

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

DATED THIS THE 19<sup>TH</sup> DAY OF JANUARY, 2023

BEFORE

THE HON'BLE MS. JUSTICE JYOTI MULIMANI

**WRIT PETITION No. 30170 OF 2018 (GM-RES)**

**BETWEEN:**

SRI. A.B. YOMAKESHAPPA

... PETITIONER

(BY SRI.SANGAMESH.R.B., ADVOCATE)

**AND:**

1. KARNATAKA STATE INFORMATION COMMISSION  
MAHITHI SOUDHA, DEVARAJ URS ROAD  
OPPOSITE VIDANA SOUDHA WEST GATE NO.2  
BENGALURU - 560 001.
2. K. PRAKASHA REDDY

... RESPONDENTS

(BY SRI. RAJASHEKHAR.K., ADVOCATE FOR R-1  
R-2 SERVED)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE IMPUGNED ORDER DATED: 28.05.2018 IN KIC NO. 2600 APL 2018 PASSED BY RESPONDENT NO.1 VIDE ANNEXURE-L.

THIS WRIT PETITION COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, THE COURT MADE THE FOLLOWING:

**ORDER**

Sri.Sangamesh.R.B., learned counsel for the petitioner and Sri.Rajashekhara.K., learned counsel for Respondent No.1 has appeared in person.

2. The facts are quite simple and are stated as under:

It is stated that one K.Prakasha Reddy on 22.11.2017 applied under Section 6(1) of the Right to Information Act, 2005 (hereinafter referred to as 'the Act' for short), seeking details of the C.D copy of the recorded CCTV footage of inside and outside cameras fixed in the Check Posts - Nangli from 01.04.2016 to up to date. In response to the above RTI application, the petitioner

working as ARTO and PIO issued an endorsement on 24.12.2017 stating that the office of the PIO does not have a recorded CD of CCTV footage. The applicant dissatisfied with the endorsement preferred a first appeal under Section 19(1) of the Act on 27.12.2017. Aggrieved by the inaction on the part of the First Appellate Authority, the applicant preferred a second appeal under Section 19(3) of the Act before the Karnataka State Information Commission on 05.03.2018.

The Karnataka State Information Commission registered the appeal and notices were issued to the petitioner to appear before the Commission on 11.04.2018. The hearing date was fixed for 11.04.2018. On the said date, the petitioner was present and requested the Commission to drop the proceedings on the ground that endorsement has already been issued to Mr.Prakash Reddy on 24.12.2017 stating that the recorded C.D of CCTV footage was not available in the office of the PIO. Despite the same, the Commission proceeded to conduct

the proceedings, and a specific direction was given to initiate proceedings under Section 20(2) of the Act as to why disciplinary action should not be taken against the PIO for not furnishing the information. In compliance with the Order passed by the Commission, the PIO on 21.05.2018 once again communicated to the applicant that the office of the PIO had already intimated to the applicant on 24.12.2017 stating that the office of RTO does not have a recorded CD of CCTV footage. It was also informed that the storage capacity of the CCTV installed in the Check Post is very minimal/ small.

In response to the show-cause notice issued by the Commission, the petitioner gave a reply stating that the CCTV installed in the office is having the capacity to retain memory only for a week, and after the expiry of a week, the same will get erased automatically without any manual intervention and there is no Circular issued by the head office regarding mode of maintenance of CCTV and duration of maintenance of previously recorded visuals

since it is a video recorded, it requires huge space and the hardware capacity is not sufficient to hold the coverage for more than a week. Hence, the required information as sought by the applicant is not available in the office of the PIO. It is also stated that there is no rule which requires how many days the previous visuals have to be maintained. Hence, denial of the information by issuing an endorsement is due to bonafide reasons and there is no malafide intention on his part in not providing the information to the applicant.

The petitioner appeared before the Commission and requested to drop the proceedings. But the Commission proceeded further and on 28.05.2018 directed the ACB to investigate into the matter by appointing an officer. This order of the Commission is called into question in this Writ Petition on several grounds as set out in the memorandum of the Writ Petition.

3. Learned counsel for the petitioner and respondent No.1 urged several contentions.

Learned counsel for petitioner Sri.Sangamesh.R.B., has relied upon the decision reported in **CENTRAL BOARD OF SECONDARY EDUCATION AND ANOTHER VS. ADITYA BANDYOPADHYAY AND OTHERS** reported in **(2011) 8 SCC 497.**

4. Heard the contentions urged on behalf of the respective parties and perused the writ papers and also the Annexures with utmost care.

The following points arise for my consideration:

1. Is the Commission justified in referring the matter to ACB for investigation under section 19(8)(a) of the Right to Information Act 2005?
2. Is the Public Information Officer obliged to furnish information that is not available?

The facts have been sufficiently stated and the same does not require reiteration.

The whole controversy before me centered around the scope of Section 19(8)(a) of the Right to Information Act, 2005, and the obligation to provide information that is not available.

Before I answer the points, let us quickly glance at the scope and object of the Act.

The right to information provides a legal framework for citizens' democratic right to access information under the control of public authorities. The basic object is to promote transparency and accountability in the functioning of every public authority.

The Right to Information Act, of 2005 has been probably the most discussed law of recent times. The RTI Act provides information to the public. It is a source that provides transparency and accountability in the working of public authorities. To maintain transparency, the word information is defined under Section 2(f) of the Right to

Information Act, 2005. This section helps in determining which information can be provided to the public.

“Section 2(f) defines “information” means any material in any form, including records, documents, memos, e-mails, opinions, advises, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force;”

“Section 2(i) defines “record” includes—

- (a) any document, manuscript, and file;
- (b) any microfilm, microfiche, and facsimile copy of a document;
- (c) any reproduction of image or images embodied in such microfilm (whether enlarged or not); and
- (d) any other material produced by a computer or any other device;”



“Section 2(j) defines “right to information” means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to—

- (i) inspection of work, documents, and records;
- (ii) taking notes, extracts, or certified copies of documents or records;
- (iii) taking certified samples of material;
- (iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes, or in any other electronic mode or through printouts where such information is stored in a computer or any other device.

In this background, let me answer the points:

The applicant is Sri.K.Prakasha Reddy. He sought the details of a CD copy of the recorded CCTV footage cameras fixed in Nangali Check Post, Mulbagilu Taluk, Kolar District.

The dates are quite relevant. The applicant applied on

22.11.2017. He sought the recorded footage from 01.04.2016 up to date.

Suffice it to note that the office of the Public Information Officer and Assistant Regional Transport Officer, Nangali Check Post, Mulbagal Taluk received the application on 24.11.2017 and it duly responded to the request made by the applicant by issuing an endorsement on two occasions. It is pivotal to note that the PIO, on the 24<sup>th</sup> day of December 2017, replied that the RTO office does not have a recorded CD of CC TV footage. Pursuant to the order of the Commission, the PIO replied on 21.05.2018 stating that the capacity of the CCTV camera installed in the Check Post is minimal/ small and the information sought by the applicant Sri.K.Prakasha Reddy is not available in the office of the PIO due to the less storage capacity of the camera.

In this case, the controversy is the non-furnishing of a CD of the CCTV footage. Hence, it is very much essential to know and understand the hardware capacity. It is

pivotal to note that the company by name ENVISION FROM THOUGHT TO COMPLETION had installed the CCTV in the check post. The service provider has clarified in his letter dated 22.02.2018 that the recorded CCTV footage will be available only for ten days because of the less capacity of the hard disk. It is also clarified that for more days the backup needs to be upgraded with a Hard disk and NVR. A suggestion was made to upgrade the hard disk and replace it with new NVR and IP cameras for better clarity.

As already noted, the applicant sought the recorded CCTV footage from 01.04.2016 in the month of November 2017. He is seeking one and a half years old recorded CCTV footage. The CCTV installed in the office had less capacity; it can retain memory only for a week and thereafter, it will automatically get erased without any manual intervention.

As we have seen the definitions of information, record, and the right to information, no doubt a citizen is

entitled to access information under the control of public authorities provided the information must be accessible and the officials concerned must possess the information which is sought for. The information sought should be easily accessible and in the electric format. In the present case, because of the less storage capacity, the information could not be made available to the applicant and the same was informed to him well in time. It is common sense that the officer is not obliged to furnish information that is not available in his office.

Next, let me consider the contention about Section 19(8)(a) of the Act.

Sri.Sangamesh. R.B., learned counsel in presenting his arguments, strenuously urged that referring the matter to ACB, Bengaluru for investigation is beyond the scope of Section 19(8)(a) of the Act.

A good deal of argument was addressed about Section 19(8)(a) of the Act. Hence, extracting Section

19(8)(a) (i) to (vi) and (b) to (d) helps indicate the right approach.

*"19. Appeal.— xxxxxxxxxxxx*

*xxxxxxxxxxx*

*(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;*

*(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 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.*

The language employed is plain and clear. A bare perusal of the provision makes it very clear that the Commission has the power to require the public authority to take any such steps as may be necessary to secure compliance with the provisions of the Act including (i) to (vi).

Suffice it to note that under the provisions of the RTI Act, 2005 only such information that is available and existing and held by the public authority or is under control of the public authority can be provided. The PIO is not supposed to create information that is not a part of the record, and PIO is not obliged to furnish information that is not accessible and available in his office. Hence, in my opinion, the referral of the matter to ACB is certainly beyond the scope of section 19(8)(a) of the Act. I may

venture to say that the Commission has failed to have regard to relevant considerations and disregarded relevant matters. In my considered opinion, the order passed by the Commission is unsustainable in law.

Furthermore, because of the abolition of the ACB, the order of the Commission cannot be adhered to.

The result is that the writ petition will be allowed. The writ of certiorari is ordered. The order dated 28.05.2018 passed by the Karnataka State Information Commission in KIC No.2600 APL 2018 at Annexure-L is quashed.

The Writ Petition is ***allowed.***

**Sd/-  
JUDGE**

BNV/TKN