

(2013) 03 BOM CK 0238

Bombay High Court

Case No: Public Interest Litigation No. 91 of 2012

Krishna Harischandra Rao and
Others

APPELLANT

Vs

The State of Maharashtra and
Others

RESPONDENT

Date of Decision: March 7, 2013

Citation: (2013) 6 ABR 287 : (2013) 4 ALLMR 215 : (2013) 4 BomCR 817 : (2013) LabIC 4353 :
(2013) 4 MhLj 855

Hon'ble Judges: Mohit S. Shah, C.J; Anoop V. Mohta, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Mohit S. Shah, C.J.

This petition purporting to be public interest petition is filed by five petitioners for challenging the appointment of respondent No. 2-Mr.Ratnakar Gaikwad as the State Chief Information Commissioner u/s 15(1) of the Right to Information Act, 2005. Petitioners Nos. 1,3 & 4 had also applied for the said post. However, petitioners Nos. 2 & 5 had not applied for the said post. Petitioners Nos. 1, 3 & 4 contend that they are actively disseminating knowledge and practical inputs among Right to Information applicants and other citizens and that are widely networked with RTI activists around the country and are opinion-leaders. They are frequently invited to impart training in RTI to various citizens, groups, NGOs and government organizations.

2. Petitioner No. 1, arguing in person on behalf of all the petitioners, stated at the outset that as the impugned appointment was made in June 2012, the petitioners are not relying on the judgment dated 13 September 2012 of the Supreme Court in [Namit Sharma Vs. Union of India \(UOI\)](#), .

3. The petitioners have challenged the appointment of respondent No. 2 mainly on the following grounds:-

(i) Respondent No. 2 in his capacity as the then Chief Secretary in the Government of Maharashtra till 30 May 2012 participated in the selection process and was a part of the selection mechanism and within one week of his retirement got himself appointed as the State Chief Information Commissioner after making the application on 29 May 2012.

(ii) Respondent No. 2 was the Chief Secretary from January 2011 till 30 May 2012 and during this period respondent No. 2, as the Chief Secretary, did not take any steps for filling in the vacancy in the post of State Chief Information Commissioner, which arose in July 2011, and this post was kept vacant for ten months so that respondent No. 2 himself can be appointed as State Chief Information Commissioner.

(iii) In any view of the matter, appointment of respondent No. 2 as the State Chief Information Commissioner would not serve the purpose under the Right to Information Act, as he himself having held the post of Chief Secretary and also the post of Chief Executive Officer of Mumbai Metropolitan Region Development Authority (MMRDA), respondent No. 2 would have to deal with a number of cases where there will be conflict of interest. The State Chief Information Commissioner would be hearing appeals arising from cases dealing with Mantralaya and MMRDA, which are administrative bodies and where respondent No. 2 himself had acted as the Chief Secretary or Chief of the MMRDA.

(iv) Petitioners have also challenged the constitutional validity of provisions of Section 15(5), in so far as persons in "administration and governance" fields are to be considered as eligible for the post of the State Chief Information Commissioner. It is submitted that since the officers, who were themselves part of administration and governance, will be required to deal with queries relating to administration and governance, a retired government officer working as the State Chief Information Commissioner would not be able to discharge his duties impartially while dealing with the cases concerning his own fraternity.

(v) It is submitted that in any view of the matter, there should be some "cooling off" period before considering a retired government officer as eligible for the post of State Chief Information Commissioner.

4. Affidavit in reply has been filed on behalf of the State Government by Mr. R.T. Jadhav, Deputy Secretary, General Administration Department.

5. As regards the post of the State Chief Information Commissioner lying vacant, it is pointed that Mr. Suresh Joshi was appointed as State Chief Information Commissioner from 11 October 2005 to 11 October 2010 and thereafter Mr. Vilas Patil, who was holding the post of State Information Commissioner, was appointed as State Chief Information Commissioner on 14 October 2010. Thereafter, additional

charge of the post of State Chief Information Commissioner was with Mr. Vijay Kuvalekar from 25 July 2011 till 7 February 2012, and thereafter from 8 February 2012 till 7 June 2012 the additional charge of the post of State Chief Information Commissioner was given to Mr. Bhaskar Patil. It is, therefore, submitted that the post of State Chief Information Commissioner was never lying vacant and the duties of the office of State Chief Information Commissioner were being discharged.

6. Secondly, as regards the eligibility of respondent No. 2, it is pointed out that sub-section (5) of Section 15 provides for eligibility and persons of eminence with wide knowledge and experience, inter alia, in administration and governance are eligible. Hence, respondent No. 2 was found eligible to hold the post of State Chief Information Commissioner. It is also submitted that the only disqualifications provided are in subsection (6) of Section 15 and the respondent No. 2 does not suffer from any of those disqualifications.

7. As regards allegation of bias, it is submitted that since the Act makes officers having experience in administration and governance eligible for the post of State Chief Information Commissioner, no bias can be attributed to the holder of the post.

8. It is stated that after respondent No. 2 submitted his application on 29 May, 2012, another senior officer Mr. Subodh Kumar, who had retired as Municipal Commissioner of Mumbai Municipal Corporation, had also submitted his application on 1 June 2012 and his candidature was also considered by the High Power Committee.

9. As regards selection for the post of State Chief Information Commissioner, it is pointed out in affidavit in reply that as provided in sub-section (3) of Section 15, the High Power Committee consisting of the Chief Minister, the Leader of Opposition in the Legislative Assembly and Deputy Chief Minister nominated by the Chief Minister held their meeting on 6 June 2012 and at the said meeting they considered candidature of 91 applicants, including respondent No. 2.

10. It is submitted that after considering the candidatures of 91 applicants, the High Power Committee recommended the name of respondent No. 2 for the post of State Chief Information Commissioner as per the minutes of the meeting held on 6 June 2012, which are to be found at Exh.A-3 to the petition. On the basis of the said recommendation, the Governor of Maharashtra appointed the respondent No. 2 as State Chief Information Commissioner and appointment order was signed by Mr. Jayant Kumar Banthia, who is the present Chief Secretary.

11. Thereafter, learned Advocate General submitted that in judicial review this Court is only concerned with legality or otherwise of the decision making process and not with the merits of the decision itself. It is also submitted that the Court is not to sit in appeal over the selection made by the High Power Committee, which task has been entrusted by Parliament to the High Power Committee presided over by the Chief Minister.

12. As regards the first contention that the Chief Secretary himself participated in the selection process and was a part of the selection mechanism, it is not possible to accept the above contention. Selection process was conducted by the High Power Committee constituted under sub-section (3) of Section 15 of the Right to Information Act, which reads as under:-

The State Chief Information Commissioner and the State Information Commissioners shall be appointed by the Governor on the recommendation of committee consisting of-

(i) the Chief Minister, who shall be the Chairperson of the committee.

(ii) the Leader of Opposition in the Legislative Assembly; and

(iii) a Cabinet Minister to be nominated by the Chief Minister.

The High Power Committee was accordingly constituted in accordance with the aforesaid provision. Merely, because the process of appointment is handled by General Administration Department, which respondent No. 2 headed prior to his retirement, it cannot be said that respondent No. 2 himself had participated in the selection process or that he was a part of the selection mechanism. As pointed by learned Advocate General, apart from respondent No. 2 having submitted his application on 29 May 2012, Mr. Subodh Kumar, then Municipal Commissioner of Mumbai Municipal Corporation, had also applied on 1 June 2012 and his candidature was also considered and hence it is not possible to accept the contention of petitioners that selection was delayed to await the application of respondent No. 2.

13. As regards the allegation that respondent No. 2 deliberately kept the post of State Chief Information Commissioner vacant for 11 months, there is nothing to show that any conscious decision was taken at any level to keep the post vacant. As pointed out in affidavit in reply, additional charge of the post was given to Mr. Kuvalekar from 25 July 2011 to 7 February 2012 and thereafter from 8 February 2012 till 7 June 2012 additional charge of the post was given to Mr. Bhaskar Patil, State Information Commissioner.

14. As regards the contention that respondent No. 2 participated in selection process because the Chief Minister and Chief Secretary are extremely close in working relationship, it is not possible to accept this contention. The allegation would amount to alleging bias. However, there is no allegation of any personal bias against the Chief Minister or any other member of the High Power Committee. Accepting the petitioners' case would amount to disqualifying not only the Chief Secretary, but all the senior officers working in the Government Secretariat from holding the post of State Information Commissioner or State Chief Information Commissioner, which would be contrary to the express provisions of sub-section (5) of Section 15.

Accepting the petitioners' contention would also amount to holding that persons having experience in government administration and governance are not fit to hold the post of State Chief Information Commissioner and State Information Commissioner. There is no warrant for drawing such adverse inference. It is not possible to hold that the provisions of sub-section (5) of Section 15 of the Right to Information Act are constitutionally invalid, in so far as they include experts in the fields of administration and governance as eligible for the post of State Chief Information Commissioner or State Information Commissioner.

15. Coming to the contention that "cooling off" period ought to have been provided in Section 15(5) of the Right to Information Act, it appears to be a matter of policy. The Parliament having made the provision for eligibility in sub-section (5) of Section 15 and having provided for disqualification in sub-section (6) of Section 15, in the absence of any such disqualification about certain period after retirement, which the petitioners call "cooling off period", it is not for this Court to make a policy and direct the Parliament to provide any such disqualification for the period of "cooling off" as contended by the petitioners.

16. Coming to the contention that respondent No. 2 would have bias in matters which he had dealt with as the Chief Secretary or Chief of the MMRDA, learned Advocate General fairly states that if in any case respondent No. 2 finds that the case pertains to decision taken by him personally, as Chief Secretary or Chief of the MMRDA, he would reclude himself from hearing any appeal arising from the refusal to give information on query pertaining to that decision.

17. Learned Advocate General has also pointed out at the time respondent No. 2 took over the charge of post of State Chief Information Commissioner on 8 June 2012, there were 4094 appeals which were pending in the office of State Chief Information Commissioner. In the last about nine months, another 1917 appeals came to be instituted, but the respondent No. 2 and the State Information Commissioners have heard and decided a large number of appeals and therefore now only 1072 appeals are pending and it is, therefore, submitted that respondent No. 2 has also been discharging his duties efficiently.

18. In this petition we are only concerned with eligibility or otherwise of respondent No. 2 to hold the post of State Chief Information Commissioner and whether there was any illegality in the decision making process. We do not find any substance in any of the contentions raised by the petitioners. The petition is, therefore, dismissed.