

IN THE HIGH COURT OF BOMBAY (NAGPUR BENCH)

Writ Petition No. 5269 of 2008

Decided On: 01.07.2009

Appellants: **Shri Lokesh Chandra, I.A.S. Director (Transmission) Ministry of Power, Govt. of India and Mrs. Abha Shukla, I.A.S. Director, Ministry of Civil Aviation**
Vs.

Respondent: **The State of Maharashtra through Chief Secretary and Ors.**

Hon'ble Judges:

C.L. Pangarkar, J.

Counsels:

For Appellant/Petitioner/Plaintiff: C.S. Kaptan, Adv.

For Respondents/Defendant: Dangre AGP for Respondent No. 1, S.P. Dharmadhikari, Sr. Adv. for Respondent No. 2 and R.D. Bhuihar, Adv. for Respondent No. 3

Subject: Right to Information

Acts/Rules/Orders:

Right to Information Act, 2005 - Sections 15, 15(1), 15(2) and 15(4); Election Commission Act - Sections 9 and 10

Cases Referred:

State of Rajasthan v. Prakash Chand (1998)1 SCC 1; T.N. Seshan, Chief Election Commissioner of India v. Union of India and Ors. (1995)4 SCC 611

Disposition:

Petition allowed

JUDGMENT

C.L. Pangarkar, J.

1. This writ petition challenges the order passed by the State Information Commissioner, Nagpur Region in second appeal under the Right to Information Act, 2005.

2. The facts are as follows

Respondent No. 4 herein applied to respondent No. 6 the Public Information Officer General Administration Department, Mumbai to supply the information of assets and liabilities of the petitioners. Respondent No. 4 was informed by respondent No. 6 that such information cannot be supplied as that would invade the privacy of individual. An appeal was preferred before the first appellate authority, who also rejected the appeal. Respondent No. 4, therefore, preferred second appeal before the State Information Commissioner, Nagpur

Division. The Commissioner directed the information to be supplied. The order was challenged before this Court by the petitioners and this Court set aside the order and directed the Commissioner to decide the preliminary objections raised by the petitioners in the second appeal before the Commissioner. Respondent No. 3 The State Information Commissioner rejected the objection. He found that the Chief Information Commissioner had no right to issue an administrative order that Chief Information Commissioner would alone hear the appeals in such matters. The petitioners feel aggrieved by the said order.

3. I have heard the learned Counsel for the petitioners as well as all the respondents. All respondents except respondent No. 3 support the contention of the petitioners that the Chief Information Commissioner alone can hear the appeal such as the present one as per the order passed by him on 5/2/2007 (Annexure F).

4. The undisputed fact is that Government of Maharashtra has appointed the Chief Information Commissioner and three Divisional Commissioners at Nagpur, Aurangabad and Bombay. The State Information Commission is constituted under Section [15](#) of the Right to Information Act. Sub-sections 1 and 2 of Section [15](#) read as follows

15. Constitution of State Information Commission.

(1) Every State Government shall, by notification in the Official Gazette, constitute a body to be known as the...(name of the State) Information Commission to exercise the State powers conferred on, and to perform the functions assigned to, it under this Act,

(2) The State Information Commission shall consist of

(a) the State Chief Information Commissioner, and

(b) such, number of State Information Commissioners, not exceeding ten, as may be deemed necessary.

It is thus clear that Act envisages appointment of Chief Information Commissioner and maximum ten State Information Commissioners. The Information Commissioners appointed at the regional headquarters are designated as State Information Commissioners. The question is of determination of powers of the Chief Information Commissioner vis a vis; the State Information Commissioner and the Commission itself.

5. The Chief Information Commissioner had issued an administrative order to the following effect

ORDER

The following administrative orders are being issued under Section [15\(4\)](#) of the Right to Information Act, 2005.

(1) The applications of the State Information Commissioner appointed at divisional level for grant of all kinds of leave (casual, earned, etc.) should be submitted to the State Chief Information Commissioner.

(2) The State Information Commissioners should submit in advance for information the particulars of tour to be undertaken in the jurisdiction allotted to them, to the State Chief

Information Commissioner. Similarly, in any case, if they have to go outside their jurisdiction (on working day and holiday), it is necessary for them to obtain prior permission of the State Chief Information Commissioner.

(3) The State Information Commissioner at divisional level should fix the hearing of maximum second appeals/complaints at the District Headquarters so that it will be convenient to the public. Similarly, Video Conferencing should also be used for the purpose of hearing.

(4) In case of the second Appeals/complaints, if the appellant/applicant resides within the jurisdiction of the State Information Commissioner but the First Appellate Authority and the Public Information Officer are from the office at Mumbai (for example - Mantralaya, Director General of Police, etc.), such matters will be heard by the State Chief Information Commissioner at Mumbai.

(5) All the State Information Commissioners should submit the monthly report of the action taken by them in second appeals/complaints and miscellaneous references (in the proforma enclosed herewith) for every month up to 5th of next month to the State Chief Information Commissioner, without fail.

(6) The State Chief Information Commissioner shall write the annual confidential reports of all the State Information Commissioners at divisional level.

(7) In case of any correspondence to be made by the State Information Commissioner with the State Government, Central Government or other Commission/Authority, it should be submitted through the State Chief Information Commissioner.

(S.V. Joshi)
State Chief Information Commissioner.

It is on the basis of this administrative order that the petitioners submitted a preliminary objection that the Regional State Commissioner could not hear the second appeal in their case. Respondent No. 3 finds that the Chief Information Commissioner alone has no power to issue such order at all and usurp the powers of the State Information Commissioner by entertaining an appeal alone. It was also found by the State Information Commissioner that the Chief Information Commissioner alone could not decide as to which appeal he should hear and which appeal the State Information Commissioner should hear. According to him, this could be decided only by all the Commissioners together.

6. Respondent No. 3 while deciding the objection has, therefore, refused to follow the administrative direction. The ground on which he refused to follow those administrative instructions are (1) The Commission consists of Chief and State Information Commissioners and therefore the Chief Commissioner could not alone take the decision as to who should hear the appeals (2) he could not give any directions to the other State Commissioners as they are not subordinates, and (3) Such direction would amount to usurping the power of State Commissioner.

7. The State Government has appointed the State Commissioner at regional level with a view to avoid the inconvenience being caused to a common man and the justice should be delivered at the door step. The intention was also that the appeal from that particular area

could be heard and decided in that area itself. The material question is, however, of powers of the Chief Commissioner.

8. Respondent No. 3 applying the analogy of the Election Commission holds that the Information Commissioner also has to act in unison and Chief Commissioner alone cannot take the decision even on administrative side. The Election Commission no doubt has to act in unison and Chief Election Commissioner cannot in his own right individually take any decision with regard to the elections. This is because of the provisions contained in Section 9 and 10 of the Election Commission Act. It would be necessary to produce Section 9 and 10 of the Election Commission Act here-

Transaction of Business of Election Commission.

9. The business of the Election Commission shall be transacted in accordance with the provisions of this Act.

10. (1) The Election Commission may, by unanimous decision, regulate the procedure for transaction of the business as also allocation of the business amongst the Chief Election Commissioner and other Election Commissioners.

(2) Save as provided in Sub-section (1) all business of the Election Commission shall, as far as possible, be transacted unanimously.

(3) Subject to the provisions of Sub-section (2), if the Chief Election Commissioner and other Election Commissioners differ in opinion on any matter, such matter shall be decided according to the opinion of the majority.

9. Here, the law mandates the Commissioners to act in unison. Their decision has to be unanimous. They are, therefore in every matter, coming before them, supposed to act collectively. None of them has a power to act individually. In the Right to Information Act, there is no such mandate. In fact, every Commissioner who hears the appeal has to act individually and independently. If the analogy of Election Commission is to be applied then perhaps no Chief Commissioner or State Commissioner would be able to hear an appeal even individually or independently. All appeals will have to be heard by all members of the Commission collectively and their decision will have to be necessarily unanimous. No individual Commissioner will have in that case a right to record decision dissent or differ with the conclusions and reasons of his colleague. The Information Commissioners are required to hear the appeals. Hearing of appeal necessary means discharging a judicial function. When judicial function is discharged, each individual manning it must decide the matter before him according to his own conscience and not necessarily fall in line with his colleague.

10. A Commission necessarily needs to have ahead the Chief Information Commissioner, is a Head. The Commission not only is to decide the appeals but there are administrative functions which need to be discharged. Administrative functions necessarily are required to be discharged by the Head unless he delegates those powers to somebody else. Section [15\(4\)](#) of the Act reads as follows

15(4) The General superintendence, direction and management of the affairs of the State Information Commission shall vest in the State Chief Information Commissioner who shall be assisted by the State Information Commissioners and may exercise all such powers and

do all such acts and things which may be exercised or done by the State Information Commission autonomously without being subjected to directions by any other authority under this Act.

In this section the functions to be discharged by the Chief Information Commissioner are defined. These are administrative functions. The functions are (1) General Superintendence, (2) Issuance of directions and (3) Management of the affairs of the State Information Commission. These powers are vested in the Chief Commissioner.

11. Mr. Bhuihar, learned Counsel for respondent No. 3 submits that the words "assisted" means that the powers of the other Commissioners are coextensive. The submission cannot be accepted. The law only expects the other Commissioners to assist the Chief. It means if the Chief Commissioner so demands, the other Commissioners are supposed to render the assistance. The assistance can never be foisted for it may not be required. The word assistance itself means to render help or a helping hand and helping hand is required only when the person discharging the functions finds that he may alone be not able to discharge the functions effectively and efficiently. Nobody is supposed to render assistant unless sought. It would, therefore, be exclusively within the right of the Chief Commissioner if he should or should not seek assistance with regard to the matters mentioned in Section [15\(4\)](#).

12. If other Commissioner says that his powers with regard to Section [15\(4\)](#) are coextensive then perhaps there would be chaos. The general superintendence has to be by the Head alone and the right to issue directions must vest in the Head. If the Section is interpreted in the way as suggested by Mr. Bhuihar then other Commissioner may issue directions as he wishes which may be contradictory. The law does not require the Chief Commissioner to even consult the other Commissioners with regard to the management of the affairs of the Commission. Had there been a clause of consultation then perhaps the argument of Shri Bhuihar could have been accepted. The words used are assistance and not consultation. The Legislature in its wisdom has used the word assistance and assistance, as already said, means helping hand alone and not the exercise of power unilaterally.

13. The Supreme Court in State of Rajasthan v. [Prakash Chand reported in MANU/SC/0807/1998](#) : 1998CriLJ2012 has held that on the judicial side Chief Justice is the first amongst equals and on administrative side the Chief Justice is the master of the roster. It is, therefore, clear that though the Chief Justice is the first amongst equals on judicial side, he is in fact unequal on the administrative side. He alone can decide, who should sit in the Division Bench and who should sit in single and what type of work a puisne judge should deal with. Such type of power is certainly conferred on Chief Information Commissioner alone by Section [15\(4\)](#) of the Right to Information Act.

14. Shri Bhuihar, learned Counsel for respondent No. 3, submits that powers of all Commissioners are equal and other Commissioners are not subordinate to the Chief. There can not be two opinions with regard to the proposition that neither of the Commissioner is subordinate to the Chief Information Commissioner. Similar is the case of Chief Justice and the puisne judges. They are equal but on administrative side the Chief Justice wields more power. By virtue of Section [15\(4\)](#), I find that the Chief Information Commissioner has the statutory authority to manage the affairs of the Commission and to issue direction etc. Respondent No. 3 has tried to mix up the quasi judicial powers to administrative. The quasi or judicial powers are certainly equal but not the administrative. Respondent No. 3 while deciding the objection has quoted the observations of the Supreme Court in T.N. Seshan's case reported in (1995)4 SCC 611 (T.N. Seshan, Chief Election Commissioner of India v. Union of India and Ors.). The ratio in T.N. Seshan's case has no application at all, in view of

the provisions contained in 9 and 10 of the Election Commission Act. The power to decide the appeal in our case is to be exercised by one Commissioner only and bench of two or more Commissioners is not contemplated. The Information Commissioner in that regard is not expected to take decision collectively. In no case, both these Commissions can be equated due to nature of functions they are supposed to discharge.

15. It must, therefore, be held that the Chief Information Commissioner has right to decide which appeals are to be heard by whom. That is his statutory right and his prerogative under the statute. Respondent No. 3 is bound to hear only those appeals which may be made over to him and cannot make a grievance for withdrawal of any appeal from him by the Chief Information Commissioner. The order passed by the Chief Information Commissioner on 5/2/2007 cannot be faulted with. The objections of the petitioners must be upheld and the order passed by respondent No. 3 on those objections ought to be set aside. The petition allowed.

No order as to costs.