

(2014) 09 KAR CK 0079

In the Karnataka High Court

Case No : Writ Petition No. 6239/2011 & W.P. Nos. 6293-6297/2011 (GM-RES)

The Selection Committee of The Assistant Public Prosecutors-
Cum-Assistant Government Pleaders

APPELLANT

Vs

The Karnataka State Information Commission

RESPONDENT

Date of Decision : 02-09-2014

Acts Referred:

Right to Information Act, 2005 — Section 18, 18(1), 19, 19(1), 19(2)

Citation : (2014) 6 KarLJ 60

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

Bench : Single Bench

Advocate : H.B. Mahesh, HCGP, Advocate for the Appellant; Sharath Gowda G.B., Yogesh L. Hiremath, G.B. Maruthi, Shyam Koundinya, K.B. Loknath, Advocate for the Respondent

Final Decision : Allowed

Judgement

A.N. Venugopal Gowda, J.—Government of Karnataka had issued a Notification dated 18.06.2009 vide Annexure- C inviting applications for recruitment of 144 vacant posts of Assistant Public Prosecutors cum Assistant Government Pleaders in the Dept. of Prosecutions and Government Litigation.

2. Petitioner-Committee was constituted vide Annexure- B for conducting recruitment process. Written examination was held on 07.11.2009 and 08.11.2009. Respondents 2 to 7 made applications seeking furnishing of copies of their respective answer books and related information. In view of the a resolution passed by the petitioner, in the meeting held on 30.11.2009 vide Annexure-D, a Notification dated 02.03.2010 vide Annexure-F was issued by the Secretary of the petitioner. Questioning the said action, without exhausting the remedy of first appeal, respondents 2 to 7 approached the 1st respondent. The cases were treated as complaints filed under S. 18(1) of the Act and the order as at Annexure-A having been passed on 03.12.2010, directing the petitioner to

provide the information sought for within 30 days from the date a copy of the order is received and file compliance report, on or before 17.01.2011, these petitioners were filed to quash the order dated 03.12.2010 as at Annexure-A.

3. Sri H.B. Mahesh, learned HCJP, firstly, contended that the respondents 2 to 7 having not exhausted the remedy of filing the appeal provided under S. 19(2) of the Right to Information Act, 2005 (for short, "the Act") and the 1st respondent having been approached directly, the action of the 1st respondent in treating the claims of respondents 2 to 7 as "complaints" filed under S. 18 of the Act is arbitrary and illegal. He submitted that the 1st respondent has acted in excess of the jurisdiction i.e., in directly entertaining the claims of respondents 2 to 7 as complaints and in passing the order as at Annexure-A, in exercise of the power under S. 18 of the Act. Secondly, 1st respondent has not considered the scope of provisions under Ss. 18 and 19 of the Act. He submitted that the impugned order being contrary to the decision in the case of Chief Information Commr. and Another Vs. State of Manipur and Another, , interference is called for.

4. Sri G.B. Sharath Gowda, learned advocate for respondent No. 1, on the other hand contended that the action of the petitioner in not furnishing the information to respondents 2 to 7 being contrary to the decisions in the cases of (1) UNIVERSITY OF CALCUTTA AND OTHERS Vs. PRITAM ROOJ, AIR 2009 CAL 97; (2) Central Board of Secondary Education and Another Vs. Aditya Bandopadhyay and Others, ; (3) Kewal Singh Gautam Vs. State of Chhattisgarh and Others ; AND (4) KARNATAKA PUBLIC SERVICE COMMISSION Vs. SMT. LALITHA BAI K., (W.P. No. 11043/2008 decided on 14.09.2012), the 1st respondent is justified in passing the order dated 03.12.2010, as at Annexure-A. He made submissions in support of the impugned order.

5. Respondents 2 to 7 though served with the notice of these writ petitions have remained absent.

6. Perused the writ record. Point for consideration is, whether the 1st respondent has the power under S. 19(3) of the Act, to direct the petitioner to provide the information sought by respondents 2 to 7 and report compliance?

7. Respondents 2 to 7 had sought information under the Act by making applications under S. 6 of the Act, before the Public Information Officer of the petitioner. The information and certified copies sought related to the respective answer books of the applicants and the Notification issued for conducting of the recruitment pertaining to notified 144 posts of Assistant Public Prosecutors cum Assistant Government Pleaders in the Dept. of Prosecutions and Government Litigation. The request was rejected by assigning mainly the following reasons:

" (a) There is no provision under the Karnataka Department of Prosecutions & Government Litigation Recruitment Rules, 1982;

(b) That the selection committee has passed a resolution dated 30.11.2009, wherein it is decided not to provide answer scripts under the RTI Act;

(c) That the High Court of Karnataka in a case between Sri K. Basavaraja Vs. The Registrar General, High Court of Karnataka, , has held that evaluated answer scripts cannot be furnished to the candidates."

8. Respondents 2 to 7 did not avail the relief as provided under S. 19(2) of the Act, but, approached respondent No. 1 for relief. The claims of respondents 2 to 7 were considered as one under S. 18 of the Act and the impugned order as at Annexure-A was passed. In view of the refusal of the request vide Annexure-F, the applicants/respondents 2 to 7 ought to have filed an appeal under sub-section (2) of S. 19 of the Act. There is no scope to file a complaint, against the order of refusal passed by the public information officer, under sub-section (1) of S. 18 of the Act, before the 1st respondent.

9. In the case of The Registrar, Office of the Karnataka Lokayukta Vs. Karnataka Information Commission, , it was held as follows:

15. In the case of Chief Information Commr. and Another Vs. State of Manipur and Another, , the material facts were that an application dated 09.02.2007 under S. 6 of the Act for obtaining of information from the SIO relating to the magisterial enquiries initiated by the Government of Manipur from 1980-2006 was filed. Finding no response, the applicant filed a complaint under S. 18 of the Act before the State Chief Information Commissioner, who by an order dated 30.05.2007 directed the State Information Officer to furnish the information within 15 days. Said order was challenged by filing writ petition. A second application was filed on 19.05.2007 for obtaining similar information for the period of 1980 - March 2007 and no response having been received, the applicant filed a complaint under S. 18 of the Act, which was disposed on 14.08.2007, directing disclosure of the information sought for within 15 days. The said order was also challenged by filing of writ petition by the respondents. Both the writ petitions having been dismissed by a common order dated 16.11.2007 and writ appeals filed having been disposed of on 29.07.2010, holding that under S. 18 of the Act, the State Information Commissioner has no power to direct the respondent to furnish the information and further having held that such a power has already been conferred under S. 19(8) of the Act on the basis of an exercise under S. 19 only and the direction to furnish information having been held as without jurisdiction and directing the State Information Commissioner to dispose of the complaint in accordance with law, feeling aggrieved, the original applicant/complainant filed a SLP before the Apex Court. The question raised for determination reads as follows:

"28. The question which falls for decision in this case is the jurisdiction, if any, of the Information Commissioner u/s 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 u/s 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."

Taking into consideration the rival contentions advanced with reference to the scope of S. 18 of the Act, Apex Court has held as follows:

"30. It has been contended before us by the respondent that u/s 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, u/s 18 is an order of penalty provided u/s 20. However, before such order is passed the Commissioner must be satisfied that the conduct of the Information Officer was not bonafide.

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 u/s 18 of the said Act has no jurisdiction to pass an order providing for access to the information."

(emphasis supplied)

The impugned orders, extracted in paras 8 and 9 supra, being contrary to the law declared by the Apex Court, reproduced supra, cannot be sustained.

16. S. 18 of the Act is with regard to the Powers and functions of the Information Commissions. While exercising the powers, the Information Commission cannot issue direction either to allow inspection of the record by the applicant or furnish the information/copies of the record. The Information Commission at the time of deciding the complaint or appeal, if is of the opinion that the PIO has not furnished the information within the time specified under Sub-Section (1) of S. 7 of the Act or malafidely denied the request for information or knowingly given incorrect/incomplete or misleading information or obstructed in any manner in furnishing the information, shall impose a penalty not exceeding Rs. 25,000/-. The orders passed by the Commission, noticed supra, is beyond its powers.

Said decision squarely applies to the instant case.

10. Since respondent No. 1 has committed illegality in entertaining the claims of respondents 2 to 7, without noticing the fact that respondents 2 to 7 have not questioned the communication as at Annexure-F, in an appeal under S. 19(1) & (2) of the Act, in view of the decision noticed in para 9 supra, it is unnecessary to consider the contentions urged by Sri G.B. Sharath Gowda, with regard to the merit of the order, as at Annexure-A.

11. There being no cause of action to file a complaint under S. 18 of the Act and the proceedings before respondent No. 1 being not maintainable, it is ordered as follows:

Writ petitions are allowed. Impugned order as at Annexure-A is quashed. The cases instituted by respondents 2 to 7, before respondent No. 1, being not

maintainable, stand quashed. However, liberty is reserved to respondents 2 to 7, to file first appeal as per the provision under sub-section (2) of S. 19 of the Act. If such appeals are preferred within a period of 30 days from today, the same shall be considered and decided in accordance with law, without going to the question of limitation. All other contentions of both sides are left open.

No costs.