



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9TH DAY OF FEBRUARY, 2023

BEFORE

THE HON'BLE MS. JUSTICE JYOTI MULIMANI

WRIT PETITION NO. 22745 OF 2018 (GM-RES)

BETWEEN:

SRI.M.VENKATESHAPPA

...PETITIONER

(BY SRI. J.D.KASHINATH., ADVOCATE)

AND:

1. THE KARNATAKA INFORMATION COMMISSION (CH-2)
2ND FLOOR, MAHITHI SOUDHA,
OPPOSITE TO WEST GATE-2 TO
VIDHANASOUDHA,
BANGALORE - 560 001.
REPRESENTED BY ITS COMMISSIONER.

2. SRI. B.H. VEERESH

...RESPONDENTS

(BY SRI. RAJASHEKHAR.K., ADVOCATE FOR R1
R2 - SERVED)



THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, SEEKING CERTAIN RELIEFS.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Sri.Kashinath.J.D., learned counsel for the petitioner and Sri.Rajashekhar.K., learned counsel for respondent No.1 have appeared in person.

2. The brief facts are these:

One B.H.Veeresh submitted the RTI application seeking information in respect of Objection in Para 39 of Draft Audit Report of the Officers of the Executive Engineer conducted by the Chief Audit Officer, BBMP, Bangalore during 2011-12 and certain other information. The details of the information sought are in Annexure-B. The office of the Chief Engineer transferred the said application to the Executive Engineer, Road and Infrastructure, Special Zone, BBMP, Bangalore. The Public Information Officer of the Executive Engineer (Roads and Infrastructure), Mahadevapura, Special Zone, BBMP issued a



letter to the applicant stating that the audit report for the year 2011-12 was not received by his office.

The applicant preferred an appeal before the Superintendent Engineer, Road and Infrastructure, BBMP, Bangalore and the same was dropped since the applicant did not prosecute the same diligently. The applicant filed an appeal/ complaint under Section 19(3) of the RTI Act before the Karnataka Information Commission. The Commission issued notice by fixing the date of hearing on 27.01.2016. One Smt.Padmavathi, Account Superintendent appeared on behalf of the PIO and the Commission directed the PIO to provide the applicant free of cost information. It is said that on 01.02.2016, the PIO & Executive Engineer (R&I) BBMP, Bangalore provided the available information (for 789 pages) to the applicant through his assignee Maheswar Singh and the same was acknowledged by the assignee of the applicant.

However, on 03.06.2016, the Commission directed to pay Rs.1,000/- (Rupees One Thousand only) as compensation to the applicant and directed to provide information free of cost on or before 16.09.2016.



It is also averred that the applicant disputed the said information and stated that he has not received the complete information. It is also averred that at this juncture the petitioner was the PIO to Executive Engineer, Mahadevapura Zone, BBMP and no notice was served to him however, the notice was served on the petitioner only on 24.01.2017 through the BBMP officer. In the meantime, the then PIOs were dropped from the proceedings by the Commission. On 28.12.2016, the Commission issued a notice to the petitioner and the petitioner submitted a report that a payment of Rs.1,000/- (Rupees One Thousand only) is made to the applicant. The petitioner also submitted the explanation to drop the proceedings against him since he was transferred to another department and the information sought by the applicant was furnished and payment of Rs.1,000/- (Rupees One Thousand only) was also made. But, the Commission vide order dated 18.01.2008 imposed a penalty of Rs.10,000/- (Rupees Ten Thousand only) on the petitioner.

Under these circumstances, the petitioner having left with no other alternative and efficacious remedy, has filed this Writ Petition under Articles 226 and 227 of the Constitution of India.



3. Learned counsel for the petitioner and respondent No.1 have urged several contentions.

4. Heard, the contentions urged on behalf of the respective parties and perused the Writ papers and also the Annexures with utmost care.

Sri.Kashinath., learned counsel for petitioner in presenting his argument submitted that the Commission has not accorded any opportunity to the petitioner and hence there is an utter violation of the principles of natural justice.

Sri.Rajashekhar.K., learned counsel appearing on behalf of the Commission raised many pleas and justified the action of the Commission.

The first argument in the present case is about the violation of the principles of natural justice and the second is about the arbitrary exercise of power by the commission.

The principle of *Audi alterem partem* is the basic concept of the principle of natural justice. The omnipotence inherent in the doctrine is that no one should be condemned unheard.



It is needless to say that whenever a public function is being performed there is an inference, in the absence of an express requirement to the contrary, that the function is required to be performed fairly. The inference will be more compelling in the case of any decision which may adversely affect a person's rights or interests or when a person has a legitimate expectation of being fairly treated. The significance of this approach is that it prima facie imposes on all administrators an obligation to act fairly. Without acknowledging this expressly, the majority of the decisions/orders of the public authorities are in practice no more than conscious or unconscious illustrations of the approach.

Reverting to the facts of the case, the petitioner gave a detailed reply on 11.01.2018. The reply is in Annexure-N. A perusal of the same shows that the petitioner has submitted his explanation to drop the proceedings against him.

The order passed by the Commission imposing a penalty is in Annexure-A. It is dated 18.01.2018. I have perused the order with care. A perusal of the same depicts that the



commission neither considered the written explanation nor allowed the petitioner to submit his explanation orally. Hence, I have no hesitation in saying that the commission has disregarded the principles of natural justice. On this count alone, the order is liable to be quashed.

Be that as it may, the petitioner was neither working as an Information Officer when the application was filed nor was he an information officer at the time of hearing of the appeal. The petitioner was in the office of the Public Information Officer and Executive Engineer Civil at Mahadevapura Special Zone from 16.09.2016 to 22.05.2017 and thereafter he was transferred to another place of BBMP. Hence, the imposition of penalty on the petitioner is improper.

Further the available information was furnished to the assignee of the applicant. The commission has failed to take note of the fact that the petitioner was not in the office at the relevant point in time. I may venture to say that the Commission has failed to have regard to relevant considerations and disregarded relevant matters. In my



considered opinion, the order passed by the commission is unsustainable in law.

The result is that the Writ Petition will be allowed. This Court orders a Writ of Certiorari. The order dated 18.01.2018 passed by the Commission in No. ಕಮಾೞ 459 ಸಿಬಿಎಂ 2015 vide Annexure- A is quashed.

Resultantly, the Writ Petition is **allowed**.

**Sd/-
JUDGE**

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List No.: 2 Sl No.: 35