2023 INSC 915

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

Writ Petition (Civil) No. 360 of 2021

Kishan Chand Jain …Petitioner

Versus

Union of India & Ors …Respondents

O R D E R

1. The petitioner invokes the jurisdiction of this Court under Article 32 of the Constitution seeking directions for the better functioning of the State Information Commissions[1] under the Right to Information Act, 2005.[2] It is stated that the SICs, along with the Central Information Commission,[3] play a pivotal role in the proper implementation of the RTI Act. However, most of the SICs are located in the capital cities of the States and conduct proceedings physically. The petitioner asserts that this imposes prohibitive costs on applicants and appellants, especially those living in the remote areas, as they have to travel long distances to approach the SICs. Such bottlenecks in the functioning of the SICs deprive applicants and appellants from effectively

[1] "SIC"
[2] "RTI Act"
[3] "CIC"

exercising their right to information. Therefore, the petitioner urges that the SICs should allow the option of virtual hearings along with physical hearings.

2. The petitioner asserts that it is the legislative intention of Parliament in enacting the RTI Act to provide information to applicants at a reasonable expense. Virtual hearings further this legislative intention as they provide access to information to an applicant in a cost-effective manner. It has been further asserted that most SICs do not have the facility of online filing of RTI appeals and complaints similar to the CIC. Moreover, the petitioner urged that the SICs should adopt a user-friendly digital portal to make the functioning of the SICs more effective and productive.

3. On the basis of the averments, the petitioner has sought the reliefs as summarized below:

(i) SICs should hear complaints as well as second appeals by giving the option of both, physical and virtual hearing through a digital platform and the State Governments must support the SICs financially and technically to conduct virtual hearings;

(ii) SICs must update and have self-contained digital portals with online facilities for:

(a) filing RTI complaints and appeals;

(b) showing the case status of pending/decided matters;

(c) uploading daily orders and judgments;

(d) uploading cause lists; and

(e) uploading annual reports under Section 25 in line with Section 4(2).

(iii) SICs must be directed to dispose of the complaints within a fixed time frame, preferably within four months;

(iv) Norms be set up for disposal of a stipulated number of cases per working day by every Information Commissioner;

(v) SICs should prepare annual reports on the implementation of the provisions of the 2005 Act and provide them to the State Government under Section 25(1); and

(vi) SICs should ensure the imposition and recovery of penalties from erring information officers according to Section 20(1).

4. Notice was issued in these proceedings on 20 April 2021. Thereafter, the proceedings have been listed before this Court on 21 April 2023 and 10 July 2023.

5. The RTI Act was enacted to operationalize the rights of citizens to access information about the functioning of the government, which is otherwise only held by the government authorities. The legislation sets out a practical regime for citizens to secure access to information under the control of the public authorities, promote transparency and accountability in the functioning of public authorities, and constitute the CIC and SICs. Thus, the RTI Act pursues the legitimate state aim of ensuring transparent and accountable government.

6. In view of the stated objectives, Section 3 of the RTI Act provides that all citizens shall have the right to information. Section 2(j) defines right to information to mean the right to information accessible under the RTI Act which is held by or under the control of any public authority and to include :

(i) the right to inspection of work, documents records; (ii) taking notes, extracts or certified copies of documents or records; (iii) taking certified samples of material; and (iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes, or in any other electronic mode or through printouts where such information is stored in a computer or in any other device. Section 2(h) defines a public authority as follows:

> (h) "public authority" means any authority or body or institution of self-government established or constituted –
>
> (a) by or under the Constitution;
>
> (b) by any other law made by Parliament;
>
> (c) by any other law made by State Legislature;
>
> (d) by notification issued or order made by the appropriate Government, and includes any –
>
> i. body owned, controlled or substantially financed;
>
> ii. non-Government organisation substantially financed, directly or indirectly by funds provided by the appropriate Government.

7. Section 4 obliges every public authority to maintain its records and computerize them to facilitate right to information under the RTI Act. Section 5 mandates every public authority to designate Central Public Information Officers[4] or State Public Information Officers[5], as the case may be, to provide information to persons requesting for the information under the RTI Act. Section 6 allows any person to make a request in writing to the CPIO or the SPIO, as the case may be, specifying the particulars of the information sought by them. Section 7(1) mandates the CPIO or SPIO to act on the request for information within thirty days and forty-eight hours in case of information

[4] "CPIO"
[5] "SPIO"

concerning the life and liberty of a person. Moreover, Section 7(2) states that failure of the CPIO or SPIO to give a decision within the stipulated timelines will be deemed to be a refusal of the request.

8. Section 2(k) defines SIC to mean "the State Information Commission constituted under sub-section (1) of section 15." Section 15 provides that every State Government shall, by notification in the Official Gazette, constitute an SIC to exercise powers conferred on, and to perform the functions assigned to them under the RTI Act. The SICs consists of the State Chief Information Commissioner and such number of State Information Commissioners, not exceeding ten, as may be deemed necessary. The general superintendence, direction, and management of the affairs of the SICs is vested in the State Chief Information Commissioner.

9. Section 18 specifies the powers and functions of Information Commissions in the following terms:

> **"18. Powers and functions of Information Commissions** – (1) Subject to the provisions of this Act, it shall be the duty of the Central Information Commission or State Information Commission, as the case may be, to receive and inquire into a complaint from any person, –
>
> (a) who has been unable to submit a request to a Central Public Information Officer or State Public Information Officer, as the case may be, either by reason that no such officer has been appointed under this Act, or because the Central Assistant Public Information Officer or State Assistant Public Information Officer, as the case may be, has refused to accept his or her application for information or appeal under this Act for forwarding the same to the Central Public Information Officer or State Public Information Officer or senior officer specified in sub-section (1) of section 19 or the Central Information Commission or the State Information Commission, as the case may be;

(b) who has been refused access to any information requested under this Act;

(c) who has not been given a response to a request for information or access to information within the time limits specified under this Act;

(d) who has been required to pay an amount of fee which he or she considers unreasonable;

(e) who believes that he or she has been given incomplete, misleading, or false information under this Act; and

(f) in respect of any other matter relating to requesting or obtaining access to records under this Act.

(2) Where the Central Information Commission or State Information Commission, as the case may be, is satisfied that there are reasonable grounds to inquire into the matter, it may initiate an inquiry in respect thereof.

(3) The Central Information Commission or State Information Commission, as the case may be, shall, while inquiring into any matter under this section, have the same powers as are vested in a civil suit while trying a suit under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely:-

(a) summoning and enforcing the attendance of persons and compel them to give oral or written evidence on oath and to produce the documents or things;

(b) requiring the discovery and inspection of documents;

(c) receiving evidence on affidavit;

(d) requisitioning any public record or copies thereof from any court or office;

(e) issuing summons for examination of witnesses or documents; and

(f) any other matter which may be prescribed.

(4) Notwithstanding anything inconsistent contained in any other Act of Parliament or the State Legislature, as the case may be, the Central Information Commission or the State Information Commission, as the case may be, may during the inquiry of any complaint under this Act, examine any record to which this Act applies which is under the control of the public authority, and no such record may be withheld from it on any grounds."

10. The nature of powers exercised by the CIC or SICs under Section 18 is supervisory in nature.[6] Under Section 18(3), the CIC or SICs have the same powers as are vested in a civil court while trying a suit in respect of the matters specified under the said provision.

11. Section 19 provides the appellate procedure by allowing any person who is aggrieved by refusal of information to seek an effective redress and remedy. Section 19(1) allows any person who does not receive a decision within the time specified in Section 7 to prefer a first appeal to a senior officer of CPIO or SPIO. Section 7(3) allows any person who is aggrieved by the decision of such senior officer of CPIO or SPIO to file a second appeal with the CIC or SIC. In such proceedings, the onus to prove that the denial of request was justified lies on the CPIO or SPIO who denied the request. Section 19(8) provides that a CIC or SIC, while deciding, has the power to:

(a) require the public authority to take such steps as may be necessary to secure compliance with the provisions of the RTI Act, including –

(i) provide access to information, if so requested, in a particular form;

(ii) appoint a CPIO or SPIO, as the case may be;

(iii) publish certain information or categories of information;

(iv) make necessary changes to its practices in relation to the maintenance, management and destruction of records;

[6] Chief Information Commissioner v. State of Manipur, (2011) 15 SCC 1

(v) enhance the provision of training on the right to information for its officials;

(vi) provide it with an annual report in compliance with clause (b) of sub-section (1) of section 4;

(b) require the public authority to compensate the complainant for any loss or other detriment suffered;

(c) impose any of the penalties provided under this Act; and

(d) reject the application.

12. The SICs exercise broad powers, including among them the power to conduct inquiries into complaints from any person, hear appeals, and impose penalties. They decide on matters and issues pertaining to the right to information. In **Union of India** v. **Namit Sharma**,[7] this Court held that the Information Commissions are required to act in a fair and just manner while following the procedure laid down in Sections 18, 19, and 20.

13. Section 26(3)(b) requires the appropriate government, if necessary, to update and publish guidelines referred to in sub-section (2) including the postal and street address, phone and fax number and, if available, electronic mail address of the CPIO or SPIO, as the case may be of every public authority appointed under Section 5(1).

14. In pursuance of the order issuing notice, counter affidavits have been filed by SICs of Arunachal Pradesh, Assam, Bihar, Goa, Haryana, Himachal Pradesh, Karnataka, Madhya Pradesh, Manipur, Sikkim, Tamil Nadu, Uttar Pradesh,

[7] (2013) 10 SCC 359

and West Bengal. The position in regard to the SICs has been summarized in the following tabulation contained in the rejoinder:

S.No.	Name of SIC	Whether hybrid mode adopted	Para of CA
1	Himachal Pradesh (R-12)	Yes	4
2	Karnataka (R- 14)	Yes	2
3	Haryana (R-11)	Yes	4
4	Sikkim (R-25)	No	5
5	Punjab (R-35)	Yes	6
6	Arunachal Pradesh (R-48)	No Mention	-
7	Tamil Nadu (R-42)	Yes	12-13
8	Uttar Pradesh (R 29)	No but is not opposed to virtual hearing	17
9	Bihar(R-7)	Yes but discretion to conduct hearing through hybrid mode be left to SIC	6
10	Manipur (R-18)	Yes	4
11	Goa (R-9)	No	7 & 8
12	West Bengal (R-38)	Yes	3(iv)
13	Madhya Pradesh (R -43)	Yes	6

15. The CIC conducts its proceedings in a hybrid manner, which ensures ease of access to citizens in pursuing their complaints and appeals under the RTI Act. However, from the material which has been placed before the Court in the counter affidavits filed by some of the SICs, it is evident that there is a variation in the practice which is followed across different States.

16. The RTI Act is based on the principle that citizens have a right to know about the functioning of every public authority. Correspondingly, it also places a duty on the public authorities to act in a responsible and transparent manner by providing information about their functioning to the citizens.[8] In the process, the legislation promotes the ideals of open government and democracy.[9] Democracy requires an informed citizenry and transparency in functioning for the electors to hold the elected representatives to account.[10] Thus, the right to information promotes the values of participative democracy and accountability.

17. The right to information is not merely a statutory right for, it has also been recognized as a constitutional right. The freedom of speech and expression under Article 19(1)(a) includes the right to acquire and disseminate information.[11] The right to information has also been recognized as a facet of Article 21.[12] This intersection with the constitutional right entails a heightened burden and responsibility on the CIC and SICs to ensure that individuals get access to information on matters of public concern under the provisions of the RTI Act. In **Anjali Bharadwaj** v. **Union of India**, this Court held that the existence of the CIC and SICs is imperative and vital for the smooth working of the RTI Act.[13] Recently, a three-Judge Bench of this Court in **Kishan**

[8] State of U P v. Raj Narain, (1975) 4 SCC 428
[9] S P Gupta v. Union of India, 1981 Supp SCC 87
[10] Dinesh Trivedi v. Union of India, (1997) 4 SCC 306
[11] Secretary, Ministry of Information and Broadcasting, Government of India v. Cricket Association of Bengal, (1995) 2 SCC 161
[12] Reliance Petrochemicals Ltd v. Proprietors of Indian Express Newspapers, Bombay Pvt Ltd, (1988) 4 SCC 592
[13] (2019) 18 SCC 246

Chand Jain v. **Union of India**[14] observed that the CIC and SICs have a prominent place under the RTI Act and they must exercise their powers and functions keeping in mind the purpose and object of the legislation.

18. The RTI Act provides for setting up of Information Commissions for providing effective access to justice to citizens to agitate their grievance of perceived breaches of the right to information by public authorities. Under the scheme of the RTI Act, any person aggrieved by the denial of information under Section 7 can approach the SICs to seek redressal. In more than one way, the SICs are authorities empowered to redress and remedy the grievances of citizens.

19. Access to justice is a right of constitutional purport which signifies that individuals have effective means to approach legal institutions to seek appropriate legal remedies. The ability to access legal institutions empowers individuals to understand and exercise their legal and constitutional rights. Access to justice enhances the quality of human life and, therefore, is an important facet of right to life under Article 21. In **Anita Kushwaha** v. **Pushap Sadan**,[15] a Constitution Bench of this Court held that access to justice is also a facet of Article 14, which guarantees equality before law and equal protection of laws to both the citizens and non-citizens alike. As a result, the inability of any person to access courts or any other adjudicatory mechanism

[14] 2023 SCC OnLine SC 1021
[15] (2016) 8 SCC 509

provided for determination of rights and obligations due to institutional inadequacy is bound to result in a denial of right to equality.

20. Article 39A of the Constitution recognizes the rights of citizens to equal justice and free legal aid. Reading Articles 14, 21, and 39A harmoniously, it is evident that is the constitutional duty of the organs of the state to provide individuals with the means of access to justice in an effective and efficient manner.[16] Particularly, it is duty of the Government to raise the standards of infrastructure by adopting technology to make our institutional processes accessible and inclusive.

21. The recent technological advancements in terms of video-conferencing must be used to promote inclusion of people living in remote areas within the fold of the justice delivery mechanism. Physical courts require the litigants and parties living in remote areas to travel long distances to appear before the court. With increasing costs of travel and other related expenses, video-conferencing solutions provide a cost-effective and efficient alternative to the physical courts. Technology allows us to create and use a "virtual courtroom" which is as real as any physical courtroom. In more than one-way, virtual courts democratize our legal processes by expanding the courtroom area beyond the walls of the courtroom. In **Swapnil Tripathi** v. **Supreme Court of India**, it was observed that technological solutions can be a tool to actualize the right of access to justice by providing virtual entry to the litigants in the courtroom.[17] However, virtual courtrooms are not just restricted to allowing

[16] Brij Mohan Lal v. Union of India, (2012) 6 SCC 502
[17] (2018) 10 SCC 639

litigants to virtually enter courtrooms; they also allow citizens to participate effectively in the court proceedings. The transcendental effect of technology is not only to further the constitutional right of individuals to access justice, but it also strengthens the rule of law and democracy.

22. It is a constitutional duty of every adjudicatory institution, may it be courts, tribunals, or commissions, to adopt technological solutions such as video-conferencing and make them available to litigants and the members of the Bar on a regular and consistent basis. The use of technology is no longer an option. Properly deployed for the purpose of conducting hybrid or virtual hearings, technology has the potential to ensure access to justice by obviating the need for citizens to travel long distances to secure the right of being heard.

23. In view of the above discussion, we are of the considered view that access to the Information Commissions is integral to securing the right to information, which is a necessary concomitant of right to equality under Article 14, the freedom of speech and expression under Article 19(1)(a) of the Constitution, and the right to life under Article 21. Accordingly, we direct that all SICs across the country must provide hybrid modes of hearing to all litigants for the hearing of complaints as well as appeals. All SICs must provide an option for availing of a hybrid mode of hearing which shall be at the discretion of the applicant, or as the case may be, the appellant. The links for availing of the option must be stipulated in the daily cause list of the Information Commissions across the country. This shall be operationalized no later than by 31 December 2023.

24. That apart, there can be no gainsaying the fact that e-filing provides round the clock access to courts, and in the process, facilitates the convenience of lawyers and litigants.[18] We direct that all SICs must ensure that e-filing of complaints and appeals is provided in a streamlined manner to every litigant. Steps should also be taken having regard to the provisions of Section 26 of the RTI Act to ensure that service is effected on the Public Information Officers through the electronic mode. This shall also be implemented by 31 december 2023.

25. All Central and State Ministries shall take steps within a period of one month from the date of this order to compile the email addresses of the Central and State Public Information Officers which shall be furnished to the CIC and to all the SICs, as the case may be.

26. In order to facilitate the implementation of this order, we direct that the Secretary, Department of Personnel and Training shall convene a meeting of all the Central and State Information Commissioners within a period of one month from the date of this order. Comprehensive modalities for the implementation of the above directions shall be set up.

27. All the State Governments shall cooperate in the implementation of the order. The State Governments shall, where funds are required, ensure provision of necessary funds to all the SICs for setting up the infrastructure for conducting virtual hearings. The CIC and SICs would be at liberty to avail of the facilities

[18] M P High Court Bar v. Union of India, 2023 SCC OnLine SC 365

which have been provided by the NIC for setting up the websites on the S3 WAS Platform which provides for ease of access in the electronic mode.

28. We are hopeful that with the fulfilment of the above directions, the implementation of the RTI Act would be streamlined to facilitate access to justice and information to citizens.

29. The writ petition is accordingly disposed of.

30. This Court wishes to record its appreciation of the assistance which has been rendered by Mr. Kishan Chand Jain on the one hand and Mr. K. M. Natraj, Additional Solicitor General, on the other.

31. Pending applications, if any, stands disposed of.

……..…….....……...…CJI.
[Dr Dhananjaya Y Chandrachud]

…….…..…....……..…..J.
[J B Pardiwala]

…….…..…....……..…..J.
[Manoj Mishra]

New Delhi;
October 09, 2023
GKA