IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

C.W.P. No. 10981 of 2012 (O&M)
Date of decision: 30.10.2012

Ved Parkash and others

.. Petitioners

v.

State of Haryana and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Raghujeet Singh Madan, Advocate for the petitioners.
Mr. Roopak Bansal, Addl. Advocate General, Haryana.

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Rajesh Bindal J.

1. The petitioners have approached this court impugning the order dated 6.3.2012, passed by Chief Information Commissioner, Haryana (for short, 'the Commission'), whereby the appeal filed by them was dismissed referring to Section 3 of the Right to Information Act, 2005 (for short, 'the Act') holding that under the Act, right to information is provided only to a citizen and not to a group of citizens, hence, any application/appeal on their behalf under the Act is not maintainable.

2. Learned counsel for the petitioners submitted that the petitioners herein filed application seeking certain information from Public Information Officer, PWD, B&R, Jind Circle and deposited the requisite fee. As some sketchy and incomplete information was provided by the Public Information Officer, the petitioners preferred appeal before the first appellate authority, who vide order dated nil, endorsement dated 7.12.2011, directed for supply of the information and also warned the Public Information Officer to be careful in future. As the information was still not

provided, the petitioners preferred appeal before the Commission, which was dismissed by holding that the petitioners have no right to invoke the provisions of the Act in terms of Section 3 thereof, as only a citizen individually has the right to seek information and not a group of citizens.

3. Learned counsel further submitted that the petitioners, who are three in number, are citizens of India. The application was filed by them to avoid multiplicity of litigation as the information sought by them was common. It could be sought even by each one of them individually. It is not that if three persons had approached the authority under the Act jointly, their individual status would change. It will not become a legal entity as such different from their individual status which may not be termed as citizens of India, such as society or company. He further submitted that before taking up the appeal filed by the petitioners, the Commission did not even grant opportunity of hearing to them.

4. Learned counsel for the State though tried to make effort to defend the order but could not successfully plead that if three individuals file a petition jointly, the information cannot be provided holding their application to be not maintainable. As far as merits of the controversy are concerned, learned counsel submitted that the entire information, as sought by the petitioners, has already been supplied. Copies of the Rules, as have been sought, will also be supplied and in fact, the grouse of the petitioners does not subsist and the petition deserves to be dismissed.

5. Heard learned counsel for the parties and perused the paper book.

6. Though considering the stand taken by learned counsel for the parties, the writ petition could have been disposed of at this stage as the requisite information has been supplied to the petitioners, however, still considering the fact that the appeal filed by the petitioners had been dismissed by the Commission totally on a non-sustainable ground regarding its maintainability, it may result in passing of such like illegal orders in future, this court would like to deal with the issue. In addition thereto, another issue required to be dealt with is regarding grant of opportunity of hearing to an appellant.

7. Part II of the Constitution of India deals with the issue of citizenship. Article 5 provides for citizenship at the commencement of the Constitution. Article 6 provides for rights of citizenship of certain persons who have migrated to India from Pakistan. Article 7 provides for rights of citizenship of certain migrants to Pakistan. Article 8 provides for right of citizenship of certain persons of Indian origin residing outside India. Article 11 provides for power of Parliament to make provision with regard to acquisition and termination of citizenship and all other matters relating therein.

8. The Citizenship Act, 1955 deals with the issue of citizenship. It provides for citizenship by birth, by descent, by registration, by naturalisation, by incorporation of territory etc. Inter-alia Section 3 thereof provides that every person born in India (a) on or after 26.1.1950 but before the commencement of the Citizenship (Amendment) Act, 1986 and (b) on or after such commencement and either of whose parents is a citizen of India at the time of his birth, shall be a citizen of India by birth.

9. In the present case, it is not in dispute that the petitioners, who had filed application before the authority under the Act, were born in India after commencement of the Constitution. They had filed a joint application seeking certain information. The question is as to whether their application/appeal could be rejected on the ground that they being group of individuals cannot be termed as citizens ? Three individuals, who had filed the application before the Public Information Officer or the appeal before the Commission, have not constituted any separate legal entity, as a consequence of which they have lost their individual status. It has not become a legal entity in itself, as may be in case of constitution of a company, which has separate legal entity. It was held by Hon'ble the Supreme Court in N. Khadervali Saheb (Dead) by LRs and another v. N. Gudu Sahib (Dead) and others, (2003) 3 SCC 229 that even a partnership firm does not have an independent entity, though in that case some individuals by signing a document termed as partnership deed join together to carry on some business or other activity giving such an entity a different name. Name of the firm is only a compendious name given to the

partnership and the partners are the real owners of entire property of the partnership. Relevant paragraph thereof is extracted below:

> ".....A partnership firm is not an independent legal entity, the partners are the real owners of the assets of the partnership firm. Actually, the firm name is only a compendious name given to the partnership for the sake of convenience. The assets of the partnership belong to and are owned by the partners of the firm. So long as partnership continues each partner is interested in all the assets of the partnership firm as each partner is owner of the assets to the extent of his share in the partnership. On dissolution of the partnership firm, accounts are settled amongst the partners and the assets of the partnership are distributed amongst the partners as per their respective shares in the partnership firm. Thus, on dissolution of a partnership firm, the allotment of assets to individual partners is not a case of transfer of any assets of the firm. The assets which herein before belonged to each partner, will after dissolution of the firm stand allotted to the partners individually."

10. Section 13 of the General Clauses Act, 1897 clearly provides that in all Central Acts and Regulations, unless there is anything repugnant in the subject or context, words in the singular shall include the plural and vice versa. In the present case, it cannot be denied that the appellants before the Commission individually being citizens of India were entitled to invoke the jurisdiction of the authorities under the Act for seeking information. Merely because more than one citizen had sought information by filing a joint application when their cause of action is same, it cannot be rejected holding that the same was filed by group of persons. The ultimate object is to avoid multiplicity. In case more than one individual can file separate application for same relief, they can always file a joint application.

11. To avoid passing of the orders of the kind in question which may result in creation of unnecessary litigation, Hon'ble the Supreme Court

had made certain observations regarding working of the Commissions and issued directions in Writ Petition (Civil) No. 210 of 2012-- Namit Sharma v. Union of India, decided on 13.9.2012. The relevant parts thereof are extracted below:

> "99. ..... This discussion safely leads us to conclude that the functions of the Chief Information Commissioner and Information Commissioners may be better performed by a legally qualified and trained mind possessing the requisite experience. The same should also be applied to the designation of the first appellate authority, i.e., the senior officers to be designated at the Centre and State levels. However, in view of language of Section 5, it may not be necessary to apply this principle to the designation of Public Information Officer.
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> 100. Moreover, as already noticed, the Information Commission, is performing quasi-judicial functions and essence of its adjudicatory powers is akin to the Court system. It also possesses the essential trappings of a Court and discharges the functions which have immense impact on the rights/obligations of the parties. Thus, it must be termed as a judicial Tribunal which requires to be manned by a person of judicial mind, expertise and experience in that field.....
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> 103. The above detailed analysis leads to an ad libitum conclusion that under the provisions and scheme of the Act of 2005, the persons eligible for appointment should be of public eminence, with knowledge and experience in the specified fields and should preferably have a judicial background. They should possess judicial acumen and experience to fairly and effectively deal with the intricate questions of law that would come up for determination before the Commission, in its day-to-day working. The

> Commission satisfies abecedarians of a judicial tribunal which has the trappings of a court. It will serve the ends of justice better, if the Information Commission was manned by persons of legal expertise and with adequate experience in the field of adjudication. We may further clarify that such judicial members could work individually or in Benches of two, one being a judicial member while the other being a qualified person from the specified fields to be called an expert member. Thus, in order to satisfy the test of constitutionality, we will have to read into Section 12(5) of the Act that the expression 'knowledge and experience' includes basic degree in that field and experience gained thereafter and secondly that legally qualified, trained and experienced persons would better administer justice to the people, particularly when they are expected to undertake an adjudicatory process which involves critical legal questions and niceties of law. Such appreciation and application of legal principles is a sine qua non to the determinative functioning of the Commission as it can tilt the balance of justice either way. Malcolm Gladwell said, "the key to good decision making is not knowledge. It is understanding. We are swimming in the former. We are lacking in the latter". The requirement of a judicial mind for manning the judicial tribunal is a well accepted discipline in all the major international jurisdictions with hardly with any exceptions....."
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> [*Emphasis supplied*]

12. Accordingly, the order passed by the Commission rejecting the appeal holding the same to be not maintainable cannot be sustained and is set aside. However, the matter need not be remanded back for the reason that effective relief has already been granted to the petitioners and the respondents have undertaken to supply them copy of the rules and the petitioners are not entitled to any further information.

13. The grievance raised by learned counsel for the petitioners in

the present case is also that before deciding the appeal, the petitioners were not given any opportunity of hearing by the Commission. It cannot be disputed that no one can be condemned unheard. In case, the petitioners had filed appeal, minimum that was required was intimation of date of hearing to them so as to enable them to appear before the Commission and present their case. Reference can be made to Sayeedur Rehman v. State of Bihar, (1973) 3 SCC 333; Maneka Gandhi v. Union of India, (1978) 1 SCC 248; Mohinder Singh Gill v. Chief Election Commissioner, (1978) 1 SCC 405; Swadeshi Cotton Mills v. Union of India, (1981) 1 SCC 664; Special Leave Petition (Civil) No. 23781 of 2007—Indu Bhushan Dwivedi v. State Jharkhand and another, decided on 5.7.2010. The same having not been done, it has resulted in prejudice to the petitioners. This ground alone is also sufficient to set aside an order passed by any authority.

14. A similar issue came up for consideration before this court in C.W.P. No. 17157 of 2010—M/s Mahindra and Mahindra Ltd. v. The Employees Provident Fund Appellate Tribunal and another, decided on 24.7.2012, where the Employees Provident Fund Appellate Tribunal, which has its principal seat at New Delhi, heard some cases by holding Camp Court at Chandigarh. However, proper intimation about the date of hearing was not given to the party concerned. The order was set aside and the matter was remitted back. This Court had also made certain suggestions regarding conduct of proceedings, requirement of mentioning of name and designation of the Presiding Officer in all the interim and final orders and service of notice by use of technology. The same are extracted below:

> 25. Before parting with the order, this court would like to comment on the manner in which the proceedings have been conducted. As has already been noticed above, the case was not being taken up date-wise i.e. on a date fixed for hearing. There are two different orders passed on one date fixing two different dates of hearing. The Tribunal is discharging important quasi judicial function. The cases cannot be dealt with in the manner in which the same has been dealt with in the present case. In some of the zimni orders even it has not been mentioned as to

who had signed that order. Neither the name of the person who had signed it nor his designation has been mentioned. In future it is directed that in all interim or final orders whatever are passed in an appeal or other proceedings by the Tribunal, the officer who signs those orders, his name and designation shall be clearly mentioned.

26. In courts all proceedings take place in writing. As the file shows in the present case after 21.9.2007 when the case was adjourned to 14.12.2007, only a notice is available on record fixing the date of hearing as 19.5.2010 at Chandigarh. There is no order to take up the file on any date and directing for fixing next date of hearing and issuance of notice to the parties. In the absence thereof, under what authority a notice was issued to the parties is not available on record. The Principal seat of the Tribunal is at Delhi. As was informed, some times, it holds Circuit Bench at different places. Whichever cases are to be fixed at Circuit Bench, there has to be specific order in the file fixing the case in a particular bench. The aforesaid order should either be passed in the presence of the counsels or the parties when it listed at the Principal Bench or it should be ensured that the notice has, in fact, been served upon both the parties. Whatever the appeal is taken up for hearing there has to be an interim order on record passed on that date showing the proceedings. One of the method to ensure service of notice on the parties could be through the concerned Regional office of Employees' Provident Fund Organisation, as the establishment normally pertains to that area. We are living in the era of technology. For the means of communication, the same should be utilised. Wherever the establishments are having fax or email I.D. efforts should be made to sent a copy of the notice through that mode as well. In case it is successful, this can be adopted as the method of service of notice in future. In addition thereto, the counsel who filed the appeal should also be

> informed. The same can also be by way of emails. At the time of filing of the appeal, it should be a requirement that the party, and the counsel who has filed the appeal should provide their complete address, telephone number, fax number and email address so as to enable the Tribunal to communicate with them."
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> *[Emphasis supplied]*

15. For the purpose of guidance of the applicants/ appellants before the Public Information Officer or the first appellate authority, it would be appropriate if while deciding the application/first appeal filed, it is mentioned in the order itself that the party concerned, if aggrieved, has a remedy of appeal to the designated authority as per provisions of the Act. The period during which such a remedy can be availed of should also be mentioned. Similar issue was considered by this court in C.W.P. No. 15230 of 2012—Mohan Singh v. The State of Punjab and another, decided on 9.8.2012 and the following directions were issued:

> *"Still further, the petitioner in the present case has been dismissed from service after enquiry. In terms of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 an order of dismissal is appealable. The petitioner has mentioned in his petition that there is no alternative remedy available to him. Apparently, the statement is misleading. To avoid any such occasion in future and also with a view to guide the employees regarding their statutory right to file appeal or avail of any other remedy in accordance with the applicable Rules/Regulations, it would be appropriate if authority, which passes the order of punishment or any other order, specifically mentions therein on the top or in the end that an appeal against the order is maintainable to the designated authority and even the period for availing such a remedy."*

16. It is expected that the Commission shall bring the order passed in this case to the notice of all concerned for compliance.

17. Copy of the order be also sent to the Chief Information Commissioner, New Delhi and State Information Commission, Punjab for bringing it to the notice of all the authorities dealing with the cases under the Act.

18. Copy of the order be also sent to Chief Secretary, Punjab and Haryana and Home Secretary, Union Territory, Chandigarh for information and compliance.

19. The petition stands disposed of.

(Rajesh Bindal)
Judge

30.10.2012
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(Refer to Reporter)