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AP.No.375/2007/SIC
File No.4235/SIC-Gen3/2007

Col.N.R.Kurup (Retd)
Deepam,
Chettemcoon,
Tellicherry-670 101.



Appellant

Vs

Public Information Officer
Revenue(L) Department,
Secretariat,
Thiruvananthapuram.

Appellate Authority and
Principal Secretary (Revenue)
Revenue Department,
Secretariat,
Thiruvananthapuram.



Respondents

ORDER

This is an unusual appeal entertained u/s.19(3) of the RTI Act. Though the request of the appellant was to entertain this matter as a complaint u/s.18(1) of the RTI Act, on a close scrutiny, it was brought out that the appellant himself had availed of an opportunity u/s.19(1) of the RTI Act, preferring a first appeal before the appellate authority viz., the Principal Secretary, Revenue, Govt. of Kerala against the State Public Information Officer, Revenue Department, Govt. Secretariat, Trivandrum. Having availed of a legal remedy u/s.19(1), the scheme of the RTI Act does not permit one to prefer a complaint u/s 18(1) before the

State Information Commission against both the Appellate Authority and the Public Information Officer. Therefore, this Commission with its inherent power had entertained this complaint u/s.19(3) of the RTI Act as the second appeal.

Col.N.R.Kurup (Retd) was constantly filing either complaints or appeals with regard to the very same subject matter involving the very same question of law and an out and out personal information with no public interest at all. There was no public interests involved in the ever so many petitions, requests, complaints and appeals received from Col.N.R.Kurup (Retd). This second appeal was one among such appeals.

The subject matter of the appeal requires some illustration for the sake of clarity and understanding. Ext A1 was an alleged request u/s.24(1) of the RTI Act addressed to the Hon.Minister for Revenue of Kerala. It was an allegation against the Village Officer, Tellicherry, attributing corruption and the appellant wanted to know the action taken against the Village Officer. The petition was filed u/s.24(1) of the RTI Act. Subsequently, after the expiry of nearly one month and ten days, a first appeal u/s.19(1) of the Act was preferred before the Appellate Authority, Principal Secretary, Revenue, pleading that the Village Officer may be fined for not providing the information to the tune of Rs.25,000/-, if ordered by the Information Commission.

The remarks of the Public Information Officer was called for. A detailed report and an account of the actions taken were furnished by the Public Information Officer. It was also made clear that the requester was clearly informed of the matter that there was no case of corruption against any officer working in the Revenue Sub-Division of Tellicherry and the fact that his request has been rejected. The Public Information Officer had taken the view that this was an adequate disposal of the case.

The questions that arise for consideration are (i) whether a request u/s.24(1) of the RTI Act could be entertained by the Public Information

Officer or by the Appellate Authority? and, (ii) whether an imputation of corruption, ipso-facto, could be taken note of without a proper enquiry?

Issue No.(i):- The RTI Act, 2005 is a parliamentary creation for obtaining information from the public authorities. The scheme of the Act was simple, straight forward and devoid of any complications. The request had to be made u/s.6 of the RTI Act and the Public Information Officer derived the statutory authority to receive a request if only the same was addressed to him u/s.6(1) of the RTI Act. The action, therefore, had to be as per Section 7(1) of the RTI Act. Here, the Public Information Officer should not and ought not have received the complaint presented u/s.24(1) of the RTI Act with a court fee stamp of Rs.10/- affixed on it. The rules framed by the appropriate Government had contemplated affixing of court fee stamp by way of cost for the application only on requests made under Section 6(1) of the RTI Act and not under any other provisions of this Act.

Section 24 of the Act deals with an entirely different area of the RTI Act. Chapter VI contains the 10 miscellaneous Sections or provisions for the purpose of implementation of the Act. Section 24 provides for immunity for Organisations, as notified by the appropriate Government, and indicated in Schedule II to the Act and, also to deal with cases of Human Rights violations and corruption *vis-a-vis* such Organisations. It reads "Nothing contained in this Act shall apply to the intelligence and security organizations specified in the Second Schedule, being organizations established by the Central Government or any information furnished by such organizations to that Government: Provided that the information pertaining to the allegations of corruption and human rights violations shall not be excluded under this sub-section". Provided further that in the case of information sought for is in respect of allegations of violation of human rights, the information shall only be provided after the approval of the State Information Commission, and notwithstanding anything contained in Section 7, such information shall be provided within forty-five days from the date of the receipt of request." The first proviso makes a further exemption of the

exempted clause that in case of allegation of corruption and human rights violation, a request for information can be made to the Public Information Officer of the exempted organizations. The second proviso makes it further mandatory that such information shall be furnished only after the consent of the State Information Commission. In other words, the exempted organizations mentioned in Section 24 and scheduled in Schedule II are organizations, information in respect of which were ordinarily barred to the outside world except as otherwise provided viz., if such information involve patent instance/s of corruption and/or violation of human rights and that too with the permission of the State Information Commission, and to be provided within a period was 45 days. The Revenue Department was not an organization mentioned in the schedule II notified by the State Government u/s.24 of the Act. Therefore, there was not even a slightest justification in invoking this provision of the RTI Act. So this request u/s.24(1) was a total mis-use/mis application of the provision of RTI Act and the PIO should not have received such a complaint.

Issue No.(ii) & (iii):- Col.N.R.Kurup (Retd) was repeatedly banking on an allegation of losing some property in Survey No, Ward No.2, Block No.2, TS 37 of Tellicherry Village. This Commission itself had disposed of nearly four appeal petitions (AP.66/2006/SIC, AP.81/2006/SIC, AP.82/2006/SIC AP.85/2006/SIC, AP.116/2006/SIC, CP.117/2006/SIC) on the very same matter. The subject matter was the same. The parties were the same. He had also, as could be learned, agitated this matter before the Local Munisiff Court by instituting a civil case as OS.415/99. The actual party involved was one Smt.Indira, wife of the appellant, Col.N.R.Kurup (Retd.). She had failed to establish before the Court of Law that she had got some property in the said survey number. The property was being enjoyed by the descendants of one Smt.Kunjipapthumma. The final transfer of the property took place (the transfer of the Jama took place) on 16.10.1946 ie., even prior to the independence. Even then the appellant was alleging corruption against the present Village Officer, who might not have even been born at the time of the transfer of the Jama. This question was enquired into by all the Revenue Officers and finally by the District Collector, Kannur. Ext

A2 is the detailed report preferred by Mr.C.Reghu.IAS, State Public Information Officer of the Revenue Department. The Public Information Officer on 3.5.2007 had intimated the appellant that the petition alleging corruption against the Village Officer had been forwarded to the Land Revenue Commissioner and, the outcome of the enquiry had also been communicated to him by the District Collector. A Juma finalised in way back in 1946 and the legal descendants remitting all taxes there to the property can not be altered by any authority at this point of time. Therefore, there was no merit in the case and, the same had to be dismissed.

An imputation or allegation of corruption against a Public Servant could not be sustained, without a thorough enquiry. If the appellant wanted to bring out any instance of corruption, of which he is sure and has definite information with him there are ever so many avenues available to him to prosecute his case, under our existing legal and administrative set up. RTI Act was envisaged to contain corruption through transparency and ensure accountability through cleaning the system, by way of creating a mechanism to continuously make available accurate information at the disposal of the citizens. Section 24 (1) enables one to take up cases of corruption and human right violations in the organisations, exempted under Section 24 of the RTI Act. And, information on such cases can be provided only after the approval of the State Information Commission. The Section is quite specific on it.

The appellant Col.N.R.Kurup(Retd) was summoned to appear before the Commission to substantiate his case. It was the primary duty of a judicial forum to afford an opportunity to both sides to be heard. The principle of natural justice warrant such a procedure. The appellant on the 22nd of September, 2007 addressed the Commission as follows:- (marked as Ext A3)

"I have not received any response from the Appellate Authority and as such it will be futile to spend Rs.3000/- and waste two days to come to Trivandrum without knowing what to defend". This amply testify his attitude.

He was the appellant, and it was for him to state his case, prosecute the same before the Commission. Of course, the Act does not insist his personal appearance but then the cases has to be dealt with whatever material that are available before the Commission. At some point of his communication, he had expressed with willingness to allow the case to be proceeded with under that provision. He went on with innumerable number of e-mails, replicas, reminders and allegations of all sorts against the PIO and also against the Appellate Authority. All these communications and requests emanate only from personal interest, that too from the alleged proprietary right of his wife, and, not out of any matter of public interest. Therefore, the requests and allegations tantamount to vexatious requests especially on a matter well settled by a competent civil court. In the result, the complaint was seen devoid of any merit. It is not maintainable under the law nor under facts. It is dismissed.

Dated this, the 12th day of November, 2007.

Authenticated copy

Secretary to Commission

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