

Chattisgarh High Court  
Chattisgarh High Court  
Advocate Vinod Chawada vs Central Information Commission ... on 26 July, 2010  
WRIT PETITION C No 2910 of 2009

Advocate Vinod Chawada

...Petitioners

Versus

Central Information Commission & five Others ...Respondents

! Shri Ankit Pandey Advocate for the petitioner

^ Shri Kashif Shakel Advocate for the respondent No 2 to 6

CORAM: Honble Shri Satish K Agnihotri J

Dated: 26/07/2010

: Judgement

O R D E R

Delivered on 26th day of July 2010

WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA

1. Challenge in this petition is to the order dated

05.05.2009 (Annexure P/1) passed by the Central Information

Commission, New Delhi, whereby the appeal filed by the  
petitioner was dismissed for want of prosecution.

2. The brief facts, in nutshell, are that the petitioner

presented an application dated 01.20.2008 (Annexure P/2) to

the Public Information Officer, Ispat Mantralaya, Government

of India, New Delhi, under the provisions of section 6(1) of

the Right to Information Act, 2005 (for short 'the Act,

2005'), wherein the petitioner applied for supply of

certified copy of certain documents alongwith certain

informations, as under:

&quot;(i) certified copies of the inspection report of Prakash Industries Ltd., Champa-Janjgir (C.G.) prepared by Joint Plant Committee under Ministry of Steel, Govt. of India and submitted the same before committee of Ministry of Coal, Govt. of India regarding allocation of concessions of Coal Blocks i.e. Urtaan, Beaharaband North and Vijay Central Coal Blocks.

(ii) certified copies of official Memorandum presented by Prakash Industries Limited, Champa Janjgir (C.G.) in respect of subject noted in above col. No. (i); and

(iii) the reasons for not publishing the abovementioned information on the official website of the Steel Ministry as is statutory required as per section 4(1) of the Right to Information Act.&quot;

3. The request of the petitioner was forwarded to the

Executive Secretary & amp; CPIO, Joint Plant Committee, Kolkata

on 10.10.2008 (Annexure P/3). The Director and Public

Information Officer, Ministry of Steel, refused to supply

the information as sought for by the petitioner vide letter

dated 03.11.2008 (Annexure P/11) on the ground that the

documents have been forwarded to the Joint Plant Committee

in respect of para 1 of his application, in respect of para

2 of the application, the same was refused on the ground

that the allotment of Vijay Central Coal Block is to be

finalized and the matter is subjudice before the Hon'ble

court as the same relates to the Ministry of Coal, the

application may be presented before the Ministry of Coal.

Being aggrieved, the petitioner preferred first appeal

before the appellate authority, Ministry of Steel,

Government of India on 17.11.2008 (Annexure P/5) under the

provisions of section 19(1) of the Act, 2005. The first

appellate authority dismissed the appeal by order dated

01.12.2008 (Annexure P/6) holding as under:

&quot;en la[;k & amp; 1 dks bl ea=ky; ds fnukad 10- 10-2008 ds vuqlkj tsihlh dks varfjr dj fn;k x;k gSA tSlk vkids }kjk crk;k x;k gS fd tsihlh us vHkh rd dksbZ m Rrj ugha fn;k x;k gSA vr% vkidks fuEufyf[kr irs ij tsihlh ds vihyh; izkf/kdkjh ls laidZ djus dh lykg nh tkrh gS%

MkW- mn; izrki flag]

la;qDr lfpo ,oa viyh; izkf/kdkjh]

TokbaV IykaV desVh]

mlksx Hkou]

ubZ fnYyhA

2] en la;k & 2 ds laca/k esa mYys[kuh; gS fd okafNr lwpuk ds fy, vkidks dks;yk ea=ky; ls laidZ djus dh lykg nh xbZ Fkh D;ksafd ;g fo"q;k; muls lacaf/kr gS vkSj ;g ekeyk U;k;k/khu gSA vr% vki bl lwpuk ds fy, ihvkbZvks] dks;yk ea=ky; ls laidZ dj ldrs gSaA

3] vihy ds en la;k & 3 ds laca/k esa ;g iqu% dgk tkrk gS fd lwpuk dk vf/kdkj vf/kfu;e] 2005 ds varxZr vfuok;Z :Ik ls crkbZ tkus okyh lHkh lwpuk,a igys ls gh ea=ky; dh oSclkbV ij miyC/k gS vkSj tSlk vkids }kjk vuqjks/k fd;k x;k gS] lHkh uksfVaXl vkSj i=kpkj dks vku ykbu miyC/k djokus dk dksbZ izLrko ugha gSA"

4. Thereafter, the petitioner received three more

communications on 3.12.2008 (Annexure P/7), 23.10.2008

(Annexure P/8) and 29.12.2008 (Annexure P/9). Being

aggrieved, the petitioner preferred a second appeal under

the provisions of section 6 read with section 19(3) of the

Act, 2005 on 06.01.2009 (Annexure P/10). The same was also

dismissed vide order dated 05.05.2009 (Annexure P/1) for

want of prosecution.

5. Shri Pandey, learned counsel appearing for the petitioner would submit that the Central Information Commission (Appeal Procedure) Rules, 2005 (for short 'the Rules, 2005') provides for filing of an appeal and hearing of the appeal. Rule 7 of the Rules, 2005 provides that the appellant may opt not to be present and in that event, final decision may be taken on the basis of documents and after affording opportunity of hearing to the respondents. The respondent No. 1 committed serious error in dismissing the appeal for want of prosecution without examining the second appeal of the petitioner, by the impugned order dated 05.05.2009 (Annexure P/1).

6. On the other hand, Shri Kashif Shakeel, learned counsel appearing for the respondent No. 2 to 6 would make submission on merit. However, with regard to averment of dismissal of the appeal for want of prosecution, he would submit that the appeal was disposed of after considering the facts submitted by the Director, CPIO, Ministry of Steel. Thus, the grievance of the petitioner that the appeal was dismissed for want of prosecution, is contrary to the facts and record.

7. Heard learned counsel for the parties, perused the pleadings and documents appended thereto.

8. Without going into the merits of the case, I would examine the only question as to whether the second appeal can be dismissed by the respondent No. 1 on the ground that the appellant has not appeared for hearing on 02.03.2009 and 05.05.2009. The appellant has further not responded to the notice for hearing nor has submitted any comments or rejoinder on the submission made by the respondents. Thus, it was presumed that he was no more interested in pursuing the matter and the appeal was disposed of.

9. In the appeal preferred before the respondent No. 1 (Annexure P/12), it was clearly stated by the petitioner that the appeal may be considered on merit and in its perspective without insisting on appearance of the petitioner/appellant, which reads as under: "jgh ckr vk;ksx ds le{k lquokbZ fn- 20-03- 09 dks vihykFkhZ ds mifLFkr gksus dh rks bl lacaf/k es vihykFkhZ }kjk viuh ewy vihy ds i`"B dz- 8 dh dafMdk 3 esa gh foLrkfjr :Ik ls lacaf/kr oS/kkfud izko/kkuksa dk mYys[k djrs gq, O;fDrxr mifLFkfr ekQh pkgrs gq, xq.k&#amp;nks&quot;k ds vk/kkj ij f}rh; vihy ds fujkdj.k dk vuqjks/k fd;k x;k gSA vr,o] rnuqlkj vihy ds fujkdj.k dk vuqjks/k gSA&quot;

10. In the notice of hearing dated 24.03.2009 (Annexure P/14), it was clearly stated that "In the event of failure by you to appear for the hearing, the Commission shall pass an ex-parte order" and further "The appellant Sh. Vinod Chawada may also present in person or through an authorized representative for hearing";

11. The contents of para 3 of the notice dated 24.03.2009 (Annexure P/14) has been replied by the petitioner vide communication dated 30.03.2009 (Annexure P/15) that he may be exempted from appearing on the date of hearing i.e. 05.05.2009 and the case may be decided on the basis of merit.

12. Rule 7(2) of the Rules, 2005 reads as under: "7. Personal presence of the appellant or complainant. -

(1) xxx xxx xxx

(2) The appellant or the complainant, as the case may be, may at his discretion at the time of hearing of the appeal or complaint by the Commission be present in person or through his duly authorized representative or may opt not to be present.

(3) xxx xxx xxx

(4) xxx xxx xxx &quot;

13. On bare perusal of the Rules, it is clear that the appellant or complainant may be present in person or his duly authorized representative or may opt not to be present.

The Commission may decide the appeal on merit without insisting on presence of the appellant. It is crystal clear

from the aforesaid facts that the petitioner/appellant in covering letter as well as in the subsequent correspondence, as aforesaid, has clearly stated that he may be exempted from appearing before the Commission under the provisions of Rule 7(2) of the Rules, 2005. The scheme of the Act, 2005 as well as the Rules, 2005 framed therein, do not contemplate hearing of the appellant before taking a decision on merits of the case. The requirement seems to be to act on the complaint or appeal by summoning documents calling upon the respondents against whom the complaint is made and pass order in accordance with the provisions of law.

14. The impugned order has been passed not on the basis of merit but on the basis that he had neither appeared nor any representation was made neither any rejoinder or submissions have been forwarded by the appellant, holding that the appellant may not be interested in pursuing the appeal. It was required that the Commission ought to have considered the facts on merits after seeking response from the other parties against whom the complaint/appeal was filed and pass order on merit.

15. In view of the foregoing, the impugned order dated 05.05.2009 (Annexure P/1) is quashed. The respondent No. 1 is directed to examine the appeal of the petitioner on its merit and perspective and pass the order in accordance with law.

16. Accordingly, the writ petition is allowed.

17. There shall be no order as to costs.

JUDGE