

SUPREME COURT OF INDIA

R.K.Jain

Vs.

Union of India

(G.S.Singhvi and Sudhansu Jyoti Mukhopadhaya JJ.)

16.04.2013

JUDGMENT

SUDHANSU JYOTI MUKHOPADHAYA, J.

1. Leave granted.

2. In this appeal, the appellant challenges the final judgment and order dated 20th April, 2012 passed by the Delhi High Court in L.P.A. No. 22/2012. In the said order, the Division Bench dismissed the appeal against the order of the learned Single Judge dated 8th December, 2011, wherein the Single Judge held that “the information sought by the appellant herein is the third party information wherein third party may plead a privacy defence and the proper question would be as to whether divulging of such an information is in the public interest or not.” Thus, the matter has been remitted back to Chief Information Commissioner to consider the issue after following the procedure under Section 11 of the Right to Information Act.

3. The factual matrix of the case is as follows: The appellant filed an application to Central Public Information Officer (hereinafter referred to as the ‘CPIO’) under Section 6 of the Right to Information Act, 2005 (hereinafter referred to as the ‘RTI Act’) on 7th October, 2009 seeking the copies of all note sheets and correspondence pages of file relating to one Ms. Jyoti Balasundram, Member/CESTAT. The Under Secretary, who is the CPIO denied the information by impugned letter dated 15th October, 2009 on the ground that the information sought attracts Clause 8(1)(j) of the RTI Act, which reads as follows:-

“R-20011-68/2009 – ADIC – CESTAT

Government of India

Ministry of Finance

Department of Revenue

New Delhi, the 15.10.09

To

Shri R.K. Jain

1512-B, Bhishm Pitamah Marg,

Wazir Nagar,

New Delhi – 110003

Subject: Application under RTI Act.

Sir,

Your RTI application No.RTI/09/2406 dated 7.10.2009 seeks information from File No.27-3/2002 Ad-1-C. The file contains analysis of Annual Confidential Report of Smt. Jyoti Balasundaram only which attracts clause 8 (1) (j) of RTI Act. Therefore the information sought is denied.

Yours faithfully,

(Victor James)

Under Secretary to the Govt. of India”

4. On an appeal under Section 19 of the RTI Act, the Director (Headquarters) and Appellate Authority by its order dated 18th December, 2009 disallowed the same citing same ground as cited by the CPIO; the relevant portion of which reads as follows:

“2. I have gone through the RTI application dated 07.10.2009, wherein the Appellant had requested the following information;

A) Copies of all note sheets and correspondence pages of File No. 27/3/2002 – Ad. IC relating to Ms. Jyoti Balasundaram. B) Inspection of all records, documents, files and note sheets of File No.27/3/2002 – Ad. IC.

C) Copies of records pointed out during / after inspection.

3. I have gone through the reply dated 15.10.2009 of the Under Secretary, Ad. IC-CESTAT given to the Appellant stating that as the file contained analysis of the Annual Confidential Report of Ms. Jyoti Balasundaram, furnishing of information is exempted under Section 9 (1) (j) of the R.T.I. Act.

5. The provision of Section 8 (1) (j) of the RTI Act, 2005 under which the information has been denied by the CPIO is reproduced hereunder:

“Information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information.....”

6. File No.27/3/2002- Ad.1C deals with follow-up action on the ACR for the year 2000-2001 in respect of Ms. Jyoti Balasundaram, Member (Judicial), CEGAT” (now CESTAT). The matter discussed therein is personal and I am not inclined to accept the view of the Appellant the since Ms. Jyoti Balasundaram is holding the post of Member (Judicial), CESTAT, larger public interest is involved, which therefore, ousts the exemption provided under Section 8 (1) (j). Moreover, Ms. Jyoti Balasundaram is still serving in the CESTAT and the ACR for the year 2000-2001 is still live and relevant insofar as her service is concerned. Therefore, it may not be proper to rush up to the conclusion that the matter is over and therefore, the information could have been given by the CPIO under Section 8(1)(i). The file contains only 2 pages of the notes and 5 pages of the correspondence, in which the ACR of the officer and the matter connected thereto have been discussed, which is exempt from disclosure under the aforesaid Section. The file contains no other information, which can be segregated and provided to the Appellant.

7. In view of the above, the appeal is disallowed.”

5. Thereafter, the appellant preferred a second appeal before the Central Information Commission under Section 19 (3) of the RTI Act which was also rejected on 22nd April, 2010 with the following observations:-

“4. Appellant’s plea is that since the matter dealt in the above- mentioned file related to the integrity of a public servant, the disclosure of the requested information should be authorized in public interest.

5. It is not in doubt that the file referred to by the appellant related to the Annual Confidential Record of a third-party, Ms. Jyoti Balasundaram and was specific to substantiation by the Reporting Officer of the comments made in her ACRs about the third – party’s integrity. Therefore, appellant’s plea that the matter was about a public servant’s integrity per-se is not valid. The ACR examines all aspects of the performance and the personality of a public servant – integrity being one of them. An examination of the aspect of integrity as part of the CR cannot, therefore, be equated with the vigilance enquiry against a public servant. Appellant was in error in equating the two.

6. It has been the consistent position of this Commission that ACR grades can and should be disclosed to the person to whom the ACRs related and not to the third – parties except under exceptional circumstances. Commission’s decision in P.K. Sarvin Vs. Directorate General of Works (CPWD); Appeal No. CIC/WB/A/2007/00422; Date of Decision; 19.02.2009 followed a Supreme Court order in Dev Dutt Vs. UOI (Civil Appeal No. 7631/2002).

7. An examination on file of the comments made by the reporting and the reviewing officers in the ACRs of a public servant, stands on the same footing as the ACRs itself. It cannot, therefore, be authorized to be disclosed to a third-party. In fact, even disclosure of such files to the public servant to whom the ACRs may relate is itself open to debate.

8. In view of the above, I am not in a position to authorize disclosure of the information.”

6. On being aggrieved by the above order, the appellant filed a writ petition bearing W.P(C) No. 6756 of 2010 before the Delhi High Court which was rejected by the learned Single Judge vide judgment dated 8th December, 2011 relying on a judgment of Delhi High Court in Arvind Kejriwal vs. Central Public Information

Officer reported in AIR 2010 Delhi 216. The learned Single Judge while observing that except in cases involving overriding public interest, the ACR record of an officer cannot be disclosed to any person other than the officer himself/herself, remanded the matter to the Central Information Commission (CIC for short) for considering the issue whether, in the larger public interest, the information sought by the appellant could be disclosed. It was observed that if the CIC comes to a conclusion that larger public interest justifies the disclosure of the information sought by the appellant, the CIC would follow the procedure prescribed under Section 11 of Act.

7. On an appeal to the above order, by the impugned judgment dated 20th April, 2012 the Division Bench of Delhi High Court in LPA No.22 of 2012 dismissed the same. The Division Bench held that the judgment of the Delhi High Court Coordinate Bench in Arvind Kejriwal case (supra) binds the Court on all fours to the said case also.

The Division Bench further held that the procedure under Section 11 (1) is mandatory and has to be followed which includes giving of notice to the concerned officer whose ACR was sought for. If that officer, pleads private defence such defence has to be examined while deciding the issue as to whether the private defence is to prevail or there is an element of overriding public interest which would outweigh the private defence.

8. Mr. Prashant Bhushan, learned counsel for the appellant submitted that the appellant wanted information in a separate file other than the ACR file, namely, the “follow up action” which was taken by the Ministry of Finance about the remarks against ‘integrity’ in the ACR of the Member. According to him, it was different from asking the copy of the ACR itself. However, we find that the learned Single Judge at the time of hearing ordered for production of the original records and after perusing the same came to the conclusion that the information sought for was not different or distinguished from ACR. The learned Single Judge held that the said file contains correspondence in relation to the remarks recorded by the President of the CESTAT in relation to Ms. Jyoti Balasundaram, a Member and also contains the reasons why the said remarks have eventually been dropped. Therefore, recordings made in the said file constitute an integral part of the ACR record of the officer in question.

Mr. Bhushan then submitted that ACR of a public servant has a relationship with public activity as he discharges public duties and, therefore, the matter is of a public interest; asking for such information does not amount to any

unwarranted invasion in the privacy of public servant. Referring to this Court's decision in the case of State of U.P. vs. Raj Narain, AIR 1975 SC 865, it was submitted that when such information can be supplied to the Parliament, the information relating to the ACR cannot be treated as personal document or private document.

9. It was also contended that with respect to this issue there are conflicting decisions of Division Bench of Kerala High Court in Centre for Earth Sciences Studies vs. Anson Sebastian reported in 2010 (2) KLT 233 and the Division Bench of Delhi High Court in Arvind Kejriwal vs. Central Public Information Officer reported in AIR 2010 Delhi 216.

10. Shri A. S. Chandiok, learned Additional Solicitor General appearing for the respondents, in reply contended that the information relating to ACR relates to the personal information and may cause unwarranted invasion of privacy of the individual, therefore, according to him the information sought for by the appellant relating to analysis of ACR of Ms. Jyoti Balasundaram is exempted under Section 8(1)(j) of the RTI Act and hence the same cannot be furnished to the appellant. He relied upon decision of this Court in Girish Ramchandra Deshpande vs. Central Information Commissioner and others, reported in (2013) 1 SCC 212.

11. We have heard the learned counsel for the parties, perused the records, the judgements as referred above and the relevant provisions of the Right to Information Act, 2005.

12. Section 8 deals with exemption from disclosure of information. Under clause (j) of Section 8(1), there shall be no obligation to give any citizen information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority is satisfied that the larger public interest justifies the disclosure of such information. The said clause reads as follows:-

“Section 8 - Exemption from disclosure of information.- (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,--

XXX XXX XXX

XXX XXX XXX

(j) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:

Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.”

13. On the other hand Section 11 deals with third party information and the circumstances when such information can be disclosed and the manner in which it is to be disclosed, if so decided by the Competent Authority. Under Section 11(1), if the information relates to or has been supplied by a third party and has been treated as confidential by the third party, and if the Central Public Information Officer or a State Public Information Officer intends to disclose any such information or record on a request made under the Act, in such case after written notice to the third party of the request, the Officer may disclose the information, if the third party agrees to such request or if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party. Section 11(1) is quoted hereunder:

“Section 11 - Third party information.- (1) Where a Central Public Information Officer or a State Public Information Officer, as the case may be, intends to disclose any information or record, or part thereof on a request made under this Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within five days from the receipt of the request, give a written notice to such third party of the request and of the fact that the Central Public Information Officer or State Public Information Officer, as the case may be, intends to disclose the information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party shall be kept in view while taking a decision about disclosure of information:

Provided that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure outweighs

in importance any possible harm or injury to the interests of such third party.”

14. In *Centre for Earth Sciences Studies vs. Anson Sebastian* reported in 2010(2) KLT 233 the Kerala High Court considered the question whether the information sought relates to personal information of other employees, the disclosure of which is prohibited under Section 8(1) (j) of the RTI Act. In that case the Kerala High Court noticed that the information sought for by the first respondent pertains to copies of documents furnished in a domestic enquiry against one of the employees of the appellant-organization. Particulars of confidential reports maintained in respect of co-employees in the above said case (all of whom were Scientists) were sought from the appellant-organisation. The Division Bench of Kerala High Court after noticing the relevant provisions of RTI Act held that documents produced in a domestic enquiry cannot be treated as documents relating to personal information of a person, disclosure of which will cause unwarranted invasion of privacy of such person. The Court further held that the confidential reports of the employees maintained by the employer cannot be treated as records pertaining to personal information of an employee and publication of the same is not prohibited under Section 8(1) (j) of the RTI Act.

15. The Delhi High Court in *Arvind Kejriwal vs. Central Public Information Officer* reported in AIR 2010 Delhi 216 considered Section 11 of the RTI Act. The Court held that once the information seeker is provided information relating to a third party, it is no longer in the private domain. Such information seeker can then disclose in turn such information to the whole World. Therefore, for providing the information the procedure outlined under Section 11(1) cannot be dispensed with. The following was the observation made by the Delhi High Court in *Arvind Kejriwal* (supra):

“22. Turning to the case on hand, the documents of which copies are sought are in the personal files of officers working at the levels of Deputy Secretary, Joint Secretary, Director, Additional Secretary and Secretary in the Government of India. Appointments to these posts are made on a comparative assessment of the relative merits of various officers by a departmental promotion committee or a selection committee, as the case may be. The evaluation of the past performance of these officers is contained in the ACRs. On the basis of the comparative assessment a grading is given. Such information cannot but be viewed as personal to such officers. Vis-à-vis a person who is not an employee of the Government of India and is seeking such information as a member of the public, such information has

to be viewed as Constituting 'third party information'. This can be contrasted with a situation where a government employee is seeking information concerning his own grading, ACR etc. That obviously does not involve 'third party' information.

23. What is, however, important to note is that it is not as if such information is totally exempt from disclosure. When an application is made seeking such information, notice would be issued by the CIC or the CPIOs or the State Commission, as the case may be, to such 'third party' and after hearing such third party, a decision will be taken by the CIC or the CPIOs or the State Commission whether or not to order disclosure of such information. The third party may plead a 'privacy' defence. But such defence may, for good reasons, be overruled. In other words, after following the procedure outlined in Section 11(1) of the RTI Act, the CIC may still decide that information should be disclosed in public interest overruling any objection that the third party may have to the disclosure of such information.

24. Given the above procedure, it is not possible to agree with the submission of Mr. Bhushan that the word 'or' occurring in Section 11(1) in the phrase information which relates to or has been supplied by a third party should be read as 'and'. Clearly, information relating to a third party would also be third party information within the meaning of Section 11(1) of the RTI Act. Information provided by such third party would of course also be third party information. These two distinct categories of third party information have been recognized under Section 11(1) of the Act. It is not possible for this Court in the circumstances to read the word 'or' as 'and'. The mere fact that inspection of such files was permitted, without following the mandatory procedure under Section 11(1) does not mean that, at the stage of furnishing copies of the documents inspected, the said procedure can be waived. In fact, the procedure should have been followed even prior to permitting inspection, but now the clock cannot be put back as far as that is concerned.

25. The logic of the Section 11(1) RTI Act is plain. Once the information seeker is provided information relating to a third party, it is no longer in the private domain. Such information seeker can then disclose in turn such information to the whole world. There may be an officer who may not want the whole world to know why he or she was overlooked for promotion. The defence of privacy in such a case cannot be lightly brushed aside saying that since the officer is a public servant he or she cannot possibly fight shy of

such disclosure. There may be yet another situation where the officer may have no qualms about such disclosure. And there may be a third category where the credentials of the officer appointed may be thought of as being in public interest to be disclosed. The importance of the post held may also be a factor that might weigh with the information officer. This exercise of weighing the competing interests can possibly be undertaken only after hearing all interested parties. Therefore the procedure under Section 11(1) RTI Act.

26. This Court, therefore, holds that the CIC was not justified in overruling the objection of the UOI on the basis of Section 11(1) of the RTI Act and directing the UOI and the DoPT to provide copies of the documents as sought by Mr. Kejriwal. Whatever may have been the past practice when disclosure was ordered of information contained in the files relating to appointment of officers and which information included their ACRs, grading, vigilance clearance etc., the mandatory procedure outlined under Section 11(1) cannot be dispensed with. The short question framed by this Court in the first paragraph of this judgment was answered in the affirmative by the CIC. This Court reverses the CIC's impugned order and answers it in the negative.

27. The impugned order dated 12th June 2008 of the CIC and the consequential order dated 19th November 2008 of the CIC are hereby set aside. The appeals by Mr. Kejriwal will be restored to the file of the CIC for compliance with the procedure outlined under Section 11(1) RTI Act limited to the information Mr. Kejriwal now seeks.”

16. Recently similar issue fell for consideration before this Court in *Girish Ramchandra Deshpande v. Central Information Commissioner and others* reported in (2013) 1 SCC 212. That was a case in which Central Information Commissioner denied the information pertaining to the service career of the third party to the said case and also denied the details relating to assets, liabilities, moveable and immovable properties of the third party on the ground that the information sought for was qualified to be personal information as defined in clause (j) of Section 8(1) of the RTI Act. In that case this Court also considered the question whether the orders of censure/punishment, etc. are personal information and the performance of an employee/officer in an organization, commonly known as Annual Confidential Report can be disclosed or not. This Court after hearing the parties and noticing the provisions of RTI Act held:

“11. The petitioner herein sought for copies of all memos, show-cause notices and censure/punishment awarded to the third respondent from his employer and also details viz. movable and immovable properties and also the details of his investments, lending and borrowing from banks and other financial institutions. Further, he has also sought for the details of gifts stated to have been accepted by the third respondent, his family members and friends and relatives at the marriage of his son. The information mostly sought for finds a place in the income tax returns of the third respondent. The question that has come up for consideration is: whether the abovementioned information sought for qualifies to be “personal information” as defined in clause (j) of Section 8(1) of the RTI Act.

12. We are in agreement with the CIC and the courts below that the details called for by the petitioner i.e. copies of all memos issued to the third respondent, show-cause notices and orders of censure/punishment, etc. are qualified to be personal information as defined in clause (j) of Section 8(1) of the RTI Act. The performance of an employee/officer in an organisation is primarily a matter between the employee and the employer and normally those aspects are governed by the service rules which fall under the expression “personal information”, the disclosure of which has no relationship to any public activity or public interest. On the other hand, the disclosure of which would cause unwarranted invasion of privacy of that individual. Of course, in a given case, if the Central Public Information Officer or the State Public Information Officer or the appellate authority is satisfied that the larger public interest justifies the disclosure of such information, appropriate orders could be passed but the petitioner cannot claim those details as a matter of right.

13. The details disclosed by a person in his income tax returns are “personal information” which stand exempted from disclosure under clause (j) of Section 8(1) of the RTI Act, unless involves a larger public interest and the Central Public Information Officer or the State Public Information Officer or the appellate authority is satisfied that the larger public interest justifies the disclosure of such information.

14. The petitioner in the instant case has not made a bona fide public interest in seeking information, the disclosure of such information would cause unwarranted invasion of privacy of the individual under Section 8(1)(j) of the RTI Act.

15. We are, therefore, of the view that the petitioner has not succeeded in establishing that the information sought for is for the larger public interest. That being the fact, we are not inclined to entertain this special leave petition. Hence, the same is dismissed.”

17. In view of the discussion made above and the decision in this Court in Girish Ramchandra Deshpande(supra), as the appellant sought for inspection of documents relating to the ACR of the Member, CESTAT, inter alia, relating to adverse entries in the ACR and the ‘follow up action’ taken therein on the question of integrity, we find no reason to interfere with the impugned judgment passed by the Division Bench whereby the order passed by the learned Single Judge was affirmed. In absence of any merit, the appeal is dismissed but there shall be no order as to costs.