

M.P. Manjunath Vs. Karnataka Information Commission and Others

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Court : Karnataka

Decided On : Sep-16-2014

Judge : A.N. Venugopala Gowda

Appeal No. : Writ Petition No. 28336 of 2014 (GM-RES)

Appellant : M.P. Manjunath

Respondent : Karnataka Information Commission and Others

Judgement :

(Prayer: This Petition Is Filed Under Articles 226 And 227 Of The Constitution Of India, Praying To Quash The Impugned Order Passed By The 1st Respondent Dated 20.05.2014, Copy Of Which Is Herein Produced As Annexure-F, As Being Illegal And Without Jurisdiction.)

1. Petitioner is working as a Co-operative Development Officer in the Department of Co-operation, Government of Karnataka. 3rd respondent made an application under S.6 of the Right to Information Act, 2005 (for short, 'the Act'), on 23.09.2013 to issue information relating to the entire service of the petitioner in the Co-operation Department. The application having been submitted before the 2nd respondent and the information having not been furnished and issued Annexure-D, the 1st respondent was approached by way of a complaint vide Annexure - E for relief. The 1st respondent having passed the order bearing No.KIC 10561 PTN 2013, dated 20.05.2014, as at Annexure-F, this writ petition was filed to quash the

said order.

2. Smt. Leela Devadiga, learned advocate, appearing for the petitioner contended that:

(a) The Commission was in error in entertaining the complaint under S.18 of the Act.

(b) The Commission was in error and acted in excess of its jurisdiction in entertaining the complaint, when the Commission has not been vested with the power to examine, under S.18 of the Act, the correctness/otherwise of not furnishing the information.

(c) By taking up the complaint as a original proceeding, the Commission has rendered S.19 of the Act as redundant and otiose.

(d) The reasoning in the impugned order of the Commission and its approach to the case is completely perverse. Contradictory order passed vide Annexure-H was pointed out.

(e) The respondent No.3/applicant, without exhausting the alternative remedy of preferring an appeal before the First Appellate Authority, having approached the Commission with a complaint, the same being not maintainable, the impugned order calls for interference.

3. Sri G.B. Sharath Gowda, learned advocate for respondent No.1, on the other hand, submitted that statement of objections was not filed to the complaint lodged before the Commission by respondent No.3 and in the circumstances, the Commission is justified in allowing the complaint and directing the furnishing of a copy of the service register of the employee, who is a public servant. Learned counsel further submitted that in the facts and circumstances of the case, no interference with the impugned order is called for.

4. Perused the writ record and considered the rival contentions. The question which falls for decision in this case is the jurisdiction, if any, of the Commission, under S.18 of the Act, in directing the disclosure of the information.

5. Respondent No.3 had sought information on 23.09.2013 by submitting an application vide Annexure-A. The said application having been forwarded by the Registrar of Co-operative Societies to the 2nd respondent - competent authority, petitioner was issued with a notice, as at Annexure-B, by the said competent authority, calling upon the petitioner to reply as to whether such information can be provided. The Public Information Officer, considering the reply of the petitioner, rejected the information sought by the 3rd respondent vide Annexure-D, stating that the requested information cannot be provided unless there exists a larger public interest. The applicant / respondent No.3, without availing the appeal provision provided under S.19 of the Act, having filed a complaint dated 28.10.2013 under S.18(1) of the Act, vide Annexure-E, the Commission has passed the order on 20.05.2014 vide Annexure-F.

6. In the case of CHIEF INFORMATION COMMISSIONER AND ANOTHER Vs. STATE OF MANIPUR AND ANOTHER, AIR 2012 SC 864, 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 Special Leave Petition before the Apex Court. The question raised for determination therein reads 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." 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 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."

(emphasis supplied)

7. The procedure for hearing of the appeals has been provided in the Act. The procedure contemplated under Ss.18 and 19 of the Act is substantially different. The power under S.18 is supervisory in character and the procedure under S.19 is an appellate procedure and 3rd respondent, if is aggrieved by the intimation of the 2nd respondent, may seek redressal by following the procedure under S.19.

8. When the specific remedy has been made available to an aggrieved party, under the Act, the Commission is not justified in interfering with the order passed by the 2nd respondent. When the Act itself provides for a mechanism, the same cannot be by-passed, which would defeat the provisions of the Act.

9. In the instant case, the Commission has acted in excess of its jurisdiction and has committed error in passing the order dated 20.05.2014.

10. The impugned order is contrary to the decision of the Apex Court, noticed supra. The contentions urged by Smt. Leela Devadiga, learned advocate, is well founded and hence the impugned order cannot be sustained.

In the result, the writ petition is allowed and the impugned order is quashed. The complaint filed before the Commission being not maintainable, is dismissed. However, liberty is reserved to respondent No.3 to seek remedy in accordance with law.

No costs.

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