

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT  
JAIPUR BENCH, JAIPUR

ORDER

S. B. Civil (Misc.) Writ Petition No. 17123/2012

M.K. Sharma

Vs.

State Information Commission & Anr.

Date of Order

:

17.08.2016

P R E S E N T

HON'BLE MR. JUSTICE VEERENDR SINGH SIRADHANA

Mr. M.K. Sharma, petitioner present in person.

Mr. Harish C. Kandpal, A.G.C., for Mr. G.S. Gill, AAG, for  
State-respondents.

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BY THE COURT:

Aggrieved of the order dated 8<sup>th</sup> May, 2012 made by the  
Chief Information Commissioner, Rajasthan Information  
Commission, Jaipur and the order dated 18<sup>th</sup> July, 2012,  
declining the review application of the petitioner; the  
petitioner has approached this Court praying for the following  
reliefs:

"I. summon the record of the case, issue a writ  
in the nature of CERTIORARI for quashing the  
order dated 8.05.12 read with dated 18.7.2012  
(Annexure-P7, 11) passed by Respondent No.1 in  
Parivad 242/2012 titled as "Sh. M.K. SHARMA,  
31-B, First Floor, RSEB Colony, Vaishali Nagar,  
Jaipur V/S Public Information Officer & Chief  
Engineer (HQ) o/o P.H.E.D., 2, Civil Lines, Jaipur.

II. Being wrong, arbitrary, illegal and erroneous.

III. direct the State Information Commission to  
act lawfully as per Legal Procedures laid in India  
Judicial System in letters and spirit.

IV. Direct the Respondent No.2 to provide the  
information as sought vide RTI application  
(Annexure-P 1).

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V. take action as mandated u/s 18, 20(1) & (2) under RTI Act 2005 against the Respondent No.2.

VI. grant compensation of Rs.51000, towards avoidable delay, mental agony, litigation along with any other relief which the Hon'ble Court may deem fit in the facts and the circumstances of the case.

And for this act of kindness, the petitioner, as in duty bound, shall ever pray."

2. Shorn off unnecessary details, the essential skeletal material facts necessary for appreciation of the squabble are that the petitioner made an application under Section 2, 4, 5 and 6 of the Right to Information Act, 2005 (for short, 'Act of 2005'), seeking information. Most of the information sought was one contemplated under Section 4 of the Act of 2005, with reference to voluntary disclosures which every public authority is obliged to bring in public domain.

3. The Chief Engineer (Headquarters) and State Public Information Officer (PHED), Jaipur, returned the application of the petitioner vide communication dated 6<sup>th</sup> January, 2012 along with postal order, stating that there was no officer by the designation addressed, in the office. Further, since the information sought for related to the office of Additional Chief Engineer, PHED (Drilling Area), Jaipur; therefore, the application be addressed to the concerned office. Aggrieved of the communication dated 6<sup>th</sup> January, 2012, the petitioner instituted an application under Section 18 of the Act of 2005, before the Chief Information Commissioner, Rajasthan Information Commission, Jaipur. Vide impugned order dated 8<sup>th</sup> May, 2012, the Chief Information Commissioner disposed

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off the application with a direction to the petitioner, to address the application within seven days again to the same authority, with further observations that there was no defect in the application of the petitioner. Moreover, if the concerned officer to whom the application was addressed was not the Public Information Commissioner, he ought to forward the application to the concerned Public Information Officer. A review application instituted before the Chief Information Commissioner, has also been declined vide order dated 18<sup>th</sup> July, 2012; of which the petitioner is aggrieved of.

4. Reiterating the pleaded facts and grounds of the writ application, the petitioner present in person, asserted that from the details furnished, as to the 'Public Information Officer' under the Act of 2005; the Chief Engineer (Headquarter), 2 Civil Lines, Jaipur, has been indicated as 'State Public Information Officer'. It is further contended that communication dated 6<sup>th</sup> January, 2012, returning the application along with the postal order, to the petitioner would further reveal that it bears the signature of the Chief Engineer (Headquarter), with the designation as 'Public Information Officer' Department of PHED, Rajasthan, Jaipur. According to the petitioner, the grievance raised by him before the Chief Information Commissioner under Section 18 of the Act of 2005, has not been adjudicated upon in accordance with law and precedents. Referring to the opinion of the Supreme Court in the case of **Chief Information**



***Commissioner & Anr. Vs. State of Manipur and another:***

(2011) 15 SCC 1 and Namit Sharma Vs. Union of India:

(2013) 1 SCC 745, the petitioner would urge that the Chief Information Commissioner not only declined his application under Section 18, in an illegal and arbitrary manner but also adopted a discriminatory approach as would be evident from the orders made by the same Chief Information Commissioner in Appeal No. 1540/2011 dated 22.5.2012 and Appeal No. 1593/2011 dated 14.5.2012; wherein in somewhat similar factual matrix, the Chief Information Commissioner held that under the Act of 2005, there is no provision for return of the application along with fee, and therefore, such an act would amount to an error.

5. Further, referring to Section 6(3) of the Act of 2005, the Chief Information Commissioner, in both the appeals aforesaid, held that where an application is made to a public authority requesting for an information, (i) which is held by another public authority; or (ii) the subject matter of which is more closely connected with the functions of another public authority; the public authority, to which such an application is made, shall transfer the application or such part of it as may be appropriate, to that other public authority and inform the applicant immediately about such transfer. It is further contended that an action of transfer of the application, in view of the contemplation under Section 6 (3), has to be made as soon as practicable but in no case later than five days from

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the date of receipt of the application.

6. Furthermore, the same Chief Information Commissioner, having adopted such a course, in consonance with mandate of Section 6(3) of the Act of 2005; made a discriminatory order while declining the application of the petitioner vide impugned order dated 8<sup>th</sup> May, 2012, while relegating him to the same Public Information Officer to address the same application again, within 7 days.

7. In response to the notice of the writ application, the State respondents have filed their counter-affidavit raising preliminary objections while supporting the impugned orders dated 8<sup>th</sup> May, 2012 and 18<sup>th</sup> July, 2012 (Annex.P/7 and P/11), respectively.

8. It is contended that the petitioner, aggrieved of the orders impugned herein, also instituted a second appeal on 30<sup>th</sup> March, 2012, to which a response has been filed by the respondents therein; therefore, the present writ application deserves to be dismissed on that count alone. However, the fact that the second appeal has been declined vide order dated 13<sup>th</sup> May, 2013, confirming the order dated 17<sup>th</sup> May, 2012, is not in dispute for the counsel for the State-respondents produced a photo copy of the same for perusal of this Court.

19. According to the learned counsel for State-respondents, for the petitioner instituted a complaint on 3<sup>rd</sup> February, 2012 under Section 18 of the Act of 2005, directly before the Chief





Information Commissioner, Jaipur, and the same has rightly been declined. Moreover, vide order dated 8<sup>th</sup> May, 2012, the petitioner was directed to approach the same Public Information Officer within seven days of the decision, and such an action in the fact situation, cannot be faulted.

10. It is further urged that for the application seeking information was not addressed to the appropriate authority, therefore, the Public Information Officer, committed no illegality in declining the application and returning the same along with fee, to the petitioner vide order dated 6<sup>th</sup> January, 2012.

11. I have heard the petitioner present in person and Mr. Harish C. Kandpal, A.G.C. for Mr. G.S. Gill, AAG, appearing for State-respondents and with their assistance perused the materials available on record as well as gave my earnest consideration to the rival submissions.

12. Indisputably, the petitioner instituted an application seeking information under the Act of 2005 on 21<sup>st</sup> December, 2011. It is also not in dispute that most of the information sought for was as contemplated under Section 4 of the Act of 2005, which ordains public authorities to maintain all its records duly catalogued and indexed in a manner and in the form which facilitates the right to information under the Act of 2005, and ensure that all records that are appropriate to be computerised are, within a reasonable time subject to availability of resources, computerised and connected through

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a network all over the country on different systems so that access to such records is facilitated. The application of the petitioner was declined by the Public Information Officer vide communication dated 6<sup>th</sup> January, 2012, along with fee enclosed with the application through postal order-95E035604 for the postal order was not addressed to the appropriate authority. Further, there was no authority with the designation as addressed in the postal order, in the office of the Chief Engineer (Headquarter), PHED, Rajasthan, Jaipur, while the Chief Engineer (Headquarter), indicated himself with the designation as "Public Information Officer".

13. From the materials available on record, it is also evident that the petitioner sent several *e-mails*, as would be reflected from document available at Page 21 of the paper-book that the petitioner sought for information from the respondent No.2 (PIO), to furnish the name of the Accountant in whose name, the postal order on account of fee, was required to be drawn. The counsel as well as counter-affidavit filed on behalf of State-respondents are inconspicuously silent on the communications through *e-mails*.

14. In the case of **Chief Information Commissioner & Anr.** (supra), the Supreme Court, while explaining the scope of Section 18 and 19 of the Act of 2005, held thus:

31. 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.

32. 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.

33. In the facts of the case, the Appellant after having applied for information under Section 6 and then not having received any reply thereto, it must be deemed that he has been refused the information. The said situation is covered by Section 7 of the Act. The remedy for such a person who has been refused the information is provided under Section 19 of the Act. A reading of Section 19(1) of the Act makes it clear. Section 19(1) of the Act is set out below:

19. Appeal. -(1) Any person who, does not receive a decision within the time specified in Sub-section (1) or clause (a) of Sub-section (3) of section 7, or is aggrieved by a decision of the Central Public Information Officer or the State Public Information Officer, as the case may be, may within thirty days from the expiry of such period or from the receipt of such a decision prefer an appeal to such officer who is senior in rank to the Central Public Information Officer or the State Public Information Officer as the case may be, in each public authority:

Provided that such officer may admit the appeal after the expiry of the period of thirty days if he or she is satisfied that the Appellant was prevented by sufficient cause from filing the appeal in time.

39. The nature of the power under Section 18 is supervisory in character whereas the procedure under Section 19 is an appellate procedure and a person who is aggrieved by refusal in receiving the information which he has sought for can only seek redress in the manner provided in the statute, namely, by following the procedure under Section 19. This Court is, therefore, of the opinion that Section 7 read with Section 19 provides a complete statutory mechanism to a person who is aggrieved by refusal to receive information. Such

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person has to get the information by following the aforesaid statutory provisions. The contention of the Appellant that information can be accessed through Section 18 is contrary to the express provision of Section 19 of the Act.

41. This Court accepts the argument of the Appellant that any other construction would render the provision of Section 19(8) of the Act totally redundant. It is one of the well known canons of interpretation that no statute should be interpreted in such a manner as to render a part of it redundant or surplusage.

42. 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.

43. It may be that sometime in statute words are used by way of abundant caution. The same is not the position here. Here a completely different procedure has been enacted under Section 19. If the interpretation advanced by the learned Counsel for the Respondent is accepted in that case Section 19 will become unworkable and especially Section 19(8) will be rendered a surplusage. Such an interpretation is totally opposed to the fundamental canons of construction.

15. A glance of Section 18 as explained by the Supreme Court would reveal that nature of power under Section 18 is supervisory in character whereas the procedure under Section 19 is an appellate procedure and a person who is aggrieved by refusal in receiving the information which he has sought for can only seek redress in the manner provided under the statute i.e. procedure as contemplated under Section 19 of the Act of 2005. Thus, as held by the Supreme Court, the two sections 18 and 19 of the Act of 2005, operate in two different fields and one cannot be substituted by another.

16. In the factual matrix aforesaid, the Chief Information Commissioner, in exercise of powers under Section 18, ought

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to deal with the application of the petitioner under supervisory jurisdiction and was obliged to conduct an enquiry into the matter as contemplated under Section 18(3) of the Act of 2005, rather than relegating the petitioner to the same Public Information Officer to resubmit the application within 7 days. Moreover, after having concluded that there was no defect or error in the application submitted by the petitioner.

17. From the materials available on record, it is also evident that the same Chief Information Commissioner in appeal No. 1540/2011 decided on 22.5.2012 and Appeal No. 1593/2011 decided on 14.5.2012, in somewhat similar factual matrix; in no uncertain terms, concluded that it is duty of the Public Information Officer under the Act of 2005, on receipt of an application seeking information, to make available the information sought for and in the event he is of the opinion that the information sought for is in the possession of some other authority, he is required to transmit the application to the concerned public authority or such part of it, as may be appropriate, to that other public authority and inform the applicant immediately about such transfer. This exercise is to be undertaken by the Public Information Officer, as soon as practicable but in no case later than 5 days from the date of receipt of the application. Thus, having understood and concluded, in the backdrop of the mandate of Section 6(3) of the Act of 2005, there was no good reason for the Chief Information Commissioner, to deviate in the case of the

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petitioner and direct the petitioner to resubmit the application before the same Information Commissioner within 7 days having ascertained the fact that there was no defect or error of any kind in the application. Hence, the argument advanced by the petitioner for having adopted an approach contrary to law and precedents for reasons best known to the Chief Information Commissioner; has some substance.

18. In the case of **Namit Sharma** (supra), the Supreme Court while dealing with Article 14 of the Constitution to have a person's right to be adjudged by a forum which exercises judicial power in an impartial and independent manner consistent with the recognised principles of adjudication held that it is a mandatory requirement that judicial or quasi-judicial powers ought to be exercised by persons having judicial knowledge and expertise. Applying the principles enunciated by Constitution Benches in the case of **Union of India V. Madras Bar Association**: (2010) 11 SCC 1; **L. Chandra Kumar V. Union of India and Ors.**: (1997) 3 SCC 261; **Bharat Bank Ltd. Delhi V. Employees of Bharat Bank and Ors.**: AIR 1950 SC 188; the Supreme Court reiterated the principles of independence of judicial Tribunals, whose functioning is more akin to the Government functioning or were they are a part of the Court-attached system of administration of justice. Emphasising the necessity of transparency in appointment procedure of Information Commissioner and Chief Information Commissioner, detail

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guidelines have been issued.

19. While considering the scope of Section 18, 19, 20, 5 to 11 and 24 of the Act of 2005, in the case of **Namit Sharma** (supra), the Supreme Court observed that the authority and the Tribunal constituted under the provisions of the Act of 2005, are certainly quasi-judicial authority/tribunal performing judicial functions. At this juncture, it would be relevant to consider the text of para 98, 99, 100, 36 and 108.8, which reads thus:

"98. This takes us to discuss the kind of duties and responsibilities that such high post is expected to perform. Their functions are adjudicatory in nature. They are required to give notice to the parties, offer them the opportunity of hearing and pass reasoned orders. The orders of the appellate authority and the Commission have to be supported by adequate reasoning as they grant relief to one party, despite opposition by the other or reject the request for information made in exercise of a statutory right.

99. It is not only appropriate but is a solemn duty of every adjudicatory body, including the tribunals, to state the reasons in support of its decisions. Reasoning is the soul of a judgment and embodies one of the three pillars on which the very foundation of natural justice jurisprudence rests. It is informative to the claimant of the basis for rejection of his claim, as well as provides the grounds for challenging the order before the higher authority/constitutional court. The reasons, therefore, enable the authorities, before whom an order is challenged, to test the veracity and correctness of the impugned order. In the present times, since the fine line of distinction between the functioning of the administrative and quasi-judicial bodies is gradually becoming faint, even the administrative bodies are required to pass reasoned orders. In this regard, reference can be made to the judgments of this Court in the cases of *Siemens Engineering and Manufacturing Co. of India Ltd. v. Union of India and Anr.*: (1976) 2 SCC 981; and *Assistant Commissioner, Commercial Tax Department Works Contract and Leasing, Kota v. Shukla and Brothers*: (2010) 4 SCC 785.

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100. The Chief Information Commissioner and members of the Commission are required to possess wide knowledge and experience in the respective fields. They are expected to be well versed with the procedure that they are to adopt while performing the adjudicatory and quasi judicial functions in accordance with the statutory provisions and the scheme of the Act of 2005. They are to examine whether the information required by an applicant falls under any of the exemptions stated under Section 8 or the Second Schedule of the Act of 2005. Some of the exemptions under Section 8, particularly, Sub-sections (e), (g) and (j) have been very widely worded by the Legislature keeping in mind the need to afford due protection to privacy, national security and the larger public interest. In terms of Section 8(1)(e), (f), (g), (h) and (i), the authority is required to record a definite satisfaction whether disclosure of information would be in the larger public interest or whether it would impede the process of investigation or apprehension or prosecution of the offenders and whether it would cause unwarranted invasion of the privacy of an individual. All these functions may be performed by a legally trained mind more efficaciously. The most significant function which may often be required to be performed by these authorities is to strike a balance between the application of the freedom guaranteed under Article 19(1)(a) and the rights protected under Article 21 of the Constitution. In other words, the deciding authority ought to be conscious of the constitutional concepts which hold significance while determining the rights of the parties in accordance with the provisions of the statute and the Constitution. The legislative scheme of the Act of 2005 clearly postulates passing of a reasoned order in light of the above. A reasoned order would help the parties to question the correctness of the order effectively and within the legal requirements of the writ jurisdiction of the Supreme Court and the High Courts.

108.8. The Information Commissions at the respective levels shall henceforth work in Benches of two members each. One of them being a 'judicial member', while the other an 'expert member'. The judicial member should be a person possessing a degree in law, having a judicially trained mind and experience in performing judicial functions. A law officer or a lawyer may also be eligible provided he is a person who has practiced law at least for a period of twenty years as on the date of the advertisement. Such lawyer should also have

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experience in social work. We are of the considered view that the competent authority should prefer a person who is or has been a Judge of the High Court for appointment as Information Commissioners. Chief Information Commissioner at the Centre or State level shall only be a person who is or has been a Chief Justice of the High Court or a Judge of the Supreme Court of India."

36. Section 12(5) is a very significant provision under the scheme of the Act of 2005 and we shall deal with it in some elaboration at a subsequent stage. Similarly, the powers and functions of the Authorities constituted under the Act of 2005 are conspicuous by their absence under the Act of 2002, which under the Act of 2005 are contemplated under Section 18. This section deals in great detail with the powers and functions of the Information Commissions. An elaborate mechanism has been provided and definite powers have been conferred upon the authorities to ensure that the authorities are able to implement and enforce the provisions of the Act of 2005 adequately."

20. In the backdrop of what has been held by the Supreme Court in the case of **Namit Sharma** (supra), the Chief Information Commissioner was obliged to detail out the reasoning and the reasons for adopting a deviating stand in the case of the petitioner than that of two appeals referred to hereinabove, in the backdrop of Section 6(3) of the Act of 2005.

21. For the reasons and discussions aforesaid, the writ application succeeds and is allowed. The impugned orders dated 8<sup>th</sup> May, 2012 and 18<sup>th</sup> July, 2012 as well as communication dated 6<sup>th</sup> January, 2012, returning the application of the petitioner along with fee through a postal order, are hereby quashed.

22. The respondents are directed to furnish the information sought for by the petitioner through his application dated 21<sup>st</sup>



December, 2011, within 15 days from the date a certified copy of this order is presented.

23. The petitioner would be entitled to costs of Rs. 25,000/- (Rs. Twenty five thousand).

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(VEERENDR SINGH SIRADHANA),J.

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