माहितीचा अधिकार

राज्य माहिती आयोग, मुख्यालय, मुंबई

माहितीचा अधिकार अधिनियम, २००५ मधील कलम १९ (३) अन्वये दाखल झालेले अपील

क्र.मुमाआ/नों.क्र.८९/२०२३/अ.क्र.६५९३/२५/०१

श्री. जफर खान गफ्फार खान
संजयनगर बायजीपूरा गल्ली नं. ए-११
औरंगाबाद

विरुद्ध

जन माहिती अधिकारी तथा कक्ष अधिकारी
अन्न, नागरी पुरवठा व ग्राहक संरक्षण विभाग,
मंत्रालय विस्तार, मादाम कामा रोड, मुंबई-३२

प्रथम अपिलीय अधिकारी तथा अवर सचिव
अन्न, नागरी पुरवठा व ग्राहक संरक्षण विभाग,
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द्वितीय अपील अर्ज सुनावणी दिनांक : १६.१०.२०२५

अपीलकर्ता	:	अनुपस्थित
विद्यमान जन माहिती अधिकारी	:	उपस्थित
प्रथम अपिलीय अधिकारी	:	अनुपस्थित

सदर द्वितीय अपिलावर आज दि.१६.१०.२०२५रोजी सुनावणी आयोजित करण्यात आली असून सुनावणी दरम्यान अपिलार्थी अनुपस्थित आहेत. विद्यमान जन माहिती अधिकारी तथा कक्ष अधिकारी, श्री. महेश गरड उपस्थित आहेत. विद्यमान प्रथम अपिलीय अधिकारी तथा अविर सचिव अनुपस्थित आहेत. तत्कालीन जन माहिती अधिकारी तथा सेवानिवृत्त कक्ष अधिकारी श्री. संजय दामोदर कदम व तत्कालीन प्रथम अपिलीय अधिकारी तथा सेवानिवृत्त अवर सचिव, श्री. कृष्णकांत कदम उपस्थित आहेत.

या अपिला संदर्भातील कागदपत्रांचे अवलोकन केल्यावर आयोग या निष्कर्षावर येत आहे की, प्रस्तुत प्रकरणी अपिलार्थी श्री. जफर खान गफ्फार खान यांनी मा. मंत्री अन्न नागरी पुरवठा ग्राहक संरक्षण यांचा आदेश क्र.१६०७/१६०/प्र.क्र.९२०७/ना.पू.२१ अन्न नागरी पुरवठा दि.३०.०७.२००९ या आदेशाची साक्षांकित प्रत मागितली असून तत्कालीन जन माहिती अधिकारी तथा कक्ष अधिकारी यांनी अर्जामध्ये मागितलेल्या आदेशाचा क्रमांक योग्य नसून सदर क्रमांकाचा आदेश कार्यासनामध्ये उपलब्ध अभिलेख तपासला असता आढळून येत नाही. त्यामुळे अर्जामध्ये मागितलेली मा.मंत्री यांनी पारित केलेल्या आदेशाचा उचित क्रमांक व अपीलकर्त्याचे नाव याचा स्पष्ट उल्लेख केल्यास आवश्यक माहिती देता येणे शक्य होईल, असे सुचित केले आहे. त्यानंतर अपिलार्थी यांनी मागितलेली माहिती दिली नसल्याचा आक्षेप नोंदवीत प्रथम अपील अर्ज दाखल केला असून दि.२९.११.२०२२ रोजी प्रस्तुत द्वितीय अपील अर्ज दाखल केला आहे.

प्रस्तुत प्रकरणी जन माहिती अधिकारी तथा कक्ष अधिकारी यांनी कार्यालयीन अभिलेखात अपिलार्थी यांनी नमूद केलेल्या क्रमांकासंबंधित कुठलाच आदेश उपलब्ध नसल्याची वस्तुस्थिती जन माहिती अधिकारी स्तरावर प्रतिसाद दिला असल्याचे आढळून येते. ही बाब लक्षात घेता अपिलार्थी यांनी जर योग्य आदेश क्रमांक

अथवा अपीलकर्त्यांचे नाव अथवा त्यांचा उल्लेख केल्यास माहिती मिळणे शक्य होईल, असे विद्यमान जन माहिती अधिकारी तथा कक्ष अधिकारी यांनी आज सुनावणी दरम्यान नमूद केले.

अपिलार्थी यांना उपरोक्त माहिती प्राप्त करून घेण्यास स्वारस्य असल्यास अशा प्रकारची माहिती कळविल्यास त्यांना संबंधित आदेश प्राप्त करून देणे शक्य होईल. इतर मंत्रालयीन विभागांमध्ये आयोजित करण्यात येणाऱ्या अनेक वैधानिक सुनावणी (statutory appeal) यातील आदेश हे संकेतस्थळांवरच उपलब्ध नसल्याची सार्वजनिक तक्रार असून यासंदर्भात अनेक माहिती अर्ज हे आयोगाच्या विविध खंडपीठांकडे नेहमीच सुनावणीस येत असतात. सद्यस्थितीत जास्तीत जास्त माहिती ही स्वयंप्रेरणेने उघड करण्याबाबत मा.सर्वोच्च न्यायालय यांनी त्यांच्या **Kisan Chand Jain Vs. Union of India** मुळ याचिका (सिव्हील) क्र. ९९०/२०२१, या प्रकरणात दि. १७ ऑगस्ट, २०२३ यात दिलेल्या निर्देशाप्रमाणे अधिकांश माहिती सर्वसार्वजनिक प्राधिकरणांनी कलम ४(१)(ख) नुसार स्वयंप्ररणेने उघड करणे आवश्यक असून अपिलार्थी यांनी मागितलेली माहिती कलम ४(१)(ख) अन्वये स्वत:हून उघड करणाऱ्या माहितीचा भाग असल्याचे प्रथम दर्शनी आढळून येते. तसेच मा.उच्च न्यायालय खंडपीठ मुंबई यांनी श्रीम. सावित्री चंद्रकेश पाल विरुध्द महाराष्ट्र शासन, रिट याचिका क्र. ४१०१/२००७ यात मंत्रालयीन विभागाकडे तसेच मा.मंत्री, मा.राज्यमंत्री व विविध खाते प्रमुख यांचे द्वारा घेत असलेल्या सुनावण्या त्याची प्रक्रिया व पारित केलेले आदेश हे सहज व सुलभपणे नागरिकांना उपलब्ध करून देण्याबाबत या आधीच खालील प्रमाणे दिशा निर्देश दिलेले आहेत :

मंत्रालयीन स्तरावर दाखल झालेले अर्ज अथवा पुनरिक्षण याचिका याबद्दल घ्यावयाची प्रक्रिया व याबाबतीत वेळोवेळी निर्गमित केलेल्या सुचनांचे उल्लंघन होत असल्याचे स्पष्टपणे आढळून येत आहे. याबाबतीत मा.उच्च न्यायालय खंडपीठ मुंबई यांनी श्रीमती सावित्री चंद्रकेश पाल विरुध्द महाराष्ट्र शासन, रिट याचिका क्र. ४१०१/२००७ यात शासन स्तरावर प्रलंबित याचिका हाताळण्याबाबत मार्गदर्शन केलेले आहे. यानंतर श्रीम. छाया जगन काळे विरुध्द महाराष्ट्र शासन, रिट याचिका क्र. ९७०८/२०१० यात परिच्छेद क्र.१७ मध्ये शासन स्तरावर प्रलंबित असलेले व पुनरिक्षण याचिका हाताळण्याबाबत मार्गदर्शक तत्वे निर्गमित केलेले आहे. ते खालीलप्रमाणे आहेत.

This Court in exercise of powers conferred under Articles 226 and 227 of the Constitution of India prescribed the following procedure to be adopted by quasi-judicial authorities including the Ministers, Secretaries, Officials and litigants while hearing and determining appeals, revisions, review applications and interim applications etc.:-

1) Memo of appeal or revision, review and or any applications shall specifically mention under which enactment and / or under what provisions of law the said appeal / review / revision or application is filed.

2) The appellant / applicant shall give a synopsis of concise date and events along with the memo of appeal or revision.

3) The appeal / revision and/ or application shall be filed within a period stipulated under the law governing the subject from the receipt of the order / decision which is impugned in the above matter. In the event of delay, it should only be entertained along with application for condonation of delay.

4) At the time of presentation of appeal, review or revision, the applicant shall, if, filed in person, establish his identity by necessary documents or he shall file proceedings through authorised agent, and / or advocate.

5) The application shall be accompanied by sufficient copies for every opponents/respondents' and also supply 2 extra copies for the authorities.

6) For issuance of summons to the opponents / respondents, court fees /postal stamps of sufficient amount shall be affixed on the application form / memo of appeal or revision as the case may be.

तसेच ओशिवरा को-ऑपरेटिव्ह हॉऊसिंग सोसायटी लि. विरुध्द महाराष्ट्र शासन, रिट याचिका क्र.२७९०/२०१० यातील परिच्छेद क्र. ९ व १० या मध्ये विविध वैधानिक अपील हाताळण्याबाबत घ्यावयाची दक्षता याबाबत विविध न्यायालयाने निर्गमित केलेले दिशानिर्देश सविस्तर मार्गदर्शक तत्वे निर्गमित केले असून ते खालीलप्रमाणे आहेत.

"Repeatedly I have been observing that what is going on before the authorities and particularly the Hon'ble Ministers of the concerned Department is a hasty exercise which could hardly be termed as a hearing of a quasi-judicial matter. This Court is flooded with writ petitions wherein the only grievance raised is that the parties were not heard before an adverse order was made. It is not that this grievance has been made in this matter alone. It has been my experience throughout that whenever the original records are called for, they reveal that the parties and their advocates have attended on the dates notified but the proceedings are adjourned to subsequent dates due to non-availability of the officers and the Ministers. Thereafter, intimations are not given in time or wherever given, they are received just a day before the hearing. The authorities ought to be aware of the fact that all parties are not residing in Mumbai or in Pune so as to rush to their offices on a phone call. They ought to give an adequate and proper notice of the hearings. The notices should be issued in advance and only on ensuring receipt thereof that the matters could be taken up in the absence of the parties. The authorities ought to record reasons as to why they are proceeding in the absence of parties and their order must reflect that since parties are deliberately keeping away from the proceedings or avoiding to take notice that the matters are decided in their absence. Sometimes, the matters are fixed by orders of this Court. It is not as if the authorities are helpless because they have a whole set up in the form of the office of the Government Pleader attached to this Court who make frequent requests for extension of time on their behalf. Such requests are granted depending upon the exigencies of work and being satisfied that despite all efforts the matters could not be disposed of within the time stipulated in this Court's order. In such cases, routinely the time is extended on the request of the Additional Government Pleader / Government Pleader / Assistant Government Pleader. The orders are passed without even calling upon the petitioners' advocate or the affected parties to appear.

10. However, despite such accommodation, clear directions of this Court that personal hearing whenever sought must be given and wherever directed cannot be dispensed with, routinely orders are passed by the authorities in a casual and cavalier manner completely disregarding the orders of this Court and in any event ignoring the principles of natural justice. They ought to be aware of the fact that they decide the fate of litigants and adversely affect their rights either in properly or otherwise. In such circumstances, the seriousness that has to be attached to the hearing so as to not reduce it to a farce or a ritual, is the least that is expected by this Court. In Advanced Law of Lexicon by P. Ramnatha Aiyer, 3rd Edition, Reprint 2007, a "hearing" is defined as a judicial Session held for the purpose of deciding issues of fact or that of Law. In Administrative Law, presentment of argument by the affected individual to the decision making Authority. A hearing in person contemplates listening to pleadings, evidence and arguments. Thus, understood it can never be curtailed or short circuited without any reasonable grounds. The settled principle that Justice must not only be done but seen to be done is squarely applicable. A Quasi-Judicial power must be exercised in accordance with the Principles of Natural Justice. The hearing may be regulated but surely if there is a direction to

grant a Personal hearing that cannot be dispensed with or brushed aside. Equally, the hearing must be a meaningful exercise and not an empty formality. In this case, these basic Rules have not been adhered to, rather they are given a go-bye. In the name of a hearing a hasty and meaningless exercise has been undertaken, which cannot be accepted or construed as compliance with Rule of Law.

तसेच श्री बळवंतराय हिरालाल पारेख विरुध्द महाराष्ट्र शासन, रिट याचिका क्र. ७५०४/२०१५ यातील परिच्छेद क्र. ११ व १३ मध्ये प्रत्येक निवाडयामध्ये मा. उच्च न्यायालयाने राज्य सरकार व त्यांचे प्राधिकरण यांनी त्यांचेकडे दाखल झालेल्या याचिकाच्या बाबतीत घ्यावयाची दक्षता यांचे सविस्तर मार्गदर्शन केलेले आहे. ते खालीलप्रमाणे आहेत.

"In many cases, the appeals / revision applications arise out of disputes concerning agricultural lands having small areas. Small time farmers are the litigants in such cases. There are appeals / revisions arising out of partition proceedings under section 85 of the said Code wherein the parties are litigating for years. In many cases and especially in the cases of farmers, the pendency of proceedings may affect their rights to earn livelihood. Right to speedy justice is enshrined in our Constitution. There are several cases where there is an undue delay in even taking up the applications for ad-interim reliefs in appeals / revisions for hearing. Such delays may defeat the very object of providing the remedy of appeal / revision. Therefore, it is the duty of the State to ensure that the appellant or applicant in appeal and / or revision application, as the case may be, gets an opportunity to present his case before the appellate / revisional authority for grant of ad-interim relief immediately after filing of appeals / revisions. In any event, a litigant is entitled to make submission before the appellate / revisional authority that his case should be taken up for consideration immediately as there is an urgency to grant ad-interim / interim relief. The draft Government Resolution of October 2018 which is placed on record by the learned AGP provides for nominating the Officers who will decide when the urgent applications in appeals / revision applications will be heard by the appellate / revisional authorities. This provision in the proposed Government Resolution implies that a litigant will never get a chance to mention his case before the appellate or revisional authority so that he can make out a case for urgency. Not making available an opportunity to the litigants to move the appellate / revisional authority even for praying that the application for interim relief should be taken up immediately virtually amount to denial of justice which cannot be countenanced by a Writ Court. In the case of **Noor Mohammad v. Jethanand1**, the Apex Court held thus:

"28. In a democratic set up, intrinsic and embedded faith in the adjudicatory system is of seminal and pivotal concern. Delay gradually declines the citizenry faith in the system. It is the faith and faith alone that keeps the system alive. It provides oxygen constantly. Fragmentation of faith has the effect-potentiality to bring in a state of cataclysm where justice may become a casuality. A litigant expects a reasoned verdict from a temperate Judge but does not intend to and, rightly so, to guillotine much of time at the altar of reasons. Timely delivery of justice keeps the faith ingrained and establishes the sustained stability. Access to speedy justice is regarded as human right which is deeply rooted in the foundational concept of democracy and such a right is not only the creation of law but also a natural right. This right can be fully ripened by the requisite commitment of all concerned with the system. It cannot be regarded as a facet of Utopianism because such a thought is likely to make the right a mirage losing the centrality of purpose. Therefore, whoever has a role to play in the justice-dispensation system cannot be allowed to remotely conceive of a casual approach. (Emphasis added) 1 (2013) 5 SCC 202

If appellant or applicant, as the case may be, are not even permitted to move the appellate / revisional authority for hearing the prayer for ad-interim relief, it will amount to denial of the access to justice. It will infringe his right of securing speedy justice. Therefore, it is necessary for the State to make available the said opportunity to the litigants. On many occasions, the Hon'ble Ministers exercising appellate /revisional powers are not available. The State will have to consider of authorizing senior Secretaries to hear the prayers for interim / ad-interim reliefs in absence of Hon'ble Ministers. The State Government must ensure that the appellate / revisional authority is available at a fixed time of every working day so that the litigants can mention their matters

13. In many cases, we have come across, the revisions applications and/ or appeals filed with the State Government are not even numbered. There are no data entries made on the dedicated website of filing of appeals / revisions. It is necessary to ensure that the appeals / revisions filed before the State Government are numbered in a similar manner in which the proceedings are numbered in the Court of Law. It will be appropriate if data entries are made of the proceedings filed on the dedicated website of the State Government so that the data becomes available to the litigants By making available such data along with copies of the judgment and orders on public domain, a litigant is able to monitor the progress of his case while sitting a providing such elementary facilities may amount to denial of effective justice.

आज झालेल्या सुनावणीत प्रस्तुत प्रकरणात अशा प्रकारची माहिती संकेतस्थळावर उपलब्ध नसल्याची बाब देखील समोर आली असून मा.उच्च न्यायालय यांनी निर्देशित केल्याप्रमाणे तसेच नागरिकांना अशाप्रकारे अर्धन्यायिक तसेच वैधानिक प्रक्रियांमध्ये पारित केलेले आदेश सहजरित्या प्राप्त होण्याच्या दृष्टीने अशा प्रकारच्या सुनावण्यानंतर पारित केलेले आदेश शासनाच्या संबंधित विभागांच्या संकेतस्थळावर सहज सुलभपणे उपलब्ध करून दिल्यास त्यामुळे निर्णय प्रक्रियेतील पारदर्शकता वाढण्यास अधिक मदत होईल.

प्रस्तुत प्रकरणात मा.मुख्य सचिव यांनी त्यांच्या स्तरावर योग्य तो आढावा घेत प्रचलित नियमानुसार मा. मुंबई उच्च न्यायालय यांच्या वरील आदेशात नमूद केल्याप्रमाणे तसेच मा.सर्वोच्च न्यायालय यांच्या **Kisan Chand Jain Vs. Union of India** या प्रकरणात अधिकाधिक माहिती स्वयंप्रेरणेने उघड करण्याच्या निर्देशाचे अनुपालन होण्याच्या दृष्टीने योग्य तो निर्णय पारित करण्याच्या सूचनेसह प्रस्तुत द्वितीय अपील अर्ज निकाली काढून नस्तीबद्ध करण्यात येत आहे.

आदेश

१. वरील विवेचनानुसार जन माहिती अधिकारी यांनी कार्यवाही करावी.
२. वरील अपील निकाली काढण्यात येत आहे.

ठिकाण : मुंबई
दिनांक : १६.१०.२०२५

State Information Commission Maharashtra

(राहुल भा. पांडे)
राज्य मुख्य माहिती आयुक्त

प्रत योग्य त्या प्रशासकीय कार्यवाहीसाठी अग्रेषित:

मा.मुख्य सचिव, महाराष्ट्र शासन, मुख्य सचिव कार्यालय, मुख्य इमारत, ६ वा मजला, मंत्रालय, मादाम कामा मार्ग, हुतात्मा राजगुरू चौक, मुंबई-४०००३२