
(2013) 03 CAL CK 0036
In the Calcutta High Court
Case No : C.O. No. 221 of 2013

Rabindra Nath Pal

APPELLANT

Vs

West Bengal State Information Commission and Others

RESPONDENT

Date of Decision : 08-03-2013

Acts Referred:

Constitution of India, 1950 — Article 227

Right to Information Act, 2005 — Section 2, 20, 20(1), 3, 6(1)

Citation : (2013) 2 CALLT 7 : (2013) 3 CHN 610

Hon'ble Judges : Subal Baidya, J

Bench : Single Bench

Advocate : Subrata Datta and Ms. Kuheli Sinha, for the Appellant; R.N. Chakraborti and Ms. Era Ghosh for the Opposite Party No. 1, Mr. Achinta Kr. Banerjee and Mr. Debangsu Mandal for the Opposite Party Nos. 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

Subal Baidya, J.—This is an application filed by the petitioner Rabindra Nath Pal under Article 227 of the Constitution of India is directed against the opposite party alleging, inter alia, that the petitioner being a resident of the premises No. 6, Bakul Bagan Road with an intention to get some information u/s 6(1) of the Right to Information Act, 2005 in respect of the building of the premises No. 5A, Bakul Bagan Road, Ward No. 72 of Kolkata Municipal Corporation where one Suren Mitra and some local roofs were residing permanently having no sanctioned of water and/or sewerage connection from KMC and the resident of that building has dig up a Well at the backward and thus it has turned the said building a futile breeding ground for mosquitoes due to stagnant water and thus it is causing serious hazards for the locality threatening the lives of the people living nearby. It is further alleged that the petitioner being the resident of adjoining premises has made five queries (Annexure "P-1") to SPIO(Building)/ Director General (Building), Kolkata Municipal Corporation on 16.11.2010 which are as follows:--

(i) Whether the said building at 5A, Bakul Bagan Road has obtained Completion Certificate from the KMC?

(ii) If not, can anyone reside there or utilize the said building for any other purpose?

(iii) If the answer for (ii) is "no", does the KMC complete to take actions to put a stop to the above noted illegalities?

(iv) If the answer for (iii) is "yes", how soon?

(v) Would the KMC held itself liable if the lives of the people of the aforesaid locality become hazardous, owing to reasons detailed above?

2. It is also alleged that u/s 7 of the said Right to Information Act it is incumbent upon the opposite party No. 2, Director General (Building)/State Public Information Officer, KMC to furnish information at least within 30 days from the date of receipt of the request, but in spite of lapse of statutory period of 30 days no response was received by the petitioner from the opposite party No. 2 either rejecting the request for information or furnishing the same in discharge of statutory obligation and having no other way the petitioner on 7.1.2011 submitted a complaint to the opposite party No. 1 the West Bengal State Information Commission, a public authority treated as complaint No. 167 of 2011 (Annexure P-2) complaining about failure of opposite party No. 2 to respond to queries submitted by the petitioner seeking following reliefs:--

(i) The SPIO be directed to release the information sought for immediately.

(ii) The information now released should be free of cost.

(iii) To impose penalty @ Rs. 250/- per day on the SPIO starting from 16.12.2010 till the day of release of information as asked for.

(iv) To recommend for disciplinary action against the SPIO under the service rules applicable to him.

(v) Adequate compensation by the employer of the SPIO, for subjecting the complainant to such, delay, harassment, costs, mental anxiety etc.

3. It is further alleged that being directed, the opposite party No. 3 Executive Engineer (Building) by a letter contended that reply (Annexure P-4) had already been sent to the petitioner as per his queries through under certificate of posting dated 24.2.2011, but the information to send a letter etc. Under Certificate of Posting was discontinued with effect from 31.1.2011 by the authority of communication and information department. It is also alleged that the petitioner received a notice of hearing from opposite party No. 1 informing that the complaint No. 167 of 2011 would be taken up for hearing on 8.10.2012 at 14:00 hours (Annexure P-6) and following that notice the petitioner submitted a written statement on 1.10.2012 to the opposite party No. 1 reiterating his contention already made in his letter dated 3.8.2012 (P-2) with a prayer to start proceeding

u/s 20(1) of the RTI Act against the opposite party No. 2.

4. It is also alleged that after receiving no information from the opposite party No. 1 the petitioner filed another RTI queries dated 23.11.2012 that the State Public Information Officer, West Bengal who sent an evasive reply dated 4.12.2012 (Annexure P-9 and out of frustration the petitioner on 21.12.12 addressed a letter to the opposite party No. 1 but on the same day the petitioner received an authenticated copy of order dated 8.10.12 from the opposite party No. 1 in connection with appeal/complaint No. 3558(2)-WBIC/RTI/798/12 arising out of complaint No. 167 of 2011, but the said order dated 8.10.2012 is contrary to law and hence the present revisional application under Article 227 of the Constitution of India has been filed by the petitioner.

5. Heard the learned Lawyer for the petitioner, the opposite party No. 1 and opposite party No. 2. Perused the application along with other documents made as Annexure thereto. Perused also the decision of the Hon''ble Supreme Court reported in Central Board of Secondary Education and Another Vs. Aditya Bandopadhyay and Others, referred to by the learned counsel for the opposite party No. 1.

6. Perused also the order of the State Information Commissioner. West Bengal dated 08.10.2012 which is under challenge of this revision.

7. The learned Advocate for the petitioner submitted that the petitioner has applied for the information on 16.11.2010 and the opposite party No. 2 was legally bound to give reply within 30 days from that date. He also submitted that assuming that the reply of the opposite party No. 2 was sent Under Certificate of Posting on 24.2.2011, but that was also sent more than two months after the expiry of the said period on 30 days, but the opposite party No. 1 by order dated 8.10.2012 did not impose any penalty upon the opposite party No. 2 as per provision of section 20 of the Right to Information Act and not only so, the opposite party No. 1 did not recommend for initiation of the disciplinary action against the opposite party No. 2. He also submitted that the order of the opposite party No. 1 only directing to reply against the item Nos. 3 & 4 of the queries has violated the provision of section 20 of the said Act and as such the said order under challenge is not sustainable in law.

8. He further submitted that as per notification dated 31.01.2011 made as annexure to the application has made it clear that the sending of the letter etc. Under Certificate of Posting has been discontinued with effect from 31.1.2011 and therefore, the claim of the opposite party No. 2 to the effect that the opposite party No. 2 sent the reply to the queries to the petitioner through Under Certificate of Posting is not tenable.

9. The learned Advocate for the opposite party No. 1 submitted that there is a provision u/s 20 of the Right to Information Act for imposition of penalty and also for recommending to initiate disciplinary action against the Public Authority at fault under the service rule applicable to him, but the order under challenge has

made it clear that the opposite party No. 1 was not in favour of imposing such penalty upon the opposite party No. 2 and also did not recommend for initiation of the disciplinary action against the opposite party No. 2 considering that the very object of the Right to Information Act is to make the petitioner aware about the information sought for by him through queries u/s 6(1) of the said Act. He also submitted that there is no fault on the part of the opposite party No. 1 while passing the order under challenge.

10. The learned Advocate for the opposite party No. 2 submitted that the petitioner made queries u/s 6(1) of the RTI Act mostly in respect of the matters which are totally vague, uncertain and future course of action, if any, and the reply sent by the opposite party No. 2 in response to the said queries was justified. He also submitted that for giving a reply to the queries under RTI Act the opposite party No. 2 had to collect information from various departments of the Kolkata Municipal Corporation and it took considerable time to collect such information and that was the reason for some delay but it was not intentional, otherwise the opposite party No. 2 would not send the said reply on 24.2.2011 Under Certificate of Posting. He also submitted that no gazette publication showing the discontinuation of the provision for sending the letter under Certificate of Posting with effect from 31.1.2011 by the postal authority has not been produced on behalf of the petitioner and the acceptance of the letter for sending the reply under Certificate Posting to the petitioner as appearing from the postal memo on 24.2.2011 makes it clear that the sending of the letter Under Certificate of Posting through postal department has not been discontinued with effect from 31.1.2011 as claimed by the learned Advocate for the petitioner.

11. This matter is practically a revision under Article 227 of the Constitution of India. Going through the order under challenge passed by the opposite party No. 1 it is evident that the opposite party No. 1 did not assign any reason as to why the reply against item Nos. 3 and 4 of the queries are not specific and to the point. This goes to show only the non-application of judicial mind. What would be the subject matter of queries under RTI Act has been vividly described by the Hon"ble Supreme Court in paragraph 63 of the judgment reported in Central Board of Secondary Education and Another Vs. Aditya Bandopadhyay and Others, wherein it has been provided that "RTI Act provides access to all information that is available and existing. This is clear from a combined reading of section 3 and "definition of information" and "right to information" under clauses (f) & (j) of section 2 of the Act."

12. From the above it is amply clear that the public authority is under obligation to give information in respect of all information which is available and existing, and there is no scope to get any reply in respect of any future course of action or any suggestion or any advice. From the queries of the petitioner it is evident that only the query No. 1 is definite and such information can be available from the Kolkata Municipal Corporation, but regarding four other queries it can be said

without any hesitation in the light of the decision of the Hon''ble Supreme Court reported above that the same are not available and existing with the Kolkata Municipal Corporation. Furthermore, the item Nos. 2 to 5 cannot be the subject matter of any query under RTI Act, but can only be made the subject matter of a complaint before the Kolkata Municipal Corporation under Kolkata Municipal Corporation Act, but not under RTI Act. Except some delay of few days there is no fault on the part of the opposite party No. 2 in giving the reply and in this regard the submission made by the learned Advocate for the opposite party No. 2 is acceptable considering the fact that some more time is necessary for collecting the information from various departments of the Kolkata Municipal Corporation. The order of the opposite party No. 1 which is under challenge clearly show that said direction to the opposite party No. 2 has been made in respect of query Nos. 3 and 4 is nothing, but an out come of the non-application of judicial mind. The query Nos. 3 and 4 as already pointed out cannot be the subject matter of queries under the RTI Act and as such the order passed by the opposite party No. 1 containing the direction to the opposite party No. 2 for furnishing specific information to the petitioner is also not sustainable in the eye of law.

13. In this connection, it will not be out of place to mention that the petitioner has filed the queries with the opposite party No. 2 for seeking some remedies under the garb of RTI Act, which are practically available to him under the Kolkata Municipal Corporation Act and such attempt of taking shelter under the Right to Information Act instead of Kolkata Municipal Corporation Act on the part of the petitioner is not legally tenable.

14. In view of the above, the order passed by the opposite party No. 1 on 8.10.2012 which is under challenge is not sustainable in law and therefore, the same is set aside. Accordingly, the instant revision also stands dismissed.

The application under Article 227 of the Constitution of India is, thus, disposed of.