



2023/KER/53218

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE MURALI PURUSHOTHAMAN

FRIDAY, THE 11TH DAY OF AUGUST 2023 / 20TH SRAVANA, 1945

WP(C) NO. 22483 OF 2023

PETITIONER:

SANOJ V K, AGED 44 YEARS



BY ADV K.S.PRAVEEN

RESPONDENTS:

- 1 BHARAT PETROLEUM CORPORATION LTD. (BPCL),
REPRESENTED BY ITS CHAIRMAN & MD,
BHARATH BAVAN, 4&6 CURRIMBHOY ROAD,
BALLARD ESTATE, P.B.NO.688, MUMBAI, PIN - 400001
- 2 RAVI R SAHAY, (FIRST APPELLATE AUTHORITY),
REGIONAL MANAGER (LPG),
SOUTHERN REGIONAL OFFICE NO:1
RANGANATHAN GARDEN, OFF 11TH MAIN ROAD
POST BOX NO: 1212 AND 1213 ANNA NAGAR,
CHENNAI, PIN - 600040
- 3 MANOJ NAMJOSHI,
CENTRAL PUBLIC INFORMATION OFFICER, BPCL
DEVELOPMENT & NETWORK MANAGER (LPG),
KERALA, BPCL-KERALA STATE OFFICE,
IRIMPANAM INSTALLATION, CCK BUILDING,
SEAPORT AIRPORT ROAD, KOCHI, PIN - 682309
R BY SC SRI. BENNY P.THOMAS

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
11.08.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



'CR'

JUDGMENT

The petitioner submitted Ext.P1 request for information under the Right to Information Act, 2005 (hereinafter referred to as 'the Act', for short) before the 3rd respondent, Central Public Information Officer (CPIO). The CPIO neither rejected the request nor gave a reply within the statutory period.

2. The petitioner, therefore, preferred Ext. P2 First Appeal under Section 19(1) of the Act before the 2nd respondent. The same was rejected *vide* Ext. P3 order stating that the CPIO has replied to the request of the petitioner and the 2nd respondent concurs with the same. It is stated in Ext.P3 that a copy of the order of CPIO is also enclosed therewith. The petitioner was also informed that in case he is not satisfied with the decision of the 2nd respondent, he can submit a Second Appeal before the Central Information Commission, New Delhi, whose address is furnished, as per Section 19(3) of the Act within



90 days of receipt of the order. The address furnished is as follows:

“Hon'ble Chief Information Commissioner,
Information Commission,
Room No. 305, 2nd floor, B wing,
August Kranti Bhawan, Bhikaji Cama Place,
New Delhi 11 00 66.”

After providing the address as above, it is further stated in Ext. P3 that as per Section 19(3) of the Act, Second Appeal against the decision of the First Appellate Authority lies before the Chief Information Commissioner at the address aforesaid and the same shall be submitted within 90 days of receipt of the order.

3. As informed by the 2nd respondent in Ext. P3, the petitioner prepared a Second Appeal and forwarded the same to the Chief Information Commissioner by Speed Post at the address furnished in Ext. P3. The same was returned to the petitioner by the postal authority stating that the addressee cannot be located. According to the petitioner, the address furnished to the petitioner in Ext. P3 by the 2nd respondent was not proper and correct and such wrong



address was furnished to him willfully and deliberately and therefore, the 2nd respondent is liable to pay penalty under Section 20 of the Act. It is also stated that since the 3rd respondent CPIO has failed to furnish information within the period provided under Section 7(1) of the Act, he is also liable to be punished under Section 20 of the Act. The petitioner has, therefore, filed this writ petition for the following reliefs:

- “i) Issue a writ of mandamus or such other writ, order or direction directing the 2nd respondent to pay the penalty as contemplated under section 20 of the Right To Information Act, 2005.
- ii) Issue a writ of mandamus or such other writ, order or direction directing the 3rd respondent to pay the penalty as contemplated under section 20 of the Right To Information Act, 2005.
- iii) To declare the information given by the 2nd respondent is knowingly given incorrect information.”

4. Can the petitioner invoke the jurisdiction of this Court under Article 226 of the Constitution of India for direction to the CPIO and the appellate authority to pay penalty as contemplated under Section 20 of the Right to Information



Act, 2005?

5. The 2nd respondent, while rejecting the request of the petitioner for information vide Ext. P3, had communicated to him the particulars of the appellate authority and the period within which an appeal against such rejection has to be preferred. According to the petitioner, the address of the appellate authority furnished to him was wrong and therefore, the postal article was returned with the endorsement that the addressee cannot be located. The petitioner contends that wrong address was willfully and deliberately furnished to him by the 2nd respondent and therefore, the 2nd respondent is liable to pay penalty under Section 20 of the Act. It is also contended that, since the 3rd respondent CPIO has failed to furnish information within the period provided under Section 7(1) of the Act, the 3rd respondent is liable to pay penalty under Section 20 of the Act.

6. Chapter V of the Act deals with powers and functions of Information Commissions, appeals and penalties. Section



18 deals with powers and functions of Commissions and reads thus:

18. Powers and functions of Information Commissions.—(1) Subject to the provisions of this Act, it shall be the duty of the Central Information Commission or State Information Commission, as the case may be, to receive and inquire into a complaint from any person,-

- (a) who has been unable to submit a request to a Central Public Information Officer or State Public Information Officer, as the case may be, either by reason that no such officer has been appointed under this Act, or because the Central Assistant Public Information Officer or State Assistant Public Information Officer, as the case may be, has refused to accept his or her application for information or appeal under this Act for forwarding the same to the Central Public Information Officer or State Public Information Officer or senior officer specified in sub-section (1) of section 19 or the Central Information Commission or the State Information Commission, as the case may be;
- (b) who has been refused access to any information requested under this Act;
- (c) who has not been given a response to a request for information or access to information within the time limit specified



under this Act;

(d) who has been required to pay an amount of fee which he or she considers unreasonable;

(e) who believes that he or she has been given incomplete, misleading or false information under this Act; and

(f) in respect of any other matter relating to requesting or obtaining access to records under this Act.

(2) Where the Central Information Commission or State Information Commission, as the case may be, is satisfied that there are reasonable grounds to inquire into the matter, it may initiate an inquiry in respect thereof.

(3) The Central Information Commission or State Information Commission, as the case may be, shall, while inquiring into any matter under this section, have the same powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of persons and compel them to give oral or written evidence on oath and to produce the documents or things;

(b) requiring the discovery and inspection of documents;

(c) receiving evidence on affidavit;

(ci) requisitioning any public record or copies thereof from any court or office;



(e) issuing summons for examination of witnesses or documents; and

(f) any other matter which may be prescribed.

(4) Notwithstanding anything inconsistent contained in any other Act of Parliament or State Legislature, as the case may be, the Central Information Commission or the State Information Commission, as the case may be, may, during the inquiry of any complaint under this Act, examine any record to which this Act applies which is under the control of the public authority, and no such record may be withheld from it on any grounds.

(underlining supplied)

Section 20 of the Act deals with penalties and reads thus:

“20. Penalties.—

(1) Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause, refused to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed



information which was the subject of the request or obstructed in any manner in furnishing the information, it shall impose a penalty of two hundred and fifty rupees each day till application is received or information is furnished, so however, the total amount of such penalty shall not exceed twenty-five thousand rupees: Provided that the Central Public Information Officer or the State Public Information Officer, as the case may be, shall be given a reasonable opportunity of being heard before any penalty is imposed on him: Provided further that the burden of proving that he acted reasonably and diligently shall be on the Central Public Information Officer or the State Public Information Officer, as the case may be.

(2) Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause and persistently, failed to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 or



malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall recommend for disciplinary action against the Central Public Information Officer or the State Public Information Officer, as the case may be, under the service rules applicable to him.”

(underlining supplied)

7. A reading of the above sections indicates that it shall be the duty of the Central Information Commission or State Information Commission, as the case may be, to receive and inquire into a complaint from any person who has not been given a response to a request for information within the time limit specified under the Act or who believes that he has been given incomplete, misleading or false information under the Act, and the Commission at the time of deciding the complaint or appeal is of the opinion that the Information Officer has not furnished information



within the time specified under sub-section (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information, it shall impose the penalty as provided in Section 20.

8. Thus, the authority competent to impose penalty as contemplated under Section 20 of the Act on the Central Public Information Officer or the State Public Information Officer is the Central Information Commission or State Information Commission, as the case may be and the petitioner cannot approach this Court invoking its jurisdiction under Article 226 of the Constitution of India. Accordingly, this writ petition is dismissed without prejudice to the right of the petitioner to approach the appropriate authority for the reliefs prayed for.

Sd/-
MURALI PURUSHOTHAMAN
JUDGE



APPENDIX

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE APPLICATION DATED
22.10.2022 SUBMITTED BY THE PETITIONER TO
THE 3RD RESPONDENT
- Exhibit P2 TRUE COPY OF THE FIRST APPEAL UNDER 19(1)
OF THE RIGHT TO INFORMATION ACT, 2005,
FILED BY THE PETITIONER TO THE 2ND
RESPONDENT DATED 17.12.2022
- Exhibit P3 TRUE COPY OF THE ORDER NO.
BPCLD/A/P/22/00149 DATED 12.01.2023
ISSUED BY THE 2ND RESPONDENT
- Exhibit P4 TRUE COPY OF THE POSTAL RECEIPT DATED
20.04.2023
- Exhibit P5 TRUE COPY OF THE COVER OF THE RETURNED
SECOND APPEAL
- Exhibit P6 TRUE COPY OF THE TRACK CONSIGNMENT
DETAILS OF CONSIGNMENT NUMBER
EL390226621IN