

(2015) 05 MAN CK 0025
In the Manipur High Court
Case No : WP(C) No. 353 of 2011

The Board of Secondary Education and Others	APPELLANT
Vs	
The State Chief Information Commissioner and Others	RESPONDENT

Date of Decision : 19-05-2015

Acts Referred:

Right to Information Act, 2005 — Section 18, 18(1), 18(1)(a), 18(1)(b), 18(1)(c)

Citation : AIR 2015 Manipur 19

Hon'ble Judges : N. Kotiswar Singh, J

Bench : Single Bench

Advocate : N. Ibotombi, Senior Advocate, for the Appellant; A. Vasum, GA, L. Sevananda and Joylaxmi, Advocates for the Respondent

Final Decision : Allowed

Judgement

N. Kotiswar Singh, J.—Heard Mr. N. Ibotombi, learned senior counsel for the petitioners, Board of Secondary Education, Manipur, Mr. L. Sevananda Sharma, learned counsel for respondent No. 1 and Mr. A. Vasum, learned GA for the respondent No. 3.

When the hearing was taken up today, nobody appeared on behalf of respondent No. 2, though Ms. Joylaxmi, Advocate, had appeared on earlier occasion.

2. In this writ petition, the petitioners have challenged the order dated 30.4.2011 passed by the Manipur Information Commission in Complaint Case No. 135 of 2010 on the basis of the complaint filed by respondent No. 2 under Section 18 of the Right to Information Act, 2005, as an information seeker after having failed to obtain necessary information from the Board of Secondary Education, Manipur. The respondent No. 2 had submitted an application on 2.8.2010 to the petitioner No. 2 demanding the following informations from the Board of Secondary Education, Manipur.

"i) Xerox copies of the answer script of my son namely, Md. Iqbal Quresh Roll No. 12301 for the res-examined papers namely Science, Social Science and

Additional English;

ii) Xerox copies of the answer script of the said 24th ranked candidate Md. Arish bearing Roll No. 12309 for comparison; And

iii) Certified copy of the model answers for the above three subjects namely Science, Social Science and Additional English prepared by the Board of Secondary Education, Manipur which is given to the examiners during the time of examination of the answer papers of the candidates."

3. As the said informations were not furnished to the respondent No. 2, he approached the State Chief Information Commissioner on 9.9.2010 by filing a complaint under Section 18 of the Act, instead of preferring an appeal under Section 19 of the Act, which was registered as Complaint Case No. 135 of 2010, on the basis of which the impugned order dated 30.4.2011 was passed by the Manipur Information Commission.

4. This order dated 30.4.2011 has been challenged essentially on the ground that the Manipur Information Commission could not have passed a direction for furnishing information in a proceeding initiated under Section 18 of the Right to Information Act, 2005. By this order, the Manipur Information Commission has issued directions to the petitioners to furnish certain information including furnishing Xeroxed copies of answer scripts of respondent No. 2, the answer scripts of certain candidate and also certified copies of the model answers of three subjects namely, Science, Social Science and Additional English a sought for by the respondent No. 2. This order has been challenged by the petitioners on the ground that the said order for furnishing information could not have been passed by the Manipur Information Commission in exercise of powers under Section 18 of the Right to Information Act, 2005 as had been held by the Division Bench of the Gauhati High Court in State of Manipur and Another Vs. The Chief Information Commissioner and Another, AIR 2010 Guw 183 : (2011) 2 GLT 275 , the principle laid down in which has been affirmed by the Hon'ble Supreme Court in Chief Information Commr. and Another Vs. State of Manipur and Another, (2011) 13 SCALE 460 .

5. It is the contention of the petitioners that if any information seeker is aggrieved by the refusal or non providing of information by the concerned authority, such information seeker could approach the appellate authorities as provided under Section 19 of the Right to Information Act, 2005 and obtain necessary information or direction from the appellate authorities. The Central Information Commissioner or the State Information Commissioner is the second appellate authority under the Act. Even though a provision has been provided under Section 18 of the Act for filing complaint before the concerned State Information Commission for non furnishing of information by the concerned authority, the State Information Commission could not have exercised the jurisdiction conferred under Section 18 of the Act for giving direction to the concerned authority for furnishing the information sought for, as such, power

could be exercised only by the appellate authorities under Section 19 of the Act.

6. In this regard Mr. N. Ibotombi, learned senior counsel for the petitioners has relied on the decision of the Gauhati High Court referred to above. In the aforesaid case, it has been held by the Gauhati High Court that Section 18 of the Right to Information Act, prescribes the powers and functions of the Central Information Commission as well as the State Information Commission to receive and enquire into 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 under Section 18. In such a situation, 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. However, there is nothing to show in Section 18 of the Act 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, 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.

7. It was held in the aforesaid case that the power of the State Commission, while dealing with a complaint under Section 18 of the said Act, cannot be considered as the same to its power, while dealing with a second appeal under Section 19 of the said Act. It was held that the power of the State Information Commission, while dealing with a complaint under Section 18 of the Act cannot be considered as the same to its power while dealing with a second appeal under Section 19 of the Act. The aforesaid principle has been affirmed by the Hon'ble Supreme Court in the aforesaid case of Chief Information Commissioner and Anr v. State of Manipur and Anr (supra). The Hon'ble Supreme Court while dealing with the aforesaid legal position observed as follows.

"28. The question which falls for decision in this case is the jurisdiction, if any, of the Information Commissioner under Section 18 in directing disclosure of information. In the impugned judgment of the Division Bench, the High Court held that the Chief Information Commissioner acted beyond his jurisdiction by passing the impugned decision dated 30th May, 2007 and 14th August, 2007. The Division Bench also held that under Section 18 of the Act the State Information Commissioner is not empowered to pass a direction to the State Information Officer for furnishing the information sought for by the complainant.

29. If we look at Section 18 of the Act it appears that the powers under Section 18 have been categorized under clauses (a) to (f) of Section 18(1). Under clauses (a) to (f) of Section 18(1) of the Act the Central Information Commission or the State Information Commission, as the case may be, may receive and inquire into complaint of any person who has been refused access to any information requested under this Act [Section 18(1)(b)] or has been given

incomplete, misleading or false information under the Act [Section 18(1)(e)] or has not been given a response to a request for information or access to information within time limits specified under the Act [Section 18(1)(c). We are not concerned with provision of Section 18(1)(a) or 18(1)(d) of the Act. Here we are concerned with the residuary provision under Section 18(1)(f) of the Act. Under Section 18(3) of the Act the Central Information Commission or State Information Commission, as the case may be, while inquiring into any matter in this Section has the same powers as are vested in a civil court while trying a suit in respect of certain matters specified in Section 18(3)(a) to (f). Under Section 18(4) which is a non-obstante clause, the Central Information Commission or the State Information Commission, as the case may be, may examine any record to which the Act applies and which is under the control of the public authority and such records cannot be withheld from it on any ground.

30. It has been contended before us by the respondent that under Section 18 of the Act the Central Information Commission or the State Information Commission has no power to provide access to the information which has been requested for by any person but which has been denied to him. The only order which can be passed by the Central Information Commission or the State Information Commission, as the case may be, under Section 18 is an order of penalty provided under Section 20. However, before such order is passed the Commissioner must be satisfied that the conduct of the Information Officer was not bona fide.

31. We uphold the said contention and do not find any error in the impugned judgment of the High court whereby it has been held that the Commissioner while entertaining a complaint under Section 18 of the said Act has no jurisdiction to pass an order providing for access to the information.

37. We are of the view that Sections 18 and 19 of the Act serve two different purposes and lay down two different procedures and they provide two different remedies. One cannot be a substitute for the other.

42. Apart from that the procedure under Section 19 of the Act, when compared to Section 18, has several safeguards for protecting the interest of the person who has been refused the information he has sought. Section 19(5), in this connection, may be referred to. Section 19(5) puts the onus to justify the denial of request on the information officer. Therefore, it is for the officer to justify the denial. There is no such safeguard in Section 18. Apart from that the procedure under Section 19 is a time bound one but no limit is prescribed under Section 18. So out of the two procedures, between Section 18 and Section 19, the one under Section 19 is more beneficial to a person who has been denied access to information.

43. There is another aspect also. The procedure under Section 19 is an appellate procedure. A right of appeal is always a creature of statute. A right of appeal is a right of entering a superior forum for invoking its aid and interposition to correct

errors of the inferior forum. It is a very valuable right. Therefore, when the statute confers such a right of appeal that must be exercised by a person who is aggrieved by reason of refusal to be furnished with the information. In that view of the matter this Court does not find any error in the impugned judgment of the Division Bench. In the penultimate paragraph the Division Bench has directed the Information Commissioner, Manipur to dispose of the complaints of the respondent No. 2 in accordance with law as expeditiously as possible."

8. In view of the above said legal position, this Court is of the view that the impugned order dated 30.4.2011 passed by the Manipur Information Commission by exercising the power under Section 18 of the Act by directing the petitioners to furnish information as mentioned therein cannot be sustained as it would amount to exercising the power of the second appellate authority available under Section 19 of the Act to give direction to the authority for furnishing the information. Accordingly, the order dated 30.4.2011 passed by the Manipur Information Commission is set aside. However, liberty is granted to the respondent No. 2, the information seeker to invoke the provisions of Section 19 of the Act for appropriate remedy, within a period of four weeks from today.

The writ petition is accordingly allowed.