CASE COMMENT ON: UNION OF INDIA V.NAMIT SHARMA

REVIEW PETITION [C] No.2309 OF 2012

Lilly Francis[1]

CASE DETAILS

Supreme Court of India

Namit Sharma

v.

Union of India

Right to Information (RTI) - CIC Member Appointments

Hon'ble Judges/Coram:

A.K. Patnaik andA. K. Sikri, JJ

Decided on:3/9/13

JUDGMENT:

A.K. Patnaik, J.

Equivalent Citation: 2013(1)ABR10, 2013(1) AKR 57.

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Introduction

The right to information offers an invaluable tool, which every person in India can use to find out information that can make their lives better.2005 was a momentous year for right to information in India because it saw the enactment of a national right to information law. The Central Act was passed by the Indian Parliament on 12 May 2005 and received Presidential assent on 15 June 2005. It came into force on 12 October 2005.

Right to information has been one of the most path breaking legislations enacted and enforced in India ever since independence. Secrecy is viewed as a popular tragedy or farce1 after the enactment of Right to Information Act in 2005 (hereinafter referred to as the Act). Wings are given to the objectives of the RTI Act through instrumentalities defined under the statute which include inter alia, public information officer, public authority, Central Information Commission and State Information Commissions (hereinafter referred to as CIC and SICs). CIC and SICs are given the power to resolve complaints or appeals, preferred to it under Section 18 and 19 of the Act, and to render decisions with respect to the same.

The CIC and SICs being the second appellate authoritiesunder the statute are thereby empowered to promulgate binding and just resolutions to matters, based on the facts and issues in the case. The purpose of the said provision has been to avoid the treachery of moving from courts to courts.However, the recent judicial interpretations by the Supreme Court of India, pertaining to the qualifications of the members of the CIC and SICs who are empowered to declare decisions, is rather ominous.The Supreme Court of India held that, in order to transform the CIC into a balanced authority, the court ordered for inclusion of judicial members in each bench of CIC, mandating that the “Information Commissions at the respective levels shall henceforth work in Benches of two members each. One of them being a judicial member, while the other an expert member. The judicial person should be a individual possessing a degree in law, having a judicially trained mind and experience in performing judicial functions.

While considering the review petition of Union of India challenging the judgment, the division bench found that CIC need not be considered as a judicial or a quasi-judicial body;

rather it is an administrative body. The judgment, which has a prospective effect[2], proclaimed that therefore the inclusion of a judicial or legal member in the information commission is not mandatory. The court states that the *Information Commission does not decide a dispute between two or more parties concerning their legal rights other than their right to get information in possession of a public authority. This function obviously is not a judicial function, but an administrative function conferred by the Act on the Information Commissions.*[3]

Factual Background

Petitioner, NamitSharma in the original petition questioned constitutional validity of Section 12(5) and (6) and Section 15(5) and (6) of the Right to Information Act. These provisions deal primarily with the eligibility criteria for appointment to the posts of Chief Information Commissioners and Information Commissioners, both at the central and the state levels. The whole RTI mechanism in the country was put to standstill position . Most of the SIC have suspended the hearings *sine die*. Petitioner alleged that:

(1) Eligibility criteria were too vague and did not provide definite criteria in violation of Article 14 (equality before law), 16 (equality of opportunity in matters of public employment) and 19(1)(g) (a right to practice any profession) of the Constitution.

(2) It was not mandatory for the Commissioners to have judicial knowledge and experience, although they performed judicial and quasi-judicial functions by exercising adjudicatory and penal powers.

(3) Appointment procedure to these posts did not prescribe any mechanism for consultation with the judiciary.

In the review petition

(1) Information Commissions are neither courts not quasi-judicial tribunals but administrative tribunals which perform quasi-judicial functions while deciding appeals and complaints. So they do not have to be compulsorily headed by retired judges.

[2] *Union of India* v. *Namit Sharma* [Review Petition [C] No.2309 of 2012] &*State of Rajasthan &Anr*.v. *Namit Sharma* [Review Petition [C] No.2675 of 2012].
[3] *Id* at para 20.

(2) Retired bureaucrats do not qualify for description as "persons of eminence in public life" as the relevant civil service conduct rules prevent them from taking an active part in public life while being in government service. So serious efforts must be made to appoint candidates with specialised knowledge and experience in the fields mentioned in Section 12(5) and 15(5) of the RTI Act.

(3) An officer who is required toadjudicate the matters , judicially does not make the person a Court oreven a Tribunal because that only establishes that he isfollowing the standards of conduct and is free from biasand interest. He argued that as InformationCommissions are not really exercising judicial powers, andare not courts, Parliament has notprovided in Sections12(5) and 15(5) of the Act that Information Commissionershave to have judicial experience and acumen.

ISSUE OF LAW

A judicial decision is made according to rules. An administrative decision is made according to administrative policy. A quasi-judicial body is any authority which performs judicial functions as part of its administrative functions. A quasi-judicial function is purely an administrative function which the law requires to be exercised in some respectsas if it were a judicial body. The decision itself seems to be dictated by policy and expediency. But the process followed is subject to the principles of natural justice, which require the minister to act fairly towards the objectors and not to take fresh evidence without disclosing to them. Decision pronounced by a quasi-judicial body is therefore an administrative decision which is subject to some measure of judicial procedure.Thus any person, who by virtue of his administrative office is empowered to exert his discretion and prudence towards resolving an issue, in compliance with policy and procedure, may be considered as a quasi-judicial authority.

Applying the abovementioned situation to the issue at hand, CIC and SICs are vested with powers to hear appeals and complaints under the RTI Act 2005. CIC and SICs are the second appellate authorities prescribed under the RTI Act, the first being the senior officer in the concerned public authority. The primary concern of an applicant in both the situations of initiating a complaint or an appeal would be either to have access to the information that has been denied to him; or to ensure that the case of the Public Information Officer (hereinafter referred to as PIO), who was not properly performing his duties as part of his office, is brought into the light of the authorities.

Section 8 of the RTI Act, 2005, provides statutory exemptions to right to information. The exemptions, inter alia, includes national security, scientific interests of the state, matters pending before the court of law, matters pertaining to parliamentary privileges, communications based on fiduciary relationship and privacy.

Further, the CIC is empowered to function as a civil court, while inquiring into any complaint lodged by any person.In all the other cases, where the CIC or SICs have decided on a matter, the decision shall be binding.How far it could be used to serve justice in above situation whether it is the proposition is not in violation of the constitutional and fundamental right to information.

The legislative power should be exercised in a manner which is in consonance with the constitutional principles and guarantees .Complete lack of judicial knowledge in the commission may render the decision making process impracticable and may be contrary to the law. In *Union of India v. Madras Bar Association*[4]and in *PareenaSwarup v. Union of India*[5] ,it was contended that the powers ,functions and jurisdiction that the chief/state Information exercise undisputedly ,including the penal jurisdiction ,includes certain requirements of legal knowledge and expertise .

Scheme ,objects and reasons

Objects and reasons were discussed in a way which is akin to that of freedom of speech being a life support of Democracy .The need of the citizens to be informed and the core values of an open Government are indispensible .Then intends to argue that people are bounded to obey the final judgements given by such incompetent people without knowledge of law in state /centre where in past judgements ie. Precedents does not having any binding power upon their jurisdiction is in contravention to the objects and reasons of the Act.

Analysis

The Judgement of the review petition case mainly discussed the objectives of the law and aspects of RTI for the reasoning to say that the law is clear about the appointment of the information commissions as per the sections.

Analysing the legal implications of the statutory provisions along with the ratio in the review petition, the critics have divergent opinions on the following aspects. It is not agreeable to

[4](2010) 11 SCC 1.
[5](2008) 14 SCC 107.

consider CIC and SICs as administrative functions and it is not plausible to denigrate the issues involved in the context of the Act into meagre issues that do not require judicial consideration. If fundamental rights are claimed against the 'state' and Right to Information Act is an extension of Article 19(1)(a) of the Constitution of India, the grievances with respect to the same, though may be procedural or technical or administrative, cannot be shrouded entirely within the blanket of administrative functions, particularly when further recourse to justice is not a matter of right but a prerogative of the courts that are vested with the power of extraordinary jurisdiction. Extraordinary jurisdiction as the name indicates is not a remedy in ordinary cases; and is preferred in situations where the ordinary recourse would not suffice. It also has to be well assimilated that the right to prefer an application and the right to receive information based on the same may have repercussions on the future enjoyment of further rights by the individual. Completely excluding the same from the consideration of experts having the knowledge of law may put the enjoyment of rights by people in an awkward position. Taking the above mentioned relation of rights into cognizance, much of the unnecessary litigation may be avoided by the prudent intervention of judicial members at the right time. If we believe in the norm that justice should be seen to be done, much of discontent and ineffective decision making can be controlled by required intervention.

It is also interesting to note that the apex court does not exclude the situation where the issues that may have to be decided by the CIC are of a wider repercussion and the case cannot be decided without a technical expert in law. The court expresses its belief that the Parliament may incorporate sufficient provisions to take care of such situation.32 Such a stance being adopted by the Supreme Court is far from being considered as an act emulating judicial restraint. As the final word on justice in the land, the court has the power to set wrong and impracticable things right, whether they be made by the Legislature or Executive, with its wisdom and wit and with due reference to its role in the democracy. It is unforgettable that there are situations where the Constitution and the legal system of this country have been saved by the alacrity of the Supreme Court.

Conclusion

The judgment may go a long way to confirm the growing concern that CIC has become a safe landing haven for retired bureaucrats with no formal experience in law. The recent judicial interpretations by the Supreme Court of India have distorted the understanding about the nature and functioning of CIC.

Ideas of justice cannot be compartmentalized. The parliament and the executive of India have ratified the creation of administrative tribunals in India as a closer aid to justice. The review petition in *Namit Sharma* has to be analysed in the bigger picture of the repercussions that may arise out of this judgment. The judgment may go a long way to confirm the growing concern that CIC has become a safe landing haven for retired bureaucrats with no formal experience in law.If not treated with caution, the future implementation of the interpretation may culminate obstructions on seeking justice by the ordinary litigants of the country for information.