
(2000) 08 DEL CK 0015

In the Delhi High Court

Case No : CW. No. 3520 and CM. 5382 of 2000

Arun Kumar Aggarwal

APPELLANT

Vs

Prasar Bharati

RESPONDENT

Date of Decision : 07-08-2000

Acts Referred:

Citation : (2000) 55 DRJ 88

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : Mr. Prashant Bhushan, for the Appellant;

Judgement

Manmohan Sarin, J.—Petitioner has filed this writ petition under Article 226 of the Constitution of India, seeking a writ in the nature of mandamus, directing the respondent to make available copies of the documents pertaining to the "ICC Knockout Tournament 1998", as requested by him. Petitioner also seeks a direction to the respondent to abide by its circular dated 25.11.1997, containing instructions for ensuring transparency in the working of Prasar Bharati.

2. Mr. Prashant Bhushan, learned counsel for the petitioner, has been heard in support of the writ petition. Petitioner's case in the writ petition is that he had been engaged as a Financial Expert by Prasar Bharati. Petitioner was asked to look into the formation and functioning of the Sports Consortium consisting of private parties as also the buying and marketing of TV rights pertaining to various events. Petitioner claims to have submitted a report, which according to him, highlighted the conspiracy between the officials of the respondent and the consortium parties. by which Doordarshan was made to suffer losses of over 20 crores. Petitioner had made the report public in a press conference in April, 2000. As per the petitioner, Mr. Jagmohan Dalmia, President of the International Cricket Council, was involved in the said conspiracy. This led to the President of the International Cricket Council, Mr. Jagmohan Dalmia, filing a criminal complaint for defamation u/s 500/501 read with Section 120-B of the Indian Penal Code before the Metropolitan Magistrate, Calcutta.

3. Petitioner had been summoned to appear before the Metropolitan Magistrate and he is stated to have appeared in the third week of July, 2000. Petitioner claims that in order to adequately defend himself in the said criminal complaint, he requires photostat copies of all the documents pertaining to ICC Knockout Tournament 1998. Petitioner had requested the Chief Executive Officer of the respondent vide his letter dated 11.5.2000 to supply these documents, but to no avail. Rather the respondent has declined the request on the ground that the matter was sub-judice.

4. Learned counsel, Mr. Prashant Bhushan, submitted that apart from the requirement of the photocopies of the said files and documents to defend himself in the criminal trial, respondent in keeping with its acclaimed policy of transparency was obliged to provide these papers. He places reliance on a circular issued by the Chief Executive Officer of respondent to the effect that no case file or paper, which is of interest to the general public would be treated as confidential. Further, that all cases pertaining to commissioning of programs, award of contract or any other financial transaction with any person would be available on payment of a small fee.

5. Learned counsel also urged that keeping in mind the acclaimed policy of transparency in functioning of the respondent and the right of information of the petitioner, the respondent was obliged to supply the photocopies of the files. Learned counsel urged that the ground of sub-judice was totally irrelevant and untenable. Learned counsel also places reliance on the *The State of U.P. Vs. Raj Narain and Others*, and *S.P. Gupta Vs. President of India and Others*, to support his plea of transparency and the right of information flowing from the right of freedom of speech, as well as the entitlement to know the particulars of every public transaction.

6. The question to be considered is whether the petitioner, in these circumstances, is entitled to a writ of mandamus in exercise of writ jurisdiction under Article 226 of the Constitution of India. Though the petitioner claims that he had made his report public acting, in public interest, his requirement for all the files relating to " ICC Knockout Tournament 1998" is essential for the purpose of defending himself in the criminal complaint of defamation. The complaint itself is only at a stage, where process u/s 204 of the Code of Criminal Procedure has been issued. The complainant after acceptance of notice by the petitioner/accused would be required to examine his witnesses, whom the petitioner could cross-examine prior to leading his own evidence in defense. I find that in Cr.P.C. itself contains makes a specific provision in this regard to enable the Court to issue a direction for production of documents which may not be in the possession of the accused.

Section 91 of the Code of Criminal Procedure is in the following terms:

Summons to produce document or other thing-

(1) Whenever any court or any officer in charge of a police station considers that

the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such court or officer, such court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this Section shall be deemed-

(a) to affect, sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or the Bankers, Books Evidence Act, 1891), or

(b) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority.

7. Petitioner is thus free to move the trial court where the criminal complaint is pending for a direction to the respondent to produce the documents, which are required during trial for the petitioner/accused to defend himself. The learned Magistrate upon such a request for production of documents by the respondent being made, could give appropriate directions for production of such documents as are required during trial for defense. Judicial scrutiny would ensure that the requisition is confined to the records as are relevant for the purpose of defending the petitioner and not a general requisition of all the files/records.

8. It may be noted that petitioner had made a request for being supplied copies of all the files relating to ICC Knockout Tournament 1998. I am of the view that keeping in mind Section 91 of the Code of Criminal Procedure, which is available to the petitioner, this is not a fit case where the Court should exercise its discretion for granting a writ of mandamus, as has been sought by the petitioner in exercise of jurisdiction under Article 226 of the Constitution of India.

9. The writ petition is, accordingly, dismissed.