

(2013) 10 KAR CK 0030

In the Karnataka High Court

Case No : Writ Petition No. 193 of 2013 (GM-RES)

Sri Mario Pires

APPELLANT

Vs

The Karnataka State Information Commission, Bruhat
Bangalore Mahanagara Palike and A.R.S. Kumar

RESPONDENT

Date of Decision : 31-10-2013

Acts Referred:

Citation : (2014) 1 AKR 394 : (2013) ILR (Kar) 6049 : (2014) 1 KarLJ 443 :
(2014) 1 KCCR 368

Hon'ble Judges : A.N. Venugopala Gowda, J

Bench : Single Bench

Advocate : T.P. Vivekananda, for the Appellant; G.B. Sharath Gowda, for R1 and
Sri K.N. Putte Gowda, for R2, for the Respondent

Final Decision : Allowed

Judgement

A.N. Venugopala Gowda, J.—This writ petition has been filed impugning an order of the Karnataka State Information Commission (for short "the Commission"), imposing penalty of Rs. 10,000/-, recoverable out of the salary of the petitioner. Material facts which have been led to filing of this writ petition are the following:

Third respondent filed an application on 28.09.2011, under the Right to Information Act, 2005 (for short "the Act") for furnishing of certified copies and the information, with reference to various Committees formed in the Bruhat Bangalore Mahanagara Palike represented by the elected Corporators. Petitioner being the Public Information Officer forwarded the said application on 07.10.2011 to all the Standing Committees, requesting to submit the information for the purpose of furnishing copies and the information sought by the 3rd respondent. The information and the documents sought having been received from the Standing Committee/s, the 3rd respondent was informed through a notice dated 26.10.2011, that the documents sought for by him consists of 1200 pages and that he should pay Rs. 2,400/-, @ Rs. 2/- per page. The notice dated 26.10.2011, dispatched on 02.11.2011, reached the 3rd respondent on

03.11.2011. The 3rd respondent filed a complaint before the Commission on 31.10.2011, under S. 18 of the Act, alleging that there is non-compliance with the request made in his application dated 28.09.2011. In response to a notice dated 05.04.2012 issued by the Commission for appearance and to show cause why penalty under S. 20(1) of the Act should not be imposed, appearance having put in, noticing that the notice dated 26.10.2011 was dispatched on 02.11.2011 and the fee for providing of the information was asked after lapse of more than 30 days, holding the same as not correct and further noticing the submission made through the representative of the petitioner that the information sought by the complainant as available, by an order dated 07.05.2012, the petitioner was directed to provide certified copies of information to the complainant within 7 days, free of cost, through RPAD, under an intimation to the Commission and by further noticing that from 01.10.2011 to 07.05.2012 the petitioner had not provided the information to the complainant, petitioner was directed to show cause within 30 days, why penalty under S. 20(1) of the Act should not be imposed. The petitioner forwarded all the documents sought for by the complainant, free of cost, on 14.06.2012 and submitted an explanation to the Commission on 05.09.2012, stating the reasons, why the information could not be furnished to the complainant within the prescribed time. The Commission by an order dated 30.10.2012, by rejecting the explanation offered by the petitioner, imposed penalty of Rs. 10,000/-, recoverable out of the salary of the petitioner, in two installments of Rs. 5,000/- each.

2. Sri T.P. Vivekananda, learned advocate for the petitioner contended that the impugned order imposing penalty is arbitrary and illegal. He submitted that the Commission being a quasi judicial forum, the order passed imposing penalty must be supported by reasons, in as much as, duty to give reasons would enable the Court hearing a petition for issue of writ of certiorari to ex-facie ascertain whether there is any error apparent on the record. He further submitted that in the impugned order, the reasons being conspicuously absent and the reply submitted by the petitioner having not been objectively considered, the impugned order being wholly subjective and passed in excess of the jurisdiction, interference is warranted.

3. Sri G.B. Sharath Gowda, learned advocate for the 1st respondent, on the other hand contended that there being no dispute that the petitioner had not furnished the information within the time specified under sub-Section (1) of S. 7 of the Act, the Commission while deciding the complaint on 07.05.2012, by being of the opinion that the petitioner has committed the default, ordered to show cause why penalty under S. 20(1) of the Act should not be imposed for having not provided information to the complainant from 01.10.2011 to 07.05.2012 and after finding the reply dated 05.09.2012 is unacceptable, imposed the penalty. He submitted that the impugned order being in conformity with the provision under S. 20(1) of the Act is sustainable.

4. S. 20(1) of the Act being material for deciding the case, the same is

reproduced hereunder:

S. 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.

(underlining is for emphasis)

5. The facts, noticed supra, being matter of record, are not in dispute. Material portion of the impugned order reads thus:

Ex-facie, the explanation offered has not received any consideration. The provision mandates that the Commission should find out as to whether the Public Information Officer without any reasonable cause had not furnished information within the time specified under sub-section (1) of S. 7 or obstructed in any manner in furnishing the information, to impose the penalty. Penalty cannot be imposed mechanically. There is lack of application of mind. There being subjective satisfaction and lack of objective consideration and also the reasons in support of the conclusion, the impugned order being vitiated, is indefensible.

6. It is appropriate to notice the decision in the case of Hindustan Steel Ltd. Vs. State of Orissa, , in the matter of levy of penalty. Apex Court has held as follows:

Under the Act penalty may be imposed for failure to register as a dealer - Section 9(1) read with Section 25(1)(a) of the Act. But the liability to pay penalty does not arise merely upon proof of default in registering as a dealer. An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a

matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute.

(Italicised by me for emphasis)

7. The provisions of the Act make it clear that the Commission is a high powered quasi judicial forum vested with the jurisdiction to enquire into and decide the complaints or the appeals. Hence, any order passed by it affecting the rights of the parties to the case should be a speaking one.

8. In *Woolcombers of India Ltd. Vs. Woolcombers Workers Union and Another*, , Apex Court while considering an award passed under S. 11 of the Industrial Dispute Act, 1947 has held as follows:

5.....The giving of reasons in support of their conclusions by judicial and quasi-judicial authorities when exercising initial jurisdiction is essential for various reasons. First, it is calculated to prevent unconscious unfairness or arbitrariness in reaching the conclusions. The very search for reasons will put the authority on the alert and minimize the chances of unconscious infiltration of personal bias or unfairness in the conclusion. The authority will adduce reasons which will be regarded as fair and legitimate by a reasonable man and will discard irrelevant or extraneous considerations. Second, it is a well-known principle that justice should not only be done but should also appear to be done. Unreasoned conclusions may be just but they may not appear to be just to those who read them. Reasoned conclusions, on the other hand, will have also the appearance of justice. Third, it should be remembered that an appeal generally lies from the decisions of judicial and quasi-judicial authorities to this Court by special leave granted under Article 136. A judgment which does not disclose the reasons, will be of little assistance to the Court. The Court will have to wade through the entire record and find for itself whether the decision in appeal is right or wrong. In many cases this investment of time and industry will be saved if reasons are given in support of the conclusions. So it is necessary to emphasise that judicial and quasi-judicial authorities should always give the reasons in support of their conclusions.

(emphasis supplied)

9. In the case of *Travancore Rayon Ltd. Vs. Union of India (UOI)*, , Apex Court, while dealing with the revisional jurisdiction of the Central Government under the then S. 36 of the Central Excise and Salt Act, 1944 has held that the Central Government was actually exercising the judicial power and in exercising judicial power reasons in respect of the order must be disclosed on two grounds, the first being that the person aggrieved gets an opportunity to demonstrate that the reasons are erroneous and second one being the obligation to record reasons

operates as a deterrent against possible arbitrary action by the executive authority invested with the judicial power.

10. In the case of The Siemens Engineering and Manufacturing Co. of India Ltd. Vs. The Union of India (UOI) and Another, , Apex Court has held that an authority in making an order in exercise of its quasi-judicial function must record reasons in support of the order it makes. It has been further held that every quasi judicial order must be supported by reasons and that the rule requiring the reasons in support of a quasi-judicial order is, as basic one as following the principles of natural justice and the rule must be observed in its proper spirit.

11. The order passed by the 1st respondent, impugned in this writ petition, the material portion of which has been reproduced in para 6 supra, makes clear that the same is a wholly unreasoned order and the arbitrariness in imposing penalty on the petitioner is apparent. Reply to the show cause notice having been submitted, the Commission having not objectively considered the explanation offered and without arriving at a reasoned opinion that there was no reasonable cause for not furnishing the information and the documents sought within the time specified in sub-section (1) of S. 7, by a non-speaking order, the penalty has been imposed on the petitioner. In the circumstances, the grounds urged by Sri T.P. Vivekananda as against the impugned order and the approach of the Commission to the matter is well founded. Since the impugned order is vitiated for non-consideration of the reply dated 05.09.2012 of the petitioner and the consideration by the Commission being merely a pretence, the impugned order being contrary to well settled principles of law in the decisions noticed supra, is unsustainable.

In the result, the writ petition is allowed and the impugned order is quashed. The 1st respondent is directed to reconsider the reply dated 05.09.2012 submitted by the petitioner in proper spirit and pass a reasoned order in the light of the observations made above.

No costs.