

Patna High Court - Orders

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Central Selection Board Of ... vs State Information Commission & ... on 9 July, 2013

Patna High Court LPA No.355 of 2013 (5) dt.09-07-2013 1 IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.355 of 2013

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1. Central Selection Board Of Constable Through Its Public Information Officer Namely Chandra Shekhar Prasad Singh Bank Harding Road, Near Sachivalaya Halt, Patna, Bihar

.... Appellant/s

Versus

1. State Information Commission through its Joint Secretary-Cum- Additional Registrar, State Information Commission, Bihar, Patna

2. Joint Secretary-Cum-Additional Registrar, State Information Commission, Bihar, Patna

3. Sajan Kumar Sah S/O Ramashish Sah, R/O Village+P.O.-Maidapur, P.S.- Bochha, District- Muzaffarpur

.... Respondent/s

===== Appearance :

For the Appellant/s : Mr.

For the Respondent/s : Mr.

===== CORAM: HONOURABLE MR. JUSTICE NAVIN SINHA

and

HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE NAVIN SINHA)

5 09-07-2013 We have heard counsel for the Appellant and respondent no. 3.

The present Appeal arises from order dated 18.09.2012 in C.W.J.C. No. 17311 of 2012 rejecting the challenge of the Appellant to the order dated 08.08.2012 passed in Case No. 42430 of 2010-11 by the State Information Commission. Learned counsel for the Appellant submits that on 13.12.2011 the Commission passed a reasoned order disposing the case, satisfied that the information sought for by the respondent had been furnished to him. The respondent then filed Patna High Court LPA No.355 of 2013 (5) dt.09-07-2013 2 an application on 24.01.2012 that all information desired had not been made available. The Appellant had taken advantage of the absence of the respondent on the former date. Merely because the respondent had objected

but without recording its own satisfaction with regard to the order dated 13.12.2011, the Commission decided to review its earlier order, leading to the impugned order dated 14.08.2012 giving fresh directions for supply of documents. It was next submitted that the Right to

Information Act, 2005 (hereinafter called the Act) does not vest power for review of its orders in the Commission. The Commission has only statutory powers conferred by the Act. There is no inherent power of review, which otherwise necessarily has to be vested in a statutory body by the statute conferring power on it. Reliance is placed on (1971) 3 SCC 844 (Patel Narshi Thakershi vrs. Shri Pradyumansinghji Arjunsinghji) Counsel for the respondent no. 3 submitted that Section 18 of the Act provides for the powers and functions of the Information Commission. Section 18(3) vests powers in the Commission alike a Civil Court trying a suit under the Code of Civil Procedure. Apart from the powers of the Civil Court mentioned in Sub-clause (a) to (e), Sub-clause (f) is wide in its terms "any other matter which may be prescribed". The Patna High Court LPA No.355 of 2013 (5) dt.09-07-2013 3 Commission therefore has adequate powers including for review under this residuary clause.

We have considered the submissions made on behalf of the parties.

When an authority is created by a statute, its powers, duties and functions are regulated by statutory provisions. The powers vested in the authority are provided for in the statute itself. Powers not specifically vested in the statutory body are deemed to have been excluded. Section 18 generally provides for the powers and functions of the Commission. Section 19 provides for Appeal. There is no separate statutory provision empowering the Commission to review its order. In absence of any substantive statutory provision for review, the submission that under Sub-clause (f) the residuary power could have been conferred does not appeal to us. We need not discuss that aspect any further since no such provision has been pointed out to us from the Rules also if it could be so.

The powers of the Civil Court vested in the Commission are specific under Section 18(3) and cannot be extended beyond the provisions incorporated therein. The power for review under the Code of Civil Procedure is to be found in Section 114. There is no reference to the same in the Act. Patna High Court LPA No.355 of 2013 (5) dt.09-07-2013 4 In Patel Narshi Thakershi (supra), it has been observed at paragraph-4 as follows :-

“4. "..... It is well settled that the power to review is not in inherent power. It must be conferred by law either specifically or by necessary implication. No provision in the Act was brought to notice from which it could be gathered that the Government had power to review its own order....." We find that the order dated 13.12.2011 did not dismiss the application of respondent no. 3 for non prosecution but it was disposed by a reasoned order disclosing application of mind. Had it been dismissal simpliciter for non prosecution, we may have taken different view of the matter. The only option available to the respondent no. 3 in view of the detailed nature of the order dated 13.12.2011 was to file an Appeal under Section 19 of the Act.

Before we conclude, we must take note of the submission on behalf of respondent no. 3 that no objection was taken on behalf of the appellant before the learned Single Judge that the Commission had no power of review. It was being taken for the first time in the appeal. It being a question of law can be raised at any time. Further more, we find from paragraph-3 of the order passed by the learned Single Judge that the challenge laid out by the Appellant to the order dated 08.08.2012 was primarily Patna High Court LPA No.355 of 2013 (5) dt.09-07-2013 5 in view of the earlier order dated 13.12.2011 dropping the proceedings.

In conclusion, we find it difficult to sustain the order under Appeal which is accordingly set aside. The Appeal is allowed.

(Navin Sinha, J)

(Vikash Jain, J)

Md. Ibrarul/-