

Shail Sahni Vs Valsa Sara Mathew and Others

Court: Delhi High Court

Date of Decision: July 5, 2013

Acts Referred: Constitution of India, 1950 " Article 226
Right to Information Act, 2005 " Section 18, 18(1), 19, 19(1), 19(i)

Citation: (2013) 6 AD 408 : (2013) 201 DLT 430 : (2013) 4 JCC 2859 : (2014) 2 RCR(Civil) 762

Hon'ble Judges: V.K. Jain, J

Bench: Single Bench

Advocate: Jayant Tripathi, CGSC and Ms. Nayantara Roy, for the Respondent

Final Decision: Dismissed

Judgement

V.K. Jain, J.

The petitioner before this Court applied to CPIO, Delhi Cantonment Board on 15.4.2011 seeking certain information, vide

his letter dated 10.5.2011. The CPIO informed the petitioner that the information sought by him was not clear and requested him to attend his

office to clarify the information desired by him. Accordingly, the petitioner met with APIO in the presence of CPIO and gave certain clarifications

with respect to the information sought by him. The CPIO of Western Command transferred another application of the petitioner dated 7.9.2012 to

the CPIO of the Chief Executive Officer of the Cantonment Board on 13.9.2012. The grievance of the petitioner is that the information sought by

him has not been supplied so far. The petitioner, who appears in person, has sought the following directions:

A. Issuance of a writ in the nature of writ of mandamus or any other appropriate writ or order or direction directing respondents no. 1 and 2 to

expeditiously furnish information/documents as asked by petitioner in his application dated 15.4.2011 received by cantonment board office vide

diary no. 404 and as per written clarifications (annexed herewith as Annexure-B).

B. Issuance of a writ in the nature of writ of mandamus or any other appropriate writ or order or direction directing respondents to pay amount of

Rs. 410000/- (four lack ten thousand only) to petitioner as special, exemplary, monetary compensatory cost/damages and cost of the present

petition.

C. Issuance of a writ in the nature of writ of mandamus or any other appropriate writ or order or direction directing respondent no. 3 and 4 (CEO

Delhi Cantonment Board & Govt. of India) to exercise their inherent powers and take disciplinary action against respondent no. 1 and 2 under the

service rules applicable to them.

D. Issuance of a writ in the nature of writ of mandamus or any other appropriate writ or order of direction directing respondents no. 3 and 4 (CEO

Delhi Cantonment Board & Govt. of India) to exercise their inherent powers and award Punishment to/UPON respondents no. 1 and 2 and

suspend respondents no. 1 and 2 from the service.

E. Issuance of a writ in the nature of writ of mandamus or any other appropriate writ or order or direction in favour of petitioner and against the

respondents which is expedient in the interest of justice.

Section 7(1) of the Right to Information Act, to the extent it is relevant, provides that CPIO or SPIO, as the case may be, on receipt of a request

u/s 6 shall either provide the information sought by the applicant or reject the request within 30 days of the receipt of the request. Sub section (2)

of Section 7 provides that if the CPIO or SPIO, as the case may be, fails to give a decision on the request within the above referred time, he shall

be deemed to have refused the request. Section 19(i) of the Act provides that a person who does not receive a decision within the time stipulated

in sub section (1) of Section 7 may within 30 days from the expiry of such period prefer an appeal to such officer senior in rank to the CPIO or

SPIO as the case may be. Such an appeal can be admitted even after expiry of the aforesaid period if the Appellate Authority is satisfied that the

appellant was prevented by sufficient cause from filing an appeal in time. The appeal preferred under sub section (1) of Section 19 is required to be

disposed of within 30 days of its receipt or within such extended period not exceeding a total of 45 days from the date of filing, for reasons to be

recorded in writing. A second appeal under sub section 3 of section 19 is provided to the Central Information Commission or the State

Information Commission against the decision given under sub section (1) of the said Section. The Commission is competent not only to require the

Public Authority to provide access to the information but also to compensate the complainant for any loss or other detriments suffered by him. The

Commission can also impose any of the penalties provided under the Act. Section 20(1) of the Act provides that where the Commission 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, had, without any reasonable cause, refused to furnish information within the time specified time, it shall impose a penalty of two

hundred and fifty rupees each day till application was received or information is furnished subject to maximum penalty of twenty-five thousand

rupees: The burden of proving that he acted reasonably and diligently lies the CPIO or the SPIO, as the case may be. The Commission is also

competent to recommend disciplinary action against CPIO or SPIO in case it finds that he had without any reasonable cause and persistently not

furnished the information within the specified time. The Commission is also mandated by law to receive and inquire into the complaint from any

person who has been refused to access to any information requested under the Act or who has not been able to give a request in response of any

information access within the time limit specified in the Act.

2. It would thus be seen that two remedies were available to the petitioner on account of the alleged failure of the CPIO to provide the requisite

information to him. He could file an appeal before the senior officer of CPIO u/s 19(1) of the Act and could also make a complaint to the

Commission u/s 18(1) of the Act. The remedy of appeal provided u/s 19(1) of the Act cannot be said to be a remedy less efficacious than a writ

petition, since such an appeal is required to be decided within a maximum period of 45 days from the date it is filed. A complaint to the

Commission is also an effective remedy since not only can the Commission impose penalty upon CPIO, it can also recommend disciplinary action

against him. However, the petitioner has not chosen to avail remedies available to him u/s 18(1) and 19(1) of the Act.

3. It was contended by the petitioner that his earlier appeals were not decided by the Appellate Authority within the time stipulated in the Act and,

therefore, the remedy of an appeal u/s 19(1) of the Act cannot be said to be an efficacious remedy. I, however, find no merit in this contention. If

the Appellate Authority does not decide the appeal within the statutory time fixed under sub section (6) of Section 19, it may be open to the

aggrieved person to come to this Court for a direction to the Appellate Authority to decide his appeal without any further delay, but, unless he

avails the statutory remedy of appeal provided u/s 19 of the Act, it would be difficult to entertain a writ petition, bypassing the statutory mechanism

provided under the Act.

4. The petitioner has relied during the course of arguments on a decision of the Supreme Court in Chief Information Commr. and Another Vs.

State of Manipur and Another, , where the Apex Court, inter alia, held that the Commission while entertaining a complaint u/s 18 of the Act has no

jurisdiction to pass an order providing for access to the information. The Court was of the view that section 7 read with section 19 provide

complete statutory mechanism to a person who is aggrieved by refusal to receive information and he has to get this information by following the

aforesaid statutory provision. The Court was also of the view that when the statute confers a right of appeal, that must be exercised by a person

who is aggrieved by reason of refusal to furnish the information. For the reasons stated hereinabove, since the petitioner has alternative remedy

of appeal u/s 19(1) of the Act available to him, and the said remedy cannot be said to be less efficacious than the remedy by way of a writ petition,

it would not be appropriate to invoke extraordinary jurisdiction of this Court under Article 226 of the Constitution, in this matter. The writ petition

is accordingly dismissed. There shall be no order as to costs.