

വിവരാവകാശ കമ്മീഷൻ മുമ്പാകെ അപേക്ഷകൻ Hearing നു ഹാജരായില്ല എന്നതിന്റെ പേരിൽ ex-parte ആയി അപേക്ഷ തീർപ്പാക്കാനാകില്ല എന്ന് വിവരാവകാശ കമ്മീഷൻ

*Inter alia*, the Appellate Authority had raised two questions during the course of the personal hearing. The first one was a submission to dismiss the case since the appellant was ex-parte in the proceedings. This is a quite unwanted submission by the appellate authority and also against all known principles of jurisprudence. The appellant was absent but was not set ex-parte. The RTI Act is a new legislation of the Parliament which provides two appeal forums in the Act. The first appeal forum is the appellate authority rather the officer senior in rank of the same department. The second appellate forum is the State Information Commission. In a second appeal, the well settled position of law is that the appeal should be disposed off only on merit and not by any other method. Order IX of the Civil Procedure Code deals with ex-parte proceedings and the manner and the effect of setting one party as ex-parte. It is a privilege conferred exclusively on the Judicial Fora to proceed even in the absence of one party remaining absent. The consequences are very severe. If the plaintiff is absent, the plaint itself is lost by dismissal. If the defendant is absent the plaintiff gets an ex-parte decision against the defendant. But the prerogative whether one should be set ex-parte or not, rests with the Court and it is not for any one to suggest that some one may be set ex-parte. Unlike other statutes, the RTI Act, Section 18 (3) had made it specifically clear that the procedure for the trial of the suit contemplated in the Civil Procedure Code was applicable to the proceedings before the SIC. The unambiguous declaration of Sub-section 3 of Section 18 regarding the application of the provision of Civil Procedure Code could make it further clear that this Commission was specially empowered under the Civil Procedure Code in the manner in which a trial had to be conducted or an enquiry had to be conducted. The contention of the Appellate Authority was that the proceedings should have been dropped or an appeal should have been dismissed, consequent to the absence of the appellant/requester. He was canvassing for a position like dismissal of the appeal. The ex-parte proceedings enable the court or the judicial forum to proceed further even in the absence of one party. Declaring one person or one party, the appellant or the respondent, as ex-parte is a prerogative vested with the Commission. It is a privilege and discretion of the Commission. Absence alone does not automatically invite the consequences of setting one ex-parte. The RTI Act is for furnishing of information and not for penalization/providing relief. To set ex-parte means to make a judicial pronouncement that in the absence of either of the party, the court or the Commission is taking a view. Moreover, in respect of the RTI Act, it is up to the appellant to be present and his non-presence will not or should not end up in throwing the case overboard, as contented by the first appellate authority. The Appellate Authority, therefore, had gone wrong in making such a submission.