

THE HIGH COURT OF MEGHALAYA

WA No. 25 of 2015

Shri B Bhattacharjee,
High Court Bar Association,
Shillong, East Khasi Hills,
District, Meghalaya.

Appellant

-VS-

1. The Appellate Authority under
The Right to Information Act, 2005,
And also Registrar General, High Court
Of Meghalaya, Shillong.

2. Mr MC Tiken,
Registrar (Adm)
Substituted as per Court's order
Dated 31.08.2015,
Public Information Officer

Under the Right to
Information Act 2005 and
Also Registrar, High Court of
Meghalaya, Shillong.

3. The Chief Information Commissioner
(CIC)
Meghalaya State Information Commissioner
1st Floor, New Administrative
Building, Lower Lachumiere, Shillong
793001.

Respondents.

BEFORE

HON'BLE MR JUSTICE UMA NATH SINGH, CHIEF JUSTICE
HON'BLE MR JUSTICE SR SEN

For the Appellant : Mr B Bhattacharjee, Adv

For the Respondents : Mr AK Singh, Sr. Adv
Mr A Pathania, Adv

Date of Judgment & Order : 6th November, 2015

JUDGMENT AND ORDER

Uma Nath Singh, CJ.

This writ appeal has been filed against judgment and order dated 29.07.2015 passed by learned single Judge in WP(C)No. 49 of 2015, whereby the writ petition was allowed and the pending appeal before the State Chief Information Commissioner (hereinafter to be referred to as 'CIC') has been quashed.

2. Respondents filed a writ petition bearing WP(C) No.49 of 2015 seeking quashment of impugned order dated 18.3.2015 passed by respondent No.3 (CIC) with prayer to hold that the legal practitioners can appear and represent the parties before respondent No.3 and also to seek quashment of declaration made in pursuance of Rule No.7 of the Right to Information (Appeal & Procedures of the State Information Commission) Rules, 2007, relating to "Personal presence of the appellant or complainant", as violative of constitutional and statutory provisions of law.

3. The brief facts giving rise to the filing of the writ petition is, that the appellant filed an application dated 7.8.2014 under the Right to Information Act, 2005, before the Public Information Officer (hereinafter to be referred to as 'PIO') of the High Court of Meghalaya, to seek information with regard to an Advocate, who had been designated as Senior Advocate vide Memo No. HCM.II/168/2014/2018, dated 31.07.2014 by the High Court of Meghalaya.

The said RTI application dated 7.8.2014 filed by the appellant was rejected by the PIO of the High Court of Meghalaya, vide the order dated 2.9.2014 on the ground that the applicant, i.e. the appellant herein is not an “affected person” under Rule 4(v) of the High Court of Meghalaya (Right to Information) Rules, 2013.

The appellant, being aggrieved by the order dated 2.9.2014 passed by the PIO, High Court of Meghalaya, preferred an appeal dated 29.9.2014 under Section 19 of the RTI Act, 2005 before the Appellant Authority (Registrar General), High Court of Meghalaya. The Appellant Authority (Registrar General), High Court of Meghalaya, after hearing both parties, upheld the order dated 2.9.2014 passed by the PIO, and dismissed the said appeal vide the order dated 13.11.2014 and further held that the information sought for cannot be disclosed as the same is covered by Rule 5 of the High Court of Meghalaya (Right to Information) Rules, 2013 which provides for exemption from disclosure of information.

The appellant, again being aggrieved by order dated 13.11.2014 passed by the Appellant Authority (Registrar General), High Court of Meghalaya, preferred second appeal dated 29.1.2015 under Section 19(3) of the RTI Act, 2005 before respondent No.3 which was registered as MIC/Appeal/2/2015/25. Respondent No.3, while admitting the appeal, vide order dated 19.2.2015, issued notice to respondent No. 1 and 2 for show cause and listed the case for hearing on 18.3.2015. Accordingly, respondent No.1 and 2 appeared on 18.3.2015 before respondent No.3 through their lawyers to which respondent No.3 took objections and made observations vide order dated 18.3.2015 that assistance of any person(s), who is/are legal practitioners is not permissible as per the provision of law laid down in Rules 7(4) of the Right to Information

(Appeals & Procedure of the State Information Commission) Rules, 2007, as notified by the Government of Meghalaya.

However, after the conclusion of the proceedings for the day, respondent No.1 and 2 filed an application on 18.03.2015 before respondent No.3 with prayer for representation by their legal representatives and the said application filed by respondent No.1 and 2 is still pending before respondent No.3.

Thus, respondent No.1 and 2 filed a writ petition before the High Court of Meghalaya, challenging the order dated 18.3.2015 passed by respondent No.3 which was registered as WP(C) No.49 of 2015. The Hon'ble Single Judge, while admitting the said writ petition stayed the further proceedings of Appeal No.MIC/Appeal/2/2015/25 pending before respondent No.3 vide order 26.3.2015. Finally, the learned Single Judge, after hearing both parties and considering the rival pleadings including the affidavit-in-opposition vide the impugned judgment and order dated 29.7.2015, allowed the writ petition and also quashed the appeal filed by respondent No.2 pending for disposal before respondent No.3.

In the affidavit-in-opposition filed by the appellant (herein) before the learned Single Judge, he took the plea while countering the averments made in the writ petition that there is no legal foundation in the writ petition, that there was no denial of right of representation by a Lawman and that the filing of writ petition is premature. There is no denial of any right to the respondents.

Besides, respondent No.3 (State CIC) also filed affidavit-in-opposition in the writ petition refuting the assertions made by the writ petitioners/respondents herein.

4. It appears that learned single Judge has considered the writ petition, inter alia, on the premises that the appellant herein was not an affected party as he had not applied for, nor was his case taken up suo moto for designation by the High Court. It also appears that the State CIC/Appellate Authority respondent No. 3 objected to the appearance of lawyers on behalf of the High Court. It was not within the competence of respondent No. 3 to decide the legality or otherwise of the High Court of Meghalaya (RTI) Rules, 2013. The validity of a rule can be decided only by the High Court or the Supreme Court. Moreover, the Rules have been framed by a high constitutional authority.

Under Section 30 of the Advocates Act, 1961, an advocate can appear anywhere, through out the territory of India, before any tribunal or person legally authorized to take evidence. Since the State CIC has all the trappings of a tribunal, therefore, the Advocates cannot be stopped from appearance on behalf of the parties. On the question of representation by a counsel, learned single Judge has also considered the following judgments of Hon'ble the Supreme Court passed in (i) **Supreme Court Bar Association v. Union of India and Another, reported in (1998)4 SCC 409 and (ii) Pravin C Shah v. KA Mohd. Ali and Anr, reported in (2001)8 SCC 650.** Though the appellant now submits that the counsel for the respondent/writ petitioner should have been allowed by the State CIC to appear but the fact remains that in his affidavit-in-opposition, such stand is conspicuous by absence. Learned single Judge has referred to and discussed the provisions of Section 16(2) of Advocates Act, 1961 that provide for the designation of senior counsel and also noticed that the appellant was not an affected party as required under

Rule 4 of the High Court of Meghalaya (RTI) Rules 2013. Further Rule 5(d) of the High Court of Meghalaya (RTI) Rules 2013 provides for non-disclosure of information to a person who is not found 'affected' by such information.

5. We have also heard and considered the submissions of the appellant in person and learned senior counsel for the respondents. Respondent No. 3 despite service of notice on 15.09.2015 at 17.13.41 hours in his office (vide information available on internet) has not entered appearance. He has also not filed any application or written submissions though the case was reserved for verdict. However, his affidavit-in-opposition filed in the writ petition is available on record.

6. The appellant at the very outset submitted that he never had any objection to the appearance of a lawyer on behalf of the respondents High Court. It is also a submission that there was no prayer in the writ petition for quashing the appeal pending before the State Chief Information Commissioner, respondent No. 3. Thus, the learned single Judge has travelled beyond prayer in quashing that appeal. It is also a submission that the appropriate authority in the High Court under the RTI Act and Rules is a creature of the statute and the Rules framed for the High Court thereunder cannot have an overriding effect qua the provisions of the RTI Act. The Rules drawn by the High Court under the RTI Act has not been framed in exercise of powers under Article 225 of the Constitution of India, thus, the RTI Rules framed for the High Court cannot stand on the same footing as the ones framed in exercise of the constitutional powers. In fact, the Rules were framed in exercise of the

powers conferred by sub-section (1) of Section 28 read with Section 2(e)(iii) of the Right to Information Act, 2005. As such, the State CIC who is a statutory appellate authority under the Act is empowered to deliberate on the applicability of the Rules framed by the High Court in the matter pending before it. Thus, learned single Judge has been in error in holding that the Chief Information Commissioner, respondent No. 3, has no power to decide the validity of the Rules framed by the High Court. It was also premature for the High Court to deliberate and decide the issues raised in appeal on merit which was within exclusive domain of the State CIC, respondent No. 3 under Section 19(3) of the RTI Act. Moreover, there was no challenge to the validity of the Rules framed by the High Court under the RTI Act by the appellant in his appeal filed before the State CIC, respondent No. 3. The point raised only related to giving a harmonious interpretation of the rules and the Act. It is also contention that learned single Judge in exercise of powers conferred under Article 226 of the Constitution of India cannot take away the power and jurisdiction of the appellate authority under Section 19(3) of the RTI Act. It is impermissible for the learned single Judge to make a guess work as to on what basis the pending appeal would have been decided by the State CIC, respondent No. 3. According to the appellant, the provisions of the RTI Act have to be given primacy over the RTI Rules.

7. It is a further submission that appellant's right to appeal under Section 9(3) of the RTI Act has been violated, and there was also no challenge to the Rules in question before the High Court.

8. On the other hand, Shri AK Singh, learned senior counsel for the respondents, inter alia, contended that though the appellant claims to have given up the challenge to the Rules but that statement stands belied by his affidavit-in-opposition filed in the writ appeal to plea taken by the respondents in the writ petition.

There is no specific denial of the averments of respondents/writ petitioners in Para 5 (XVIII) and Ground 'J' of the writ petition:

“ xviii. That the counsels appearing for the petitioners brought to the notice of respondent No. 1, that the Hon’ble High Court have the power to frame the Rules under Article 225 of the Constitution of India read with Section 2(e)(iii) and Section 28(1) of the RTI Act, 2005 and this commission cannot examine the validity and legality of the rules framed by Hon’ble High Court. It was also brought to the notice of the respondent No. 2 that the right to examine the rules vest only with the Hon’ble High Court on the judicial side and respondents have to follow the rules being the law framed by the Hon’ble High Court. The counsels also brought to the notice of the respondent No. 1 about the various judgments including judgments passed by the Hon’ble Supreme Court, Hon’ble High Court of Guwahati and Chief Information Commissioner, which clearly spell out the legal position that the rules framed by the Hon’ble High Court is a law made by the High Court which cannot be examined by the State Information Commission but the respondent No. 1 did not take note of any of these judgments and instead of passing the order in open court, abruptly left the Court/hearing room without pronouncing any order or fixing any next date. The prayer of the counsel, to accommodate about the date of hearing as they come from Delhi, was also ignored.”

Ground 'J' of the writ petition:

“J. Because the respondent No. 1 has gravely erred in directing the petitioners during course of hearing to remain ready on next date of hearing to satisfy that the Rules framed by this Hon’ble Court in exercise of the powers vested under Article 225 of the Constitution of India read with relevant provisions of RTI Act are in consonance with the provisions of the RTI Act. This is gross misuse of the powers by the respondent No. 1 and is beyond his jurisdiction. This is an attempt by the

respondent No. 1 to encroach upon the right of this Hon'ble Court on judicial side etc. to examine validity of the Rules framed by this Hon'ble Court and is also against the law settled by Hon'ble Supreme Court, High Courts and even Chief Information Commissioner, Delhi."

9. Learned senior counsel submits that in affidavit-in-opposition filed by the appellant to the aforesaid averments in the writ petition, there is no specific denial of the averments in reply made to para 5 (xviii), of the writ petition by the appellant. Besides, in reply to Ground 'J' of the writ petition the following written submissions have been made by the appellant :

"11. That the averments made in sub-para xviii of paragraph 5 of the writ petition are based on surmises and conjunctures as it is pre-matured at this stage to anticipate as to what point would be taken up at the time of hearing of the matter before the Respondent No. 1. It may further be stated that the Respondent No. 1 has his own legal expertise to decide the matter while discharging his function under the Right to Information Act, 2005 and the rules framed thereunder.

13. That the averments made in paragraph No. 6 and sub-para No. A, B, C, D, E, F, G, H, I, J, K, L, M and N thereunder are utterly misconceived and the grounds raised therein are not tenable in the eye of law. In reply thereto, it is respectfully stated that the passing of the order dated 18.03.2015 by the Respondent No. 1 does not in any manner infringe the right of the petitioners under Article 19(1)(g) of the Constitution of India nor there is any right available to the petitioners under section 30 of the Advocates Act, 1961. Rule 7(4) of the Right to Information (Appeal & Procedures of the State Information Commission) Rules, 2007 and Rule 7(4) of the Central Information Commission (Appeal and Procedure) Rule, 2005 do not allow the parties to a proceeding to be represented by a legal practitioner. It is further stated that the Regulations of 2009 cannot override the aforesaid Rules framed under the Right to Information Act, 2005".

10. It is also worth noting that if a fact is not specifically denied, then, it is deemed to have been admitted. This view had been taken by Hon'ble Apex Court in the Case of ***Asha v. Pt. B.D. Sharma University of Health Sciences and Ors AIR 2012 SC 3396 para 17 and 18.***

“17. In the reply filed on merits by the Respondents, these paragraphs were dealt with in a most casual manner and no specific denial was made. Paragraphs 7 to 9 of the reply read as under:

7. That in reply to Para No.7 of the petition averments made in Para No.3 and 4 of the preliminary submissions are reiterated here.

8. That in reply to Para No.8 of the petition it is submitted that since the Petitioner left the counseling place without appearing before the counseling board her candidature was not considered for admission to MBBS course under ESM category and the Respondent No.3 who was next in merit than the Petitioner got the admission in MBBS course under ESM category. Averments made in Para No.3 and 4 of the preliminary submissions are also reiterated here.

9. That Para No.9 of the writ petition is wrong and denied. The Petitioner has never approached to the answering Respondents with regard to her admission in MBBS course after 2nd counseling as claimed in this para. However, in any case she is not entitled for admission to MBBS Course under ESM category in present circumstances in view of facts mentioned in Para No.2,3 & 4 of the preliminary submissions.

18. From a bare reading of the reply filed by the Respondents, it is clear that there is no specific denial of the above-noted averments made by the Appellant. It is a settled principle of the law of pleadings that an averment made by the Appellant is expected to be specifically denied by the replying party. If there is no specific denial, then such averment is deemed to have been admitted by the Respondent. In the present case, it is evident that the above-noted averments in the writ petition were relevant and material to the case. In fact, the entire case of the Appellant hinged on these three paragraphs of the writ petition. It was thus, expected of the Respondents to reply these averments specifically, in fact to make a proper reference to the records relevant to these paragraphs. In view of the omission on part of the Respondents to refer to any relevant records and failure to specifically deny the averments made by the Appellant, we are of the considered view that the Appellant has been able to make out a case for interference”.

11. It Is also a submission of learned senior counsel, Mr AK Singh, that the High Court can exercise its powers under Article 226 of the Constitution and can mould or grant the relief in a given facts and circumstances to do justice. Thus, in the instant case, even if there was no prayer for quashment of the appeal pending before the State Chief Information Commissioner, the learned Single Judge has rightly passed the order of quashment because pendency of appeal only amounted to abuse of the process of the law and Court. It is also a submission of learned senior counsel, that the Rules framed by High Court are the law made in respect of cases covered by them and, as such, the information

required vide the application of the appellant, is expressly hit by Section 8(b) of RTI Act. It is further submission of learned senior counsel, that the State Chief Information Commissioner does not have any jurisdiction to examine the legality and validity of any Rule framed by High Court in exercise of its powers. It is also a contention that the Information Commission is in the nature of tribunal and also exercises quasi-judicial function. That apart, learned senior Advocate has also pleaded that, under Section 30 of the Advocates Act, 1961, an Advocate is entitled to practice before any tribunal or before any person legally authorized to take evidence. It is also a submission that the litigation, being in the nature of a frivolous one, deserves to be deprecated and visited with exemplary cost: for, Right to appropriate remedy does not give a licence to misuse court's jurisdiction.

12. From a careful consideration of rival submissions, it appears that, the appellant has consistently maintained that the State Chief Information Commission can examine the legality of the Rules framed by the High Court, and the High Court has no right to be represented by a counsel before the Commission. This stand does not appear to be correct in view of Section 30 of the Advocates Act whereunder an Advocate, upon being enrolled has right to appear before any tribunal or person having power to take evidence throughout the territory of India. Secondly, if there is an issue relating to questioning the legality and validity of an Act or Rule, that can be tested only by the High Court under Article 226 or the Supreme Court, under Article 32 of the Constitution of India. Moreover, there is no denial of the assertion made in the writ petition that the State Chief Information Commissioner wanted to examine the validity of the High Court Rules. As regards the submission that,

without any specific averment or prayer in the writ petition, the learned single Judge should not have quashed the appeal pending under Section 19(4) of the RTI Act before the State Chief Information Commissioner and thereby taken away his right of appeal, the same does not seem to be tenable for the reason that the jurisdiction of High Court, in entertaining a writ petition under Article 226 of the Constitution despite alternative statutory remedy being available is not affected specially in a case where the authority against whose orders the writ is filed is shown to have no jurisdiction or has purportedly usurped the jurisdiction without any legal foundation. In the instant case, when the High Court Rules specifically prohibited disclosure of information regarding designation of Senior Advocate to a person who is not affected and the legality of that Rule could not have been examined by the State Chief Information Commissioner, then in that case, if the learned single Judge passed the order of quashment of appeal pending before that authority, then there is no illegality of any sort committed in that judgment. Hon'ble the Apex Court, in a catena of decisions has reiterated this view. In the case of ***Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and Others, reported in (1998) 8 SCC 1, vide paras 14,15,20 and 21***, it has been held as under :

“14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for “any other purpose.”

15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the

Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.

20. *Much water has since flown under the bridge, but there has been no corrosive effect these decisions which, though old, continue to hold the field with the result that law as to the jurisdiction of the High Court in entertaining a writ petition under Article 226 of the Constitution, in spite of the alternative statutory remedies, is not affected, specially in a case where the authority against whom the writ is filed is shown to have had no jurisdiction or had purported to usurp jurisdiction without any legal foundation.*

21. *That being so, the High Court was justified in dismissing the writ petition at the initial stage without examining the contention that the show-cause notice issued to the appellant was wholly without jurisdiction and that the Registrar, in the circumstances of the case, was not justified in acting as the "Tribunal."*

13. A similar view has been taken in the case of ***Committee of Management and Another v. Vice-Chancellor and others reported in (2009)2 SCC 630*** wherein, it is provided that the availability of alternative remedy by itself cannot be a ground for the High Court to refuse exercise of its jurisdiction. It can exercise its writ jurisdiction notwithstanding the fact that an alternative remedy is available, inter alia, in a case where the same would not be an efficacious one. Furthermore, when an order has been passed by an authority without jurisdiction or in violation of the principles of natural justice, the superior courts cannot refuse to exercise their jurisdiction although there exists an alternative remedy.

14. Further, in ***Commissioner of Endowments and Others v. Vittal Rao and Others reported in (2005)4 SCC 120***, it has been held that the High Court while exercising jurisdiction under Article 226 of the Constitution can pass appropriate orders and such powers can neither

be controlled nor affected by the provisions of Order 23 Rule 3 CPC. It would not be correct to say that the provisions of Order 23 Rule 3 should be mandatorily applicable even in the case of exercising jurisdiction under Article 226 of the Constitution or else it may lead to an anomalous situation that before disposing of the writ petition, the Court would be required to frame issues and take evidence, even during the proceedings under Article 226. In fact proceedings under Article 226 of the Constitution stand on a different footing when compared to the ones in suits or appeals arising therefrom.

15. Again in the case of ***Godrej Sara Lee Limited v. Assistant Commissioner(AA) and Another reported in (2009)14 SCC 338***, it is provided that even if there is no specific ground or prayer for quashment of a Notification still the High Court in exercise of powers under Article 226 can pass appropriate order.

16. As regards the assertion that the State Chief Information Commission has power to examine the legality of the provisions of the High Court of Meghalaya (RTI) Rules, apart from what is discussed herein above, it needs to be noticed that learned Single Judge has carefully addressed the issue quite extensively and we do not find any fault, legal or otherwise, to exercise our appellate jurisdiction. Even the Central Information Commission in its various orders as noticed by learned Single Judge has clearly held that the Information Commission has no power to examine the legality of any Rule. One of such case is F.No.CIC/AT/A/2008/01137 decided on 13th March 2013, wherein, Vide para 19 it has been held by the Division Bench of the Commission that it is not within the purview of the Commission to examine the manner in

which a competent authority in exercise of its powers to frame Rules under Section 28 of the RTI Act has drawn such Rules. Thus, in view of the clear provisions of law that the State Information Commission, has no power to examine the legality and validity of the Meghalaya High Court (RTI) Rules, framed by the competent authority and further that in exercise of powers under Article 226 of Constitution of India, this Court notwithstanding the existence of alternative remedy can entertain and decide or render judgment even on a issue which does not find specific reference in the prayer or the ground and quash the appeal pending before the State Chief Information Commissioner who has no jurisdiction to decide: for, there is a clear prohibition in the High Court Rules regarding disclosure of information in question. Besides, as this writ appeal has been filed by a practicing Advocate of the Court who is not an affected party, probably not under proper understanding of law, we may like to refer and notice the ratio of decisions of Hon'ble the Apex Court whereby such practice has been deprecated. In ***Dr Buddhi Kota Subba Rao v. K Parasaran and Others, reported in (1996) 5 SCC 530***, it is held that no litigant has a right to unlimited drought on the court time and public money in order to get his affairs settled in the manner as he wishes. Easy access to justice should not be misused as a licence to file misconceived or frivolous petitions. A similar view has been taken by Hon'ble the Apex Court also in the case of ***Nupur Talwar v. Central Bureau of Investigation and Anr, reported in (2012) 11 SCC 465***, as:

“ 52. As of now, I would only seriously caution the petitioner from such behaviour in future. After all, frivolous litigation takes up a large chunk of precious court time. While a state of mind of the accused can be

understood, I shall conclude by suggesting that the accused should henceforth abide by the advice tendered to her, by the learned counsel representing her. For, any uncalled or frivolous proceedings initiated by the petitioner hereinafter, may evoke exemplary costs.”

17. Thus, the writ appeal is dismissed with a note of caution for future.

JUDGE

CHIEF JUSTICE

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