
(2010) 07 GAU CK 0029
In the Gauhati High Court
Case No : Writ Appeal No. 11 of 2008

State of Manipur and Another	Vs	APPELLANT
The Chief Information Commissioner and Another		RESPONDENT

Date of Decision : 29-07-2010

Acts Referred:

Right to Information Act, 2005 — Section 10, 18, 18(1), 18(3), 19

Citation : AIR 2010 Guw 183 : (2011) 2 GLT 275

Hon'ble Judges : Maibam B.K. Singh, J; Ashok Potsangbam, J

Bench : Division Bench

Advocate : N. Kotiswar, General, for the Appellant; S. Jayanta Th. Rajkishore and M. Rakesh, for the Respondent

Final Decision : Allowed

Judgement

Maibam B.K. Singh, J.—These two writ appeals being No. 11 of 2008 and 12 of 2008 have been filed challenging the common judgment dated 16-11-2007 passed by a learned Single Judge of this Bench disposing of W. P. (C) No. 733 of 2007 and W. P. (C) No. 478 of 2007 respectively. Since these two writ appeals are closely connected in respect of the questions of laws and facts involved in them, they are heard and proceeded jointly.

2. We have heard Mr. N. Kotiswar, learned Advocate General, Manipur, assisted by Mr. Th. Rajkishore, learned Counsel appearing on behalf of the Appellants, Mr. M. Rakesh, learned Counsel appearing on behalf of the Respondent No. 2 in both the appeals and Mr. S. Jayanta, learned senior counsel appearing on behalf of the Respondent No. 1 in both the appeals.

3. On perusal of the materials before the Court in the light of the submissions made by both sides, the following undisputed facts are ascertained:

On 9-2-2007, the Respondent No. 2 submitted an application u/s 6(1) of the Right to Information Act, 2005, hereinafter referred to as the Act, to the State Public Information Officer, Home Department, Government of Manipur, seeking

information relating to the number of enquiries instituted under the Commission of Inquiry Act, 1952, by the Government of Manipur from 1980 upto 2006 with their names and particulars; the total number of enquiry reports which were considered by the Government along with their memorandum of action taken; copies of enquiry reports which were considered by the Government of Manipur along with their memorandum of action taken and total number of enquiry reports which were submitted but not yet considered by the Government of Manipur and particulars thereof. On 19-5-2007, the said Respondent No. 2 submitted another application u/s 6(1) of the said Act to the same State Public Information Officer seeking similar information relating to Magisterial Inquiries instituted by the Govt. of Manipur. On not getting any response in respect of the said two applications even after the lapse of the statutory period of time, the Respondent No. 2 filed a Complaint being No. 7 of 2007 u/s 18(1)(c) of the said Act on 13-3-2007 in respect of the application dated 9-2-2007 and also another Complaint under the same provisions of law on 30-6-2007 in respect of the application dated 19-5-2007 to the Manipur Information Commission, Imphal, praying to inquire into the Complaints and pass appropriate orders so as to enable the complainant (Respondent No. 2) to obtain the information requested by him. After hearing the concerned parties, the State Chief Information Commissioner, Manipur, disposed of the said Complaint Case No. 7 of 2007 on 30-5-2007 with a direction to furnish the following information to the applicant/complainant within 15 days from the date of the order on payment of the prescribed fees; (i) the total number of enquiry under the Commission of Inquiry Act, 1952, by the Government of Manipur since the year 1980 upto 2006 with their names and particulars; (ii) the total number of enquiry reports (of enquiries instituted under the Commission of Inquiry Act, 1952) submitted to the Government of Manipur; (iii) copies of enquiries reports (of enquiry instituted under the Commission of Inquiry Act, 1952) which were considered by the Government of Manipur along with their memorandum of actions taken only those cases of such enquiry reports which had been laid before the Assembly or the Parliament, discussed, approved and final actions were over. While disposing of the said Complaint No. 7 of 2007, the State Chief Information Commissioner, Manipur, considered the question of applicability or otherwise of the provisions of Section 8 and Section 24 of the said Act. The second Complaint made on 30-6-2007 was also disposed of on 14-8-2007 in the same manner stated above by the State Chief Information Commissioner, Manipur.

4. Apparently, being aggrieved by the said orders of the State Chief Information Commissioner, Manipur, dated 30-5-2007 and 14-8-2007 passed in the Complaint Case No. 7 of 2007 and the other complaint case, the present Appellants filed Writ Petition (C) No. 478 of 2007 and Writ Petition (C) No. 733 of 2007 respectively praying for quashing the said orders of the State Chief Information Commissioner, Manipur. Both the writ petitions being W. P. (C) No. 478 of 2007 and W. P.(C) No. 733 of 2007 were dismissed by the learned Single Judge, vide the impugned judgment dated 16-11-2007 holding to the effect that

the direction of the State Chief Information Commissioner, Manipur, to furnish the information did not offend either Section 8 or Second Schedule of the said Act. The learned Single Judge directed the State Public Information Officer to furnish the information within the stipulated period from the date of receipt of the order on payment of the requisite costs, etc.

5. In the course of hearing of the parties through their respective counsel, an important question concerning the jurisdiction of the State Information Commission has arisen. The said question is if the State Information Commission, while dealing with a Complaint to it u/s 18 of the said Act from a person, who has been refused access to any information requested under the said Act or who has not been given a response to the request for information within the time limit specified under the said Act, has jurisdiction to direct for furnishing the information sought to the concerned person or not. Even though this question is not found to have been agitated before the learned Single Judge of this Court, since the defect of jurisdiction strikes at the very authority of the State Information Commission to direct for furnishing the information sought and since such a defect, if there is, cannot be cured even by consent of parties, in our considered opinion, the said question concerning the jurisdiction of the State Information Commission to give the above said directions at the time of dealing with the Complaint u/s 18 of the said Act is required to be examined in these appeals. The said question goes to the root of the power of the State Information Commission to issue the directions made on 30-5-2007 and 14-8-2007 and as such, the said question is required to be considered in these appeals. We are also of the opinion that no disputed question of fact is involved in the above said question regarding jurisdiction of the State Information Commission.

6. There is no dispute that the applications submitted by the Respondent No. 2 to the State Public Information Officer, Home Department, Govt. of Manipur on 9-2-2007 and 19-5-2007 were not disposed of even after the expiry of the period prescribed under the provisions of Section 7 of the said Act. Since the concerned State Public Information Officer failed to give decision on the request for information within the period specified in Section 7(1) of the said Act, the said State Public Information Officer should be deemed to have refused the requests under Sub-section (2) of Section 7 of the said Act. In that situation, the Respondent No. 2 was having two options - one was to file a complaint to the State Information Commission u/s 18 of the said Act and the second option was to prefer an appeal to such officer who was senior in rank to the State Public Information Officer, Home Department, Govt. of Manipur, within the prescribed period u/s 19 of the said Act. The Respondent No. 2 opted for the second option. The Respondent No. 2 could not prefer the appeal directly to the State Information Commission but he could file a second appeal to the State Information Commission against a decision of the first appellate authority mentioned in Section 19(1) of the said Act within 90 days from the date on which decision should have been made or was actually received.

7. Section 18 of the Right to Information Act, 2005 prescribes the powers and functions of the Central Information Commission as well as the State Information Commission to receive and enquire a complaint from any person, inter alia, who has been refused access to any information requested under the Act or who has not been given a response to a request for information or access to information within the time limit specified under the Act. If the Central Information Commission or the State Information Commission is satisfied that there are reasonable grounds to interfere into the matter, it may initiate an enquiry in respect thereof. As per provisions of Sub-section (3) of Section 18 of the said Act, the Central Information Commission or State Information Commission, as the case may be, while inquiring into any matter u/s 18, 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. Further, an overriding power is given to the Central Information Commission or State Information Commission as the case may be, during the inquiry of any complaint under the Act, to 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.

8. In Section 18 of the said Act, there is nothing to show that while dealing with or disposing of a complaint regarding failure of the State Public Information Officer to give a response to a request for information or access to information within the time limit specified under the said Act and as such, the State Public Information Officer having been deemed to have refused the request for information made by the complainant, the State Information Commission is empowered to pass an order or direction to the State Public Information Officer for furnishing the information sought by the complainant. When a complaint of the type mentioned above is filed, the grievance of the complainant is not against any reason for rejection of his application seeking for information. The complainant's grievance is basically regarding the failure of the concerned State Public Information Officer to give a response to the application for information within the time limits specified in the Act without assigning any reason. In that situation, in our considered opinion, the State Information Commission is not required to consider about applicability or otherwise of the provisions of Sections 8, 9, 10, 24 and Second Schedule of the Right to Information Act, 2005.

9. In the present case, since the complaint was regarding the failure of the State Public Information Officer to give a response to the request for information within the time limit specified under the said Act, on being satisfied about existence of reasonable grounds to interfere into the matter, the State Information Commission was supposed to find out, after giving sufficient opportunities to the

concerned parties and also after taking necessary steps in that connection, if there was sufficient justification for not giving the response to the said request for information within the specified time limit. Depending on its findings in the inquiry, the State Information Commission could have directed the State Public Information Officer to dispose of the application for information within a specified time and if necessary, it should have also imposed penalty u/s 20 of the said Act. In dealing with the said complaint, the State Information Commission was not having jurisdiction to proceed with the complaint in the manner as if it was dealing with second appeals preferred to it u/s 19 of the said Act. If the State Information Commission was dealing with a second appeal u/s 19 of the said Act, depending on its findings after hearing the concerned parties, it could have disposed of the second appeal in any manner specified in Sub-section (8) of Section 19 of the said Act. Section 18 of the said Act nowhere states that the State Information Commission has to dispose of a complaint filed to it under the said section in the manner provided in Sub-section (8) of Section 19 of the said Act. In fact, since the State Public Information Officer had not yet disposed of the said applications of the Respondent No. 2 on merit, the State Information Commission ought not to have considered the question of applicability or otherwise of the provisions of Sections 8, 9, 10, 24 and Second Schedule of the said Act in respect of the said applications in the said inquiry in respect of the said complaints.

10. The power of the State Information Commission, while dealing with a complaint u/s 18 of the said Act, cannot be considered as the same to its power, while dealing with a second appeal u/s 19 of the said Act. By disposing of the said complaints of the Respondent No. 2, vide the impugned directions dated 30-5-2007 and 14-8-2007, after consideration about applicability or otherwise of Sections 8, 9, 10 and 24 of the said Act, the State Information Commission proceeded as if it was dealing with a second appeal and disposing the same on merit. In our considered opinion, the State Chief Information Commissioner, acted illegally and beyond its jurisdiction in passing the impugned directions dated 30-5-2007 and 14-8-2007. Further, in our opinion, by disposing of the said two complaints in the manner of disposing of a second appeal on merit, injustice has been caused to the Appellants.

11. In view of the above findings, the impugned common judgment dated 16-11-2007 passed by the learned single Judge upholding the impugned directions of the State Chief Information Commissioner, Manipur, is not sustainable in the eyes of law. These appeals are allowed. The impugned judgment dated 16-11-2007 passed by the learned single Judge is hereby set aside. The impugned directions dated 30-5-2007 and 14-8-2007 are found to have been made by the State Chief Information Commissioner, Manipur, beyond its jurisdiction and as such, illegally. The impugned directions are hereby quashed. The State Chief Information Commissioner, Manipur, shall have to dispose of the said two complaints of the Respondent No. 2 afresh in accordance with law as expeditiously as possible.

12. A copy of this order be sent to the State Chief Information Commissioner, Manipur, for information and necessary action.