

(2007) 11 AHC CK 0085
In the Allahabad High Court
Case No : Writ Petition No. 8464 (M/B) of 2007

Brij Bhushan Dubey

APPELLANT

Vs

State Information Commission, Lucknow and others

RESPONDENT

Date of Decision : 27-11-2007

Acts Referred:

Right to Information Act, 2005 — Section 18, 6

Citation : (2007) 11 AHC CK 0085

Hon'ble Judges : U.K.Dhaon, J and S.S.Chauhan, J

Final Decision : Dismissed

Judgement

U.K. Dhaon and S.S. Chauhan, JJ.

1. Heard Sri Chandra Bhanu Pandey, learned Counsel for the petitioner.
2. The petitioner has filed the instant writ petition against the order dated 15.10.2007 passed by the Chief Information Commissioner, U.P., Lucknow whereby the complaint preferred by the petitioner has been dismissed being not maintainable under the provisions of the Right to Information Act, 2005.
3. The brief facts as alleged in the writ petition are that in the month of March 2007, an advertisement was telecast in electronic channels in which Sri Amitabh Bachchan, a renowned actor and the then Member of U.P. Development Council and also a Brand Ambassador for State of U.P. was being shown as saying the following:

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4. The petitioner has further alleged that on 30.3.2007, the petitioner made a request to Sri Amitabh Bachchan for certain information under section 6 of the Right to Information Act, 2005 (hereinafter referred to as the Act) and since the information was not provided to the petitioner within thirty days from the date of receipt of the application, the petitioner made a complaint under section 18 of the Act before the State Information Commission. The Commission on 26.9.2007

sent a notice to opposite party No. 3 Sri Amitabh Bacchan. Sri Pradeep Kumar, Advocate, under the instructions of his client Sri Amitabh Bachchan sent reply to the Secretary, Uttar Pradesh Information Commission, Lucknow, U.P. The Chief Information Commissioner, after considering the material on record by the impugned order dated 15.10.2007 held that the provisions of Right to Information Act, 2005 are not applicable to Sri Amitabh Bachchan in respect to the alleged publication.

5. The learned Counsel for the petitioner submitted that the fax message sent by Sri Pradeep Kumar, Advocate, on behalf of Sri Amitabh Bachchan is not in conformity with the order dated 26.9.2007 passed by the U.P. State Information Commission, Lucknow, U.P. He further submitted that by the impugned order, opposite party No. 2 in a most arbitrary and illegal manner has held that the provisions of the Act are not applicable upon the opposite party No. 3 regarding the alleged advertisement. He further submitted that it is the settled principle of law that an authority which has been given power to discharge his function in a particular manner should discharge the same in that manner but the opposite party No. 2 has passed the impugned order in clear disregard to the earlier order dated 26.9.2007. Learned Counsel for the petitioner has relied upon the decision of this Court in the case of Satish Kumar v. State of U.P. and others 2006 (4) ESC 2786 (All) (DB).

6. We have considered the submissions made by the learned Counsel for the petitioner and gone through the record

7. The petitioner has alleged that in the month of March 2007, an advertisement was telecast in electronic channels, in which Sri Amitabh Bacchan, a renowned actor and then Member of U.P. Development Council and also Brand Ambassador for State of U.P. was being shown as saying the following:

8. The petitioner has alleged that on 30.3.2007, he sought some information from Sri Amitabh Bachchan under section 6 of the Act but the same was not provided to him within thirty days from the date of receipt of the application, thereafter he filed a complaint under section 18 of the Act before the State Information Commission, Lucknow, U.P. On the said complaint made by the petitioner a notice was sent to opposite party No. 3 who sent reply dated 10.10.2007 through his Counsel Sri Pradeep Kumar, Advocate, Supreme Court of India. In the reply, it was stated by opposite party No. 3 through his Counsel that he was not served with any letter or notice sent by the petitioner. In the reply, it has been stated that Sri Amitabh Bachchan was an honorary Member of the Uttar Pradesh Development Corporation and a Brand Ambassador of the State of Uttar Pradesh and he had not availed any facilities or financial assistance attached to those posts and served the State to the best of his abilities.

9. Some of the provisions, which are relevant for the disposal of the instant writ petition are as under:

Section 2 (h) defines Public Authority

"Public Authority" means any authority or body or institution of selfGovernment established or Constituted,

(a) by or under the Constitution,

(b) by any other law made by Parliament,

(c) by any other law made by State Legislature,

(d) by notification issued or order made by the appropriate Government, and includes any

(1) body owned, controlled or substantially financed,

(ii) nonGovernment Organisation substantially financed, directly or indirectly by funds provided by the appropriate Government;

Section 2 (j) defines Right to Information

"Right to information" means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to (i) inspection of work, documents, records,

(ii) taking notes, extracts, or certified copies of documents or records,

(iii) taking certified samples of material,

(iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device;"

Section 11 of the Act deals with third party information which is as under:

"Third party information (1) Where a Central Public Information Officer or a State Public Information Officer, as the case may be, intends to disclose any Information or record, or part thereof on a request made under this Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within five days from the receipt of the request, give a written notice to such third party of the request and of the fact that the Central Public Information Officer or State Public Information Officer, as the case may be, intends to disclose the information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party shall be kept in view while taking a decision about disclosure of information:

Provided that except in the case of trade or commercial secret protected by law, disclosure may be allowed if the public interest in disclosure outweighs in importance any possible harm or injury to the interest of such third party.

(2) Where a notice is served by the Central Public Information officer or State

Public Information Officer, as the case may be, under subsection (1) to a third party in respect of any information or record or part thereof, the third party shall, within ten days from the date of receipt of such notice, be given the opportunity to make representation against the proposed disclosure.

(3) Notwithstanding anything contained in section 7, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within forty days after receipt of the request under section 6, if the third party has been given an opportunity to make representation under subsection (2), make a decision as to whether or not to disclose the information or record or part thereof and give in writing the notice of his decision to the third party.

(4) A notice given under subsection (3) shall include a statement that the third party to whom the notice is given is entitled to prefer an appeal under section 19 against the decision."

10. From the perusal of the aforesaid provisions, it is evident that information can be sought only from the public authority under the Right to Information Act, 2005. In the reply submitted on behalf of opposite party No. 3, it has been stated that the advertisement which was telecast at the time when the Model Code of Conduct was in force in the State of Uttar Pradesh and the Election Commission permitted the same. It has also been stated in the reply that Sri Amitabh Bachchan had merely acted in the advertisement without accepting any payment as he was a Brand Ambassador of Uttar Pradesh. It has also been stated in the reply dated 10.10.2007, a copy of which has been annexed as Annexure 5 to the writ petition that Sri Amitabh Bachchan was an honorary Member of the Uttar Pradesh Development Corporation and a Brand Ambassador of the State of U.P. and he had not availed any facilities attached to those posts. The petitioner has nowhere stated that for the alleged advertisement, the opposite party No. 3 Sri Amitabh Bachchan was financed by the State Government directly or indirectly. The State Chief Information Commissioner, Lucknow, U.P., by the impugned order has held that the provisions of the Right to Information Act, 2005 in respect to the alleged advertisement are not applicable to opposite party No. 3.

11. There is no illegality or infirmity in the impugned judgment and order dated 15.10.2007 passed by the Chief Information Commissioner, U.P., Lucknow. The writ petition is devoid of merits. It is accordingly dismissed at the admission stage.