

(2019) 06 JH CK 0006
In the Jharkhand High Court
Case No : Writ Petition (C) No. 3937 Of 2017

Matlu Allam

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 18-06-2019

Acts Referred:

Right to Information Act, 2005 — Section 6, 19, 20(1)
Constitution Of India, 1950 — Article 226

Citation : (2019) 06 JH CK 0006

Hon'ble Judges : Sujit Narayan Prasad, J

Bench : Single Bench

Advocate : Rahul Kumar Gupta, Akshay Verma

Final Decision : Dismissed

Judgement

1. This writ petition has been filed under Article 226 of the Constitution of India whereby and whereunder order dated 16.03.2017 as contained in

Memo No.1681 passed by the Chief Information Commissioner, Jharkhand is under challenge, by which, the appeal has been disposed of on the ground of lack of territorial jurisdiction as also on merit.

2. It is the case of the petitioner that he has made an application for getting information on 28.11.2015 before the Deputy Director, In-charge-cum-

Public Information Officer, Khadi Gram Udyog, Ranchi as contained under Annexure-1, when no information was furnished he had made an

application by approaching the first appellate authority i.e. Director-cum- First Appellate Authority Gram Udyog Commission, Calcutta and when no

order has been passed by the first appellate authority he has invoked the jurisdiction of the second appellate authority by making application before the

under Secretary to the Jharkhand State Information Commissioner, Ranchi on

10.02.2016 as would be evident from Annexure-3, upon which, the Chief Information Commissioner has passed the order on 19.12.2016 by directing the Public Information Officer to provide information, failing which the Commissioner will consider for imposing penalty in view of the provision of Section 20(1) of the Right to Information Act, 2005, but subsequent order has been passed by the Chief Information Officer on 16.03.2017 holding therein that the second appeal is not maintainable on the ground that the information has been sought for which pertains to the Ministry of Micro, Small and Medium Enterprises, Government of India whose eastern office is situated at Kolkata and therefore, the Jharkhand State Information Commission has got no jurisdiction to hear the said appeal.

3. The contention raised by the learned counsel for the petitioner is that when the Chief Information Commission has passed order on 19.12.2016 he cannot turn around and take another view by passing the impugned order on 16.03.2017, therefore, the said order is not sustainable in the eye of law.

4. Mr. Rahul Kumar Gupta, learned Sr. S.C.-I, has submitted by refuting the ground agitated by the petitioner by submitting that the Jharkhand State Information Commissioner, has got no jurisdiction to entertain an application filed by the petitioner, since the petitioner is seeking information about the ministry which pertains to the Government of India and therefore, the petitioner ought to have made application before the Public Information Officer of the concerned ministry which is under the control of Government of India.

His further submission is that the petitioner has invoked the jurisdiction of the first appellate authority by making an appropriate application before the

Director-cum- First Appellate Authority, Khadi Gram Udyog having its office at Kolkata but the second appeal has been preferred before the

Jharkhand State Commission, is not maintainable for the simple reason that the second appeal will lie against the order passed by the first appellate

authority or if not passed by the first appellate authority but here although the order has not passed by the appellate authority, therefore, the jurisdiction

of the first appellate authority would be before the second appellate authority having its jurisdiction i.e. the Central Information Commission since the

information/documents has been sought for which is under the control of the Government of India.

Further submission is that even if the State Information Commission has passed

an order on 19.12.2016 it does not mean that the same cannot be rectified subsequently on the ground of jurisdiction, therefore, no illegality has been committed if after the order dated 19.12.2016, fresh order has been passed on 16.03.2017.

5. Having heard the learned counsel for the parties and on appreciation of their rival submissions it is not in dispute as provided under the Right to

Information Act, 2005 that an application can be made by a person seeking information by invoking the jurisdiction of Section 6 of the Right to

Information Act, 2005. The information can be supplied from the State Government or the Central Government or its functionary as the case may be.

In a case where information as has sought for by the applicant seeking information or supply the document pertaining to the business of the State

Government and application is to be filed before the Public Information Officer duly notified by the State Government and if the applicant is aggrieved

either due to non-supply or on any grounds whatsoever, the said applicant can invoke the jurisdiction of the first appellate authority as provided under

the proviso of Section 19 of the Right to Information Act, 2005.

If the order has been passed or kept pending by the functionary of the State Government, central Govt. has been notified by the Public Information

Commissioner the first appeal will be filed before the concerned first appellate authority duly notified by the State Government or in case where

document for information has been sought to be supplied by the Central Government or its body, the first appeal will lie before the first appellate

authority, duly been notified by the competent authority of the Central Government likewise in the case of second appeal, the appeal will be filed by

the aggrieved before the State Information Commission and if the information pertains to the Central Government the appeal will lie before the Central

Information Commission.

On the basis of aforesaid legal position and the factual aspects involved in this case it is evident therefrom that the petitioner has made an application

for getting certain information by making an application on 28.11.2015 before the Public Information Officer who was the Deputy Director, In-charge

of the Khadi Gram Udyog, Ranchi but no information has been supplied and therefore, the petitioner has invoked power conferred under Section 19 to

the Right to Information Act, 2005 by making application by way of first appeal

before the Director-cum-first appellate authority, Khadi and Gram

Udyog Commission, Calcutta on 06.01.2016 as would be evident from Annexure-2.

It seems that no information has been furnished even by the first appellate authority and thereafter, the petitioner has invoked the jurisdiction of the

State Information Commission by way of second appeal by making an application on 10.02.2016.

The State Information Commission, although in the first instance, has passed an order on 19.12.2016 (Annexure-4) directing the concerned Public

Information Officer to furnish the information otherwise consideration of passing proper order for imposing penalty in view of the provision of Section

20(1) of the Right to Information Act, 2005 would be exercised but thereafter, the State Information Commission has passed an order on 16.03.2017

(Annexure-5) holding the second appeal is not maintainable on the ground that the information pertains to the Ministry under the control of the Central

Government.

The impugned order needs no interference for the reasons:-

The petitioner when has not supplied with any information on his application dated 28.11.2015 (Annexure-1), he has invoked the jurisdiction of the

appellate authority by making an application dated 06.01.2016 (Annexure-2) before the Director-cum-First Appellate Officer Khadi Gram Udyog,

Calcutta but even first appellate authority has not provided information thereafter he has approached to the Second Appellate Authority, Jharkhand,

State Information Commission.

Now the question would be that when the petitioner has invoked the jurisdiction of the First Appellate Authority i.e. the Director-cum-First Appellate

Officer of the Khadi Gram Udyog, Calcutta which suggests that the petitioner is seeking an information from the department which is under the

control of the Central Government, therefore, when the petitioner invoked the jurisdiction of the first appellate authority which is an officer of the

Central Government the second appeal would lie before the Central State Commission but instead of doing so the petitioner has invoked the jurisdiction

of Jharkhand State Information Commission which cannot be said to be maintainable.

When the Act provides that the information is to be furnished by the State

Government of the Central Government and for which due notification is to be issued either by the State Government or by the Central Government appointing the Nodal Officer to act as the Public Officer or the first appellate authority while the power of second appeal has been provided to a Commission which is known as State Commission in the State level and the Central Commission in the Central level, therefore, any information if sought for by the petitioner pertaining to the functionary of the Central Government either the first appeal would lie before the functionary of the Central Government or the Central Commission and not before the State authority or the State Commission.

The contention, as has been raised by the petitioner, that once the Jharkhand State Commission has passed an order on 19.12.2016 directing the Public Information Officer to furnish the information, thereafter passing the order on 16.03.2017 is not proper but this contention of the petitioner is not acceptable to this Court for the reason that if any illegality has been committed by any authority/body which is contrary to the statutory provision the said authority has got power to rectify it, so that statute be followed.

The State Information Commission has come out with the order dated 16.03.2017 holding therein that the issues which is the subject matter is not coming under the jurisdiction of the State Commission and as such while doing so the State Commission has committed no illegality.

6. In view of the entirety of the facts and circumstances of this case, this Court is not inclined to interfere with the impugned order and accordingly, this writ petition fails and is dismissed.