

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

THE HON'BLE MR. JUSTICE H. T. NARENDRA PRASAD

W.P.No.26763 OF 2013 (GM-RES)

C/ W.

W.P.No.26762 OF 2013 (GM-RES) DATED:09-01-2019

State Public Information Officer & Deputy Registrar (Establishment) Vs. Karnataka Information Commission, ,
Bangalore-560001 and Another

ORDER

These two writ petitions are inter-connected with each other. Hence the matters are clubbed together, heard and disposed of by this common order.

2. These writ petitions are directed against the order passed by the first respondent, both dated 30.04.2013 in KIC No.10682/PTN/2012 in W.P.No.26762/2013 and in KIC No.10684/PTN/2012 in W.P.No.26763/2013 (Annexure- F).

3. The brief facts of the case are that the second respondent herein filed an application on 07.05.2012 in W.P.No.26762/2013 seeking certified copies of notices received by the office of the Registrar General from advocate Dr.S.Krishnamurthy seeking to desist from continuing to use pirated Surabhi 2000 Kannada software, action taken on the notices received from advocate Dr.S.Krishnamurthy, replies sent to the notices received from advocate Dr.S.Krishnamurthy and names and contact details of the Registrar Generals of the High Court of Karnataka during 2009-10. In W.P.No.26763/2013 application dated 04.06.2012 is filed seeking information pertaining to bringing to the knowledge of the supplier of Surabhi 2000 Kannada software about copying of Surabhi Kannada software and its installation in the computers of courts subordinate to High Court of Karnataka and other similar information. The applications filed under Section 6 (1) of the Right to Information Act, 2005 (RTI Act ' for short) are produced as Annexure- A to both the petitions. Pursuant to the applications, the State Public Information Officer had issued endorsements dated 25.06.2012 and 21.06.2012 in W.P.No.26762/2013 and W.P.No.26763/2013, respectively.

3. Being aggrieved by the order of State Public Information Officer, the respondent No.2 herein filed an appeal before the Appellate Authority i.e., Registrar (Judicial), High Court of Karnataka under Section 19 (1) of the RTI Act which came to be numbered as RTI. Appeal No.43/2012 in W.P.No.26762/2013 and RTI. Appeal No.40/2012 in W.P.No.26763/2013. The appellate authority, after considering the rival contentions of the parties passed an order dated 15.09.2012 as per Annexure- C in both the cases.

4. Being aggrieved by the same, respondent No.2 herein filed appeals under Section 19 (3) of the RTI Act before the first respondent Karnataka Information Commission. The first respondent passed orders on

30.04.2013 produced as Annexure F in both the cases.The operative portion of the orders is extracted hereinbelow:

ಅರ್ಜಿದಾರರು ಕೋರಿರುವ ಮಾಹಿತಿಯು ವಕೀಲರ ಬಳಿ ಇದ್ದಲ್ಲಿ, ಕಾಯ್ದೆಯ ವಿಧಿ 553), 5 (4) ಮತ್ತು 55) ರಂತೆ ಕ್ರಮ ಕೈಗೊಂಡು ಅರ್ಜಿದಾರರಿಗೆ ನೇರವಾಗಿ ಮಾಹಿತಿ ನೀಡುವಂತೆ ಸೂಚನೆ ನೀಡಬಹುದಾಗಿತ್ತು.ಕಡತ ಲಭ್ಯವಿಲ್ಲವೆಂಬ ಕಾರಣಕ್ಕೆ ಮಾಹಿತಿ ನಿರಾಕರಿಸಿರುವುದು ಸರಿಯಾದ ಕ್ರಮವಲ್ಲ.ಸಂಬಂಧಪಟ್ಟ ವಕೀಲರಿಗೆ ದಿನಾಂಕ 31.05.2013 ರಂದು ಕಛೇರಿಗೆ ಕಡತವನ್ನು ಹಾಜರುಪಡಿಸಬೇಕೆಂದು, ಈ ಕಡತವನ್ನು ಅದೇ ದಿನ ಅಪರಾಹ್ನ 3.00 ಘಂಟೆಗೆ ಪರಿಶೀಲನೆ ಮಾಡಲು ಅರ್ಜಿದಾರರಿಗೆ ಅವಕಾಶ ನೀಡಬೇಕೆಂದು, ಪರಿಶೀಲನೆ ನಂತರ ಅರ್ಜಿದಾರರು ಗುರುತಿಸಿದ ಮಾಹಿತಿಯನ್ನು ಉಚಿತವಾಗಿ ನೀಡಬೇಕೆಂದು ಶ್ರೀ ಎಂ.ಎಸ್.ರಾಘವೇಂದ್ರ, ಉಪ ವಿಲೇಖನಾಧಿಕಾರಿ (ಆಡಳಿತ) ಹಾಗೂ ಸಾ.ಮಾ.ಅ., ಕರ್ನಾಟಕ ಉಚ್ಚ ನ್ಯಾಯಾಲಯ, ಬೆಂಗಳೂರು, ಇವರಿಗೆ ಸೂಚಿಸುತ್ತದೆ.ಕ್ರಮ ಕೈಗೊಂಡ ಬಗ್ಗೆ ಆಯೋಗಕ್ಕೆ ವರದಿಯನ್ನು ಸಲ್ಲಿಸುವುದು.”

5. Being aggrieved by the order passed by the first respondent dated 30.04.2013 (Annexure- F), the present writ petitions are filed.

6. Sri Naganand, learned Senior Counsel appearing on behalf of Sri S.Sriranga for the petitioner submits that as regards the information which is sought for by respondent No.2 as per Annexure- A in W.P.No.26762/2013, the information which is available with the petitioner has been furnished to the second respondent and the information which is not available with the petitioner and the information which is not under the control of the Public Authority, to that effect, petitioner has issued an endorsement. As regards the application as per Annexure- A in W.P.No.26763/2013 is concerned, petitioner issued an endorsement that no such information is available on record. Some of the information which were produced in O.S.No.4132/2010 in which respondent No.2 was a party to the proceeding.

7. He has relied on the judgment of the Delhi High Court in the case of THE REGISTRAR, SUPREME COURT OF INDIA Vs. R.S.MISRA (W.P. (C) No.3530/2011, disposed of on 21.11.2017) and judgment of this Court in the case of STATE PUBLIC INFORMATION OFFICER VS. N.ANBARASAN reported in ILR 2009 Kar.3890 to contend that if the information is available under any other Statute, the same will not be covered under the provisions of RTI Act.

8. He further submits that the direction given by the Karnataka Information Commission is contrary to the provisions of Sections 5 (3), 5 (4) and 5 (5) of the RTI Act. Hence the impugned orders dated 30.04.2013 at Annexure- F in both the writ petitions are unsustainable.

9. Per contra, learned counsel appearing for the first respondent Karnataka Information Commission submits that even though second respondent has a remedy under the Civil Rules of Practice to obtain the certified copies of the documents which he has sought under the application, there is no bar for filing the application under RTI and seek some documents. Hence, he justifies the order passed by the Karnataka Information Commission.

10. On 03.01.2019, the matter was posted for hearing. On that day, learned Senior Counsel Sri Naganand appearing for the petitioner has argued the matter. Counsel for the respondent No.2 was not present. At the request of counsel for respondent No.1 the matter was adjourned for further hearing. Today, the matter was argued by respondent No.1. Counsel for respondent No.2 is absent. Heard learned counsel for the parties and perused the writ papers. Annexure- A and sought for certain information. By Annexure- B the information which is available with the State Public Information Officer was provided and in respect of the information which is not available, an endorsement was given stating that the information is not available on record and some of the information related to the suit in O.S.No.4132/2010, which is pending in the City Civil Court, Bangalore and the entire file/papers have been furnished to the advocate appearing on behalf of the defendant and the second respondent herein is party to the said proceeding.

11. The respondent No.2 has filed an application as per

12. The appellate authority in Appeal No.43/2012 in W.P.No.26762/2013 and Appeal No.40/2012 in W.P.No.26763/2013 held as follows:

RTI. Appeal No.43/2012:

" 3. The appellant in this appeal contended that, the Respondent-SPIO should have summoned the files from the custody of the Advocate and furnished the information. He further contends that the requested information is denied. The LCRs show that O.S.No.4132/2010 is pending before the City Civil Court, Bangalore. As submitted before this Authority, it appears that in the said suit, the present appellant and the Hon'ble High Court are the adversary parties. Thus there is nothing to disbelieve that the case file is entrusted to the counsel appearing in that case for the Hon'ble High Court. Moreover, the notice and the reply referred to in the application of the appellant are between himself and the High Court. So he should be having the copy of his notice and the reply received to the said notice if at all such things have taken place. Therefore, appeal relate to that the information doesnot sustain.

4. So far as item No.2 is concerned it is said that such information is not available .In the decision reported in 2011 STPL (Web) 685 SC in the case of Central Board of Secondary Education v/ s Aditya Bandopadhyay and others, the Hon'ble Apex Court has held that the Information Officer is not under any obligation to furnish the information which is not available. Therefore, the Respondent-SPIO cannot be compelled to furnish such unavailable information. Having regard to these facts and circumstances, there is no merit in the appeal. Accordingly the appeal is dismissed. No order as to costs. "

RTI.Appeal No.43/2012:

" 2. The Respondent-SPIO by the impugned order/communication dated:21/06/2012 informed the appellant that as reported by the Computer Branch of High Court Establishment, such information is not available. The appellant in this appeal seeks a direction to the Respondent-SPIO to furnish the information which is sought by

him. He further seeks the direction to the Respondent-SPIO to furnish the information filed by the Hon'ble High Court in O.S.No.4132/2010 pending before the Additional City Civil Court, Bangalore. That information is record of the judicial proceeding and it is open to the appellant to seek the certified copy of the same. Therefore, that claim is not tenable.

3. The LCRS furnished by the Respondent-SPIO show that on receipt of the application he issued a requisition to the Computer Branch of Hon'ble High Court of Karnataka for said information. The proceedings of Computer Branch in High Court of Karnataka show that the requisition of the Respondent-SPIO was processed and he was ultimately informed that such information is not available. In the decision reported in 2011 STPL (Web) 685 SC in the case of Central Board of Secondary Education V/ s Aditya Bandopadhyay and others, the Hon'ble Apex Court has held that, the RTI Act does not cast an obligation on the Public Authority to collect or collate such non available information and then furnish to the appellant. In view of the aforesaid decision, there is no merit in the appeal. Accordingly the appeal is dismissed. No order as to costs. "

13. In the second appeal, the first respondent Karnataka Information Commission has directed the petitioner to obtain the documents from the advocate and permitted the respondent No.2 to verify the same. It also directed the petitioner to furnish the documents marked by the second respondent free of cost.

14. For better understanding, first I have examined the provisions of the RTI Act in this respect. As per the preamble, the said Act was enacted inter alia to set out the practical regime for citizens to secure access to information under the control of public authorities.

The various Sections of the RTI Act relevant in this context are as under:

" (i) Section 3 vests in all citizens, right to information; (ii) Section 4 obliges all public authorities to, (a) inter alia computerize all records and connect the same through a network all over the country on different systems so that access to such records is facilitated (Section 4 (1) (a); (b) publish a statement of the categories of documents that are held by it or are under its control (Section 4 (1) (b) (vi)); (c) publish details in respect of the information available to or held by it, reduced in an electronic form (Section 4 (1) (b) (xiv)); (d) publish the particulars of facilities available to citizens for obtaining information, including the working hours of a library or reading room, if maintained for public use (Section 4 (1) (b) (xv)); (e) publish such other information as may be prescribed, and to update the publications every year (Section 4 (1) (b) (xvii); (f) Section 4 (3) mandates every public authority to disseminate all the said information widely and in such form and manner which is easily accessible to the public; (g) the explanation to Section 4 provides that such dissemination means making known the information to the public through notice board, newspapers, public announcements, media broadcasts, internet or any other means, including inspection of offices of any public authority; (h) Section 4 (2) is as under:

" (2) It shall be a constant endeavour of every public authority to take steps in accordance with the requirements of clause (b) of sub-section (1) to provide as much information suo motu to the public at

regular intervals through various means of communications, including internet, so that the public have minimum resort to the use of this Act to obtain information. "

(iii) After Section 4 provided inter alia as aforesaid, the RTI Act proceeds to, vide Section 5 provide for appointment by the public authorities inter alia of CPIOS and extracts of Section 5 relevant for our purpose are as under:

" (1) Every public authority shall, within one hundred days of the enactment of this Act, designate as many officers as Central Public Information Officers or State Public Information Officers, as the case may be, in all administrative units or offices under it as may be necessary to provide information to persons requesting for the information under this Act.

(3) Every Central Public Information Officer or State Public Information Officer, as the case may be, shall deal with requests from persons seeking information and render reasonable assistance to the persons seeking such information. " (iv) and vide Section 6 provides for the procedure for obtaining under the Act and the extracts of Section 6 relevant for this purpose are as under:

" Request for obtaining information- (1) A person, who desires to obtain any information under this Act, shall make a request in writing or through electronic means in English or Hindi in the official language of the area in which the application is being made accompanying such fee as may be prescribed, to-

(a) the Central public Information Officer or State Public information Officer, as the case may be, of the concerned public authority;

(b) the Central Assistant Public Information Officer or State Assistant Information Officer, as the case may be, specifying the particulars of the information sought by him or her:

Provided that where such request cannot be made in writing, the Central Public Information Officer or State Public Information Officer, as the case may be, shall render all reasonable assistance to the person making the request orally to reduce the same in writing.

(2) An applicant making request for information shall not be required to give any reason for requiring the information or any other personal details except those that may be necessary for contacting him. "

(v) Section 7 provides for disposal of request for obtaining information by requiring the CPIO to either provide the information as expeditiously as possible and in any case within 30 days of receipt of request and subject to payment of such fee a may be prescribed or reject the request for any of the reasons as specified in Sections 8 and 9;

(vi) Section 8 provides for exemptions from disclosure of information and Section 9 provides for rejection of a request for information where providing access to information shall involve infringement of copyright subsisting in a person other than the State.

(vii) The provisions of Section 22 shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923 (19 of 1923), and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act. "

15. The Hon'ble Supreme Court in the case of NAMIT SHARMA Vs. UNION OF INDIA reported in (2013) 1 SCC 745, while considering Section 22 of the RTI Act, has held as follows:

" 79. Let Us now examine some other prerequisites of vital significance in the functioning of the Commission. In terms of Section 22 of this Act, the provisions of the Act are to be given effect to, notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923 and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act. This Act is, therefore, to prevail over the specified Acts and even instruments. The same, however, is only to the extent of any inconsistency between the two. Thus, where the provisions of any other law can be applied harmoniously, without any conflict, the question of repugnancy would not arise.¹¹

16. In the case of REGISTRAR, SUPREME COURT OF INDIA (supra), it is held as under:

" 53. The preamble shows that the RTI Act has been enacted only to make accessible to the citizens the information with the public authorities which hitherto was not available. Neither the preamble of the RTI Act nor does any other provision of the Act disclose the purport of the RTI Act to provide additional mode for accessing information with the public authorities which has already formulated rules and schemes for making the said information available. Certainly if the said rules, regulations and schemes do not provide for accessing information which has been made accessible under the RTI Act, resort can be had to the provision of the RTI Act but not to duplicate or to multiply the modes of accessing information.

54. This Court is further of the opinion that if any information can be accessed through the mechanism provided under another statute, then the provisions of the RTI Act cannot be resorted to as there is absence of the very basis for invoking the provisions of RTI Act, namely, lack of transparency. In other words, the provisions of RTI Act are not to be resorted to if the same are not actuated to achieve transparency. "

17. In the case of STATE PUBLIC INFORMATION OFFICER AND DDEPUTY REGISTRAR, HIGH Court OF KARNATAKA VS, N.ANBARASAN reported in ILR 2003 Kar.3890 this Court has held that as some of the information sought in the said case was available under Karnataka High Court Act and Rules made thereunder, it was not open for the respondent to ask for copies of the same under the RTI Act. He stated that the information in respect of item Nos. 6 to 17 in the said case related to Writ Petition No.17935/2006 and as the respondent was a party to the said proceeding, it was open to the respondent to file an application, in accordance with the Rules, for certified copies of the order sheets or the relevant documents.

18. In view of the above discussion, I am of the opinion, if any information can be accessible through the mechanism provided under another statute, then the provisions of the RTI Act cannot be resorted to. In the

case on hand, the information which is sought by the second respondent related to the legal notice which is issuer by the second respondent through his advocate. This is available with the second respondent. In respect of other documents related to O.S.No.4132/2010 which was pending in the Civil Court, Bangalore, he can obtain the same by applying for the certified copies as per the provisions of Rule 230 of the Rules of Practice. Since the second respondent is party to the proceedings he can apply for the certified copies and obtain the same. Provisions of Rule 230 of Civil Rules of Practice is extracted herein below:

"230. Application by a party- A party to a suit or proceedings is entitled, at any stage of the proceeding, to obtain copies of the record of the suit or proceeding, including documents which have been admitted in evidence.

[Irrespective of whether the documents so admitted in evidence are originals or certified copies] "

19. The State Information Commission, without considering these provisions of the Act has passed an order. It is not justified in directing the petitioner to furnish the copies sought in the applications. Hence, the impugned order is unsustainable. Accordingly, the impugned orders at Annexure- F dated 30.04.2013 in both the petitions are quashed.

Accordingly, Writ petitions are allowed.