

(2019) 07 DEL CK 0001

In the Delhi High Court

Case No : Civil Writ Petition No. 776 Of 2016, Civil Miscellaneous No. 3376 Of 2016

Baljeet Singh

APPELLANT

Vs

PIO, Industrial Training Institute, Jahangir Puri & Anr

RESPONDENT

Date of Decision : 01-07-2019

Acts Referred:

Constitution Of India, 1950 — Article 21

Right To Information Act, 2005 — Section 8, 8(1)(j)

Citation : (2019) 176 DRJ 313

Hon'ble Judges : V. Kameswar Rao, J

Bench : Single Bench

Advocate : Vikram Saini, Chhaya Sharma, Tarun Goyal, S.K. Tripathi, Shashank Tiwari

Final Decision : Allowed

Judgement

V. Kameswar Rao, J

1. The challenge in this petition is to an order passed by the CIC dated November 24, 2015, whereby the CIC has directed the respondent no.1 herein

to provide to the respondent no.2, OBC certificate of the petitioner.

2. The challenge to the order is on the ground that respondent no.2 is a neighbor and co-sharer in the property of the petitioner and has no cordial

relationship due to a property dispute. Therefore, in order to harass and put pressure on petitioner and his family to come for a settlement in the

property dispute, an application for seeking information has been filed. According to the petitioner, respondent no.2 is not a bona fide information

seeker for the said reason.

3. It is contended by the learned counsel for the petitioner that the CIC has

failed to appreciate that neither the PIO nor the Appellate Authority has disposed of the RTI Application, therefore, in the absence of any decision taken by any authority, the appeal before the CIC was not maintainable.

Hence, the CIC without considering the background of the case, and the fact personal information is protected under Section 8 of the RTI Act

directed the Department of the petitioner to supply the same while passing the impugned order, which is untenable.

4. According to the learned counsel for the petitioner the caste and educational certificate of an employee are in the nature of personal information

about a third party. Hence, this type of information is exempted from disclosure. He would rely upon the Judgment of the Supreme Court in the case

of *Girish Ramchandra Deshpande v. Central Information Commissioner and Ors.* (2013) 1 SCC 212.

5. Respondent no.1 has filed its counter-affidavit to state that respondent no.2 has filed his first RTI application at ITI, Jahangir Puri, Delhi on May 16,

2013 and August 12, 2013 in which the post of Baljeet Singh, petitioner herein was not mentioned clearly and accordingly reply was sent to Sh. Pratap

Singh, respondent no.2 by the PIO. It is also stated that the petitioner was aware regarding the RTI filed by respondent no.2 and he has accordingly

submitted a written request to the PIO / HOO and by giving reference to the property case requested not to share his personal information with any

person. Respondent no.2 not being satisfied with the reply of PIO dated September 2, 2013 moved to the first Appellate Authority to obtain the record

in respect of the petitioner. Then the first Appellate Authority supplied all the existing relevant records with the first Appellate Authority to the

respondent no.2 with a direction, if the respondent no.2 is not satisfied, he may move the second Appellate Authority, i.e., CIC. However, instead of

moving the second Appellate Authority, respondent no.2 filed various complaints to the first Appellate Authority and other higher authorities of the

department to obtain the personal record of the petitioner which lingered on / delayed the matter in the department as respondent no.2 dragged the

family dispute in his complaint, which resulted in valuable time of the department spoiled by the respondent no.2 as he wanted to settle his personal

grudge against the petitioner instead of moving towards second appeal in CIC. It is also stated that the CIC passed the order November 24, 2015 after

having heard the submissions of both the parties and in compliance thereof ITI Jahangir Puri, Delhi supplied the copy of the OBC certificate by

blocking the address and other personal information of the petitioner Sh. Baljeet Singh to respondent no.2 Sh. Pratap Singh. Even though, the petitioner

has submitted a written representation dated December 18, 2015 to defer the supply of the personal record to the respondent no.2 which was received

by PIO on December 21, 2015, meanwhile, the PIO has already obeyed with the order of the CIC. Therefore, there was no reason to consider the

written representation of the petitioner dated December 18, 2015.

6. An issue has arisen whether the OBC certificate has been received by the respondent no.2 from the department pursuant to the order of the CIC

as according to the department, the certificate which has not returned back undelivered is deemed to have been delivered.

7. Be that as it may, respondent no.2 has filed a counter-affidavit before this court wherein he has justified the impugned order of the CIC. He in his

counter-affidavit has not stated that the order of the CIC has been complied with. In any case, the counsels appearing for the petitioner and the

respondent no.1 have reiterated the stand taken by them in their respective pleadings.

8. The issue which arises for consideration is whether the OBC certificate of the petitioner can be directed to be given by the CIC. To answer this

question, it is necessary to reproduce the prayer clause in the writ petition as under:

â??In view of the above mentioned facts and circumstances of the case, it is therefore, most respectfully prayed that this Hon'ble Court may be

pleased to:

a) Call the record for perusal of this Hon'ble court.

b) Issue a writ/ order/direction/instructijon in the nature of certiorari quashing the impugned order dated 24.11.2015 passed by CIC, in the interest of justice.

c) Or in alternate, direct the respondent no.1 should not disclose the personal information of the petitioner to anyone in future.

d) Any other writ or further order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and in the

interest of the justiceâ??

9. From the above, it is clear that the petitioner in substance has challenged the order of the CIC. Alternatively, he has prayed that the respondent no.1

should not disclose the personal information of the petitioner to anyone in future. In other words, if the information as directed to be given has been

supplied by the respondent no.1 to the respondent no.2 then there is a compliance of the order of the CIC. If in the eventuality, the said information

has not been received by respondent no.2, then the same should not be given. The question is whether, respondent no.1 can still give the information to

the respondent no.2. The answer to this question would surely be, whether the information, like the caste certificate can be directed to be given. It is

the case of the petitioner that the caste certificate is a personal information qua him and such certificate being a personal information cannot be given.

Learned counsel for the petitioner has relied upon the Judgment of the Supreme Court in the Girish Ramchandra Deshpande (supra), wherein in Paras

12 to 14, the Supreme Court has held as under:

“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 organization 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 of 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.â??

10. From the law laid down by the Supreme Court it is seen the information like memos / show-cause notices / orders of censure / punishment as

sought by the respondent no.2 qualified to be personal information as defined in clause (j) of Section 8(1) of the RTI Act. Similarly, the details

disclosed by a person in his income tax returns were also held to be personal information which stand exempted from disclosure under clause (j) of

Section 8(1) of the RTI Act, unless the CPIO / SPIO / Appellate Authority is satisfied that larger public interest justifies the disclosure of such

information.

11. In the case in hand, the respondent no.2 has sought the caste certificate issued to the petitioner. The information is a personal information as the

caste to which the petitioner belongs is an issue inter-se between the respondent no.1 and the petitioner i.e. between employer and employee and this

aspect is governed by service rules. The disclosure of which has no relationship to any public activity. In fact, it is held so by a Coordinate Bench of

this court in UPSC v. Pinki Ganeriwal, W.P.(C) 5812/2010 decided on November 8, 2013, wherein in Para 5 of the Judgment it is held as under:

â??5. In the present case, the information such as date of birth, institution and year of passing graduation, field experience and caste is personal

information of the selected candidates. There is no finding by the Commission that it was in larger public interest to disclose the aforesaid personal

information of the recommended candidates. Even in his application seeking information, the respondent did not claim that any larger public interest

was involved in disclosing the aforesaid information. In the absence of such a claim in the application and a finding to this effect by the Commission,

no direction for disclosure of the aforesaid personal information could have been given.â??

12. Further, it is also not the conclusion of the Tribunal that in the larger public interest such information is required to be disclosed.

13. I may at this stage refer to certain observations made by the Division Bench

of this court while dealing with a similar issue in the case of Shri

Harish Kumar v. Provost Marshal-Cum-Appellate Authority and Anr., LPA 253/2012 decided on March 30, 2012 wherein in Paras 11 and 12 it is

held as under:

11. A Division Bench of this Court in Paardarshita Public Welfare Foundation Vs. UOI AIR 2011 Del. 82, in the context of Section 8(1)(j)

(supra) and relying upon Gobind Vs. State of Madhya Pradesh (1975) 2 SCC 14,8 Rajagopal Vs. State of Tamil Nadu (1994) 6 SCC 632 and

Collector Vs. Canara Bank (2005) 1 SCC 496 has held right to privacy to be a sacrosanct facet of Article 21 of the Constitution of India. It was

further held that when any personal information sought has no nexus with any public activity or interest, the same is not to be provided. Finding the

information sought in that case to be even remotely having no relationship with any public activity or interest and rather being a direct invasion in

private life of another, information was denied. The full bench of this Court also in Secretary General, Supreme Court of India Vs. Subhash Chandra

Agarwal AIR 2010 Del. 159 has held that the conflict between the right to personal privacy and public interest in the disclosure of personal

information is recognized by the legislature by incorporating Section 8(1)(j) of the Act. It was further observed that personal information including tax

returns, medical records etc. cannot be disclosed unless the bar against disclosure is lifted by establishing sufficient public interest in disclosure and

disclosure even then can be made only after duly notifying the third party and after considering his views. It was yet further held that the nature of

restriction on right to privacy is of different order; in the case of private individuals, the degree of protection afforded is greater; in the case of public

servants, the degree of protection can be lower, depending upon what is at stake; this is so because a public servant is expected to act for public good

in the discharge of his duties and is accountable for them.(emphasis supplied) This Court in Vijay Prakash Vs. UOI AIR 2010 Del 7 also, where

information of an estranged wife's service record was sought, held that the transparency values have to be reconciled with legal interest protected

by law, such as other fundamental rights, particularly the fundamental right to privacy; relying on O.K. Ghosh Vs. Ex. Joseph MANU/SC/0362/1962 it

was held that an individual does not forfeit his fundamental rights by becoming a

public servant; that a distinction has to be drawn between official information and private information and private details of date of birth, Personal Identification Number etc. are to be disclosed only if such disclosure is necessary for providing knowledge of proper performance of the duties and tasks assigned to the public servant; not finding any public interest in the disclosure of information sought, the order of the CIC denying the information was upheld.

12. We are even otherwise pained to find that the provisions of the RTI Act are being used for personal vendetta and owing where to the PIOs are

under huge load and strain.â??

14. Accordingly, the petition filed by the petitioner, if in the eventuality, the information has not been disclosed by respondent no.1 pursuant to the order of the CIC, is liable to be allowed and the order of the CIC shall stand set aside.

CM. No. 3376/2016 (for Stay)

Dismissed as infructuous.