner.

Mr. Raja Saha, Adv.
Ms. Arpita Saha, Adv.
Mr. Sanjay Mukherjee, Adv.
. . .for the State Information Commission

The Court: Learned counsel for the petitioner contends that the petitioner's second appeal under Section 19(3) of the Right to Information Act, 2005 is pending for more than one month above the time limit of 45 days after preferring the same. By citing two judgments of Co-ordinate Benches of this Court, learned counsel for the petitioner argues that the reasonable time limit for deciding the Second Appeal should also be construed to be 45 days.

It is argued that the petitioner is a septuagenarian retired person and as such, is suffering unnecessary for the delay caused by the Second Appellate Authority in deciding the issue.

Learned counsel for the Second Appellate Authority submits that the ratio sought to be relied on by the petitioner is contrary to the statute. It is submitted that the silence in the statute regarding in the time limit for deciding Second Appeals is deliberate and justified, since, whereas the SPIO and the First Appellate Authority deal only with information regarding a particular department or branch, the Second Appellate Authority deals with appeals from the entire State and, as such, has to process numerous bulk of applications as compared to the other two authorities.

That apart, it is argued that the Second Appellate Authority was without any Chief Information Commissioner for a considerable period of about one year, for which there is a huge backlog already in place. However, the Second Appellate Authority is trying its best to resolve the pending appeals serially, as early as possible.

It is further contended that the Second Appellate Authority is short of man power and, as such, ought not to be directed to dispose of any Second Appeal within very short period, unless there is some special circumstance to justify it.

Learned counsel for the petitioner submits that the grievance of the petitioner is that the First Appellate Authority did not advert to the specific provisions of the statute or the facts of the case. As such, the petitioner seeks to redress such grievance before the Second Appellate Authority itself as provided in Section 19(3) of the Right to Information Act, 2005. The language of the said

sub-Section is, in the interpretation of learned counsel for the petitioner, that the Second Appeal lies within 90 days “from the date on which the decision should have been made” or was actually received. Hence, in situations as the present one, where the First Appellate Authority failed to decide the issues in time, furnishes sufficient ground for the petitioner to ask the Second Appellate Authority to pass an order on merits against the order of the SPIO.

Be that as it may, although there may be some justification in the argument of the petitioner on the question of there being no statutory period for disposing of the Second Appeal, which might be justified in view of the nature of function undertaken by the Second Appellate Authority, the jurisdiction of which is spread over the entire State, as opposed to the first two authorities, since the petitioner in the present case is around 70 years of age and is a retired person, it is expected that the Second Appeal pending at the behest of the petitioner be decided expeditiously.

Hence, even without going into the question as to what would be a reasonable period for disposal of the Second Appeal in the facts and circumstances of the case and the inconvenience cited by the respondent authorities, the Second Appellate Authority ought to be directed to decide the Second Appeal of the petitioner within a short period on the ground of the age and circumstances of the petitioner.

Accordingly, WPO 1512 of 2023 is disposed of by directing the respondent, that is the State Chief Information Commissioner, West Bengal Information Commission, to dispose of the second appeal pending at the behest of the petitioner under Section 19(3) of the Right to Information Act, 2005, as

expeditiously as possible, positively within two months from date, in accordance with law.

No order as to costs.

Urgent certified website copy of this order, if applied for, be made available to the parties subject to compliance with the requisite formalities.

(SABYASACHI BHATTACHARYYA, J.)

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