

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 16TH DAY OF APRIL 2013

BEFORE

THE HON'BLE MR.JUSTICE S. ABDUL NAZEER

**WRIT PETITION NO.19441/2012 & W.P.NOS.22981 TO
22982/2012 C/W W.P.NO.24210/2012 & W.P.NOS.40995 TO
40998/2012 (GM-RES)**

W.P.NO.19441/2012 & W.P.NOS.22981-22982/2012

Between:

- 1 M/s Bangalore Electricity Supply
Company Limited,
A Wholly owned Government of
Karnataka Undertaking,
Having its Corporate Office at
K.R.Circle, Bangalore – 560 001,
Reptd. By its Chief Engineer.
- 2 Shreeram Gowda,
S/o late Chikkariyappa,
Aged about 50 years,
Executive Engineer, BESCO,
Jayanagar Division, Banashankari 2nd Stage,
Bangalore – 560 070.

- 3 Shivasharana S/o Mala Siddappa,
Aged about 36 year,s
Assistant Executive Engineer,
BESCOM, South 9 Sub-Division,
27th Cross, BSK 2nd Stage,
Bangalore – 560 070. Petitioners.

(By Sri S.Sriranga, Adv.)

And:

- 1 The State Information Commissioner,,
Karnataka Information Commission,
M.S.Bldg., Bangalore – 560 001.
- 2 Sri S. Naresh Kumar, Major,
Chief Editor, Human Rights Squad,
No.265, 1st Cross, 2nd Block,
3rd Phase, 3rd Stage, BSK,
Bangalore – 560 085. Respondents.

(By Sri G.B.Sharathgowda, Adv. For Sharath & A/S, Adv. For R1
Sri S.Naresh, Kumar, R2 – party-in-person)

W.P.NO.24210/2012 & W.P.NOS.40995-40998/2012

Between:

Sri S.V.Govindaraju,
S/o late Sri Venkataiah,
Aged about 52 years,
Chief Engineer, Electricity RT & R & D,
Karnataka Power Transmission Company Ltd.,
Kaveri Bhavan, Bangalore – 9. Petitioner.

(By Sri S. Sriranga, Adv.)

And:

- 1 The State Information Commissioner,,
Karnataka Information Commission,
M.S.Bldg., Bangalore – 560 001.
- 2 Sri S. Naresh Kumar, Major,
Chief Editor, Human Rights Squad,
No.265, 1st Cross, 2nd Block,
3rd Phase, 3rd Stage, BSK,
Bangalore – 560 085. Respondents.

(By Sri G.B.Sharathgowda, Adv. For Sharath & A/S, Adv. For R1
Sri S.Naresh, Kumar, R2 – party-in-person)

W.P.No.19441 & W.P.Nos.22981-22982/2012 are filed under
Articles 226 & 227 of the Constitution, praying to quash the order

of the 1st respondent dated 18.4.2012 passed by the 1st respondent, at Annexure 'G', etc.

W.P.No.24210/2012 & W.P.Nos.40995-40998/2012 are filed under Articles 226 & 227 of the Constitution, praying to quash the order of the 1st respondent dated 18.4.2012 at Annexure 'G', etc.

These Writ Petitions coming on for Preliminary Hearing in 'B' Group this day, the Court passed the following:

ORDER

In these cases, the petitioners have called in question the validity of the order at Annexure 'G' dated 18.4.2012 passed by the first respondent and also for quashing of the order at Annexures 'C' and 'D' and to terminate the proceedings initiated on the basis of the complaints filed by the second respondent as per Annexure 'B'.

2. The second respondent filed five (5) applications under Section 6(1) of the Right to Information Act, 2005 ('Act' for short) before the Public Information Officer of the 1st petitioner seeking the details of the first petitioner-company from various Government Offices including the State Government.

3. The contention of the petitioners is that in response to the said applications, its Officers have with utmost due diligence provided the information by collecting the same from other Departments and Organizations. Having received all the information available at the office of the petitioners, the second respondent went on to file five complaints as per Annexure 'B' on 22.6.2010 under Section 18(1) of the Act before the Karnataka Information Commission. In pursuance of the same, the first respondent without having any power under the Act to do so, directed the petitioners to allow the second respondent to enter the premises of the first petitioner-company and peruse the details by orders dated 11.4.2011 and 3.8.2011. The first respondent has issued a show cause notice to the officers of the first petitioner vide order dated 30.11.2011 seeking explanation as to why penalty should not be imposed on them. They have filed their response to the notices as per Annexure 'F' pointing out that there has been

compliance by providing information. They have further contended that second and third respondents were not the persons incharge of the offices, when the alleged delay took place and therefore, question of imposing any penalty does not arise. However, the first respondent has passed the order dated 18.4.2012 imposing penalty on petitioner Nos.2 and 3 in W.P.Nos.19441/2012 and 22981 to 22982/2012 and the petitioner in W.P.Nos.24210/2012 and 40995 to 40998/2012 and also postponing the hearing to 27.7.2012.

4. The second respondent has filed objections opposing the writ petitions.

5. I have heard Sri S.Sriranga, learned Counsel for the petitioners, Sri G.B.Sharath Gowda, learned Counsel appearing for

the first respondent and Sri S.Naresh Kumar, the second respondent, party-in-person.

6. Learned Counsel for the petitioners submits that in response to the application at Annexure 'A' filed under Section 6(1) of the Act, information has been provided to the second respondent. However, he made applications under Section 18(1) of the Act, which are not maintainable having regard to the decision of the Apex Court in ***CHIEF INFORMATION COMMISSIONER VS. STATE OF MANIPUR – AIR 2012 SC 864***. Learned Counsel argued that it is impermissible for the first respondent to issue directions on an application made under Section 18 of the Act. In the proceedings filed under Section 18, the first respondent has issued a show cause notice under Section 20 of the Act. In the said proceedings, the second respondent has passed an order as per Annexure 'C' permitting the second respondent to peruse the

records in the office of the first petitioner, which is totally without jurisdiction.

7. Again, notice has been issued to the petitioners dated 30.11.2011 seeking explanation as to why penalty should not be imposed on the them. The petitioners have filed a detailed reply to the said notice. It is argued that without considering the objections, the first respondent has passed the impugned orders.

8. Learned Counsel further argues that the first respondent has come to a conclusion that Sri Govindaraju has delayed transferring the application by about one month. This finding is arrived at without notice to the said officer. That is why he has filed writ petitions in Nos.24210/2012 & 40995-40998/2012 challenging the impugned notices.

9. Learned Counsel draws my attention to Section 20 of the Act and submits that it is the bounden duty of the first respondent to consider the objections. If the delay is caused without any reasonable cause in refusing to receive the application for information or has not furnished information within the time specified 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, then only the first respondent is competent to impose penalty. Without considering the reasons assigned, the first respondent has passed the order.

10. On the other hand, the second respondent submits that he has not received the information in response to his application under Section 6(1) of the Act. Therefore, he has filed applications

under Section 18(1) of the Act. The orders passed on the applications have not been complied with. That is why the first respondent has passed the order of penalty. He has taken me through various documents in support of his contentions. He prays for dismissal of the writ petitions. He has relied on the following decisions in support of his contentions:

(i) ***PROVINCE OF BOMBAY VS. KHUSHALDAS S. ADVANI (SINCE DECEASED) AND AFTER HIM HIS L.Rs.***

(a) GOVINDRAM KHUSHALDAS AND (b) RAMCHAND KHUSHALDAS AND OTHERS – AIR (37) 1950 SC 222;

(ii) ***T.C.BASAPPA VS. T.NAGAPPA AND ANOTHER – AIR 1954 SC 440;***

(iii) ***S.C.PRASHAR AND ANOTHER VS. VASANTSEN DWARKADAS AND OTHERS – AIR 1956 BOMBAY 530;***

(iv) ***UNION OF INDIA VS. T.R.VARMA – AIR 1957 SC 882;***

(v) *A.M.ALLISON VS. B.L.SEN – (1957) SCR 359;*

(vi) *DEPTYLAL, LESSEE, CORONATION TALKIES, OOTACAMUND, BY POWER OF ATTORNEY AGENT, RAMASWAMY VS. COLLECTOR OR NILGIRIS AS THE MANAGING OFFICER – AIR 1959 MADRAS 460.*

(vii) *SMT.UJJAM BAI VS. STATE OF UTTAR PRADESH – (1963) 1 SLR 778;*

(viii) *S.GOVINDA MENON VS. THE UNION OF INDIA & ANOTHER – 1967 (2) SCR 566;*

(ix) *MUNICIPAL CORPORATION OF GREATER BOMBAY VS. DR.HAKIMWADI TENANTS ASSOCIATION AND OTHERS – AIR 1988 SC 233;*

(x) *THE CHANCELLOR AND ANOTHER VS. DR.BIJAYANANDA KAR AND OTHERS – AIR 1994 SC 579;*

(xi) *BURN STANDARD CO. LTD. & OTHERS VS. DINABANDHU MAJUMDAR AND ANOTHER – (1995) 4 SCC*

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(xii) ***CHIEF INFORMATION COMMISSIONER AND ANOTHER VS. STATE OF MANIPUR AND ANOTHER – AIR 2012 SC 864;***

11. Learned Counsel for the first respondent has sought to justify the impugned orders

12. It is clear from the materials on record that the second respondent had made five applications at Annexure 'A' on 12.5.2010 under Section 6(1) of the Act seeking from various Government offices including the State Government details regarding the first petitioner company. It is the case of the petitioners that after having received all the information available at the office of the petitioners, the second respondent filed complaints under Section 18(1) before the Karnataka Information

Commission as per Annexure 'B' and orders have been passed on the above complaints as per Annexures 'C' and 'D. It is contended that the Information Commission has no power under Section 18 to provide access to the information which has been requested for by any person and which has been denied and that the remedy available would be to file an appeal as provided under Section 19 of the Act. It is also contended that the first respondent could not have taken up the role of the first appellate authority and entertained the application of the second respondent by permitting him to inspect and take copies of the information which he desires to take from the first petitioner company. A show cause notice was issued to the officers of the first petitioner company dated 30.11.2011 seeking explanation as to why penalty should not be imposed on the officers as per Annexure 'E'. Petitioners have filed their objections as per Annexure 'F'. Perusal of the orders impugned would disclose that the objections filed by the petitioners have not been considered. It is also relevant to mention here that

the first respondent has come to the conclusion that Sri Govindaraju had delayed transferring the application by about one month. This finding is arrived at without notice to the said officer Govindaraju, the petitioner in W.P.No.24210/2012 and 40995-40998/2012.

13. Section 6 of the Act provides for making an application for obtaining information. It states that a person, who desires to obtain any information under the Act, shall make a request in writing through electronic means in English or Hindi or in the official language of the area in which the application is being made accompanying such fee as may be prescribed to the Central Public Information Officer or State Public Information Officer as the case may be of the concerned public authority, the Central Assistant Public Information Officer or State Assistant Public Information Officer, as the case may be specifying the particulars of the information sought by him or her.

14. Section 7 of the Act provides for disposal of the request made under Section 6. The Central Public Information Officer or State Public Information Officer, as the case may be, on receipt of a request under Section 6 shall, as expeditiously as possible and in any case within thirty days of the receipt of the request, either provide the information on payment of such fee as may be prescribed or reject the request for any of the reasons specified in Sections 8 and 9. If the Information Officer fails to give the decision on the request for information within the period specified under sub-section (1), the request is deemed to have been refused.

15. Section 19 provides for filing of an appeal. Sub-section (1) of Section 19 states that any person, who does not receive a decision within the time specified in Section 7 or is aggrieved by a decision of the Central Public Information Officer, he 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 State Public Information Officer as the case may be in each public authority. Proviso to this Section authorises the appellate authority to admit the appeal after the expiry of the period of 30 days if he or she is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time. The second appeal against the decision under sub-section (1) of Section 19 can be filed within 90 days from the date on which the decision should have been made or actually received with the Central Information Commissioner or the State Information Commission. Sub-section (9) of Section 19 mandates the Central Information Commission or State Information Commission as the case may be to give notice of its decision including any right of appeal, to the complainant and the public authority.

16. Thus, Section 19 is the appellate procedure and a person, who is aggrieved by the refusal in receiving information which he has sought for can only seek redress in the manner provided in statute, namely, by following procedure under Section 19. Section 7 read with Section 19 provides complete statutory mechanism to person who is aggrieved by refusal to receive information.

17. The power vested under Section 18 with the Central Information Commission or State Information Commission is supervisory in character. This provision provides access to the information which has been requested for by any person, but which has been denied to him.

18. The Apex Court in ***CHIEF INFORMATION COMMISSIONER AND ANOTHER VS. STATE OF MANIPUR AND ANOTHER – AIR 2012 SC 864*** has considered the scope of

Sections 18 and 19 as under:

“The Central Information Commission or State Information Commission has no power under Section 18 to provide access to the information which has been requested for by any person but which has been denied to him. Remedy for such person who has been refused information is provided under Section 19 of Act. Nature of power under Section 18 is supervisory in character whereas procedure under Section 19 is appellate procedure and a person who is aggrieved by refusal in receiving information which he has sought for can only seek redress in manner provided in statute, namely, by following procedure under Section 19. Section 7 read with Section 19 provides complete statutory mechanism to person who is aggrieved by refusal to receive information. Such person has to get information by following aforesaid statutory provisions. Sections 18 and 19 of 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. It may be that sometime in statute words are used by way of abundant caution. Same is not position here. Here completely different procedure has been enacted under Section 19. If the interpretation advanced by the learned Counsel for the respondent is accepted, in that case, Section 19 will become unworkable and especially Section 19(8) will be rendered surplusage. Such an interpretation is totally opposed to the fundamental canons of construction.”

19. It is clear that Sections 18 and 19 of the 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 Supreme Court has clearly laid down that a person, who is aggrieved by refusal in receiving information, which he has sought for can only seek redress in the manner provided in the

statute, namely, by following the procedure under Section 19 and not under Section 18.

20. In the instant cases, the second respondent had filed five applications under Section 6(1) of the Act as per Annexure 'A'. According to him, he had not received the full information. That is why he has filed the applications under Section 18(1) of the Act. The first respondent has registered the complaints as KIC Nos.8328 PTN 2010, 8329 PTN 2010, 8334 PTN 2010, 8335 PTN 2010 and 8338 PTN 2010. Five orders have been passed as per Annexure 'C' permitting the second respondent to peruse the records in the office of the first petitioner-company on 21.4.2011. The petitioner was directed to permit the second respondent to peruse the records available in his office. The complaints were adjourned to 3.8.2011. All these five complaints were again taken up for consideration on 30.11.2011 and on that day, orders have been passed in all the five

complaints calling upon the petitioners to show cause why compensation should not be awarded to the second respondent under Section 19(8)(b) of the Act. The case was posted to 8.2.2012. The petitioners have filed objections to the show cause notice as per Annexure 'F'. The first respondent has passed the orders at Annexure 'G' in the same case imposing penalty of Rs.5,000/- each on three officers mentioned therein. The Commission has not closed the cases. It has further adjourned the case to 27.7.2012.

21. The procedure adopted by the first respondent is clearly not permissible in law. If the second respondent is aggrieved by the orders passed by the Public Information Officer under Section 7 of the Act, he has to file an appeal under Section 19(1) of the Act before the appellate authority and in case he is aggrieved by the action or inaction of the appellate authority, he has to file a second appeal under Section 19(3). Filing of an application under Section

18(1) of the Act complaining the alleged inaction of the Public Information Officer is clearly not permissible in law.

22. Thus, the entire proceedings initiated by the Information Commission at Annexure 'C', the show cause notices at Annexure 'E' and the order of penalty at Annexure 'G' are without jurisdiction. The orders of penalty are on the basis of the order passed earlier by the Information Commissioner under Section 18 of the Act, which are also invalid and not enforceable in law.

23. I have carefully perused the decisions relied on by the second respondent. They have no application to the facts of these cases.

24. The writ petitions are accordingly allowed. The entire proceedings in KIC Nos.8328 PTN 2010, 8329 PTN 2010, 8334

PTN 2010, 8335 PTN 2010 and 8338 PTN 2010 are quashed. Consequently, the orders at Annexure 'C' dated 11.4.2011, the show cause notice at Annexure 'E' dated 30.11.2011 and the orders of penalty at Annexure 'G' dated 18.4.2012 are also quashed. However, liberty is reserved to the second respondent to challenge the order passed by the first respondent on his applications filed under Section 6(1) of the Act before the appropriate authority in accordance with law. No costs.

Sd/-
JUDGE.

BMM/-