



The State Information Commission, Kerala
Punnen Road, Thiruvananthapuram-695 039.

Tel:0471 2335199, Fax:0471 2330920
Email: sic@infokerala.org.in

AP.No.208/2007/SIC
File No.1814/SIC-Gen3/2007

Shri.K.K.Sadanandan,
Kizhake Kuniyil House,
Thalakulathur.P.O,
Kozhikode District.

} Appellant

Vs

Public Information Officer,
General Admn. (Spl.A) Department,
Govt. Secretariat.,
Thiruvananthapuram.

} Respondents

The Appellate Authority/ (First Appeal Officer),
Additional Chief Secretary,
General Admn. (Spl.A) Department
Govt. Secretariat,
Thiruvananthapuram.

FINAL ORDER

In continuation of the order dated 2.8.2007, this Commission makes the following final order.

The details of the case, its chronological developments, whether the matter falls within the exempted item of Section 8(1) (i) of the RTI Act were all discussed in detail in the preliminary order dated 2.8.2007. The matter was adjourned with the following observation.

"The Appellate Authority during the course of the personal hearing had submitted before the Commission that he had certain bits of information to which access was not provided to him. The Commission directed the PIO to

procure the document viz., the bits of information and personally present the same in a sealed cover before the Commission within 10 days of receipt of this order".

Accordingly, the PIO Mr.Unnikrishnan Unnithan, Joint Secretary of the General Administration (Special) Department appeared before the Commission and had produced a sealed envelope. The envelope was opened in the open Commission sitting. It was seen that it contained only a copy of the proceedings of the Council of Ministers dated 5.6.2002 concerning transfer of IAS Officers. The case of Shri.T.O.Sooraj.IAS, posted as District Collector, Kozhikode was one among the transfer and postings so decided by the Council of Ministers. There was no other information provided. The PIO further submitted during the hearing that he was not in possession of any other information other than the one provided before the Commission *vide* its order dated 2.8.2007 on AP No.208/2007/SIC. It had also been observed by the Commission that a copy of the Govt. Order issued pursuant to the Council of Minister's decision on 5.6.2002 had been provided to the requester/appellant, Shri.K.K.Sadanandan, on 17.1.2007 itself after collecting Rs.10/- as the cost of providing the information. An intimation to remit Rs.10/- to receive information was sent to the requester on 17.1.2007 which the appellant says was received by him only on 10.2.2007 as verified from the seal and records of the postal department. In the meantime, he had filed the first appeal before the Appellate Authority on 7.2.2007 which was received by the Appellate Authority on 20.2.2007. The PIO had delayed in providing the information as borne out from the records. He had taken more than 30 days - the period of time allowed to provide the information, to communicate the requester to remit fees for obtaining the information and further it was dispatched only on 2.2.2007. So there was a deliberate act on the part of the PIO to delay in providing the information. The requester/appellant received the communication only on 10.2.2007 by which time he had filed the first appeal. The first appeal was seen to have been decided on 9.3.2007. The Appellate Authority in his letter had mentioned that the SPIO had asked him to remit the cost for obtaining the information and requester/appellant hadn't remitted the fee thereto. In any case, the PIO could not have asked any cost in as much as he had himself delayed in providing the information and had clearly exceeded the maximum permissible limit of 30 days.

The Appellate Authority had raised certain issues - "regarding other bits of information, I regret to inform you that these are not available at present with this authority". Pursuant to which the PIO was asked to provide the 'bits of information' which were kept away from the Appellate Authority by his superior officers. Now the Commission observed that there was no "bits of information" kept away from the Appellate Authority and, therefore, Commission is constrained to observe that the various contentions taken by the Appellate Authority in his letter while disposing off the appeal was not borne out of facts. With regard to his contention that it was covered under Section

8(1) (j) of the RTI Act "it is seen that the other bits of information requested for relate to personal information, the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion on the privacy of the individual. Moreover, this authority is not satisfied that the larger public interest justifies the disclosure of such information. No provisions are seen by this authority which compels the disclosure of such information to the Parliament or a State Legislature, either by convention or by rules".

In the final analysis, the position taken by the Appellate Authority is totally unacceptable to the Commission and his various contentions had queered the pitch. The Commission observes that there was delay on the part of the PIO and who has since retired from service and do not propose to take any coercive steps against him on the ground that he was not in the know of things and hadn't had a clear understanding of the provisions of the RTI Act. The Commission, would, however, observe that more attention and seriousness have to be paid in dealing with the request(s)/appeal(s) coming under the RTI Act, 2005 by all concerned. The information provided in the sealed cover shall also be furnished to the appellant within 10 days of the receipt of this order, though it was only a duplicate of the order already furnished.

Issue No.2:

Inter alia, the Appellate Authority had raised two questions during the course of the personal hearing. The first one was a submission to dismiss the case since the appellant was ex-parte in the proceedings. This is a quite unwanted submission by the appellate authority and also against all known principles of jurisprudence. The appellant was absent but was not set ex-parte. The RTI Act is a new legislation of the Parliament which provides two appeal forums in the Act. The first appeal forum is the appellate authority rather the officer senior in rank of the same department. The second appellate forum is the State Information Commission. In a second appeal, the well settled position of law is that the appeal should be disposed off only on merit and not by any other method. Order IX of the Civil Procedure Code deals with ex-parte proceedings and the manner and the effect of setting one party as ex-parte. It is a privilege conferred exclusively on the Judicial Fora to proceed even in the absence of one party remaining absent. The consequences are very severe. If the plaintiff is absent, the plaint itself is lost by dismissal. If the defendant is absent the plaintiff gets an ex-parte decision against the defendant. But the prerogative whether one should be set ex-parte or not, rests with the Court and it is not for any one to suggest that some one may be set ex-parte. Unlike other statutes, the RTI Act, Section 18 (3) had made it specifically clear that the procedure for the trial of the suit contemplated in the Civil Procedure Code was applicable to the proceedings before the SIC. The unambiguous declaration of Sub-section 3 of Section 18 regarding the application of the provision of Civil Procedure Code could make it further clear that this Commission was specially empowered under the Civil Procedure Code

in the manner in which a trial had to be conducted or an enquiry had to be conducted. The contention of the Appellate Authority was that the proceedings should have been dropped or an appeal should have been dismissed, consequent to the absence of the appellant/requester. He was canvassing for a position like dismissal of the appeal. The ex-parte proceedings enable the court or the judicial forum to proceed further even in the absence of one party. Declaring one person or one party, the appellant or the respondent, as ex-parte is a prerogative vested with the Commission. It is a privilege and discretion of the Commission. Absence alone does not automatically invite the consequences of setting one ex-parte. The RTI Act is for furnishing of information and not for penalization/providing relief. To set ex-parte means to make a judicial pronouncement that in the absence of either of the party, the court or the Commission is taking a view. Moreover, in respect of the RTI Act, it is up to the appellant to be present and his non-presence will not or should not end up in throwing the case overboard, as contented by the first appellate authority. The Appellate Authority, therefore, had gone wrong in making such a submission.

The Appellate Authority was hostile even at the very idea of summoning the Appellate Authority by the Commission. The Appellate Authority was summoned by invoking the inherent powers of the Commission. The order of the Appellate Authority was being challenged and principles of natural justice provides for an opportunity of hearing the Public Information Officer and also the Appellate Authority because the order of the Appellate Authority is also being challenged before the Commission. To make it further clear, Section 19(1) of the RTI Act, is the provision for the Appellate Authority to hear the appeal. Section 19(3) reads that "a second appeal against the decision under Sub-Section (1) shall lie..... to the SIC". The appeal is against the orders of the Appellate Authority and hence the Appellate Authority can be summoned. It should be noticed that the Appeal Rules notified by the Govt. of Kerala *vide* Notification No.27774/Cdn.5/2006/GAD dated 31.5.2006 (S.R.O No.412/2006) is a clear statutory provision compelling the appearance of the Public Information Officers and Appellate Authorities, if the Commission so desires. Rule 5 (i) and (iv) reads as follows. This rule promulgated by the Govt. of Kerala was in strict conformity with Section 19 sub-section (3) of the RTI Act.

Rule 5(1)reads

"(i) take oral or written evidence on oath or on affidavit from the concerned or interested persons:

(ii), (iii)

(iv) hear the State Assistant Public Information Officer or State Public Information Officer or such senior officer who had decided the first appeal or such person against whom the appeal is made, as the case may be; "

This rule read along with Section 19(3) makes it amply clear that the Commission has got every right and authority under law and practice to

summon the appellate authority for a personal hearing. It is all the more necessary because in a proceedings under the RTI Act, the Appellate Authority, is a necessary party, and necessarily, he is the respondent.

It was surprising to note that the Additional Chief Secretary of the State of Kerala and the Appellate Authority had the audacity to present before the Commission that the Commission has no jurisdiction to summon an Appellate Authority and he appeared under protest. Through out, the Commission observed a confused mind and poor application of Rules and practices, and the Commission, most charitably, absolve him, attributing the entire episode to appellant's inherent mental make up and demeanour.

To conclude, the PIO shall serve copy of the information requested by the appellant within 10 days of the receipt of this order and report compliance to the State Information Commission.

Dated this on the 29th day of October, 2007.

Authenticated copy

Secretary to Commission