

Basawanappa Vs. the Karnataka State Information Commission Rep. by Its Commissioner and Another

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Court : Karnataka Gulbarga

Decided On : Jan-14-2011

Reported in : 2011ILR(Kar)1976; 2011(4)KCCR2834(DB); 2012(2)KantLJ237; 2012AIR(NOC)302

Judge : The Honourable Dr. Justice K. Bhakthavatsala & Arali Nagaraj

Appeal No. : Writ Appeal No.10001 of 2011

Appellant : Basawanappa

Respondent : The Karnataka State Information Commission Rep. by Its Commissioner and Another

Advocate for Pet/Ap. : For the Appellant: Prashanth Kumar S. Gotur, Advocates.
For the Respondents: -----

Judgement :

DR. BHAKTHAVATSALA, J

1. In the Appeal, the appellant has questioned the correctness of the order dated 10.11.2010 passed in W.P.No.80834/2010 by Learned Single Judge of this Court, rejecting the Writ Petition on the ground that the appellant is entitled to file an Appeal under the Right to Information Act (in short, 'the RTI Act') to the Appellate

Authority viz., the State Chief Information Commissioner.

2. Learned Counsel for the appellant submits that there is no provision in the RTI Act, for filing an Appeal against the order made by the State Information Commission (in short, 'SIC'), but Learned Single Judge erred in rejecting the Writ Petition and holding that under Section 19(1) of the RTI Act, Appeal lies to State Chief Information Commissioner.

3. Sri M. Kumar, Learned Additional Government Advocate appearing for the respondents, submits that as against the order passed by the Public Information Officer (in short, 'SPIO'), there is no provision for filing an Appeal before the State Chief Information Commissioner.

4. In view of the arguments addressed by the Learned Counsel for the respondents, a short question that arises for consideration in this Appeal is:

Whether as against the order passed by the State Information Commission, Appeal lies under Section 19(1) of the RTI Act?

5. Our answer to the above point is in the negative for the following:

REASONS

6. For immediate reference, the impugned order is excerpted as under:

“This Petition though listed for orders with consent of the Learned Counsel for the parties, it is taken up for final disposal.

2. Section 19(1) of the Right to Information Act 2005, provides for an Appeal against a decision of the State Public Information Officer by an aggrieved person, to the State Chief Information Commissioner, the Appellate Authority under Rule 6 of the Karnataka Right to Information Rules 2005. In that view of the matter petitioner aggrieved by the order dated 29.1.2010 Annexure 'A' of the State Information Commissioner is entitled to file State Information Commissioner is entitled to file an Appeal to the State Chief Information Commissioner, the Appellate Authority and therefore, I decline to interfere with the verdict Reserving liberty to appellant to file an Appeal, the petition is rejected”

7. As per Section 5 of the RTI Act, every Public Authority shall, within one hundred days of the enactment of the Act, designate as many officers as State Public Information Officers to provide the information to persons requesting for the information under the RTI Act. Under Section 6 of the RTI Act, a person, who desires to obtain any information under the RTI Act, shall make a request in writing to the State Public Information Officer (in short SPIO). As per Section 7 of the RTI Act, the SPIO, on receipt of a request under Section 6 shall, as expeditiously as possible, and in any case within thirty days of the receipt of the request, either provide the information on payment of such fee as may be prescribed or reject the request for any of the reasons specified in Sections 8 and 9 of the RTI Act. Further, under sub-Section (2) of Section 7 of the Act, if SPIO fails to give decision on the request for information within the period specified under sub-Section (1) of Section 7, the SPIO shall be deemed to have refused the request. Under Sub-Section (8) of Section 7, where a request has been rejected under sub-Section (1), the SPIO shall communicate to the person making the request.-(i) the reasons for such rejection: (ii) the period within which an appeal against such rejection may be preferred, and (iii) the particulars of the Appellate Authority. The Appellate Authority referred to in sub-Section (8) of Section 7 is senior in rank to the SPIO, appointed by the Public Authorities under Section 19(1) of the RTI Act. The appellant in this Appeal, (the petitioner in the Writ Petition), is the SPIO appointed by the Public Authority Section 5(1) of the Act.

8. For the purpose of understanding, the Authorities - SPIO and the Appellate Authority, we refer to the Notification of the Governor's Secretariat bearing No.GS 87 EST 2005, Bangalore, dated 17.9.2005, issued in exercise of the powers conferred under Sections 5(1) and 19(1) of the Right to Information Act, 2005. As per the above Notification, the authorities viz., the SPIO and the First Appellate Authority have been designated as under:

Public Authority	Sections	Public Information Officer	First Appellate Authority
1	2	3	4

Karnataka Governor's Secretariat	1. Administration 2. University	Under Secretary to Governor (Administration)	Joint Secretary to Governor
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9. In the instant case it is alleged that the S P I O did not furnish the information as requested by the appellant. Hence, he filed a complaint under Section 18(1) of the RTI Act to the SIC. As per sub-Section (l) of Section 18 of the RTI Act, it shall be the duty of the S I C to receive and inquire into a complaint from any person. The complaint was also filed before the S I C under Section 18(1) of the R T I Act. The order passed by the S I C is final. It is useful to refer to Section 20 of the R T I Act. According to sub-Section (1) of Section 20, at the time of deciding any 'complaint' or 'appeal', the State Information Commission is of the opinion that without any reasonable cause, the SPIO has refused to receive an application for information or has not furnished information within the time specified under sub-Section (1) of Section 7, etc., he shall impose a penalty of Rs.250/- each day till application is received or information is furnished, but the penalty shall not exceed Rs. 25,000/- and in the instant case also, the Commissioner has imposed penalty of Rs. 10,000/- on the S P I O.

10. Rule 6 of the Karnataka Right to Information Rules 2005 says that the Public Authority shall, by Notification specify the designation of the Officer to whom the appeal under sub-Section(1) of Section 19, shall lie and the documents to be annexed, fixing date for hearing of the Appeal, hearing the parties and passing orders.

11. In the instant case, the complainant has not approached the First Appellate Authority designated under Section 19(1) of the R T I Act. The complaint was filed under Section 18(1) of the R T I Act before S I C. Therefore, we are of the opinion that Learned Single Judge erred in rejecting the Writ Petition on the ground that as against the order of the S I C. Appeal has under Section 19(1) of the R T I Act.

12. In the result, the Appeal is allowed and the impugned order dated 10.11.2010 passed in W.P. No. 80834/2010 on the file of Learned Single Judge of this Court, is set aside.

The Registry is directed to list W.P. No.80834/2010 before the Learned Single Judge on 24.1.2011.

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