

IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 26TH DAY OF JULY, 2022

BEFORE

THE HON'BLE MR. JUSTICE KRISHNA S.DIXIT

WRIT PETITION NO.4913 OF 2022(GM-RES)

BETWEEN:

SRI. SIJO SEBASTAIN,

... PETITIONER

(BY SRI.SIJO SEBASTAIN, PARTY IN PERSON)

AND:

1. KARNATAKA INFORMATION COMMISSION,
COURT HALL NO.5, MAHITI SOUDHA,
DEVARAJ URS ROAD,
OPPOSITE TO VIDHANA SOUDHA,
WEST GATE-2, BENGALURU-560 001.
2. THE PUBLIC INFORMATION OFFICER,
BLOCK EDUCATION OFFICE,
SOUTH CIRCLE-4,
GOVT HIGH SCHOOL COMPOUND,
TRIVENI NAGAR, K.R.PURAM,
BENGALURU - 560 036.

3. THE FIRST APPELLATE AUTHORITY,
BLOCK EDUCATION OFFICE,
SOUTH CIRCLE-4, GOVT HIGH SCHOOL COMPOUND,
TRIVENI NAGAR, K.R.PURAM,
BENGALURU - 560 036.

... RESPONDENTS

(BY SRI.SHARATH GOWDA G B, ADVOCATE FOR R1;
R2 & R3 ARE SERVED AND UNREPRESENTED)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226, 32 OF THE CONSTITUTION OF INDIA & RTI ACT SECTION 23, PRAYING TO TAKE ACTION AGAINST R1 AND R3 WITH EXEMPLARY PUNISHMENT FOR DERELICTION OF DUTY, BY IMPOSING MAXIMUM PENALTY AS PER RTI ACT SECTION 20(1) AND 20(2) AND THE DESERVED COMPENSATION TO THE PETITIONER FOR THE DIFFICULTIES AND MENTAL AGONY CAUSED BY THE ACTIONS OF R2 AND ETC.,

THIS PETITION COMING ON FOR ORDERS THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

Petitioner, party-in-person, Mr.Sebastian is knocking at the doors of Writ Court with the following prayers:

"1. Action against R-2 & R-3 with exemplary punishment for dereliction of duty by imposing maximum penalty as per RTI Act Section 20(1) & 20(2). And the deserved compensation to the petitioner for the difficulties and mental agony caused by the actions of R-2.

2. Action against R-1 by imposing penalty and compensation to the petitioner for the difficulties and mental agony caused by the actions of R-1 and misusing the power of Karnataka Information Commission to protect the habitual offenders of RTI Act.

3. *The petitioner humbly requests the Hon'ble Court to allow video conferencing for all hearings of this petition".*

2. After service of notice the 1st respondent-Karnataka Information Commission is represented by its Panel Counsel who opposes the writ petition *inter alia* submitting that the petition is lavishly drafted and its tenor is objectionable; whether penalty should be levied or not, is a matter of discretion and therefore is not ordinarily susceptible to judicial review of the writ court; even otherwise the information sought for having been shared with the petitioner, the present grievance is unsustainable. So contending he seeks dismissal of the writ petition.

3. The 2nd respondent-Public Information Officer has remained unrepresented despite service of notice and the petitioner contends that this is nothing short of an affront to the Writ Court. Whatever that be, the 2nd respondent remaining unrepresented would not interdict the hearing & disposal of this matter in accordance with law.

4. Brief facts of the case:

(a) Petitioner's RTI case having been favoured, the answering respondent Sri Shankar who happen to be the Public Information Officer-cum-the Manager attached to Block Education office, K.R.Puram, Bengaluru was directed to furnish the information as sought for.

(b) The said information came to be furnished with a delay of about two years. Petitioner's statutory appeal number 10725/APL/2020 came to be disposed off by the 1st respondent-Commission vide order dated 25.01.2022 on the ground that after notice dated 10.11.2021 was effected on the 2nd respondent, he has furnished to the petitioner on 03.12.2021 by a registered post the information/documents as was directed.

(c) The essential grievance of the petitioner is that the subject appeal could not have been so casually closed by order of the kind, closing eyes to the enormous delay brooked by the 2nd respondent in furnishing the information/documents and that the 1st respondent-Commission being a statutory *quasi* judicial body cannot act like a maharaja or moghul, its functions being of public law

character. The petitioner passionately submits that fine ought to have been levied on the 2nd respondent erring official, to say the least.

5. Having heard the petitioner, party-in-person and the learned Panel Counsel appearing for the 1st respondent-Commission and having perused the petition papers, this Court is inclined to grant indulgence in the matter as under and for the following reasons:

(i) Justice Louis Brandeis (1856-1941) of U.S. Supreme Court famously noted, "*Sunlight is said to be the best of disinfectants*". This statement, illuminates the justification for enacting 'transparency and information laws'. Access to information is also a key tool in combating corruption and wrongdoing. Investigative journalists and watchdog civil society organizations can use the right to access information to expose wrongdoing and help root it out. These laws reflect the fundamental premise that government and public officials are supposed to serve the people. There are, however, a number of more practical ideas underlying the widespread recognition of the right to information.

(ii) The International Covenant on Civil and Political Rights (ICCPR) has described information as 'the oxygen of democracy'. The right of access to information is recognized even under the provisions of the Universal Declaration of Human Rights, as an element of freedom of expression. It is understood in the said instrument as the right to seek and receive information. The UN Human Rights Committee in General Comment 34, adopted in 2011, widely interpreted the scope of the right to information, stating that Article 19 of the ICCPR ensures the right to access information held by public bodies. *International covenants which have been ratified by India are binding to the extent that they are not inconsistent with the provisions of the domestic law. The provisions of international conventions/covenants which elucidate and effectuate the Fundamental Rights, can be relied upon by the Courts as their facets and be enforced as such, in the light of Article 51 of the Constitution of India, says D.D.Basu's Shorter Constitution of India, Volume-I, 15th Edn. at page 644. All this needs to be kept in view by the functionaries of the RTI Act while interpreting its provisions.*

(iii) Petitioner had sought for certain information; his claim was favoured for furnishing the same in a time bound way and the said information was furnished to him after brooking a long delay of about two years, are not in dispute. All they are, even otherwise stand established by the material on record. Thus admittedly, there was delayed compliance of the direction. That being so, the 1st respondent could not have closed the appeal of petitioner leaving the culpable delay to go with impunity. An argument to the contrary strikes at the root of law, at reason and at justice.

(iv) Section 20 of the Right to Information Act, 2005 prescribes penalty of Rs.250/- for delay of each day brooked in furnishing the information; sub-section (1) prescribes the maximum penalty amount of Rs.25,000/-. The penalty clause is enacted pursuant to comment 34 of the UN Human Rights Committee, as adopted in 2011. This sub-section (1) which employs mandatory language ie., 'shall' reads as under:

"(1) Where the Central Information Commission or 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."

(v) The 1st Proviso to sub-section (1) of Sec. 20 enacts *audi alteram partem* and therefore before levying the penalty the erring person needs to be heard, is true. The 2nd Proviso enacts a negative burden and places it on the shoulders of the erring official to prove that he acted reasonably & diligently in furnishing the information in

time or not furnishing. This second proviso itself shows the significance of the right to information as legislated by the Parliament. That being the position, there was absolutely no reason for closing the appeal of the petitioner without levying penalty on the 2nd respondent, who has chosen to remain unrepresented despite service of notice. Normally, the matter would have been remanded for consideration afresh. However, such a course is not taken up since that would amount to putting the petitioner to the escalated hardship and therefore this Court itself in the extraordinary jurisdiction has treated the matter on merits, in the special circumstances of the case.

In the above circumstances, this writ petition succeeds; a penalty of Rs.25,000/- (being the maximum prescribed u/s.20 of the RTI Act) is levied on the 2nd respondent-Sri Shankar; the petitioner is awarded a cost of Rs.10,000/-. This levy needs to be discharged by Sri Shankar personally from his pocket.

The 2nd respondent shall remit the penalty amount along with costs to the petitioner within a period of 30 days; delay will carry interest at the rate of 2% per *mensum* for the first 30 days and 3% for the days next following.

The Registry shall immediately send by Speed Post a copy of this judgment to the Karnataka Information Commission, Mahiti Soudha, opp. Vidhana Soudha, Bengaluru-560 001.

**Sd/-
JUDGE**

Snb/