JUDGEMENTS

High Court of Bombay at Goa

Coram:- C.V.Bhadang,J. Dated: 25th June, 2019

SPIO D/o Dy. Director of Vigilance, Directorate of Vigilance, Althinho, Panaji-Goa.

Versus

1. Sh. Vinesh V. Arlekar R/o Shradha Niwas, H.No. B-50, Vidya Enclave, Porvorim, Berdez, Goa
2. First Appellate Authority, Director of Vigilance, Althinho, Panaji-Goa

Petition No. 338 of 2019

I proceed on the assumption that the `investigation' as used in Section 8(1)(h) of the Act, would include `investigation', by the disciplinary authority before the initiation of the disciplinary enquiry. However, any such investigation would stand `concluded', once the chargesheet is served on the delinquent employees. Thus, the said contention raised on behalf of the petitioner has to be rejected. Thus, it is not possible to accept that the information if furnished would impeded the process of any such investigation.

In the Delhi High Court of B.S. Mathur Vs.Public Information Officer (Writ Petition© 295/2011, It will have to be shown by the public authority that the information sought "would impede the process of investigation.

Delhi H.C. W.P. (C) No. 7930 of 2009: The word "impede" would "mean anything which would hamper and interfere with the procedure following in the investigation and have the effect to hold back the progress of investigation", it has still to be demonstrated by the public authority that the information if disclosed would indeed "hamper" or "interfere" with the investigation.

IN THE HIGH COURT OF DELHI AT NEW DLEHI

V.K.Jain,J. Date of Decision: 10.10.2013

1. Writ Petition (C) 4079/2013

Union Public Service Commission … Petitioner Versus

G.S.Sandhu…….. Respondent

2. W.P(C) 2/2013

Union Public Service Commission … Petitioner VERSUS

Shatmanyu Sharma…….. Respondent

3. W.P.(C) 8/2013

Union Public Service Commission … Petitioner Versus

Sh. Sahadeva Singh

4. W.P.(C) 8/2013

Union Public Service Commission … Petitioner Versus

Sh. K.L.Manhas

It was further held that mere prima facie observation of the Division Bench does not constitute a binding precedent. Therefore, reliance upon the aforesaid order in LPA No. 418/2010 is wholly misplaced.

Bihar Public Service Commission: “Every expression used by the Legislature must be given its intended meaning and, in fact, a purposeful interpretation. The expression `life’ has to be construed liberally. `Physical safety’ is a restricted term while life is a term of wide connotation. `Life’ includes reputation of an individual as well as the right to live with freedom.

The threat of penalties under the RTI Act and the pressure of the authorities under the RTI Act should not lead to employees of a pubic authorities prioritizing `Information furnishing’, at the cost of their normal and regular duties.”

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 169-2019

Coram: Hon'ble Mr. Justice Augustine George Maish

Decision Dated: January 10,2019

Rajinder Kumar ……. Versus

State of Punjab and others

His further contention is that the reason, which as been assigned, if any, is merely on the plea that the prosecution would be hampered as the case is pending in the Court after the submission of the charge-sheet against the petitioner.

Delhi High Court in Bhagat Singh vs. Chief Information Commissioner 2008 (146) DLT 385 as also a judgment passed by the Central Information Commission in Complaint No. CIC/SM/C/2011/000117/SG titled as Justice R.N.Mishra (retired) vs. Nirbhay Kumar.

A perusal of the file would indicate that the authorities bas intimated the petitioner the reason as to why the information cannot be supplied to him and would fall within the ambit of Section 8(1) (h) of the Right to Information Act, 2005. It is an admitted case that FIR No. 11 dated 2.8.2017 was registered at Police Station Vigilance Bureau, Bathinda, wherein charge-sheet has been filed against the petitioner after the investigation. The prosecution in the case is continuing in the Court. The information, which is being sought by the petitioner, is directly relatable to the prosecution of the case and, therefore, since it is likely to hamper the prosecution, the information has been denied to the petitioner.

As regards the contention of the learned counsel for the petitioner that the reason has to be assigned for non-supply of information and bringing it within the ambit of Section 8(1) (h) of the Right to Information Act, the same in the considered view of this court, has not be elaborated or detailed therein as it may, in itself, hamper the prosecution of the case.

IN THE HIGH COURT OF DELHI AT NEW DELHI

CORAM: HON'BL EMR. JUSTICE RAJVIR SHAKDHER DATED 22.4.2015

1. **W.P. (C) 3616/2012**

Union of India ……. Versus

Sh. O.P.Nahar

2. **W.P. (C) 405/2014**

Union of India ……. Versus

The holder of the information can only withhold the information if, it is able to demonstrate that the information would "**Impede"** the process of investigation or apprehension or prosecution of the offenders.

In the present case, the facts, as set out hereinabove, clearly demonstrate that the investigation is over. The charge sheet in the case was filed, as far back as on 31.12.2010.

The question then is, would be information sought for by the respondent **"Impede"** the respondent's apprehension or prosecution the respondent is in court and he says that he has been granted bail by the competent court. Therefore, prima facie, the view of the competent court, which is trying him, is that there is no impediment in apprehending the responding, and that he would be available as and when required by the court. The petition makes no averments as to how the information sought for by the respondent would prevent his prosecution.

In that view of the matter, according to me the provisions of Section 8(1)(h) of the RTI Act will not help the cause of the petitioner. Accordingly, the information, as directed by the CIC, will have to be supplied to the respondent. Is is ordered.

(see: Bhagat Singh V. Chief Information Commissioner (2008(100) DRJ 63J; B.S. Mathur V. Public Information Officer of Delhi High Court {180 (2011) DLT 303}; Adesh Kumar v. Union of India and Ors. {216 (2015) DLT 230}; Director of Income Tax/ (Investigation) and Anr. V.Bhagat Singh and Anr. {(2008) 168 TAXMAN 190 (Delhi)}; Sudhir Ranjan Senapati v. Addl. Commissioner of Income Tax, W.P.(C) 7048/2011 dated 5.3.2013; and Pradeep Singh Jadon V. UOI, W.P.(C) 7863/2013 dated 2.2.2015, which have taken similar view on this issue.

IN THE HIGH COURT OF DELHI

S.Ravindra Bhat, J. Dated 3.12.2007

WP(C) No. 3114/2007

Bhagat Singh …….. versus

Chief Information Commissioner and ors.

Such reasons should be germane, and the opinion of the process being hampered should be reasonable and based on some material. Sans this consideration, Section 8(1)(h) and other such provisions would become the haven for dodging demands for information.

A rights based enactment is akin to a welfare measure, like the Act, should receive a liberal interpretation.

In the present case, the orders of the three respondents to not reflect any reasons, why the investigation process would be hampered. The direction of the CIC shows is that the information needs to be released only after the investigation and recovery in complete. Facially, the order supports the petitioner's contention that the claim for exemption made by respondent Nos. 2 and 3 are untenable. Section 8(1)(i) relates only to investigation and prosecution and not to recovery. Recovery in tax matters, in the usual circumstances is a time consuming affair, and to withhold information till that eventually, after the entire proceedings, despite the ruling that investigations are not hampered by information disclosure, is illogical. The petitioner's grouse against the condition imposed by the CIC is all the more valid since he claims it to be of immense relevance, to defend himself in criminal proceedings. The second and third respondents have not purported to be aggrieved by the order of CIC as far as it directs disclouse of materials; nor have they sought for its review on the ground and the CIC was misled and its reasoning flawed, therefore, it is too late for them to contend that the impugned order contains an erroneous appreciation of facts. The materials available with them and forming the basis of notice under the Income Tax Act is what has to be disclosed to he petitioner, i.e. the information seeker.

As to the issue of whether the investigation has been complete or not, I think that the authorities have not applied their mind about the nature of information sought. As is submitted by the Petitioner, he merely seeks access to the preliminary reports investigation pursuant to which notices under Section 131, 143 (2), 148 of the Income Tax have been issued and not as to the outcome carried on by the Assessing Officer.

The Petitioner has not been able to demonstrate that the malafidely denied the information sought, therefore, a direction to the Central Information Commission to initiate action under Section 20 of the Act cannot be issued.

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

DATE OF DECISION: 19.5.2016

CWP NO. 17758 OF 2014

Smt. Chander Kanta…….. versus

The State Information Commission and others

The SPIO appeared before the SIC in pursuance of the shows cause notice and admitted his fault and tendered unqualified apology for the delay caused, which was of more than 100 days but vide order dated 16.6.2014, SIC warned the SPIO to be more careful in future and the proceedings issued by the show cause notice were dropped.

The only argument raised by the petitioner is that there is no jurisdiction with the SIC to let off the erring officer with a warning only as according to her, the scheme of the Act provides either to aware punishment of Rs.250/- per day or to award no punishment. In support of his submission, he has relied upon a Division Bench judgment of the Himachal Pradesh high Court in the case of Sanjay Hindwan Vs. State Information Commission and others, CWP No. 640 of 2014-D, decided on 24.8.2012.

Provision has already been interpreted by the Division Bench of the Himachal Pradesh High Court in Sanjay Hindwan's case (supra) in which it has been held that either the penalty has to be imposed at the rate fixed or no penalty has to be imposed.

Accordingly, the order passed by the SIC dated 16.6.2014 is set aside and the matter is remanded back to him to decide it again strictly in terms of Section 20 of the Act and the interpretation made by the court.

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CORA:- HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Date of decision : 29.2.2012

CWP NO. 15850 OF 2010

Lal Singh Tiwana…… versus

State of Punjab and others

Explanations which have been put-forth by the petitioner through the affidavit dated 26.7.2010 would not be enough to deny a person, who is seeking information within the time stipulated under the Act. The primary contentions raised in the affidavit are the shortage of staff, joining of the petitioner after the notice had been issued, the extension of time for registration of the plots by the Government which led to the rush of registration of plots by the owners and essential duties of Census as per the directions of the Election Commission. These are internal matters which have to be dealt with and taken care of by the Administration and cannot be taken as a ground or a defence for not supplying the information within the time stipulated under the 2005 Act itself. The provisions as contained under the 2005 Act have to be given effect to achieve the objective of this Act which are to bring transparency and accountability of public officials and to establish the right of the citizen to have the information and these excuses, if taken into consideration, the 2005 Act itself will be rendered ineffective and the purpose with which the Statute has been brought into existence would be frustrated. Therefore, the reasons assigned for not supplying the information at an early date to the complainant cannot be accepted. However, the fact that the petitioner joined on 11.5.2010, which is not disputed, the liability prior thereto cannot be imposed upon him. Giving benefit of this period i.e. prior to 11.5.2010, when provisions under Section 20(1) of the 2005 Act are invoked, the liability of the petitioner comes to ` 18,750/-.

In view of the above, the writ petition is partly allowed. Penalty is reduced to ` 18,750/- from ` 25,000/- as initially ordered.