

(2008) 07 KAR CK 0043

In the Karnataka High Court

Case No : Writ Petition No. 8127 of 2008

Bangalore International Airport Limited

APPELLANT

Vs

Karnataka Information Commission and Others

RESPONDENT

Date of Decision : 21-07-2008

Acts Referred:

Right to Information Act, 2005 — Section 15 (4), 2 (h), 4 (1) (b)

Citation : (2008) ILR (Kar) 3618 : (2009) 2 KarLJ 209 : (2008) 4 KCCR 2418

Hon'ble Judges : N. Kumar, J

Bench : Single Bench

Advocate : R.N. Narasimhamurthy for T.S. Amar Kumar, for Lawyers Inc, for the Appellant; B. Veerappa, AGA for R1, R3 and R4 and B.N. Jagadeesh, for R2, for the Respondent

Final Decision : Allowed

Judgement

N. Kumar, J.—The petitioner has challenged in this writ petition the order passed by the 1st respondent-Karnataka Information Commissioner dated 14.05.2008 as per Annexure-C declaring the petitioner as a Public Authority" as defined u/s 2(h) of the Right to Information Act, 2005, for short hereinafter referred to as "the Act".

2. The petitioner is a public limited company. It is not a Government Company as defined u/s 117 of the Companies Act, 1956. The 2nd respondent herein by name Sri Benson Issac filed an application u/s 4(1)(b) of the Act seeking suo moto publication of the information in respect of the petitioner as provided u/s 4(1)(b) of the Act. The petitioner replied stating that it is not a "Public Authority" as defined u/s 2(h) of the Act and hence it was not required to make such a publication u/s 4(1)(b) of the Act. Aggrieved by the same, the 2nd respondent moved the Karnataka Information Commissioner (for short hereinafter referred as "KIC") u/s 18 of the Act. The said complaint was listed before Sri KATHippeswamy, the State Information Commissioner (for short hereinafter referred to as "SIC".) The SIC issued notice to the petitioner seeking its

response. SIC was also of the opinion that, the complaint involves question of substantial law, and therefore he ordered that the complaint be posted for further hearing by Full Bench. Thereafter, the State Chief Information Commissioner (for short hereinafter referred to as the "SCIC") took up the matter for consideration heard the parties and passed the impugned order holding that petitioner is a "Public Authority" under the Act and therefore he issued directions under the said Act. Aggrieved by the said order the petitioner is before this Hon"ble Court.

3. Sri R.N. Narasimhamurthy, learned Senior Counsel appearing for the petitioner contended that in the first place the impugned order passed is one without jurisdiction as the SCIC had no jurisdiction to decide this matter, when once SIC was of the view that it has to be heard by a Full Bench. He also contended that even on merits the impugned order is unsustainable. Per contra, learned Counsel for the 2nd respondent submitted that the SIC has no power to refer the matter to the Full Bench as he has done. In those circumstances, the SCIC was well within his jurisdiction to entertain this matter by himself and pass the impugned order. He also submitted that this question of jurisdiction was never agitated by the petitioner before the SCIC and therefore, they are estopped from challenging the order on that ground before this Court. The learned Government Advocate supported the impugned order.

4. In exercise of the powers conferred under Sub-sections (1) and (2) of Section 27 read with Sub-section (4) of Section 15 of the Act, the Government of Karnataka has made the Karnataka Right to Information (Constitution of Benches) Rules, 2006 (for short hereinafter referred to as "the Rules"). Rules 3 and 4 read as under:

3. Constitution of Benches: (1) The State Chief Information Commissioner shall be competent to constitute Benches consisting of the State Chief Information Commissioner with one or more State Information Commissioners or consisting of two or more State Information Commissioners.

(2) It shall also be competent for the State Chief Information Commissioner or any other State Information Commissioner authorised by State Chief Information Commissioner in this behalf to function as a Bench consisting of a single member and exercise the jurisdiction, power and authority of the Karnataka Information Commission in respect of such classes of cases or such matters pertaining to such classes of cases as the State Chief Information Commissioner may by general or special order specify:

Provided that if at any stage of the hearing of any such case or matter it appears to the State Chief Information Commissioner or State Information Commissioner that the case or matter is of such a nature that it ought to be heard by a Bench consisting of two or more members the case may be transferred by State Chief Information Commissioner or as the case may be, referred to him for transfer to such Bench as the State Chief Information Commissioner may deem fit.

4. Reference to Full Bench: Notwithstanding anything contained in Rule 3, the State Chief Information Commissioner may and if a Bench referred to in Rule 3 so thinks fit, shall, constitute a full Bench of such number of State Information Commissioners as he may specify. The decision of the full Bench shall be in accordance with the opinion of the majority.

5. The aforesaid provisions provide for constitution of Benches. It is the prerogative of the SCIC to constitute Benches consisting of himself with one or more Sics or consisting of two or more Sics. Even a single Member of the Commission could function as a Bench. Such a Bench consisting of a single Member can exercise the jurisdiction, power and authority of the KIC, in respect of such classes of cases or such matters pertaining to such classes of cases as the SCIC may by general or special order specify. Therefore, it is clear that the SCIC has been empowered to constitute a Bench consisting of a Single Member, a Bench consisting of two Members and a Full Bench. The Proviso to Sub-rule (2) provides that after a case is assigned to a Bench consisting of a Single Member, during the course of the hearing, at any stage, it appears to the SCIC or the SIC who is hearing the matter, the case is of such a nature, that it ought to be heard by a Bench consisting of two or more members, then the said case is to be heard by the Bench consisting of two or more Members. If the SCIC is satisfied to that effect, then he may transfer the said case to such Bench as he may deem fit after constituting such Bench. If it is the SIC who is of the view that it has to be heard by a Bench consisting of two or more members, then he may transfer the said case to the SCIC for constitution of a Bench consisting of two or more Members and on such transfer, the SCIC shall transfer the case to such Bench he may deem fit. Rule 4 deals with constitution of Full Bench and referring the matter to the Full Bench. Once a case is listed before a Bench consisting of a single Member or two Members of the Commission, if that Bench does not include the SCIC and it appears to him or them that the case before him or them is of such a nature that it ought to be heard by a Bench consisting of two or more Members or Full Bench then he or they can not directly refer the matter to a Bench consisting of two Members or a Full Bench. He or they shall transfer the said case to the SCIC who in turn may transfer the said case to such Bench or Full Bench as he may deem fit. Similarly, when once the SCIC is of the view that the matter is of such a nature, that it ought to be heard by a Bench consisting of two or more Members, or when it is transferred to him by such SIC, for being heard by a Bench of two or more Members or by a Full Bench SCIC has no jurisdiction to decide such matters on merits by constituting a Bench of himself only. If the case is transferred by a Bench with a request to constitute a Full Bench, the SCIC has no discretion in the constitution of the Bench, and he shall constitute a Full Bench.

6. In the instant case, the SIC when the matter was listed before him, ordered issue of notice to the Chief Executive Officer of the petitioner enclosing the copy of the complaint petition and also a copy of the application dated 08.07.2007 of the 2nd respondent seeking views/comments of the petitioner, and adjourned the

case to 06.12.2007 at 3.30 p.m. In the said order he observed that as the complaint involves questions of substantial law, the complaint is posted for further hearing by Full Bench of the Commission. It appears the SIC realised that he has no power to transfer the complaint to Full Bench and the said power is vested only with SCIC. Therefore, he referred the complaint to SCIC. However, SCIC instead of referring the complaint to the Full Bench decided to decide the complaint by himself. Then he issued notice to the parties, heard them and passed the impugned order. By the impugned order, it was held that the petitioner is a body substantially financed by the Government and is therefore a "Public Authority" as defined u/s 2(h) of the Act and went on to issue further directions pursuant to the said Act. Therefore, it is clear when once the SIC was of the view that the complaint involves questions of substantial law and it has to be decided by a Full Bench, though he passed an order directing further hearing by the Full Bench, he appears to have realised that he has no such power and therefore he has referred the complaint to the SCIC. The said reference/transfer of the complaint which was pending before him to the SCIC is legal and valid. However, it is the SCIC who should have referred it to a Full Bench. In fact Rule 4 categorically states if a Bench referred to in Rule 3 so thinks fit the SCIC shall constitute a Full Bench of such number of SIC as he may specify. In those circumstances, the SCIC had no jurisdiction to decide the said complaint by constituting Bench consisting of himself only. He was legally bound to constitute a Full Bench and transfer the said complaint to the Full Bench for decision. Therefore, the impugned order passed by the SCIC is one without jurisdiction, void ab initio and liable to be set aside.

7. In so far as the argument that this question was not raised by the petitioner before the SCIC and therefore, he is estopped from urging it in this writ petition is concerned, it is a question of jurisdiction. It is settled law that the parties by consent cannot confer jurisdiction on an Authority if the said Authority had no jurisdiction under law. Therefore, notwithstanding the fact that this question was not urged before SCIC, it is open to the petitioner to urge this ground in this writ petition and the said point is well taken and it is therefore upheld.

8. In so far as the merits of the case is concerned, it becomes an order without jurisdiction and therefore, it is liable to be set aside keeping open the contention of both the parties intact to be re-agitated before the Full Bench which shall decide the case on merits, in accordance with law, without in any way being influenced by any of the observations of this Court.

9. As this matter is pending before the authorities for more than one and a half years, it is appropriate that the SCIC shall take steps to constitute a Bench in accordance with the Proviso to Sub-rule (2) of Rule 3 and Rule 4 and such Bench shall dispose of this matter expeditiously. Hence I pass the following order:

(i) Writ petition is allowed.

(ii) The impugned order is set aside only on the ground of want of jurisdiction.

(iii) All contentions are left open to be decided by the Bench on merits and in accordance with law.

(iv) The Chief Information Commissioner shall constitute the Full Bench within a week from the date of receipt of this order. The Full Bench so constituted shall decide this application of the 2nd respondent within two weeks from the date of its constitution after appearance of both the parties. Both the parties shall appear before the State Chief Information Commissioner on 01.08.2008 and take further instructions.

(v) No costs.