

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 16.12.2014

+ **W.P.(C) 3543/2014**

ADESH KUMAR

..... Petitioner

versus

UNION OF INDIA & ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Pramod Singh.

For the Respondents : Ms Suparna Srivastava, CGSC.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J (ORAL)

1. The petitioner impugns an order dated 16.04.2014 passed by the Central Information Commission (hereafter 'CIC') rejecting the petitioner's appeal against an order dated 14.11.2012 passed by the First Appellate Authority (hereafter 'FAA'). The FAA had, by an order dated 14.11.2012, rejected the appeal filed by the petitioner against the decision of the CPIO denying the information as sought by the petitioner under the provisions of the Right to Information Act, 2005 (hereafter the 'Act').

2. The CPIO had denied the information as sought for by the petitioner claiming that the same was exempt from disclosure under Section 8(1)(h) of the Act.

3. Briefly stated, the relevant facts necessary to consider the

controversy are as under:

3.1 The petitioner was posted as Superintendent Engineer, CPWD, Patna. During his tenure, an FIR was lodged in respect of an alleged offence under Section 7 of the Prevention of Corruption Act, 1988 and Section 120B of the Indian Penal Code. Subsequently, a chargesheet, *inter alia*, against the petitioner was submitted after obtaining the sanction from the competent authority.

3.2 After receipt of the chargesheet, the petitioner applied for the following information under the provisions of the Act:-

- “1 The recommendation of Director General (Works), CPWD against sanction sent to Ministry of Urban Development.
2. The noting on file note Sheet/copy of letter if any sent to CVC for comments/advice if any.
3. The copy of all letters written to Director CBI, New Delhi by Additional Secretary and Secretary, Ministry of Urban Development. Govt. of India and reply received from CBI, New Delhi/Patna as the case may be.
4. Initial recommendation of Ministry of Urban Development, Govt. of India against sanction of prosecution of Adesh Kumar sent to CVC.
5. The details of noting of various officers before declining sanction of prosecution.
6. Copy of details of noting of various officers before declining sanction of prosecution.

7. Copy of details of noting of various officers at the time of according present sanctions for prosecution of Adesh Kumar, the then SE, PCC.”

3.3 The request for the aforesaid information was rejected by the CPIO claiming that there was no obligation to provide the same by virtue of Section 8(1)(h) of the Act. The appeal preferred by the petitioner before the FAA was also rejected and the second appeal preferred by the petitioner before the CIC also met the same fate. The petitioner has challenged the said order passed by the CIC.

4. I have heard the learned counsel for the parties.

5. Before proceeding further, it would be necessary to refer to Section 8(1)(h) of the Act which reads as under:-

“8(1)(h) information which would impede the process of investigation or apprehension or prosecution of offenders;”

6. A plain reading of the aforesaid provision indicates that information which would impede the process of investigation or apprehension or prosecution of offenders could be denied. In order to deny information, the public authority must form an affirmative opinion that the disclosure of information would impede investigation, apprehension or prosecution of offenders; a mere perception or an assumption that disclosure of information may impede prosecution of offenders is not sufficient. In the present case, neither the FAA nor the CIC has considered as to how the information as sought for would impede the process of investigation or apprehension or prosecution of the petitioner and other accused.

7. It is not disputed that the investigation is over and the only issue urged is that the disclosure of information would impede prosecution of the petitioner.

8. After hearing the parties, the CIC had concluded as under:-

“The Commission heard the submissions made by appellant as well as respondents at length. The Commission also perused the case-file thoroughly; specifically, nature of issues raised by the appellant in his RTI application dt. 21.06.12, CPIO’s response dt. 18.07.12 FAA’s order dt. 14.11.12 and also the grounds of memorandum of second appeal and the Commission is of the considered view that the plea taken by the respondents u/s 8 (1) (h) of the RTI Act is not only justified but even legally tenable in the case.”

9. It is apparent from a bare perusal of the CIC’s order that it does not indicate the reasons that persuaded the CIC to uphold the view of the Public Authority that the disclosure of information sought by the petitioner would impede prosecution of the petitioner. A co-ordinate Bench of this Court in the case of **B.S. Mathur v. Public Information Officer of Delhi High Court: W.P.(C) 295/2011**, decided on 03.06.2011 had considered the contention with regard to withholding information under Section 8(1)(h) of the Act and held as under:-

“19. The question that arises for consideration has already been formulated in the Court’s order dated 21st April 2011: Whether the disclosure of the information sought by the Petitioner to the extent not supplied to him yet would “impede the investigation” in terms of Section 8 (1) (h) RTI Act? The scheme of the RTI Act, its objects

and reasons indicate that disclosure of information is the rule and non-disclosure the exception. A public authority which seeks to withhold information available with it has to show that the information sought is of the nature specified in Section 8 RTI Act. As regards Section 8 (1) (h) RTI Act, which is the only provision invoked by the Respondent to deny the Petitioner the information sought by him, it will have to be shown by the public authority that the information sought “would impede the process of investigation.” The mere reproducing of the wording of the statute would not be sufficient when recourse is had to Section 8 (1) (h) RTI Act. The burden is on the public authority to show in what manner the disclosure of such information would ‘impede’ the investigation. Even if one went by the interpretation placed by this Court in W.P. (C) No.7930 of 2009 [*Additional Commissioner of Police (Crime) v. CIC*, decision dated 30th November 2009] that the word “impede” would “mean anything which would hamper and interfere with the procedure followed 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, which in this case is the second enquiry.”

10. A bare perusal of the order passed by the FAA also indicates that the aspect as to how the disclosure of information would impede prosecution has not been considered. Merely, citing that the information is exempted under Section 8(1)(h) of the Act would not absolve the public authority from discharging its onus as required to claim such exemption. Thus, neither the FAA nor the CIC has questioned the Public Authority as to how the disclosure of information would impede the prosecution.

11. The learned counsel for the respondents contended that no prejudice would be caused to the petitioner as a result of denial of information, as all material relied upon by the prosecution to prosecute the petitioner would be available to the petitioner. In my view, this cannot be a ground to deny information to the petitioner. First of all, the question whether the information sought by the petitioner is relevant or necessary, is not relevant or germane in the context of the Act; a citizen has a right to information by virtue of Section 3 of the Act and the same is not conditional on the information being relevant. Secondly, the fact that the petitioner has access to the material relied upon by the prosecution does not prevent him from seeking information, which he considers necessary for his defence.

12. Accordingly, the writ petition is allowed. The impugned order passed by the CIC is set aside and the matter is remanded to the CIC to consider it afresh in view of the aforesaid observations.

DECEMBER 16, 2014
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VIBHU BAKHRU, J