

(2023) 02 TEL CK 0062
In the Telangana High Court
Case No : Writ Appeal No. 190 Of 2023

Bhushal Singh

APPELLANT

Vs

Telangana State Information Commission

RESPONDENT

Date of Decision : 13-02-2023

Acts Referred:

Constitution Of India, 1950 — Article 19(1)(a), 19(2), 21
Right to Information Act, 2005 — Section 2(k), 3, 4, 6(1), 8, 9, 11, 15(1), 19(1),
19(3), 19(7), 19(8), 20, 20(2)

Citation : (2023) 02 TEL CK 0062

Hon'ble Judges : Ujjal Bhuyan, CJ;N. Tukaramji, J

Bench : Division Bench

Advocate : B.Sapna Reddy, D.Pallavi, M.Durga Prasad, Ch.Kalyan Rao

Final Decision : Allowed

Judgement

1. Heard Ms. B.Sapna Reddy, learned counsel for the appellant; Ms. D.Pallavi, learned Government Pleader for Information & Technology representing respondent No.1; Mr. M.Durga Prasad, learned Standing Counsel for Greater Hyderabad Municipal Corporation (GHMC) representing respondents No.2 and 3; and Mr. Ch.Kalyan Rao, learned Government Pleader for General Administration representing respondent No.4.

2. This appeal is directed against the order dated 20.06.2022 passed by the learned Single Judge disposing of W.P.No.26034 of 2022 filed by the appellant as the writ petitioner.

3. Appellant had filed the related writ petition seeking a direction to respondent No.1 i.e., Telangana State Information Commission to consider his complaint – cum- representation dated 11.05.2022 by invoking Section 20 of the Right to Information Act, 2005 (briefly 'the Act' hereinafter).

4. Appellant had filed an application dated 25.05.2021 before the Public Information Officer (PIO) in the office of the Deputy Commissioner, Greater

Hyderabad Municipal Corporation (GHMC) Circle-3, Hayathnagar, Hyderabad under Section 6(1) of the Act for furnishing information on nine points. When the PIO did not furnish the information sought for, appellant filed first appeal before the first appellate authority on 26.06.2021 under Section 19(1) of the Act. First appellate authority failed to hear the appeal and pass appropriate order.

5. When appellant did not receive the information sought for even after thirty days of filing of the first appeal, he preferred second appeal before the Telangana State Information Commission i.e., respondent No.1. By the order dated 23.03.2022, respondent No.1 directed the PIO (respondent No.3) to furnish the information sought for to the appellant within two weeks and thereafter to submit compliance report. While closing the appeal, respondent No.1 initiated separate proceedings against the PIO by issuing show cause notice to him for not attending the hearing before respondent No.1 and for not furnishing the information sought for to the appellant within the stipulated time.

6. With the grievance that neither the information sought for was furnished to him nor further steps were taken by respondent No.1 against the defaulting PIO, appellant submitted complaint –cum- representation dated 11.05.2022 before respondent No.1. When the said complaint –cum- representation also failed to elicit any response, appellant was compelled to knock the doors of this Court by filing the related writ petition.

7. This Court by the order dated 20.06.2022 adverted to the order of respondent No.1 dated 23.03.2022 as well as Section 20 of the Act and thereafter disposed of the writ petition by directing the appellant to approach respondent No.1 for seeking appropriate relief. Net result of the above direction is that the appellant is back to square one. It is in such circumstances that the present appeal has been preferred.

8. Objective of the Right to Information Act, 2005 (already referred to as 'the Act' hereinbefore) is to provide for setting up a practical regime of right to information for citizens to secure access to information under the control of public authorities in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto.

9. Preamble to the Act says that Constitution of India has established a democratic republic; democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold governments and their instrumentalities accountable to the governed; since revelation of information in actual practice is likely to come in conflict with other public interests including efficient operations of the governments, optimum use of limited fiscal resources and preservation of confidentiality of sensitive information, it was felt that the conflicting interests are required to be harmonised while preserving the paramountcy of the

democratic ideal.

10. Supreme Court in *Institute of Chartered Accountants of India v. Shaunak H. Satya* (2011) 8 SCC 781 dealt with the object of the Act and held that object of the Act is to harmonize the conflicting public interests i.e., ensuring transparency to bring in accountability and containing corruption on the one hand and at the same time to ensure that other public interests including efficient functioning of the governments, optimum use of limited fiscal resources and preservation of confidentiality of sensitive information are not adversely affected. Supreme Court held as follows:

One of the objects of democracy is to bring about transparency of information to contain corruption and bring about accountability. But achieving this object does not mean that other equally important public interests including efficient functioning of the governments and public authorities, optimum use of limited fiscal resources, preservation of confidentiality of sensitive information, etc. are to be ignored or sacrificed. The object of the RTI Act is to harmonise the conflicting public interests, that is, ensuring transparency to bring in accountability and containing corruption on the one hand, and at the same time ensure that the revelation of information, in actual practice, does not harm or adversely affect other public interests which include efficient functioning of the governments, optimum use of limited fiscal resources and preservation of confidentiality of sensitive information, on the other hand. While Sections 3 and 4 seek to achieve the first objective, Sections 8, 9, 10 and 11 seek to achieve the second objective.

10.1. Again in *Chief Information Commissioner v. State of Manipur* (2011) 15 SCC 1, Supreme Court referred to the preamble of the Act and observed that the Act has been enacted to promote transparency and accountability in the working of every public authority in order to strengthen the core constitutional values of a democratic republic. Parliament had enacted the said Act keeping in mind the rights of an informed citizenry in which transparency of information is vital in curbing corruption while making the Government and its instrumentalities accountable. It was held as follows:

As its Preamble shows, the Act was enacted to promote transparency and accountability in the working of every public authority in order to strengthen the core constitutional values of a democratic republic. It is clear that Parliament enacted the said Act keeping in mind the rights of an informed citizenry in which transparency of information is vital in curbing corruption and making the Government and its instrumentalities accountable. The Act is meant to harmonise the conflicting interests of the Government to preserve the confidentiality of sensitive information with the right of citizens to know the functioning of the governmental process in such a way as to preserve the paramountcy of the democratic ideal. The Preamble would obviously show that the Act is based on the concept of an open society.

11. The Act provides for a hierarchy of authorities for an aggrieved citizen seeking information. As seen in this case, after failure to obtain requisite information from the PIO, appellant had filed first appeal and thereafter the second appeal. Despite a positive direction of the State Information Commission in the second appeal, which is a statutory body formed under Section 15(1) of the Act read with Section 2(k) thereof, the requisite information has not been furnished to the appellant.

12. Section 3 of the Act clearly says that all citizens of the country shall have the right to information and as per Section 4 thereof, it is the obligation of every public authority to maintain records and to furnish information sought for unless statutorily excluded.

13. PIO is a statutory authority. Under Section 5 of the Act, it is his bounden duty not only to furnish information statutorily provided but to comply with the orders of the appellate authority including the State Information Commission.

14. Way back in *State of UP v. Raj Narain* (1975) 4 SCC 428, Constitution Bench of the Supreme Court held that people of this country have a right to know every public act by their public functionaries. It was held that the right to know, which is derived from the concept of freedom of speech, though not absolute is a factor which should make one wary when secrecy is claimed for transactions which can at any rate have no repercussion on public security.

14.1. A Constitution Bench of the Supreme Court in *S.P.Gupta v. Union of India* 1981 Suppl SCC 87 held that the concept of an open government is a direct emanation from the right to know which seems to be implicit in the right to free speech and expression guaranteed under Article 19(1)(a) of the Constitution. Therefore, disclosure of information in regard to functioning of the Government must be the rule and secrecy an exception justified only where the strictest requirement of public interest so demands.

14.2. Supreme Court in *Reliance Petrochemicals Limited v. Proprietors of Indian Express Newspapers* (1988) 4 SCC 592 observed that people at large have a right to know in order to be able to take part in a participatory development in the industrial life and democracy. Right to know is a basic right which citizens of a free country aspire in the broader horizon of the right to live under Article 21 of our Constitution. That right has reached new dimensions and urgency. That right puts greater responsibility upon those who take upon themselves the responsibility to inform.

14.3. This position was reiterated by the Supreme Court in *Dinesh Trivedi v. Union of India* 1997 (4) SCC 306 wherein it was observed that in modern constitutional democracies, it is axiomatic that citizens have a right to know about the affairs of the Government which, having been elected by them seeks to formulate sound policies of governance aimed at their welfare. But like all other rights, this right is also not absolute. It has recognized limitations.

14.4. Research Foundation of Science Technology National Resource Policy v. Union of India (2005)10 SCC 510 is another case where Supreme Court in the context of environmental protection held that right to information and community participation necessary for protection of environment and human health is an inviolable part of Article 21 of the Constitution of India. In other words, it is a right which flows from Article 21 of the Constitution of India.

14.5. Finally, in Chief Information Commissioner ((2011)15 SCC 1 supra), Supreme Court after referring to its earlier decisions in Raj Narain ((1975)4 SCC 428 supra) and S.P.Gupta (1981 Suppl. SCC 87 supra) held that right to information which is basically founded on the right to know is an intrinsic part of the fundamental right to free speech and expression guaranteed under Article 19(1)(a) of the Constitution of India. The Act has been enacted to consolidate the fundamental right of free speech. However, Supreme Court clarified that such a right is subject to reasonable restrictions under Article 19(2) of the Constitution of India.

15. Therefore, from the above, it is evident that right to information is a fundamental right traceable to both under Article 19(1)(a) as well as under Article 21 of the Constitution of India. Of course, with the enactment of the Act, it is now a statutory right under Section 3 of the Act.

16. In K.S.Puttaswamy v. Union of India (2017) 10 SCC 1, Supreme Court was examining the contours of right to privacy. In that context a submission was made that since there is a statutory regime by which the right to privacy is adequately protected, it is not necessary to read a constitutional right to privacy into the fundamental rights. Rejecting such a contention, Supreme Court observed that elevating a right to the position of a constitutionally protected right, places it beyond the pale of legislative majorities; a statutory right can be modified, curtailed or annulled by simple enactment of the legislature but when it acquires the status of a constitutional right forming a part of basic structure of the constitution, it assumes an inviolable status. Supreme Court held as follows:

The submission that there is a statutory regime by virtue of which the right to privacy is adequately protected and hence it is not necessary to read a constitutional right to privacy into the fundamental rights, betrays lack of understanding of the reason why rights are protected in the first place as entrenched guarantees in a Bill of Rights or, as in the case of the Indian Constitution, as part of the fundamental rights. Elevating a right to the position of a constitutionally protected right, places it beyond the pale of legislative majorities. When a constitutional right such as the right to equality or the right to life assumes the character of being a part of the basic structure of the Constitution, it assumes inviolable status: inviolability even in the face of the power of amendment. Ordinary legislation is not beyond the pale of legislative modification. A statutory right can be modified, curtailed or annulled by a simple enactment of the legislature. In other words, statutory rights are subject to the compulsion of legislative majorities. The purpose of infusing a right with a

constitutional element is precisely to provide it a sense of immunity from popular opinion and, as its reflection, from legislative annulment. Constitutionally protected rights embody the liberal belief that personal liberties of the individual are so sacrosanct that it is necessary to ensconce them in a protective shell that places them beyond the pale of ordinary legislation. To negate a constitutional right on the ground that there is an available statutory protection is to invert constitutional theory. As a matter of fact, legislative protection is in many cases, an acknowledgment and recognition of a constitutional right which needs to be effectuated and enforced through protective laws. But, the important point to note is that when a right is conferred with an entrenched constitutional status in Part III, it provides a touchstone on which the validity of executive decision-making can be assessed and the validity of law can be determined by judicial review. Entrenched constitutional rights provide the basis of evaluating the validity of law. Hence, it would be plainly unacceptable to urge that the existence of a law creating a corresponding statutory right negates the rationale for a constitutional right or renders the constitutional right unnecessary.

17. A second appeal to an aggrieved person is provided under sub-section (3) of Section 19 of the Act. Sub-section (7) of Section 19 says that decision of the Central Information Commission or State Information Commission, as the case may be, shall be binding. That apart, under sub-section (8) of Section 19, Central Information Commission or the State Information Commission, besides exercising the powers conferred thereunder, also has the power to require the public authority to compensate the complainant for any loss or other detriment suffered; impose any of the penalty provided under the Act.

18. Section 20 deals with penalties. If the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has without any reasonable cause refused to receive an application for information or has not furnished information within the time specified or mala fide denied the request for information or furnishes incorrect, incomplete or misleading information etc., then it shall impose a penalty of Rs.250/- each day till the application is received or the information is furnished. However, the total amount of such penalty shall not exceed Rs.25,000/-. That apart, under Sub-section (2) of Section 20, the Central Information Commission or the State information Commission is competent to recommend for disciplinary action against the Central Public Information Officer or the State Public Information Officer.

19. In this case, the request for information was made before the PIO on 25.05.2021. Ultimately, respondent No.1 had directed the PIO on 23.03.2022 to furnish the information within two weeks. Almost two years have gone by since the first request for information was made and a year since the order of respondent No.1 was passed, yet the PIO has not furnished the requisite information. Such conduct of the PIO, in our view, is completely in violation of

the provisions of the Act and the fundamental right of the appellant to information.

20. That being the position, we direct respondents No.2 and 3 to furnish the information sought for by the appellant on 25.05.2021 within three weeks from today.

21. We further direct respondent No.1 to take necessary action under Section 19(8) and Section 20 of the Act against the erring official(s) by following the procedure laid down under the Act within a period of eight weeks from the date of receipt of a copy of this order.

22. Writ Appeal is accordingly allowed. No costs.

As a sequel, miscellaneous petitions, pending if any, stand closed.