

Before Rajesh Bindal, J.

BHAKRA BEAS MANAGEMENT BOARD—Petitioner

versus

**CENTRAL INFORMATION COMMISSION
AND OTHERS—Respondents**

CWP No. 18126 of 2012

December 21, 2012

Constitution of India, 1950 - Art. 226 - Writ Jurisdiction - Right to Information Act, 2005 - Judicial Review - Excess of jurisdiction - Proxy litigation - Information sought supplied to Applicant-Respondent no.2 but he preferred appeal to Central Information Commission, which passed order directing processing of application of Respondent no.3, who was not before the Commission but put in appearance nonetheless - Held, Commission travelled beyond its jurisdiction - Order of Commission set aside - Writ Petition allowed.

Held, that the undisputed facts are that Jivan Dass is not an employee of the Board. He had sought certain information pertaining to house rent allowance admissible to the employees of the Board. The information was duly supplied to him, however, still dissatisfied he preferred an appeal before the appellate authority, where again the information was supplied to him. Still being dissatisfied, he preferred an appeal before the Commission. When the appeal was taken up before the Commission on 17.7.2012, Jivan Dass himself did not appear, rather, one Joginder Singh appeared on his behalf. A perusal of the impugned order passed by the Commission shows that he pleaded his case before the Commission as if he had preferred the appeal or petition. The Commission leaving aside the case of Jivan Dass, who was the appellant before it, referred to the facts of Joginder Singh's case and advised him to file an application for the relief to Senior Executive Engineer of the Board at Bhiwani and it was directed to be processed and due payment made to Joginder Singh within six weeks.

(Para 6)

Further held, that the Commission is creation of a statute. It has to work within the four corners of law, under which it has been created. There are certain duties defined to be performed by it, namely, to ensure that the information sought by an applicant provided and in case of non-compliance, penal action is taken. But in the case in hand, though the appeal was preferred by Jivan Dass, who apparently was not even aggrieved of the order passed by the appellate authority as the requisite information had been provided to him, but as it was a kind of proxy litigation, Joginder Singh appeared on his behalf, who for some time had worked with the Board on deputation. He started pleading his own case, which was entertained by the Commission regarding claim of house rent allowance. While doing so, the Commission has travelled beyond its jurisdiction. Firstly, the issue was not the subject matter of dispute in appeal before it and secondly, the kind of directions, which have been given, could not possibly be given by any authority while proceeding under the Act. The petitioner-Board is not wrong in contending that Jivan Dass was, in fact, fighting proxy litigation for Joginder Singh, who had earlier filed a writ petition in this court for the same relief. On a direction by this court, his representation was decided and the relief regarding house rent allowance was declined to him, but still concealing that fact, he raised the issue before the Commission, though the Commission did not have any jurisdiction to entertain the same.

(Para 7)

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Further held, that for the reasons mentioned above, the writ petition is allowed. The impugned order passed by the Commission is set aside. As apparently Jivan Dass is not interested in the matter, it would be an exercise in futility to remit the matter back to the Commission.

(Para 8)

Rajesh Katoch, Advocate and Tajender K. Joshi, Advocate, *for the petitioner*.

Dinesh Arora, Advocate for respondents No. 2 and 3.

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(1) The petitioner- Bhakra Beas Management Board (for short, 'the Board') has approached this court challenging the order dated 17.7.2012, passed by Central Information Commission (for short, 'the Commission'), whereby in an appeal filed by Jivan Dass (respondent No. 2), a direction has been given for grant of some benefits to Joginder Singh (respondent No. 3).

(2) Briefly, the facts are that respondent No. 2- Jivan Dass filed an application under the Right to Information Act, 2005 (for short, 'the Act'), which was received by Public Information Officer on 7.6.2011. It was pertaining to house rent allowance admissible to the employees of the Board. Vide communication dated 2.8.2011, the information sought by respondent No. 2 was furnished. Dissatisfied with the information supplied, respondent No. 2 preferred an appeal before the appellate authority. Even before the appellate authority, the information was again supplied. The stand of the petitioner-Board is that respondent No. 3, namely, Joginder Singh, who is presently working as Deputy Superintendent in the Department of Irrigation, State of Haryana, had also sought similar information. He had served the Board on deputation from 26.8.2009 to 29.2.2012. House rent allowance was not admissible to respondent No. 3 for the reason that there was government accommodation available at the place of posting of respondent No. 3, which he failed to occupy. After respondent No. 3 was repatriated to his parent department, he filed CWP No. 4436 of 2012 in this court seeking a direction to the Board to decide his claim for re-fixation of pay and house rent allowance. The same was disposed of on 12.3.2012

with a direction for disposal of his representation, which was disposed of on 8.6.2012. In fact, Jivan Dass has no cause of action to apply for information, as was sought under the Act. It was a kind of proxy litigation on behalf of respondent No. 3. Despite complete information having been furnished to Jivan Dass, he still preferred an appeal before the Commission. On the date fixed, i.e., 17.7.2012, Jivan Dass himself did not appear but Joginder Singh appeared on his behalf on the same day and an order was passed by the Commission directing that Joginder Singh will file his application with regard to house rent allowance, which shall be processed as per rules and payment shall be made within a period of six weeks. It is the aforesaid order, which is impugned before this court.

(3) Learned counsel for the Board submitted that the order passed by the Commission is totally beyond its jurisdiction. The Commission has conducted itself in the manner as if it was exercising the jurisdiction of High Court. The issue before the Commission, which could be taken up and decided was as to whether the information sought by Jivan Dass had been provided or not, but still a direction was given for processing the application of Joginder Singh for grant of house rent allowance. For the same relief, he had even filed a writ petition in this court, which was disposed of. In terms of the directions given by this court, the order was passed by the competent authority declining his claim.

(4) On the other hand, learned counsel for respondents No. 2 and 3 though tried but could not defend the order passed by the Commission. However, he stated that even the Commission has travelled beyond its jurisdiction in dealing with the case of Joginder Singh instead of the appeal filed by Jivan Dass. The matter needs to be remitted back for taking up the appeal filed by Jivan Dass.

(5) Heard learned counsel for the parties and perused the paper book.

(6) The undisputed facts are that Jivan Dass is not an employee of the Board. He had sought certain information pertaining to house rent allowance admissible to the employees of the Board. The information was duly supplied to him, however, still dissatisfied he preferred an appeal before the appellate authority, where again the information was supplied to him.

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Still being dissatisfied, he preferred an appeal before the Commission. When the appeal was taken up before the Commission on 17.7.2012, Jivan Dass himself did not appear, rather, one Joginder Singh appeared on his behalf. A perusal of the impugned order passed by the Commission shows that he pleaded his case before the Commission as if he had preferred the appeal or petition. The Commission leaving aside the case of Jivan Dass, who was the appellant before it, referred to the facts of Joginder Singh's case and advised him to file an application for the relief to Senior Executive Engineer of the Board at Bhiwani and it was directed to be processed and due payment made to Joginder Singh within six weeks. The text of the order passed by the Commission is extracted below:

“Heard today dated 17.7.2012. Appellant not present but is represented by Shri Joginder Singh. The public authority is represented by Shri K. C. Khullar, Director (P&C), Shri V. K. Sukija Dy. CAO and Shri M. R. Kaushik, Accounts Officer.

2. Shri Joginder Singh submits that he was on deputation from the irrigation Department of Haryana Department to BBMB from 26.8.2009 to 29.2.2012 but he was not given House Rent Allowance for this period, even though other similarly placed employees were given house rent allowance. Shri K. C. Khullar submits that for claiming House Rent Allowance, the appellant is required to file a claim application and if he does so, it will be processed and approved as per rules.

3. In the premises, Shri Joginder Singh is advised to file claim application with Shri S. A. Khan, Sr. Executive Engineer, Bhiwani, whereupon Shri Khan will process the matter as per rules, obtain necessary sanctions and ensure that the amount due to the appellant is paid to the former in 06 weeks time.”

(7) The Commission is creation of a statute. It has to work within the four corners of law, under which it has been created. There are certain duties defined to be performed by it, namely, to ensure that the information sought by an applicant provided and in case of non-compliance, penal action is taken. But in the case in hand, though the appeal was preferred by Jivan Dass, who apparently was not even aggrieved of the order passed by the appellate authority as the requisite information had been provided to him,

but as it was a kind of proxy litigation, Joginder Singh appeared on his behalf, who for some time had worked with the Board on deputation. He started pleading his own case, which was entertained by the Commission regarding claim of house rent allowance. While doing so, the Commission has travelled beyond its jurisdiction. Firstly, the issue was not the subject matter of dispute in appeal before it and secondly, the kind of directions, which have been given, could not possibly be given by any authority while proceeding under the Act. The petitioner-Board is not wrong in contending that Jivan Dass was, in fact, fighting a proxy litigation for Joginder Singh, who had earlier filed a writ petition in this court for the same relief. On a direction by this court, his representation was decided and the relief regarding house rent allowance was declined to him, but still concealing that fact, he raised the issue before the Commission, though the Commission did not have any jurisdiction to entertain the same.

(8) For the reasons mentioned above, the writ petition is allowed. The impugned order passed by the Commission is set aside. As apparently Jivan Dass is not interested in the matter, it would be an exercise in futility to remit the matter back to the Commission.

S. Gupta