

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7542 OF 2017

The Central Public Information Officer
and another

..Petitioners.

Versus

The Central Information Commission
and another

..Respondents.

Mr. Yogeshwar S. Bhate, Advocate for Petitioners.

Mr. A. I. Patel, Addl. G.P. a/w. S. H. Kankal, AGP for State.

CORAM : K. K. TATED &
SARANG V. KOTWAL, JJ.
DATED : 13th JANUARY, 2020.

PC :

1. Heard Learned counsel Mr. Yogeshwar Bhate for the petitioners.
2. Though the respondents are duly served, no one appeared on behalf of them when the matter was called out.
3. By this writ petition under Article 226 of the Constitution of India, the petitioners are challenging the order dated 28/04/2017 passed by the Information Commissioner in the complaint No. CIC/MP/C/2016/000171-BJ-Adjunct, directing the CMD and the Joint Secretary (Currency), Department of Economic Affairs to conduct a detailed inquiry into the whole matter and submit

its inquiry report to the Commission under intimation to the complainant within a period of 15 days from the date of receipt of copy of the order.

4. Learned Counsel appearing on behalf of the petitioner submits that the impugned order passed by the learned Commissioner is beyond his jurisdiction. In support of his contention, he relies on the Judgment of the Delhi High Court in the matter of *Delhi Development Authority Vs. Central Information Commission & Anr.* reported in 170 (2010) Delhi Law Times 440 (DB). He relies on paragraph Nos. 18,19,20,21 which read thus:

“18. Insofar as the provisions of Section 19, which pertain to appeals, are concerned, the Central Information Commission or the State Information Commission in its decision in an appeal, has the power to, *inter alia*, require the public authority to take such steps as may be necessary to secure compliance with the provisions of the RTI Act which obviously includes the provisions of Section 4 which spells out the obligations of the public authorities. Section 19(8)(a)(vi) clearly indicates that the information Commission with an annual report in compliance with Clause (b) of Sub-section (1) of Section 4. There is nothing in Section 19 which empowers an Information Commission, be it the Central or the State Commission, to constitute any committee to initiate or conduct any inquiry for and on its behalf.

19. It is clear that there is no provision under the RTI Act which empowers the Central Information

Commission or, for that matter, the State Information Commission, to appoint a committee for conducting an inquiry for and on its behalf. The power of inquiry under Section 18, which has been given to the Central and the State Information Commissions is confined to an inquiry by the concerned Information Commission itself. There can be no delegation of this power to any other committee or person. “*Delegatus non potest delegare*” is a well-known maxim which means – in the absence of any power, a delegate cannot sub-delegate its power to another person [see: Pramod K. Pankaj v. State of Bihar & Ors., I (2004) SLT 184=2004(3) SCC 723].

20. As we have seen, there is nothing in the Act which empowers the Central Information Commission to appoint a committee to conduct an inquiry on its behalf, the only rules that have been framed under Section 27 of the RTI Act, are the following:

- (i) The Right of Information (Regulation of Fee and Cost) Rules, 2005; and
- (ii) The Central Information Commission (Appeal Procedure) Rules, 2005.

None of these rules deal with the powers of inquiry of the Central Information Commission. Therefore, there is nothing prescribed either in the Act or the Rules made thereunder, whereby the Central Information Commission could be said to have been empowered to delegate its power of inquiry under Section 18 to some other person or a committee of persons.

21. Consequently, this question has to be answered in the negative. The Central Information Commission did not have the power

to appoint the committee that it did by virtue of its order dated 22.9.2009 and, therefore, to this extent, the impugned order is liable to be set aside and it is so set aside.”

5. Considering the submissions made by the learned counsel for the petitioner and the authority in the matter of *Delhi Development Authority Vs. Central Information Commission & Anr.* (supra), we are satisfied that the petitioners have made out a case for following order.

- a) Admit.
- b) Interim relief in terms of prayer clause

(b) which reads thus:

“(b) Pending the hearing and final disposal of this Writ Petition, this Hon’ble Court may be pleased to stay the operation and implementation of the said order bearing File No. CIC/MP/C/2016/000171-BJ-Adjunct dated 28-04-2017 passed by the Hon’ble Information Commissioner Mr. Bimal Julka of the Respondent No.1 on the Respondent No.2’s Complaint dated 28-05-2016 filed against the petitioners.”

(SARANG V. KOTWAL, J.)

(K.K.TATED, J.)
