

(2018) 02 UK CK 0007
In the Uttarakhand High Court
Case No : 94 of 2018

Jeet Pal

APPELLANT

Vs

State Information Commissioner, Uttarakhand & another

RESPONDENT

Date of Decision : 19-02-2018

Acts Referred:

[Right to Information Act, 2005](#), [Section 19](#),
[Section 18](#), [Section 18\(2\)](#) -
Appeal - Power and functions of information Commissions - Power and functions of
information Commissio

Citation : (2018) 02 UK CK 0007

Hon'ble Judges : Sudhanshu Dhulia

Bench : Single Bench

Advocate : Siddhartha Singh, Sudhanshu Dhulia

Judgement

1. The petitioner before this Court was In-charge Headmaster of a Government Primary School, Tanda Banhera, Tehsil Roorkee. On information

sought by one Munir/respondent no. 2 under the Right to Information Act (from hereinafter referred to as the ""Act""), an enquiry was set up by the

District Education Officer (Primary) and in the enquiry, it came out that the present petitioner, who was at the relevant time In-charge Headmaster

in Government Primary School, Tanda Banhera, was collecting Rs.200/- from each student which is not authorized under the law. Further, it has

also come out that an anomaly had been done i.e. misappropriation of funds in Mid-Day Meal Scheme. On this, a second appeal was filed before

the State Information Commissioner, Uttarakhand and the State Information Commissioner came to the conclusion that this matter needs to be

inquired into as the matter relates to corruption and misappropriation of funds etc, and therefore, the State Information Commissioner had directed

the District Magistrate, Haridwar to enquire into the matter vide order dated 19.12.2017. This order is presently being challenged by the petitioner

before this Court by means of the present writ petition.

2. The contention of the learned counsel for the petitioner Mr. Siddhartha Singh is that the petitioner was not a Public Information Officer and he

was never a party in the proceedings under the Act, either at the stage of first appeal or second appeal and further he has not been heard.

Therefore, the impugned order passed by the State Information Commissioner is without jurisdiction as the State Information Commissioner has no

power to pass such kind of order, which has been passed.

3. The powers of State Information Commissioner are given under Section 18 of the Act as well as under Section 19 of the Act (in second

appeal). However, this Court is presently concerned with the powers of the State Information Commissioner under Section 18 of the Act. Section

18 of the Act reads as under:-

18. Powers and functions of Information Commission- (1) Subject to the provisions of this Act, it shall be the duty of the Central

Information Commission or State Information Commission as the case may be to receive and inquire into a complaint from any

person,-

(a) who has been unable to submit a request to a Central Public Information Officer, or State Public Information Officer as the case

may be, either by reason that no such officer has been appointed under this Act, or because the Central Assistant Public Information

Officer or State Assistant Public Information Officer, as the case may be, has refused to accept his or her application for information

or appeal under this Act for forwarding the same to the Central Public Information Officer or State Public Information Officer or

Senior Officer specified in sub-section (1) of section 19 or the Central Information Commission or the State Information Commission,

as the case may be;

(b) who has been refused access to any information requested under this Act;

(c) who has not been given a response to a request for information or access to information within the time limits specified under this

Act;

(d) who has been required to pay an amount of fee which he or she considers unreasonable;

(e) who believes that he or she has been given incomplete, misleading or false information under this Act; and

(f) in respect of any other matter relating to requesting or obtaining access to records under this Act.

(2) Where the Central Information Commission or State Information Commission, as the case may be, is satisfied that there are

reasonable grounds to inquire into the matter, it may initiate an enquiry in respect thereof.

(3) The Central Information Commission or State Information Commission, as the case may be shall, while inquiring into any matter

under this section, have the same powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908, in

respect of the following matters, namely:-

(a) summoning and enforcing the attendance of persons and compel them to give oral or written evidence on oath and to produce the

documents or things;

(b) requiring the discovery and inspection of documents;

(c) receiving evidence on affidavit;

(d) requisitioning any public record or copies thereof from any court or office;

(e) issuing summons for examination of witnesses or documents; and

(f) any other matter which may be prescribed.

(4) Notwithstanding anything inconsistent contained in any other Act of Parliament, or the State Legislature, as the case may, the

Central Information Commission or the State Information Commission, as the case may be, may during the enquiry of any complaint

under this Act, examine any records to which this Act applies which is under the control of the public authority, and no such record

may be withheld from it on any grounds.

4. As it is clear from the order passed by the State Information Commissioner in Second Appeal that the matter regarding collection of Rs.200/-

from students by the petitioner in a Government Primary School came when the

information was sought from the Public Information Officer under the Act. Therefore, the State Information Commissioner has exercised its powers under sub-section (2) of Section 18 of the Act for an enquiry into the matter.

5. Definitely, the State Information Commissioner himself has no powers to initiate an enquiry against the petitioner as the petitioner is not an employee of the Commission. All the same, the order dated 19.12.2017 is only in the nature of information or at best in the nature of a complaint to the District Magistrate, who has now to examine the matter and if he finds proper after the preliminary satisfaction, he should initiate the enquiry against the petitioner.

6. Apart from the provisions under the Act, what is relevant for our purposes is also it is a statutory authority which is the State Information

Commissioner, which has found that there is a prima facie case of corruption and misappropriation of funds against the petitioner, and therefore, he

has brought this to the notice of the District Magistrate, Haridwar. Now, it is for the District Magistrate to either act upon it or in case, he is not

satisfied prima facie, he would be free not to take any action against the petitioner considering the nature of the complaint which relates to Mid-

Day Meal Scheme and misappropriation of money from students. Since this has been brought to the notice of the District Magistrate, he should at

least go into this aspect and thereafter depending upon his satisfaction, he may proceed further with the matter.

7. However, it is made clear that in case the District Magistrate, Haridwar proposes to take any action against the petitioner, he shall first give a

notice to the petitioner and only after the petitioner is duly heard by the concerned District Magistrate, the District Magistrate shall proceed further

in the matter.

8. With the above observations, the writ petition stands disposed.

9. The Registrar General of this Court is hereby directed to communicate a copy of this order to the concerned District Magistrate for onward compliance.