

(2011) 03 CHH CK 0011
In the Chhattisgarh High Court
Case No : WPC No. 4279 of 2008

Arun Luthra

APPELLANT

Vs

Chhattisgarh State Information Commission

RESPONDENT

Date of Decision : 17-03-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Right to Information Act, 2005 — Section 11, 3, 6, 8

Citation : AIR 2011 Chh 128 : (2011) 2 CG.L.R.W. 270 : (2012) 275 ELT 207

Hon'ble Judges : Manindra Mohan Shrivastava, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Manindra Mohan Shrivastava, J.—Writ Petition under Article 226 of the Constitution of India. This petition has been filed by the petitioner assailing legality and validity of order dated 31-5-2008 (Annexure P-1) passed by the Chhattisgarh Information Commission, Raipur. By the impugned order, the State Chief Information Commissioner has directed the Public Information Officer of the Raipur Development Authority to supply the information in the form of order sheets and note sheets and has also directed certain steps to be taken.

2. Learned counsel for the petitioner raised four fold submissions to assail the correctness and validity of the order which are as below :-

A. That the Chief Information Commissioner has exceeded its authority in commenting upon the conduct of the Public Information Officer to show cause as to why action has not been taken against the petitioner and in directing the Public Information Officer to take necessary decision and inform the respondent No. 4 about the final decision in the matter. He submits that in the capacity as Chief Information Commissioner, such a direction could not be issued. He submits that the provisions contained in the Right to Information Act, 2005 (In short "the Act") are only in relation to right of information. He submits that the powers conferred in appellate authority including respondent No. 1 are only

extendable to disclosure of information and in the garb of exercise of appellate power under the Act, the Chief Information Commissioner could not have directed Public Information Officer to disclose as to why action has not been taken nor could have directed certain steps to be taken towards redressal of grievance of the information seeker.

B. That the information, which have been sought by the respondent No. 4 pertain to the category of exempted information as specified u/s 8(j) of the Act. Learned counsel for the petitioner submitted that contents of the three applications, which have been placed on record, show that the respondent No. 4 has been seeking information, which are purely personal and private and has no connection whatsoever with the public activity or interest.

C. That in any case, the information which were sought by respondent No. 4 were those, which related to the petitioner or in any case, supplied by the petitioner to the Development Authority, and therefore, mandate of Section 11 required the Public Information Officer or the appellate authority to issue notice to the petitioner before ordering disclosure of such information.

D. That the respondent No. 3 is a meddlesome interloper. He has an axe to grind against the petitioner. He was entering into various litigations and now in order to harass the petitioner in relation to enjoyment of various rights including propriety rights, frivolous applications are being filed before the Public Information Officer without disclosing as to how those information, if any, have a bearing on any right claimed by him.

3. On the other hand, learned counsel for respondent No. 1 submits that the Chief Information Commissioner has passed the order in exercise of power conferred under the Act as an appellate authority, and therefore, he is a formal party.

4. Learned counsel for respondents Nos. 2 & 3 submits that it is bound by the orders passed by the appellate authority to disclose information.

5. Learned counsel for respondent No. 4 would submit that the information, which have been sought by the respondent No. 4, were not those relating to personal information of the petitioner and having no connection whatsoever with the public activity or interest. He further submits that the respondent No. 4 has been only asking various information with regard to the steps, if any, taken by the Development Authority against the petitioner in the matter relating to encroachment. He further submits that the nature of information, which has been sought by him, as also the information, which has been directed to be disclosed by the Chief Information Commissioner, is not one of the category as specified in Section 11 of the Act, and therefore, no notices were required to be issued to the petitioner. He further submits that the other directions given by the Chief Information Commissioner are only to be treated as direction for disclosure of information and not to be treated as any direction to take any action against the petitioner. He lastly submits that the right to seek information u/s 3 of the Act is

not qualified on any considerations with regard to locus or grievance. He submits that under the provisions of Section 6 of the Act, he is not required to state any reason nor he has required to disclose as to whether any of his rights are affected, due to which, such information is required.

6. The three applications filed by the respondent No. 4 before the Public Information Officer, have been placed on record as Annexure-A to C along with the application for taking document on record filed by the respondent No. 4, The applications show that the respondent No. 4 has sought various information from the Development Authority, which related to alleged encroachment by the petitioner. However, the order of the Chief Information Commissioner, which is under challenge before this Court, shows that the Chief Information Commissioner has directed the Public Information Officer to provide order sheets and note sheets pertaining to the action of the Development Authority, after the order of the Court. The Chief Information Commissioner has not stated anything very specifically with regard to each and every information, which has been sought by the respondent No. 4, in his application. The information, which has been directed to be disclosed merely related to the action, if any, of the Development Authority after the Court's order. Therefore, the submissions of learned counsel for the petitioner are required to be appreciated in the light of the various directions.

7. As far as objection with reference to clause 8(j) of the Act is concerned, in the opinion of this Court, the same would not come in the way of disclosure of information of the nature, which has been directed by the Chief Information Commissioner. The exemption from disclosure of the information under clause 8(j) of the Act is in relation to those categories of information, which are personal, 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. The disclosure of order sheets and note sheets of a public authority with regard to various action taken by it, cannot be said to be a matter relating to personal information of the petitioner, having no relation to any public activity or interest. Moreover, it cannot be said that the disclosure of note sheets of the public functionary with regard to whatsoever activity it has undertaken in its capacity as such, would cause unwarranted invasion of the privacy of the petitioner. In any case, such exemption is not absolute, because even assuming that the information is personal in nature, disclosure of such, would be permissible, if the Information Officer is satisfied that the larger public interest justifies the disclosure of such information. Therefore, I am "unable to accept the submission of learned counsel for the petitioner that disclosure of the order sheets or note sheets of the Development Authority with regard to steps, if any, taken after the order of the Court, would, in any manner, be a matter relating to disclosure of personal information of the category as stated under clause 8(j) of the Act.

8. In so far as submission of learned counsel for the petitioner with regard to

violation of Section 11 of the Act is concerned, to my mind, contents of note sheets and order sheets maintained by public authority, cannot be said to be information supplied by a third party to the Public Information Officer as confidential. From the factual background, in which, the information which have been sought by respondent No. 4 and the submissions made by learned counsel for the petitioner, there is no material disclosed to this Court to show that any confidential information given by the petitioner to the Development Authority is sought to be disclosed under the order impugned. In the order, the Chief Information Commissioner has not directed the Public Information Officer to disclose any information disclosed by the petitioner and treated by the Development Authority as confidential. From the three applications, which have been placed on record as Annexure-A to C, I do not find that there is any information sought by the respondent No. 4, which is of the nature as contemplated u/s 11 of the Act, though the order of the Chief Information Commissioner is merely confined to disclosure of order sheets and note sheets after the order of the Court. Therefore, the submission made by learned counsel for the petitioner, in that regard, also fails.

9. The provisions of Section 3 of the Act state that subject to the provisions of the Act, all citizens shall have the right to information. If the same is read along with Section 6 of the Act, it would be clear that in order to seek disclosure of information, an information seeker is neither required to disclose invasion of any of his rights nor any legal injury much less state reasons as to why he is seeking such information. The right is only subject to the provisions of the Act. Therefore, whatever may be the motive of respondent No. 4 and whether or not, any of his rights are affected, there is an obligation to provide information by the Information Officer, which of course, would be subject to other provisions of the Act.

10. However, one submission of learned counsel for the petitioner that while directing disclosure of information, the Information Commissioner has proceeded to usurp certain powers, which he does not possess under the Act, has considerable force. Curiously enough, while directing disclosure of such information, the Chief Information Commissioner directs the Public Information Officer of the Development Authority to explain the information seeker as to why no action has been taken against the petitioner, even after stay order being vacated. If I may say so, the Chief Information Commissioner, acting as a statutory appellate authority, exercising powers conferred under the Act, has no such authority or jurisdiction. It cannot direct the Public Information Officer of the Development Authority to explain its conduct with regard to alleged inaction. Moreover, the Information Commissioner has gone to the extent of directing the Public Information Officer of the Development Authority to take necessary decision within a period of one month and communicate final decision to the petitioner. This direction is completely outside the jurisdiction of the Information Commissioner. The purpose and object of the Act is disclosure of information and not to issue command to public authorities to take action in a given case, having

no relation to disclosure of information under the Act. Therefore, to that extent, the order of the Chief Information Commissioner is apparently, in excess of the jurisdiction and authority vested in it under the law, and is therefore, set aside. The directions of the Chief Information Commissioner in its order dated 31-5-2008 to that extent are void and incapable of taking any effect under the law.

11. In the result, this petition is allowed in part to the extent and in the manner indicated above. No orders as to cost.