

(2013) 09 JH CK 0030

In the Jharkhand High Court

Case No : Writ Petition (S) No. 7663 of 2012

Meghna Ruby Kachhap

APPELLANT

Vs

State of Jharkhand, The Deputy Commissioner and The Chief
Information Commissioner, Government of Jharkhand

RESPONDENT

Date of Decision : 19-09-2013

Acts Referred:

Citation : (2014) 1 AJR 292 : (2013) 4 JLJR 487

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Advocate : Rajiv Kumar, for the Appellant; Sumit Prakash, J.C. to A.A.G. for the Respondent Nos. 1 and 2, for the Respondent

Judgement

S. Chandrashekhar, J.—Petitioner has approached this Court challenging order dated 24.09.2012 in Appeal No. 2672 of 2011 passed by the Chief Information Commissioner, Government of Jharkhand, Ranchi. The brief facts of the case as disclosed in the writ petition are that, the petitioner is posted as Block Development Officer at Birni, district Giridih. On 19.07.2011 an application under the Right to information Act, 2005 (for short "the Act") was submitted by one Bhuvneshwar Modi seeking various informations relating to the persons who are availing of old age pension. Since the informations sought for was so extensive that it was not possible for the Public Information Officer to provide the same within the statutory period, however, on 14.10.2011 certain informations along with pension verification report were provided to the applicant. The applicant namely, Bhuvneshwar Modi approached the Deputy Commissioner, Giridih seeking a direction for providing information to him and thereafter, he preferred Appeal No. 2672 of 2011 in which by order dated 24.09.2012 a penalty of Rs. 10,000/- has been imposed upon the petitioner, and therefore, the petitioner has approached this Court filing the present writ petition.

2. Heard the learned counsel for the petitioner and respondent-State of Jharkhand.

3. The learned counsel appearing for the petitioner has submitted that the informations sought by the applicant are so extensive that it was not possible to supply all the informations within the statutory period of 30 days. The applicant has sought for such diverse informations which required great efforts for collecting and providing those informations to the applicant. He has further submitted that, in fact the informations sought by the applicant are not in public interest rather, the applicant used to harass public authorities and others on the pretext of seeking informations in public interest. The learned counsel for the petitioner has further submitted that the procedure as prescribed under the Act has not been followed by the Chief Information Commissioner and a penalty of Rs. 10,000/- has been imposed upon the petitioner which is not justified and cannot be sustained in law.

4. As against the above, the learned counsel appearing for the State of Jharkhand has supported the impugned order and submitted that from the impugned order dated 24.09.2012 it would appear that sufficient opportunity was given to the petitioner to file his reply to the show-cause notice, however, as the petitioner failed to submit her reply, a penalty of Rs. 10,000/- has been imposed upon her. He has further submitted that the original applicant namely, Bhuvneshwar Modi has not been made a party in the present proceeding and the respondent No. 3, i.e., the Chief Information Commissioner is required to be heard in the matter.

5. Replying to the contentions of the learned counsel for the respondent-State of Jharkhand, the learned counsel appearing for the petitioner has submitted that since the petitioner has challenged the jurisdiction of the Commission to pass the order of, penalty in violation of the procedure prescribed under the Act, the applicant is not a necessary party in this matter and the Commission is not required to be heard in the matter as the Commission is a statutory body which functions in the State of Jharkhand and the State of Jharkhand is duly represented in the present proceeding.

6. Before advertng to the facts of the case, it would be useful to notice the provisions under the Act. Section 18 of the Act deals with power and functions of the Commission and Section 19 provides forum for appeal. Section 20 of the Act deals with penalties.

7. Sections 18 and 20 of the Act are reproduced below:

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 inquiry 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 be, the Central Information Commission or the State Information Commission, as the case may be, may, during the inquiry of any complaint under this Act, examine any record 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.

20. Penalties - (1) Where 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 under sub-section (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall impose a penalty of two hundred and fifty rupees each day till application is received or information is furnished, so however, the total amount of such penalty shall not exceed twenty-five thousand rupees:

Provided that the Central Public Information Officer or the State Public Information Officer, as the case may be, shall be given a reasonable opportunity of being heard before any penalty is imposed on him:

Provided further that the burden of proving that he acted reasonably and diligently shall be on the Central Public Information Officer or the State Public Information Officer, as the case may be.

(2) Where 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 and persistently, failed to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall recommend for disciplinary action against the Central Public Information Officer or the State Public Information Officer, as the case may be, under the service rules applicable to him.

8. A perusal of the provisions contained in Section 18 of the Act would reveal that when the Commission is satisfied that there are reasonable grounds to inquire into the matter, it may initiate an inquiry in respect thereof. Sub-section (3) of Section 18 of the Act provides the power of the Commission while inquiring into the matter u/s 18 of the Act.

9. Section 20 of the Act provides that at the time of deciding any complaint or appeal if the Commission forms an opinion that without any reasonable cause, the officer refused to receive an application for information or such information was not furnished within the time specified under Sub-section (1) of Section 7 or malafidely denied the request for information or incorrect, incomplete or misleading information was given or the information which was the subject of the request was destroyed or obstructed in any manner in furnishing the information, the commission shall impose a penalty. However, it has been provided therein that before any penalty is imposed, a reasonable opportunity of being heard shall be given to the officer.

10. From the record of the case more particularly, impugned order dated 24.09.2012, I find that the appeal was not finally decided and it was kept pending and the next date of hearing was fixed on 08.01.2013. I further find that no inquiry as contemplated u/s 18(2) of the Act was initiated. No finding as indicated u/s 20(1) of the Act has been recorded by the Commission in the impugned order dated 24.09.2012. By the impugned order dated 24.09.2012, a penalty has been imposed and before imposing such penalty, an opportunity of hearing was not given to the petitioner in terms of proviso to Section 20(1) of the Act.

11. Now coming to the facts of the case, I find that the applicant namely, Bhuvneshwar Modi has preferred applications dated 19.07.2011, 27.09.2011 & 24.10.2011 seeking diverse informations. Some of the informations sought by the applicant are definitely neither in the public interest nor within the ambit of the Right to Information Act, 2005. One of such informations would relate to disclosure of total number of persons in the Block who had been receiving pension illegally by suppressing their actual age and the truth. The information sought at serial No. 4 in application dated 19.07.2011 of the applicant would relate to disclosure of name of officers at whose instance financial scam in the country happened. I am of the definite opinion that request for furnishing such informations, is an abuse of the provision contained in the Act and this aspect of the matter has been completely ignored by the Commission while dealing with the present matter. I further find that the petitioner on several occasions, made a request for permitting her authorised representative to appear in the matter and it has been recorded in the impugned order dated 24.09.2012 that on the last date, the petitioner could not appear before the Commission as her daughter was ill.

12. In view of the above facts and circumstances, I am of the considered opinion that the impugned order dated 24.09.2012 is liable to be quashed. I further hold that the impugned order dated 24.09.2012 is without jurisdiction. The direction issued by the Commission deducting Rs. 10,000/- in two installments is also quashed and if the penalty imposed by order dated 24.09.2012 has already been deducted from the salary of the petitioner, it would be refunded to her forthwith. This writ petition is allowed in the aforesaid terms.