

Right to Information and Good Governance
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Lecture No. 62
Information Commission Under the RTI Act – 5

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Just to give you an idea about an amendment in 2019 as regards the appointment of Information Commissioners, the government created this amendment and has adopted this amendment which first brings about a 3 year tenure for the Information Commissioners as against the earlier 5 year tenure. The justification given by the government is to bring about uniformity of appointment to all quasi-judicial tribunals across different legislations and hence it was shortened from 5 to 3 years and there was this issue about reappointments.

Now prior to 2019, Information Commissioners could not seek reappointments. However currently, as the law stands after the amendment, Information Commissioners are eligible for reappointment and also eligible for elevation from being an Information Commissioner to the Chief Information Commissioner. So, this is an amendment that the government has brought recently to RTI Act and probably you will notice that this is the only amendment that has been ever made to the Right to Information Act.

Also, I think what was brought down is the salary that is given to the Information Commissioners and you will notice that there is a cap on the salary currently. The Chief Information Commissioners gets 2.5 lakhs and the Information Commissioner will get 2.25 lakhs. So, these are certain changes that were brought about in 2019.

RTI Act amendment in 2019: only on the appointment of ICs

- The rules state that the tenure of ICs shall be three years and they can be eligible for reappointment [once] or for elevation from ICs to Chief Information Commissioner.
- Also the above amendment cap the salary of Chief to 2.5 lakh and for ICs at 2.25 lakh



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Limitation to the powers of SIC/CIC

- **Ms. Belma Mawrie v Chief Information Commissioner**
Decided on 29 July, 2015 the High Court of Meghalaya held that State Chief Information Commissioner as an appellate authority under the RTI Act, 2005 has no jurisdiction to question the validity or otherwise of the High Court of Meghalaya (RTI) Rules, 2013 framed under the same statute i.e. RTI, 2005.
- The Court held that as a Competent Authority to frame rules, the high court RTI rules were not arbitrary and in conformity with the objectives of the RTI Act.
- Also the Court held that under sec. 18 and 19 of the RTI Act, the Information Commission cannot review the rules made under the RTI Act.



Let us go forward in looking at the limitation to the powers of the Information Commission and the case for discussion is this case decided in 2015 by the High Court of Meghalaya. It is Belma Mawrie versus the Chief Information Commissioner. Now in this case the Meghalaya High Court held that the state, Meghalaya State Chief Information Commissioner, who is an appellate authority at least not the Information Commissioner in the second appellate authority under the RTI act has no jurisdiction to question the validity of the High Court rules on RTI which are framed in 2013.

Now interestingly, you would notice that the High Court and the Supreme Court are competent authorities and under the Right to Information Act, a competent authority has the power to frame rules for the implementation of the Right to Information. Which very clearly tells you that RTI Act 2005 is the substantive law that is applicable to the whole of India except to the state of Jammu and Kashmir.

Second, the Act has rules and the rules can be drafted by the state as well as the central government as appropriate bodies for the implementation of the act. And hence, in India we have the central rules that are applicable to central government information and that will be applied by even the central Information Commission. Then you have every state that has enacted rules and please note it will be applicable to state government information and it will be the subject matter of interpretation these are the state Information Commissions.

However, additionally, the RTI Act allows competent authorities. Who are these competent authorities? If you recollect, I had told you in the past, it could be the Speaker in the house of people, it could be the vice president or the chair person in the upper house or the Rajya Sabha, it could be the chief justice in case the supreme court or in that case of the High Court as well. And hence, some High Courts like Delhi, Bombay have enacted the RTI rules and Meghalaya High Court had also adopted one such rule.

Now once the rules were framed, any citizen applying or seeking information under the RTI Act has to follow the procedure prescribed under the rules especially if he or she is seeking information from the High Court of Meghalaya. Now, the High Court of Meghalaya passed these rules it was adopted. However, the Information Commissioner of the state decided to this, question the validity of such rules. And he said that the High Court rules are not valid and are not applicable and they go against the spirit of the Right to Information Act. And hence, this was passed by the Information Commissioner and he passed adverse comments on the High Court rules.

Now the court very clearly held that under the RTI Act, competent authorities have been empowered to frame the rules and the RTI High Court rules were framed under the same. And

the High Court also held that they did not find the RTI rules to be arbitrary and in fact they said that it was in confirmative the objectives of the Right to Information Act and hence it is not the jurisdiction of the Information Commissioners at the state or even at the centre to interpret or validate the High Court or the supreme court rules under RTI if there were any.

So, any rules that is framed by the competent authority is beyond probably the purview of the Information Commissions is what the court had to say in this case. So, that is a kind of limitation of power that the Information Commissions have they can only interpret the state RTI rules and the central RTI it is nothing more than that. Also, the court held that under Section 18 and 19 of the RTI act the Information Commission cannot review the rules that are made by competent authorities. So, a significant case I think trying to set the limits of power to the Information Commissions

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**Central Information Commission
(Management) Regulations, 2007**

- In *Delhi Development Authority v Central Information Commission* Decided on 21 May, 2010-Delhi HC interpreted the scope and ambit of the above regulations.
- The petitioner prayed for the quashing of Chapter IV with specific emphasis on Regulation 2010, which makes provision for the conduct of an inquiry. The petitioner is also aggrieved by the fact that the Central Information Commission required the presence of the Vice-Chairman of the Delhi Development Authority in the course of proceedings before it and the fact that the said Vice-Chairman could not be present was commented upon adversely by the Central Information Commission.
- It was held by the court that under Sec. 18; during inquiry the power to summon is for the purposes of evidence cannot be read as a general power to call any person for any purpose in the course of hearing before the Central Information Commission.
- Court held that the Central Information Commission is not a court and certainly not a body which exercises plenary jurisdiction, hence cannot exercise powers beyond the Statute.
- Does the CIC have the power of Review: The Court held that once the statute does not provide for the power of review, the Chief Information Commissioner cannot, without any authority of law, assume the power of review. Hence the Management Act cannot expand the powers unless the same is provided in the Act or its rules.
- Also on whether the Central Information Commission has the power to appoint a committee of persons other than the members of the Commission, to inquire into the implementation of the obligations cast upon a public authority, the court held that 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.

Now in 2007, the Central Information Commission came up with its management regulation and obviously these regulations are something that Information Commissions are entitled to frame so that the internal management processes can be conducted smoothly. Especially among the various staffs that are appointed at the Information Commission. So, hence you know under delegated legislation power such regulations are generally ought to or sought to be made.

However, in Delhi Development Authority versus Central Information Commission decided by the Delhi High Court in 2010, decided to interpret the scope and ambit of such regulations that were made by the Information Commissions. So, this is something that was challenged by DDA and the reason for challenging the same was an interesting summons that was issued by the Central Information Commission which required the presence of the Vice Chairman of this Delhi Development Authority in the proceedings before it.

Now this was like an overreach that the Information Commissioner in the case did and he requested the physical personal presence of the Vice Chairman. And what was justified was that the same is provided under the regulation and being part of the regulation such an inquiry when conducted the vice chairman man should be present before the Information Commission. Now this was challenged about the fact that whether regulations can go beyond the scope of the law itself because the law does not require the specific personal presence of every officer of a public authority. But the power to summon is definitely available with the Information Commission. So, the management rules only emphasize the same.

Now it was held by the court that under Section 18 please note, which is the power of inquiry based on a complaint. The power to summon is for the purpose of evidence and cannot be read as a general power. So, if the person is relevantly required to produce or give an evidence as pertaining the inquiry or the matter at hand, then he can be summoned, then the Information Commission can call for that purpose, person for the purpose of that here, if he is not, they cannot probably insist the presence of any officer to that extent.

So, I think the court clearly held that during inquiry you can only summon the relevant person so as to give evidence and it is not to be read as a general power to call any person as would be the discretion that an Information Commissioner would want to exercise. The court held that the Central Information Commission is not a court and certainly not a body which exercise plenary jurisdiction, hence cannot exercise powers beyond the statute.

So, very clearly there is a limitation on who can be summoned during an inquiry and what is the purpose of reasons for the same and hence not being a court I think the general power of issuing

summons to anybody was taken away from the Information Commission and the court rightly held that the statute empowers the commission to do a specific work and it must do the work within those powers granted and not go beyond it.

Does the CIC have the power of review? Because you know the interesting factor in this case is the management regulations are provided for a review and the quote in this case said that once the statute does not provide for the power of review. It is for the parliament to lay down whether a particular cause is or a tribunal has the power of review. If the parliament has not prescribed the powerful review, the Information Commissioners cannot without authority of law assume the power of review.

And hence the management act cannot expand the power and grant the power of review to the Information Commission. So, it is very clearly saying that the power of review should be granted by the legislature and cannot be made through a management act. This expansion of power is not something that the law can allow the Information Commissions to do. Also, whether the Information Commission has the power to appoint a committee of persons other than the members of the commission to inquire into the implementations of the obligation casted upon a public authority. Generally, what was happening is that the Information Commissions, if they wanted to hold an inquiry would appoint a committee of individuals like you know it is done by the court.

Now the court in this case comes down heavily on this fact and says that look the power to inquire is granted only to Information Commissions. And hence if this power of inquiry is granted to the Information Commissioners they cannot sub-delegate it to a committee of persons. This goes with this principle delegatus non-protest delegare which very clearly means once there is delegation you cannot sub delegate, and unless there is a power to delegate. So, that sub delegation then becomes invalid.

So, the central Information Commissioners who had this tendency to appoint a committee of persons to inquire they had to now cut short their business of doing the same. And they had to enquire themselves and they cannot properly delegate this power to any individual or to a body



of individuals as the case may be. So, no further delegation of inquiry can be done it is for the commissioners to themselves do it and that power cannot be sub delegate is what was said in this case called Delhi development authority versus central.

Very significant judgment I think a very prominent one that again limits the power and limits the way and method in which a regulation of such kind under RTI Act can be.

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Removal/Suspension of CIC

- Sec. 14: by order of the President on the ground of proved misbehavior or incapacity.
- In this regard President should make a reference to the Supreme Court and thereafter the Supreme Court may constitute a committee of Judges which shall inquire the matter and make a report to the President.
- Suspension from Office: The President may suspend the ICs and they may be prohibited from attending office during the inquiry on whom reference has been made to the Supreme Court.
- Sec. 14(3): President may by order remove from Office if any of the Information Commissioners has been adjudged insolvent, or has been convicted of an offence which involved moral turpitude or engages during his term in any paid employment outside his duties of his office or is in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body or has acquired such financial or other interest as is likely to affect prejudicially his functions as a Information Commissioner.

Let us move forward and look at removal or suspension of Information Commissioners either at the state or the centre. First and foremost, this is provided under Section 14 and you will notice that an Information Commissioner or the Chief Information Commissioner can be removed by an order of the President. So, the President appoints and hence the president can also remove on the ground of crude misbehaviour or incapacity, this is provided crude misbehaviour or incapacity. So, this is one way in which Information Commissioners can be removed from office.

While this power is exercised by the President, he could make a reference to the Supreme Court to help him arrive at the issue of whether there is evidence to prove the misbehaviour of, if there is incapacity in place. The President can make a reference to the Supreme Court, the Supreme Court may constitute a committee of judges who should inquire into the matter of the allegation being made, take the evidence into account and then come to the rightful conclusion and make a report to the President on which the President can act under Section 14.

Also, an Information Commissioner may be suspended from office. Again, the power lies with the President of India as the case of Central Information Commissioners or it could be in the case of State Information Commissions with the Governor of the state. The President of India may suspend the Information Commissioners and he may prohibit them from attending office especially when the inquiry is on in the Supreme Court.

So, if the Supreme Court is holding the inquiry under the reference of the President and when the inquiry is on and if there are issues of interference or any kind of tampering of evidence or hampering the independence of the inquiry, then the President may suspend the Information Commissioner for the duration of the inquiry as well. So, this is also an additional power that the President has.

Also, if one reads Section 14(3), the President may by order remove an Information Commissioner from an office if he is adjudged insolvent. So, this is a clear ground on which the President may make an order or if he is convicted on an offense which involves moral turpitude, again then, the president may remove an Information Commissioner.

Also, if an Information Commissioner engages in any paid employment outside his duties, he can be removed or if in the opinion of the president is unfit to continue in office for reason of infirmity of mind or body. Or finally, if he has acquired any financial or other interest that is likely to affect prejudicially his functioning as an Information Commissioner, then under Section 14 the President has the power to remove Information Commissioner from his office.

So, what are the grounds for removal: First- If an Information Commissioner is adjudged insolvent, 2; If he is convicted on an offense that involves moral turpitude, 3; If he engages in a paid employment outside his duties, 4; He is in the opinion of the President unfit to continue because of infirmity of mind and body. And 5 and the last if he has acquired such financial or other interest as is likely to affect prejudicially is functioning as an Information Commissioner.

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Deemed guilty of misbehavior

- Sec. 14(4) if any ICs is interested in a contract or agreement made by or on behalf of the Govt. or participates in any way in the profits thereof or in any benefit or emolument arising therefrom shall be deemed guilty of misbehavior.



Also, kindly note under Section 14(4) if an Information Commissioner is interested in any contract or agreement that was made by or on behalf of the government or if he participates in any way in the profits thereof or in any benefit or any emolument arising therefrom, then it should be concluded as deemed guilty of misbehaving.

So, misbehaviour either has to be proved however in Section 14(4), if the Information Commissioner is interested in a contract or participates in some profit thereby or gains any benefit from any of these activities or receives an emolument arising from a contract or an agreement, then in those circumstances that must be a presumption of deemed guilty and the Information Commissioner will be subject to removal from his office under Section 14 of clause 4. So, I think these are some of the grounds in which the President can exercise the power to remove an Information Commissioner from his office.