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APPELLATE MECHANISM FOR THE WHISTLEBLOWERS

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ABSTRACT

With a pursuit to enable transparency and accountability in the governance machinery, the Right to Information was given statutory recognition in order to enable access to pertinent information to the common citizenry, which is otherwise exclusively available to government agencies. Right to know being the intersection of the statutory as well as constitutional realm, alarms imperative redressal and restitution of grievances in the form of acquisition and dissemination of information by government entities, in consonance with Articles 14, 19, and 21 of the Constitution of India along with sections 18, 19 and 20 of the Right to Information Act. Correspondingly, the legislature envisioned establishment of the Information Commissions for extinguishing the heightened responsibility on the government authorities. The research article attempts to comprehend the legislative intent to some extent and the relevant provisions that account for the institution of complaints and the appellate procedure outlined under the framework of the Right to Information Act in order to ensure the ideals of participative and inclusive democracy. The article accomplishes its objectives through the non-doctrinal method by elaborating on the existing legislative recourse available to the aggrieved, who is disenchanted by refusal or non-compliance to the sought requests for specific information. The data revealed by CHRI suggests that a nominal percentage of the populace constitutes the user base of the RTI Act. Glaringly, by the end of the discussion, the article sought to familiarize the readers by delving deeper into the procedural aspects of filing applications and appeals under the wider ambit of the Right to Information Act 2005.

KEYWORDS: Appellate, Transparency, Governance, Accountability, Information, RTI Act

INTRODUCTION

Access to information is the *sine qua non* for any civic engagement that mandates its functioning on the ideals of transparency and accountability. The information serves as oxygen in the bloodstream to remain viable within the social fabric of the wider community while safeguarding the principles of democratic equilibrium. Obligated by the International Covenant on Civil and Political Rights, India is necessitated to adequately guarantee the right to information reasonably within the restrictive ambit of Article 19(2) of the Indian Constitution. Section 3 of the act empowers any citizen to seek information from bodies established under the constitution, statutes, rules, or notifications. Prima facie, definition of the public authority is restrictive and seems to be extensive through

interpretation of the expressions 'means and include'¹¹⁶⁰. Except for individuals belonging to below the poverty line, an applicant can seek information from such public authority by paying such fee as is prescribed in that regard. While the act provides for *suo motu* disclosure of certain information at regular intervals under Section 4 through the utmost effective means of dispensation by the public authorities, it also prohibits certain categories of information from disclosure on various grounds under Section 8 and Schedule II of the act. Though the responsibility of furnishing information bestows upon the PIO, however, authorization regarding disclosure or non-disclosure of the sought information rests with the competent authority. Disclosure of personal information, trade

¹¹⁶⁰ DDA v. Bhola Nath Sharma (2011) 2 SCC 54

secrets, or an infringement of copyright, among others is liable to be decided upon by such competent authority before revelation by the PIO in certain cases¹¹⁶¹. A diluting provision brought out by the Digital Personal Data Protection Act 2023 declares that personal data cannot be disclosed, contrary to the previous position that permitted publication of personal data, when sought under public interest under the RTI Act. Non-disclosure or refusal to the specifics of information sought may attract unpleasant liability in the form of sanction and compensations under Section 20 of the act as we dissect deeper into the realm of the appellate mechanisms.

I. Public Information Officer

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 or in the official language of the area in which the application is being made, accompanying such fee as may be prescribed to the Assistant Public Information Officer in the absence of the Public Information Officer¹¹⁶². Requesting information does not require an applicant to provide any justification for the request or additional details about himself, apart from those that would be essential for further communication purposes. The Public Information Officer is obligated to dispose such applications within a period of 30 days from the date of receipt of the application by either providing the said information or rejecting the request on any grounds as elucidated in sections 8 and 9 of the act. With the caveat that information must be supplied within 48 hours of the request being received, if otherwise it may result in grievous injury or death to the requisitioner, as the cause is imminently dangerous to life and liberty of the applicant¹¹⁶³. In 'Ms. Sumitra Devi v. Women and Child Development Department, GNCTD, Delhi', the Commission finds that the act of not providing information to a marginalized woman within clause 1 of Section 7, pertaining threat to

life and liberty, was a serious dereliction on part of the concerned PIO¹¹⁶⁴. When a request is denied, the PIO is required to inform the requester of the reasons for the denial, the period for filing an appeal notwithstanding such a denial, and the specifics of the appellate body. Notwithstanding anything in this Act, access may be granted to that portion of the record that is devoid of any information which is immune from dissemination under this Act and that can reasonably be separated from any portion that contains exempt information as enumerated under Section 10 of the Act. In *Ashwin Shukla vs West Central Railway, Jabalpur*, according to section 10 of the RTI Act, the Commission ordered the defendant to furnish information about the vigilance investigation that was carried out against the complainant and that was completed using a severance clause. If necessary, the respondents were also instructed to sever any portions of the investigation that might compromise information about third parties or their sources. While granting partial access using severance clause, the PIO must notify the applicant regarding applicability of severance clause, reasons for such decision, credentials of the information provider, break-up of fees among others¹¹⁶⁵.

II. First Appellate Authority

Within thirty days of the expiration of the time period, extendable up to 45 days by the first appellate officer, or the receipt of the decision by the Public Information Officer, any person who feels disenchanted by the decision of the Public Information Officer, or who does not receive a decision within the time frame stipulated under section 7, may file an appeal with an officer in each public authority who is senior in rank to the Public Information Officer. Such officers who are senior in rank to the Public Information Officers in a public authority are referred to as the First Appellate Officer and their office is termed as the First Appellate

¹¹⁶¹ Reena, Right to Information-Conceptual and Other Paradoxes in Exemption Clause of RTI Act, SCC Online

¹¹⁶² Section 6(1) of Right to Information Act 2005

¹¹⁶³ Section 7(1) of Right to Information Act 2005

¹¹⁶⁴ 2014 SCC OnLine CIC 9330

¹¹⁶⁵ The Registrar General, High Court of Madras v. R.M. Subramanian and The Registrar, The Tamil Nadu Information Commission 2013 SCC OnLine Mad 1759

Authority. Deciding appeals as appellate authorities under the umbrella of RTI Act is a quasi-judicial role, however, the legislation finds no mention of any expert qualification for filling up the office of First Appellate Authority. Once a superior appellate authority/Information Commissions takes charge, a subordinate authority/FAA could not claim to reasonably exercise its authority under the guise of term extensions.¹¹⁶⁶ It is consequently imperative for the appellate authority to ensure that justice is not only carried out but also seems to have been carried out within the stipulated timeframe of 30 or 45 days. The rulings of the appellate authority ought to be a speaking order that provides reasoning for the conclusion reached with the objectives as envisaged in the act. In the event that the first appellate authority perceives the information sought relates to another public authority, it may transfer the application and direct to contact that another body in order to obtain the desired information. It is pertinent to note that the PIO being custodian of the information or the documents sought for, is primarily responsible under the scheme of the RTI Act to supply the information. In case of default or dereliction on his part, the penal action is to be invoked against him only as has been stipulated under section 20(1) and reinforced by the judgement delivered in R.K. Jain vs Union of India by the Honorable Delhi High Court, and not against the first appellate authority, whose role is mere adjudicatory.

III. Information Commissions (Suchna Bhavan)

The Central Information Commission or the State Information Commission may receive a second appeal against the decision within ninety days of the date the decision was actually received or should have been made. If the Information Commission determines that the appellant was prevented from filing the appeal in a timely manner, they may accept the appeal beyond the ninety-day limit as per the proviso outlined under Section 19(3). The

Information Commission is a statutory body established by the act of the legislature that primarily strives to cultivate an ambiance of openness among state institutions and an expanded palette of public authorities whose decisions have an enduring effect on the citizens. Pursuant to Section 18, the Information Commissions are mandated to investigate complaints submitted on any of the grounds listed throughout Section 18(1)(a) to 18(1)(f). The Commission functions in the role of a Civil Court under the authority envisaged by the act and the role of such offices is mere supervisory in nature¹¹⁶⁷. The Information Commission ensures that the information seekers should not be discouraged by the public authorities by mere inaction or use of stalling techniques instead they should be provided with the information they request, unless the act forbids publication. Time restrictions and penalty clauses have been imposed in strict parameters to guarantee these goals. Section 20 of the act provides for issuing penalty orders to the officials if information is not provided promptly or at all, there will be necessary repercussions that shall be followed. Upon issuance of any penalty orders, such officers are issued a show-cause notice as to why such actions ought not to be taken against them by the Commission. The Commission mandates such officials that information be provided to the applicant within a reasonable time frame and present a compliance report in furtherance of the same while also ensuring that the provisions of the RTI Act ought not to be misused by citizens with malafide intentions. In that regard, the honorable Supreme Court in Varun Krishna v. Central Public Information Officer Ammunition Factory and anrs, rightly disposed off the appeal citing frivolous nature of the applicant who has been tried several times, thus extinguishing the merits of the cases filed by him¹¹⁶⁸. These are designed to safeguard the culture of transparency and robust citizenry

¹¹⁶⁶ Santoshi Tel Utpadak Kendra vs Deputy Commissioner Of Sales Tax 1981 AIR 1617

¹¹⁶⁷ Chief Information Commissioner v. State of Manipur, (2011) 15 SCC 1
¹¹⁶⁸ 2021 SCC OnLine CIC 11590

that is essential to a strong and functional democracy.

IV. Court of Justice

Central Information Commission does not possess the authority to adjudicate or consider an appeal against decisions of the State Information Commission. An applicant who feels discontented by decisions or inaction of the authorities responsible for adjudication or disposal of the requests outlined under section 19 of the act, can resort to settlements in the court of appeals. The Supreme Court in *State of UP v. Raj Narain*, declared the Right to Information as a fundamental right under the fold of Article 19(1) (a) of the constitution thus, the heightened responsibility is shared by the prescribed agencies under the act as well as the courtroom procedures. Such court of appeals may enforce the decision of the commission by mandating adherence to the orders so propounded by the parties involved or set aside the impugned order or inaction by the commission. As such, an aggrieved can resort to filing of writ petitions upon infringement of their fundamental rights in High Courts of the state exercising jurisdiction in the listed matter under Article 226 and the Supreme Court under Article 32 of the Indian constitution. The apex court being the ultimate and the final authority to adjudicate upon the matters is already burdened due to huge pendency of the cases, this is precisely the reason that Information commissions were established, mostly in the capital city of the states.

CONCLUSION

Eradication of Institutional corruption through transparency and accountability of the Sovereign authority is among one of the major cornerstone of this legislation. It not only provides accountability concerning the public sector, but private information can be sought too, if it is for the general welfare or public good. In a case, where the father of a late son sought information regarding the call details in order to ascertain the cause of the murder of his son, the appeal was upheld and information was

granted to the applicant, while stating that the information sought was neither personal information nor does it falls within the purview of third-party information under the Act, by the Information Commission¹¹⁶⁹. The act stipulates publication of certain categories of information by the public authorities and is responsible for the dissemination of information, which are not expressly forbidden to be accessed by the common public. The institutional establishments and arrangement for a point of contact within the public authorities have not only made information accessible but attributed a significant role in curbing corruption and burgeoning capability of a parallel economy within the government sector. The strengthening of the masses through access and accountability is as such a welcome step, which the act seems to have endeavored since its enforcement, despite facing backlashes and dilution attempts.

¹¹⁶⁹ A-3330/SIC/REWA/2023