

**IN THE HIGH COURT AT CALCUTTA  
CONSTITUTIONAL WRIT JURISDICTION  
APPELLATE SIDE**

Present:

**The Hon'ble Justice Rai Chattopadhyay**

***WPA 1439 of 2020***

**Sudipta Das**

**Vs.**

**State of West Bengal & Ors.**

**For the Petitioner**

: Mr. Biswarup Biswas

: Mr. Pradip Kumar Ghosh

**For the West Bengal**

**Information Commission**

: Mr. Raja Saha

: Mr. Sanjay Mukherjee

**Heard on**

**: 08.04.2026**

**Judgment on**

**: 08.04.2026**

**Rai Chattopadhyay, J. :-**

- The writ petitioner's first prayer is that the respondent should supply complete information as sought for by him in the application dated October 10, 2018 filed under provisions of the Right to Information Act, 2005. His second prayer is that, the order dated January 06, 2020 of the respondent No. 3/West Bengal Information Commission, may be set aside.

- 2.** The writ petitioner filed his application dated October 10, 2018, under the Right to Information Act, 2005, before the SPIO [that is Head of the Institution, designated as such], seeking certain information with supporting documents. He was not provided with the same within the stipulated statutory time period. Hence followed the appeals before the respective statutory appellate authorities designated, as per hierarchy. Fact remains that, during pendency of his appeal, information as was sought for, has been furnished to him.
- 3.** Mr. Biswas, learned advocate for the petitioner refers to the order of the State Chief Information Commissioner/2<sup>nd</sup> Appellate Authority dated December 23, 2019 as well as the impugned order dated January 06, 2020 of the Deputy Secretary, West Bengal Information Commission/Law Officer. He submits that, in the order dated December 23, 2019, the State Chief Information Commissioner, while disposing of the second appeal filed by the present petitioner, due to non-supply of information to him as sought for by him under the Right to Information Act, 2005, has issued certain directions to the Principal Secretary, School Education Department under Section 19(8) of the said Act. That, it was directed that the Principal Secretary, School Education Department should take every necessary step to upgrade their website and all websites in respect of all other institutions under

him, especially in respect of the proactive disclosure as required under the Right to Information Act, 2005. According to Mr. Biswas, the proceeding before the State Chief Information Commissioner, West Bengal was not concluded with the said order dated December 23, 2019 but still pending. According to him, it was the bounden duty of the said authority as per the statutory provision, to ensure execution of its own order in its true letters and spirit.

4. Allegedly instead, in an abrupt manner and in violation of the provisions of Rules, a corrigendum dated January 06, 2020 was issued, thereby inserting a phrase in the said order that, "*The matter is hereby disposed of and closed*". It is submitted that this has rendered the earlier order dated December 23, 2019 as a final order in the appeal proceeding. According to Mr. Biswas, this only stands in violation of the intent of the authority as shown in the earlier order dated December 23, 2019 and afterthought. He says that such later order inserting a phrase only also stands in violation of the 'Management of Sponsored Institutions (Secondary Rules, 1972' as amended by 'Notification No. 215-SE/S/10M-01/18 dated Kolkata, the 8<sup>th</sup> March, 2018'. He elaborates that, as per substituted Rule 23A [in the notification No. 215-SE/S/10M-01/18 dated Kolkata, the 8<sup>th</sup> March, 2018], which provides for "*Powers and duties of the Head of institution of an institution*", the Head of Institution of an institution is responsible for the overall

academic and administrative matters of the institution, he is the custodian of the school records and duty-bound to produce the same as and when required by the superior authority [as per amended Rule 23A (i)]. Mr. Biswas has very strongly argued that, in practice, there happens to be a gross departure from the Rule as above by the authorities as instead of the Head of the Institution or the Headmaster, the Assistant Headmaster is designated as the SPIO. According to the petitioner this violates the prescribed Rules and stands in stark contradiction thereof, as the said designated SPIO does not happen to be the custodian of the records of the school and would not be therefore in a position to furnish any information sought for under the statutory provision. Practically therefore, the designated SPIO is always incapable of furnishing information, though bears statutory duty to do that. Mr. Biswas has submitted that, this not only violates the statutory provisions but also is a hindrance for a citizen, to exercise his rights as provided under Right to Information Act, 2005.

5. Therefore, according to the petitioner, there may be binding direction of this Court so that the directions made by the State Chief Information Commissioner, West Bengal in order dated December 23, 2019 as stated above, be duly complied with by making corrections in the website, thereby designating the Head of the Institution as the SPIO of an institution.

- 6.** Mr. Raja Saha learned advocate has represented the respondent authority. He has submitted that, the appellate authority in exercise of its discretionary power under the statute itself is at liberty to pass directions upon the respective departments, as it thinks fit and proper. The directions passed by the State Chief Information Commissioner in his order dated December 23, 2019 is in exercise of such power by the said authority in due course of discharge of his statutory duty. Otherwise, he says, that the petitioner should not have any further grievance with respect to his application dated October 10, 2018 filed under the Right to Information Act, 2005, in so far as during pendency of the appeal, information as sought for have already been furnished to the petitioner. Therefore, according to Mr. Saha, learned advocate for the respondent, the instant writ petition is only infructuous and may be dismissed for the same.
  
- 7.** It is an admitted fact in this case that, information pursuant to the application of the petitioner dated October 10, 2018 filed before the respondent institution under the Right to Information Act, 2005 have been provided to him, though at a belated stage and not within the statutory time-frame. It was supplied to him during pendency of the appeal before the 2<sup>nd</sup> Appellate Authority.

Regarding that, the petitioner should not have any further grievance.

- 8.** However, the Court takes note of the other issue raised on behalf of the petitioner that, there remains a stark contradiction in between the prescribed Rules [vide the Notification No. 215-SE/S/10M-01/18 dated Kolkata, the 8<sup>th</sup> March, 2018] and the actual practice. It is noted that, in terms of Notification No. 215-SE/S/10M-01/18 dated Kolkata, the 8<sup>th</sup> March, 2018 which amends the Management of Sponsored Institutions (Secondary) Rules, 1972, the Head of the Institution is the custodian of school records and duty-bound to produce the same when required. It is also on record and not denied in this case that, the Assistant Headmaster [AHM] of the school is the designated SPIO under the Act of 2005, who is not the custodian of the records of the institution, in terms of the said amended Rules [vide the Notification No. 215-SE/S/10M-01/18 dated Kolkata, the 8<sup>th</sup> March, 2018].
- 9.** The right to information is a fundamental right flows from Article 19(1)(a) of the Constitution of India, which guarantees freedom of speech and expression. This includes the right to know and access information, forming the Constitutional basis of the Right to Information Act, 2005. In ***State of Uttar Pradesh v. Raj Narain***

reported in **(1975) 4 SCC 428** the Supreme Court has held **“The people of this country have a right to know every public act...”**.

- 10.** In **S.P. Gupta v. Union of India** reported in **1981 SCC OnLine SC 494** the Supreme Court emphasised that disclosure of information is the rule; secrecy is the exception. In **People’s Union for Civil Liberties v. Union of India** reported in **(2003) 4 SCC 399** the said Court has held that the right to information is a fundamental right under Article 19(1)(a) of the Constitution. In **Central Board of Secondary Education v. Aditya Bandopadhyay** reported in **(2011) 8 SCC 497** the Court has clarified that RTI Act operationalizes the fundamental right to information.
- 11.** Therefore, it is now well settled that the right to information is an intrinsic part of Article 19(1)(a) of the Constitution of India. The Right to Information Act, 2005 merely provides the procedural framework, to enforce this Constitutional guarantee, making transparency a cornerstone of Indian democracy.
- 12.** The SPIO acts within the four corners of such procedural framework to uphold the Constitutional right and guarantee to a

citizen. Responsibility of this office can be found in the statute, as mentioned below: -

***“5. Designation of Public Information Officers.—(1) Every public authority shall, within one hundred days of the enactment of this Act, designate as many officers as the Central Public Information Officers or State Public Information Officers, as the case may be, in all administrative units or offices under it as may be necessary to provide information to persons requesting for the information under this Act.***

***(2) Without prejudice to the provisions of sub-section (1), every public authority shall designate an officer, within one hundred days of the enactment of this Act, at each sub-divisional level or other subdistrict level as a Central Assistant Public Information Officer or a State Assistant Public Information Officer, as the case may be, to receive the applications for information or appeals under this Act for forwarding the same forthwith to the Central Public Information Officer or the State Public Information Officer or senior officer specified under sub-section (1) of section 19 or the Central Information Commission or the State Information Commission, as the case may be: Provided that where an application for information or appeal is given to a Central Assistant Public Information Officer or a State Assistant Public Information Officer, as the case may be, a period of five days shall be added in computing the period for response specified under sub-section (1) of section 7.***

***(3) Every Central Public Information Officer or State Public Information Officer, as the case may be, shall deal with requests from persons seeking information and render reasonable assistance to the persons seeking such information.***

***(4) The Central Public Information Officer or State Public Information Officer, as the case may be, may seek the assistance of any other officer as he or she considers it necessary for the proper discharge of his or her duties.***

***(5) Any officer, whose assistance has been sought under sub-section (4), shall render all assistance to the Central Public Information Officer or State Public Information Officer, as the case may be, seeking his or her assistance and for the purposes of any contravention of the provisions of this Act, such other officer shall***

*be treated as a Central Public Information Officer or State Public Information Officer, as the case may be.*

**6. Request for obtaining information.**—(1) *A person, who desires to obtain any information under this Act, shall make a request in writing or through electronic means in English or Hindi or in the official language of the area in which the application is being made, accompanying such fee as may be prescribed, to—*

*(a) the Central Public Information Officer or State Public Information Officer, as the case may be, of the concerned public authority;*

*(b) the Central Assistant Public Information Officer or State Assistant Public Information Officer, as the case may be,*

*specifying the particulars of the information sought by him or her:*

*Provided that where such request cannot be made in writing, the Central Public Information Officer or State Public Information Officer, as the case may be, shall render all reasonable assistance to the person making the request orally to reduce the same in writing.*

*(2) An applicant making request for information shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him.*

*(3) Where an application is made to a public authority requesting for an information,—*

*(i) which is held by another public authority; or*

*(ii) the subject matter of which is more closely connected with the functions of another public authority,*

*the public authority, to which such application is made, shall transfer the application or such part of it as may be appropriate to that other public authority and inform the applicant immediately about such transfer:*

*Provided that the transfer of an application pursuant to this subsection shall be made as soon as practicable but in no case later than five days from the date of receipt of the application.*

***7. Disposal of request.—(1) Subject to the proviso to sub-section (2) of section 5 or the proviso to sub-section (3) of section 6, the Central Public Information Officer or State Public Information Officer, as the case may be, on receipt of a request under section 6 shall, as expeditiously as possible, and in any case within thirty days of the receipt of the request, either provide the information on payment of such fee as may be prescribed or reject the request for any of the reasons specified in sections 8 and 9:***

***Provided that where the information sought for concerns the life or liberty of a person, the same shall be provided within forty-eight hours of the receipt of the request.***

***(2) If the Central Public Information Officer or State Public Information Officer, as the case may be, fails to give decision on the request for information within the period specified under sub-section (1), the Central Public Information Officer or State Public Information Officer, as the case may be, shall be deemed to have refused the request.***

***(3) Where a decision is taken to provide the information on payment of any further fee representing the cost of providing the information, the Central Public Information Officer or State Public Information Officer, as the case may be, shall send an intimation to the person making the request, giving—***

***(a) the details of further fees representing the cost of providing the information as determined by him, together with the calculations made to arrive at the amount in accordance with fee prescribed under sub-section (1), requesting him to deposit that fees, and the period intervening between the despatch of the said intimation and payment of fees shall be excluded for the purpose of calculating the period of thirty days referred to in that sub-section;***

***(b) information concerning his or her right with respect to review the decision as to the amount of fees charged or the form of access provided, including the particulars of the appellate authority, time limit, process and any other forms.***

***(4) Where access to the record or a part thereof is required to be provided under this Act and the person to whom access is to be provided is sensorily disabled, the Central Public Information Officer or State Public Information Officer, as the case may be, shall***

*provide assistance to enable access to the information, including providing such assistance as may be appropriate for the inspection.*

*(5) Where access to information is to be provided in the printed or in any electronic format, the applicant shall, subject to the provisions of sub-section (6), pay such fee as may be prescribed: Provided that the fee prescribed under sub-section (1) of section 6 and sub-sections (1) and (5) of section 7 shall be reasonable and no such fee shall be charged from the persons who are of below poverty line as may be determined by the appropriate Government.*

*(6) Notwithstanding anything contained in sub-section (5), the person making request for the information shall be provided the information free of charge where a public authority fails to comply with the time limits specified in sub-section (1).*

*(7) Before taking any decision under sub-section (1), the Central Public Information Officer or State Public Information Officer, as the case may be, shall take into consideration the representation made by a third party under section 11.*

*(8) Where a request has been rejected under sub-section (1), the Central Public Information Officer or State Public Information Officer, as the case may be, shall communicate to the person making the request,—*

*(i) the reasons for such rejection;*

*(ii) the period within which an appeal against such rejection may be preferred; and*

*(iii) the particulars of the appellate authority. (9)An information shall ordinarily be provided in the form in which it is sought unless it would disproportionately divert the resources of the public authority or would be detrimental to the safety or preservation of the record in question.*

**\*\* \*\* \* \* \* \* \***

**20. Penalties.—(1) Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause, refused to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 or malafidely denied the request for information or**

***knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall 16 impose a penalty of two hundred and fifty rupees each day till application is received or information is furnished, so however, the total amount of such penalty shall not exceed twenty-five thousand rupees:***

***Provided that the Central Public Information Officer or the State Public Information Officer, as the case may be, shall be given a reasonable opportunity of being heard before any penalty is imposed on him:***

***Provided further that the burden of proving that he acted reasonably and diligently shall be on the Central Public Information Officer or the State Public Information Officer, as the case may be.***

***(2) Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause and persistently, failed to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall recommend for disciplinary action against the Central Public Information Officer or the State Public Information Officer, as the case may be, under the service rules applicable to him."***

- 13.** The provisions under the statute do not empower the SPIO to deny to exercise its responsibility under the Act of 2005, on the ground of him not being the custodian of the official records of the institution. The idea that all of an institution's records should be under the control of a single designated individual, the SPIO, is not realistic and should not be carried out too.

- 14.** The statutory responsibility of the SPIO is unambiguous and specific that, he has to provide information as per the application seeking therefor. The SPIO is not prohibited by law from gathering information from all other relevant departments/officials/individuals and providing it to an applicant. Therefore, unless and until the relevant office, officer, or individual who is the custodian of the relevant document or information, submits a written report to the SPIO to that effect, the SPIO should not refuse to provide information under the aforementioned statute, on the grounds of not being custodian of the document or information.
- 15.** So far as this writ petition is concerned however, the Court notices that the Headmaster-cum-the State Public Information Officer, Belur High School (H.S.) has been made a party here as respondent No. 5. Hence, in this case, there appears to be no such anomaly or discrepancy as pleaded on behalf of the petitioner, as the Headmaster himself, who is the custodian of the records of the school, is the designated SPIO.
- 16.** It has been indicated that, the petitioner has sought for further information vide his application dated January 02, 2020, to the Law Officer/State Public Information Officer, West Bengal Information Commission, which is still pending even beyond the

statutory period of time, without being supplied with the relevant information as sought for.

- 17.** Let the present writ petition be disposed of directing the Law Officer/State Public Information Officer, West Bengal Information Commission, to dispose of the same within 15 days from the date of receipt of copy of this judgment.
- 18.** The writ petition No. WPA 1439 of 2020 along with all applications pending, are disposed of.
- 19.** Urgent certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

**(Rai Chattopadhyay, J.)**