

IN THE HIGH COURT OF KARNATAKA AT BANGALORE
 DATED THIS THE 3RD DAY OF JANUARY, 2014
 BEFORE THE HON'BLE MR. JUSTICE A.N. VENUGOPALA GOWDA
 WRIT PETITION NO. 19314/2012 (GM - RES)

BETWEEN:

The Registrar
 Office of the Karnataka Lokayukta
 M.S. Building, Bangalore.
 (By Sri. B.A. Belliappa, Adv.)

.....(PETITIONER)

AND

1. Karnataka Information Commission
 N.14/3, Arvind Bhavan, Mithik Society Building
 Nrupathunga Road, Bangalore.
 Rep. By its Chairman.

2. Mr. A R Viswanatha
 Social & Environmental Activist
 Swamy Vivekananda Rural Education Foundation
 (RTI Jana Jagruthi Shikshana Abhiyana)
 Temple Street, Arehally Town, Belur Taluk, Hassan District.
 (By Sri. G.B. Sharath Gowda, Adv. For R1: R2 Served).

RESPONDENTS.

This Petition is filed under Article 225 of the Constitution of India, praying to quash the order passed by 1st respondent in proceeding dated 8.9.2011 and all further proceedings pursuant thereto as Annexure-F and the order dated 9.2.2012 vide Annexure-J passed by 1st respondent in complaint No. 1676/2011.

This petition having been reserved, the Court pronounced the following:

ORDER

The 2nd respondent herein - Mr. A.R. Viswahatha, submitted an application, on 5.12.2010, before the City Public Information Officer, Karnataka Lokayukta, Bangalore, the designated officer, under the Right to Information Act, 2005 (for short 'The Act'), seeking information and certified copies of Assets & Liabilities statements submitted to the Karnataka Lokayukta, by all sitting MLAs, MLCs, BBMP Corporators and also to provide statements filed by MLAs with reference to various criminal cases pending before the various Courts of Government of Karnataka, against MLAs. The designated authority informed the 2nd respondent/applicant, as per Rule 14 of the Karnataka Right to Information Rules, 2005 (for short 'the Rules') to file individual applications in respect of each MLA, MLC of the State. The applicant was notified that BBMP Corporators are not required to file Assets and Liabilities statements before the Karnataka Lokayukta, under the Karnataka Lokayukta Act, 1984.

2. The applicant by withholding the information furnished vide the communication dated 13.12.2010 supra, having filed a complaint on 20.10.2011, under S.18 of the Act and the Karnataka State Information Commission (for short 'the Commission') having issued notice

dated 8.9.2011 and the petitioner having appeared and filed statement of objections dated 3.11.2011 and the Commission having passed the orders dated 3.11.2011 and 9.2.2012, vide Annexures-F and J, to allow the complainant, to have access to the relevant records and, provide the information as identified by the applicant, feeling aggrieved, this writ petition was filed to quash the said orders.

3. Shri. B.A. Belliappa, learned advocate, first contended that the 2nd respondent having not exhausted the remedy of filing of Appeal provided under S.19 of the Act, the complaint filed by invoking S.18 of the Act, being not maintainable, 1st respondent has acted in excess of the jurisdiction i.e. in entertaining the complaint and passing the impugned orders. Secondly, 1st respondent has not considered the scope of the provisions under Section 18 and 19 of the Act. Thirdly, under Rule 14, the request of the applicant seeking information being relatable to 'one subject matter' and 2nd respondent having sought information in respect of Assets & Liabilities statements submitted to the Karnataka Lokayukta by all the sitting MLAs, MLCs and also to provide the statements filed by MLAs with reference to various criminal cases pending before various Courts in the State of Karnataka, in view of the applicant having been informed to file separate applications in respect of each MLA, MLC, as per the intimation dated 13.12.2010, the 1st respondent has committed illegality in entertaining the complaint and in passing the orders dated 3.11.2011 and 9.2.2012.

4. Sri. G B Sharath Gowda learned advocate for the 2nd respondent, on the other hand contended that having due regard of Rule 14, the Public Information Officer, ought to have furnished the information of atleast one MLA/MLC and instead, a communication dated 13.12.2010 having only been sent, complaint filed was entertained and the orders 3.11.2011 and 9.2.2012 were passed. Learned advocate made submission in support of the impugned orders.

5. The 2nd respondent, though served with the notice of this writ petition has remained unrepresented.

6. Perused the writ record. The points for consideration are:

(i) whether a single application filed seeking information and certified copies of the Asset and Liability statements submitted by all the sitting MLAs, MLCs of the State, to the Karnataka Lokayukta, is tenable in view of Rule 14 of the Karnataka Right to Information Rules, 2005?

(ii) Whether the Information Commission has the power under S.19 of the Act to direct the access to the relevant records and provide the information of the public authority, as may be identified by a complainant?

Re. Point (i):

7. Annexure-B is the application dated 5.12.2010 of the 2nd respondent, filed under Section 6 of the Act, before the PIO, Office of the Karnataka Lokayukta. Information and certified copies of the following were sought:

"Assets & Liability statements submitted to Karnataka Lokayukta by All Sitting MLAs, MLCs, BBMP Corporators and also provide statements filed by MLAs with reference to various criminal cases pending before various courts of Government of Karnataka against MLAs."

The PIO, by a communication dated 13.12.2010, vide Annexure-C; notified the 2nd respondent as follows:

"As per Rule 14 of the Karnataka Right to Information Rules, 2005, you are requested to file separate applications for each subject matters i.e., for each MLA, MLC of the State Government.

BBMP Corporators are not required to file Asset and Liabilities Statements before this Institution under Karnataka Lokayukta Act, 1984."

8. The 2nd respondent filed a complaint, under S.18 of the Act, before the 1st Respondent, on the ground that the PIO failed to give decision on his said application within 30 days of the receipt of the request and hence, he is deemed to have refused the request as laid down under Section 7(2) of the Act and sought issue of a direction, to provide the information sought in the said application and to take appropriate action under the provisions of the Act. Notice of the complaint having been issued on 8.11.2011, the PIO filed statement of objections on 3.11.2011. The 1st respondent, by taking note of the complaint and statement of objections, passed an order dated 3.11.2011. The relevant portion reads as follows:

ಅರ್ಜಿದಾರರಿಗೆ ನೀಡಿರುವ ಹಿಂಬರಹದ ಪ್ರತಿಯನ್ನು ಆಯೋಗವು ಪರಿಶೀಲಿಸಿದೆ. ಅರ್ಜಿದಾರರು ಕೋರಿರುವ ಮಾಹಿತಿಯು MLAs, MLCs, BBMP ಸದಸ್ಯರುಗಳು ಲೋಕಾಯುಕ್ತಕ್ಕೆ ಸಲ್ಲಿಸಿರುವ ಆಸ್ತಿ ಮತ್ತು ಖಣದ ಪಟ್ಟಿಯನ್ನು ಕೋರಿರುತ್ತಾರೆ. ಆದರೆ ಪ್ರತಿಯೊಂದು MLA ಗೂ ಸಹ ಪ್ರತ್ಯೇಕ ಮಾಹಿತಿ ಕೋರಿಕೆ ಅರ್ಜಿಯನ್ನು ಸಲ್ಲಿಸಬೇಕು ಎಂದು ಪ್ರತಿವಾದಿಯ ವಾದವನ್ನು ಆಯೋಗವು ಒಪ್ಪಿರುವುದಿಲ್ಲ. ಈ ವಿಷಯ ಒಂದೇ ಆಗಿರುವುದರಿಂದ ಮಾಹಿತಿಯ ಪುಟಗಳ ಸಂಖ್ಯೆ ಕಾಯ್ದೆಯ ವಿಧಿ 7(9) ರಂತೆ ಗಣನೀಯವಾಗಿ ಹೆಚ್ಚಾಗಿರುವುದರಿಂದ ಅರ್ಜಿದಾರರಿಗೆ ಸಂಬಂಧಪಟ್ಟ ಕಡತ ಪರಿಶೀಲನೆ ಮಾಡಲು ದಿನಾಂಕವನ್ನು ನಿಗದಿಪಡಿಸಲು ಅವಕಾಶವಿತ್ತು. ಆದರೆ ಅರ್ಜಿದಾರರು ಯಾವ ಅವಧಿಗೆ ಮಾಹಿತಿಬೇಕೆಂಬ ಬಗ್ಗೆ ತಿಳಿಸದೇ ಇರುವುದನ್ನು ಆಯೋಗವು ಪರಿಗಣಿಸಿದೆ. ಆದುದರಿಂದ ಅರ್ಜಿದಾರರು ಕೋರಿರುವ ಮಾಹಿತಿಯನ್ನು ದಿನಾಂಕ 26.12.2011 ರಂದು ಅಪರಾಹ್ನ 3.00 ಘಂಟೆಗೆ ಸಂಬಂಧಪಟ್ಟ ಕಡತ ಪರಿಶೀಲನೆ ನಂತರ ಅರ್ಜಿದಾರರು ಗುರುತಿಸುವ ಮಾಹಿತಿಯನ್ನು ನಿಗದಿತ ಶುಲ್ಕ ಪಾವತಿಸಿಕೊಂಡು ಮಾಹಿತಿಯನ್ನು ನೀಡಬೇಕೆಂದು ಆಯೋಗವು ಸಾ.ಮಾ.ಅ. ಹಾಗೂ ಉಪ ನಿಬಂಧಕರು (ಆಡಳಿತ), ಕರ್ನಾಟಕ ಲೋಕಾಯುಕ್ತ, ಬಹುಮಹಡಿಗಳ ಕಟ್ಟಡ, ಬೆಂಗಳೂರು ಅವರಿಗೆ ನೀಡಲಾಗಿದೆ.

9. The complainant having stated that the access to the record was not permitted by the PIO, a further order dated 9.2.2012 was passed by the 1st respondent. The relevant portion reads as follows:

4. ಅರ್ಜಿದಾರರು ಕೋರಿರುವ ಮಾಹಿತಿಗೆ ಸಂಬಂಧಿಸಿದ ಕಡತವನ್ನು ದಿ. 17.3.2012 ರಂದು ಬೆಳಿಗ್ಗೆ 11.00 ಘಂಟೆಗೆ ತಮ್ಮ ಕಛೇರಿಯಲ್ಲಿ ಪರಿಶೀಲಿಸಲು ಅವಕಾಶ ಮಾಡಿಕೊಟ್ಟು ತದನಂತರ ಸದರಿ ಕಡತದಲ್ಲಿ ಅರ್ಜಿದಾರರು ಗುರುತಿಸುವ ಮಾಹಿತಿಯನ್ನು ಮಾಹಿತಿ ಹಕ್ಕು ನಿಯಮದಂತೆ ನಿಗದಿತ ಶುಲ್ಕವನ್ನು ಪಾವತಿಸಿಕೊಂಡು ಮಾಹಿತಿಯನ್ನು ಒದಗಿಸುವಂತೆ ಆಯೋಗವು ಪ್ರತಿವಾದಿಯಾದ ಶ್ರೀ ಮೊಹಮ್ಮದ್ ಮುಹಮ್ಮದ್ ಲ್ಲಾ. ಸಾ.ಮಾ.ಅ. ಹಾಗೂ ಸಾರ್ವಜನಿಕ ಸಂಪರ್ಕಾಧಿಕಾರಿ, ಕರ್ನಾಟಕ ಲೋಕಾಯುಕ್ತ, ಬಹುಮಹಡಿಗಳ ಕಟ್ಟಡ, ಬೆಂಗಳೂರು ರವರಿಗೆ ನೀಡಲಾಗಿದೆ.

5. ಕೈಗೊಂಡ ಕ್ರಮವನ್ನು ಪರಿಶೀಲಿಸುವ ಸಲುವಾಗಿ ಸದರಿ ಪ್ರಕರಣವನ್ನು ದಿ. 27.6.2012 ರಂದು ಮಧ್ಯಾಹ್ನ 3.00 ಗಂಟೆಗೆ ಮುಂದೂಡಲಾಯಿತು.

10. Section 7 of the Act is with regard to Disposal of the request. Sub-Section (9) reads as follows:

"7. Disposal of request.-

(1) to (8) *****

(9) An information shall ordinarily be provided in the form in which it is sought unless it would disproportionately divert the resources of the public authority or would be detrimental to the safety or preservations of the record in question."
(emphasis supplied)

11. The Commission in its meeting held on 1.12.2007 having noted that very large number of applications have been filed seeking voluminous information by various PIOs and in certain cases complainants have sought information on more than one subject matter and in one particular case under as many as 100 items, having arrived at the view that some restrictions on the admissibility of questions could be imposed on the applicants under the Act, by taking note, that in both the State Legislature as well as Parliament, the right to ask question is governed by various conditions of which one is that it was related to a single matter, having felt that it is essential and desirable that a limit and ceiling is also placed on the items in the request for information, so that applicants do not seek voluminous information from the PIOs, made recommendation, that Rule 14 be inserted in the Rules. A draft notification, with regard to the proposed amendment, in exercise of the power conferred by Sub-Ss (1) and (2) of Section 27 of the Act, was forwarded to the State Government, to amend the Rules. Keeping in view the recommendation received from the 1st respondent, the amendment proposed having been accepted and approved, the amendment proposed having been accepted and approved, the Rules were amended, by Notification No. DPAR: 14 RTI 2008, dated 17.3.2007, w.e.f. 18.3.2008, inserting Rule 14, which being relevant for deciding of the case is, extracted hereunder.

"14. Request relate only to single subject matter:- A request in writing for information under Section 6 of the Act shall relate to one subject matter and it shall not ordinarily exceed one hundred fifty words. If an applicant wishes to seek information on more than one subject matter, he shall make separate applications:

Provided that in case, the request made relates to more than one subject-matter, the Public Information Officer may respond to the request relating to the first subject matter only and may advise the applicant to make separate application for each of the other subject-matters."

(emphasis supplied)

12. It is with reference to Rule 14, the applicant was instructed on 13.12.2010, to file separate applications for each subject matter i.e., for each MLA, MLC of the State.

13. S.27 of the Act empowers to make rules by Appropriate Government. In exercise of the power conferred by Sub-Sections (1) and (2) of S.27 of the Act, Government of Karnataka made the rules. In view of the recommendation made by the 1st respondent – Commission, noticed in para 11 supra, Rule 14 was inserted w.e.f. 18.3.2008. Rule 14 firstly, intended to prevent misuse by an applicant and secondly, to avoid disproportionate diversion of the resources of the public authority, in the face of provisions under S.20, providing for the mandatory imposition of penalty and also the power to recommend for initiation of disciplinary action against the Public Information Officer concerned. In my opinion Rule 14, which is clear and categorical, cannot be liberally construed, but, it should be construed strictly, as otherwise, the very purpose of its insertion would be frustrated. The Commission, while passing the order dated 3.11.2011, extracted in para 8 supra, has failed to

keep in view the purpose with which Rule 14 was inserted w.e.f. 18.3.2008. Casual approach to the matter by the Commission is apparent. The Assets and Liabilities statements of all the MLAs, MLCs of the State, cannot be construed as relating to one subject matter. The State has 225 MLAs and 75 MLCs (i.e. elected and also nominated). All of them are required to submit annually Assets and Liabilities Statements and also of members of their families, before the Karnataka Lokayukta i.e., under S.22 of the Karnataka Lokayukta, Act 1984. The information and copies sought vide application dated 5.12.2010 would disproportionately divert the resources of the public authority and in view of Rule 14, the Public Information Officer of the Petitioner's Office is justified in instructing the applicant to file separate applications for each MLA, MLC of the State.

Re: Point (ii):

14. There being no refusal of the request for information and a communication dated 13.12.2010 having undisputedly been sent to the applicant, within the stipulated period from the date of receipt of the application, there is no scope to file a complaint under Sub-Section (1) of S.18 of the Act, before the Commission. Hence, there is no necessity for conducting inquiry under Sub-Section (2) of S.18 by the Commission.

15. 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 9.2.2007 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 30.5.2007 directed State Information Officer to furnish the information within 15 days. Said order was challenged by filing writ petition. A second application was filed on 19.5.2007 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 14.8.2007, 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 29.7.2010, 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 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 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)

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, it is of the opinion 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.25000/-. The orders passed by the Commission, noticed supra, is beyond its powers.

17. The PIO, having notified the applicant/2nd respondent, the need to file separate applications for each subject matter as per Rule 14, the 1st respondent- Commission, in total disregard of the said Rule and the object with which it was inserted, has acted in excess of its jurisdiction, in entertaining the complaint and passing the impugned orders. Since the applicant was notified of the need to file separate applications, there being no cause of action to file a complaint under S.18 of the Act, the complaint instituted before the commission being not maintainable and being only an abuse of process of law, it is ordered as follows:

The writ petition is allowed and impugned orders and also the complaint filed before the 1st respondent/Commission, by the 2nd respondent, are quashed. However, liberty is reserved to the 2nd respondent, to file separate application/s as per Rule 14, for each subject matter i.e. each MLA/MLC of the State.

No cost.

Sd/-

JUDGE.

CIRCULATED IN PUBLIC INTEREST BY: B.H.VEERESHA,
MAHITHI HAKKU ADHYAYANA KENDRA, BANGALORE.rtiKarnataka@gmail.com