

"C.R."

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

&

THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR

FRIDAY, THE 7TH DAY OF OCTOBER 2022 / 15TH ASWINA, 1944

REVIEW PETITION NO. 991 OF 2014

AGAINST THE JUDGMENT DATED 28.10.2014 IN W.A.NO.180 OF 2010

IN W.P. (C) NO.25345 OF 2009

REVIEW PETITIONER:

THE STATE INFORMATION COMMISSION
(REPRESENTED BY ITS SECRETARY),
OFFICE OF THE STATE INFORMATION COMMISSION,
PUNNEN ROAD, THIRUVANANTHAPURAM-695001.

BY ADV SRI.M.AJAY, SC, STATE INFORMATION COMMN

RESPONDENTS:

- 1 C.V.RAJENDRAN
S/O.C.C.VELAYUDHAN, WORKING AS MECHANICAL
ENGINEER, CENTRAL WORKS, KSRTC PAPPANAMCODE,
THIRUVANANTHAPURAM.
- 2 E.K.BALACHANDRAN
CHALIL VEEDU, PAITHOTHU, PERAMBRA P.O.,
PIN-695039.
- 3 M.G.PRADEEP KUMAR,
(FORMER SPIO, KSRTC REGIONAL WORKSHOP,
KOZHIKODE), REGIONAL OFFICER, KSRTC,
ERNAKULAM.

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4 V.J.SAJU,
(FORMER SPIO) WORKS MANAGER, KSRTC REGIONAL
WORKSHOP, KOZHIKODE.

R1 BY ADV SRI.T.M.CHANDRAN

THIS REVIEW PETITION HAVING COME UP FOR FINAL
HEARING ON 29.08.2022, THE COURT ON 07.10.2022 DELIVERED
THE FOLLOWING:

"C.R."**ORDER**Ajithkumar, J.

“When application made for information as provided under Section 6 of the Right to Information Act, 2005 (for short “RTI Act”) is rejected, either expressly or otherwise, the remedy available to the applicant is to file an appeal as provided under Section 19 of the RTI Act and that a further complaint under Section 18 to the State Information Commission is not maintainable.” This is the position of law expounded by this Court in the judgment dated 28.10.2014 in W.A.No180 of 2010. The 1st respondent in the Writ Appeal, State Information Commission took exception to that and filed this Review Petition invoking Order XLVII, Rule 1 of the Code of Civil Procedure, 1908.

2. As per order dated 22.8.2022, service of notice on respondents No.2 to 4 was dispensed with. Heard the learned Standing Counsel for the petitioner and the learned Counsel for the 1st respondent.

3. In the judgment sought to be reviewed, the Division Bench held that the State Information Commission

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acted beyond its jurisdiction by issuing Ext.P1, whereby the 1st respondent was directed to take action on complaint dated 17.08.2007. That complaint was submitted by the requester alleging that the information sought by him was not furnished within the stipulated time. The Commission treated it as a complaint under Section 18(1) of the RTI Act as could be seen from Ext.P1. The Division Bench in such circumstances held that when an application made for information as provided under section 6 of the RTI Act is rejected, either expressly or otherwise, the State Information Commissioner is not empowered to issue a direction under Section 18 of the RTI Act to furnish the information sought and the only remedy available to the requester is to file an appeal as provided under Section 19 of the RTI Act.

4. The Apex Court in **Chief Information Commissioner and another v. State of Manipur and another [AIR 2012 SC 864]** held that Sections 18 and 19 of the RTI 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. The Apex Court further held that

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under Section 18 of the Act the Commission has power to impose a penalty as provided under Section 20 of the Act.

5. A Division Bench of this Court in **B.N. Mohanadasan v. State Information Commission and others** [W.A. No.2815 of 2009 dated 10.12.2009] considered the question whether the State Information Commission is empowered to impose penalty on an information officer under Section 18 of the Act if there is illegal denial of information or withholding of information, in cases where the requester did not invoke the appellate jurisdiction under Section 19 of the Act. The Division Bench held,-

“5. On a perusal of Section 20 of the Act wherein penalty is proposed to be imposed on a complaint or in an appeal indicate that irrespective of invoking the appeal provision, a party can approach and invoke jurisdiction of the State Commission on a complaint bringing it to the notice that there was illegal denial of information or withholding of information, as the case may be. As such, as it is open to the State Commission to impose penalty either on a complaint in this regard lodged invoking the jurisdiction of the authority under Section 18 of the Act or in an appeal filed before it under Section 19 of the Act, the present invoking of

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jurisdiction directly under Section 18 cannot be said to be either illegal or erroneous. In a given case, the aggrieved party may file appeal against the order of refusal, but it is always open for him to bring it to the notice of the State Commission the the delaying tactics which is contrary to the objectives of the Act.”

6. The learned Standing Counsel appearing for the petitioner would submit that the view taken in the judgment sought to be reviewed that a requester who was denied an information is to file an appeal as provided under Section 19 of the RTI Act and he cannot prefer a further complaint under Section 18 to the State Information Commission is against the principle laid down by the Apex Court as well as this Court in the aforementioned decisions. The judgment to the extent it deprives a person, who was denied information, the right to file a complaint under Section 18 of the RTI Act, therefore, is an error that requires review.

7. The powers of the Central Information Commission and State Information Commission under Section 18 have been categorised under clauses (a) to (f) of Section 18(1) of the Act. The Central Information Commission or the State

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Information Commission, as the case may be, may receive and inquire into complaint of any person,- (i) who has been refused access to any information requested under this Act or, (ii) has been given incomplete, misleading or false information under the Act or, (iii) has not been given a response to a request for information or access to the information within time limits specified under the Act. Under the residuary provision under Section 18(1)(f) of the Act the Commission is empowered to inquire in respect of any other matter relating to requesting or obtaining access to records under this Act. Under Section 18(3) of the Act, the Central Information Commission or State Information Commission, as the case may be, while inquiring into any matter in this Section has the same powers as are vested in a civil court while trying a suit in respect of the matters specified in Section 18(1)(a) to (f). Under Section 18(4), which is a non-obstante clause, the Central Information Commission or the State Information Commission, as the case may be, may examine any record to which the Act applies and which is under the control of the public authority and such records cannot be withheld from it on any ground.

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8. If a requester has applied for information under Section 6 of the Act 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 recourse open for such a person to get the information is provided under Section 19 of the Act. A reading of Section 19(1) makes it clear. Section 19(1) of the Act reads:-

"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 S.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."

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9. A second appeal is also provided under sub-section (3) of Section 19. Section 19(3) reads:-

"(3) A second appeal against the decision under sub-section (1) shall lie within ninety days from the date on which the decision should have been made or was actually received, with the Central Information Commission or the State Information Commission: Provided that the Central Information Commission or the State Information Commission, as the case may be, may admit the appeal after the expiry of the period of ninety days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time."

10. Under Section 19(8) the power of the Information Commission has been specifically mentioned. Those powers are as follows:-

"19(8). In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to,-

(a) require the public authority to take any such steps as may be necessary to secure compliance with the provisions of this Act, including-

(i) by providing access to information, if so requested, in a particular form;

(ii) by appointing a Central Public Information Officer or State Public Information Officer, as the case may be;

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- (iii) by publishing certain information or categories of information;
- (iv) by making necessary changes to its practices in relation to the maintenance, management and destruction of records;
- (v) by enhancing the provision of training on the right to information for its officials;
- (vi) by providing it with an annual report in compliance with clause (b) of sub-section (1) of Section 4;
- (b) require the public authority to compensate the complainant for any loss or other detriment suffered;
- (c) impose any of the penalties provided under this Act;
- (d) reject the application."

11. The State Information Commission (Appeal Procedure) Rules, 2006 laid down the procedure for deciding the appeals. The power to impose a penalty is provided under Section 20 of the Act. A reading of Section 20 makes it explicitly clear the power of imposing penalty can be invoked both in a complaint filed under Section 18 and in an appeal filed under Section 19(3) of the Act.

12. The question considered in **Chief Information Commissioner** (supra) was, has the Central Information Commission or State Information Commission, as the case may be, power to provide access to the information which was

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requested for by a person, but was denied by the public information officer. The Apex Court held that 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 as provided under Section 20 of the Act. A note of caution is also jotted. That, before passing such an order the Commissioner must be satisfied that the conduct of the Information Officer was not bona fide.

13. The Apex Court after considering purport of the aforesaid provisions observed in **Chief Information Commissioner** (supra) as follows,

“It is well known when a procedure is laid down statutorily and there is no challenge to the said statutory procedure the Court should not, in the name of interpretation, lay down a procedure which is contrary to the express statutory provision. It is a time honoured principle as early as from the decision in **Taylor v. Taylor [(1876) 1 Ch.D. 426]** that where statute provides for something to be done in a particular manner it can be done in that manner alone and all other modes of performance are necessarily forbidden. This principle has been followed by the

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Judicial Committee of the Privy Council in **Nazir Ahmad v. Emperor [AIR 1936 PC 253(1)]** and also by this Court in **Deep Chand v. State of Rajasthan [AIR 1961 SC 1527]** (para 9) and also in **State of U.P. v. Singhara Singh [AIR 1964 SC 358]** (para 8).”

14. In **B.N. Mohanadasan** (supra) the view taken by the Division Bench of this Court is that a perusal of Section 20 of the Act, wherein it is provided for imposition of a penalty on a complaint or in an appeal, indicates that irrespective of invoking the appeal provision under Section 19, a party can approach and invoke jurisdiction of the State Commission through a complaint by bringing to its notice that there was illegal denial of information or withholding of information. It is equally open to the State Commission to impose penalty on considering such a complaint invoking its jurisdiction under Section 18 of the Act.

15. From the above it is quite clear that the procedure contemplated under Sections 18 and 19 of the RTI Act is substantially different. The nature of the power under Section 18 is supervisory in character whereas the procedure under

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Section 19 is an appellate procedure and a person who is aggrieved by refusal in receiving the information, which he has sought, can only seek redress of getting access to that information only in the manner provided in the statute, namely, by following the procedure under Section 19 of the Act. When the Statute provides under Section 19 a complete statutory mechanism to a person who is aggrieved by refusal to provide information, he has to get the information by following the aforesaid statutory provisions. The aggrieved cannot resort to Section 18 of the Act to get access to the information since the provisions under Section 18 do not invest such a power on the Commission.

16. Viewed so, a requester, who was denied information, cannot approach the State Information Commission invoking the provisions under Section 18 of the Act for getting the information. If to get information, his remedy is only to file an appeal as provided under Section 19 of the Act. The requester can certainly file a complaint under Section 18 of the Act, but on such a complaint the State Information Commission has no power to direct the Public

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Information Officer to furnish information. The State Information Commission while considering a complaint under Section 18 has power to order a penalty as provided under Section 20 of the Act alone.

17. The rule enunciated in the judgment sought to be reviewed is that the only recourse available to the applicant when an application made for information under Section 6 of the RTI Act is rejected, either expressly or by implication, is to file an appeal as provided under Section 19 of the Act, and he cannot further file a complaint to the State Information Commission under Section 18 of RTI Act. The judgment to the extent it says that an applicant when his application for information under Section 6 of the RTI Act is rejected is not entitled to file a complaint to the State Information Commission under Section 18 of the RTI Act is against scheme of the Act and the principle of law laid down by the Apex Court in **Chief Information Commissioner** (supra) and this Court in **B.N. Mohanadasan** (supra), and therefore is an error liable to be reviewed. A person can approach and invoke jurisdiction of the State Information Commission

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through a complaint under Section 18 of the Act if there is illegal denial of information or withholding of information. On such a complaint what is open to the State Commission is to impose a penalty, and not to direct the Public Information Officer to furnish the information requested.

The Review Petition is disposed of accordingly.

Sd/-
ANIL K. NARENDRAN, JUDGE

Sd/-
P.G. AJITHKUMAR, JUDGE

dkr