

(2020) 08 DEL CK 0163

In the Delhi High Court

Case No : Letter Patent Appeal No. 207 Of 2020

Dr. R. S. Gupta

APPELLANT

Vs

Govt. Of NCTD & Ors.

RESPONDENT

Date of Decision : 31-08-2020

Acts Referred:

Right To Information Act, 2005 — Section 8(1)(j), 22
Delhi Right To Information Act, 2001 — Section 7
Delhi School Education Act, 1973 — Section 10(2)

Citation : (2020) 08 DEL CK 0163

Hon'ble Judges : Manmohan, J;Sanjeev Narula , J

Bench : Division Bench

Advocate : Gautam Narayan, Dacchita Shahi, Parvinder Chauhan, Nitin Jain

Final Decision : Dismissed

Judgement

Sanjeev Narula, J

1. The present appeal under Clause X of the Letters Patent is directed against the final judgment and order dated 12th May, 2020 passed by the learned Single Judge in W.P.(C) 8352/2018 whereby appellant's writ petition impugning the order passed by respondent No.3, declining to furnish the requested information under the Delhi Right to Information Act, 2001 (hereinafter referred to as 'DRTI Act'), has been rejected.

2. Brief factual matrix leading to the filing of the present appeal is that the appellant filed an application under DRTI Act, 2001 before respondent No.5 (Director of Education, Delhi) and respondent No.6 (Mrs. Ranjana Daswal, Additional/Spl. Director (ASB/ACT-II), seeking information pertaining to Geeta Senior Secondary School No.2, Sultanpuri, Delhi. Appellant sought attendance record pertaining to himself for the period from April, 2015 to March, 2017 and also of the rest of the staff members serving in the same school. The copy of the attendance register pertaining to the appellant was provided to him, however at the same time information concerning the other staff members was declined on

the ground that information requested was exempted under Section 8(1)(j) of the Right to Information Act, 2005. Aggrieved with the response received, appellant filed an appeal under Section 7 of DRTI Act before Public Grievance Commission ('PGC'), the designated appellate authority under the Act.

3. In the appeal proceeding, the Deputy Director of Education, Zone-XII filed reply and furnished a copy thereof to the appellant wherein inter alia it was stated as under:

"1. That for para 1 copy of attendance pertaining to the Appellant (Dr. R. S. Gupta) w.e.f April, 2015 to March, 2017 has already been provided to the Appellant on 5/05/2017 on depositing Rs. 120/- (Annexure R- 1). The attendance of the rest of the staff members working in the school (Geeta Sr. Sec. School, Geeta Chowk, Sultanpuri, Delhi-110086) cannot be provided as it is the third party information and comes under section 8 (1) (J) of RTI ACT as there is no large public interest was involved for which this information was being sought."

4. Vide order dated 4th September, 2017, respondent No.6 was directed to confirm whether attendance record is submitted along with the monthly salary bills received from aided school for the release of salary through ECS ('Electronic Clearance System'). The relevant order reads as under:

"4.1 Competent Authority i.e. Additional Director(II), Directorate of Education is directed to clarify whether as per the Act and Rules or under any other order of the Directorate, it is mandatory for the aided schools to submit copy of attendance register every month to the Education Department. Competent Authority shall further clarify what documents are required to be submitted by the aided schools authorities for release of salary to the staff members. The clarification should be submitted to the Appellate Authority/Chairman (POC) before the next date of hearing.

4.2 A senior officer, well conversant with the facts of the case, must be deputed on the next date of hearing.

The next date of hearing in this appeal case is scheduled for Monday, 11th December, 2017 at 11:00 A.M."

5. On 9th February, 2018, Deputy Director of Education, Zone-XII submitted a reply to the following effect:

"OFFICE OF THE DY. DIRECTOR OF EDUCATION, ZONE-XII,
DISTT.NW-(B), Q- BLOCK, MANGOLPURI, DELHI-110083.

No.: Zone-XII/74 Date: 09/02/2018

To,

The Appellate Authority/ Chairman,

Public Grievance Commission,

Govt. of NCT of Delhi.

Subject: Reply Appeal No. 247/2017/PGC /DRTI/ Edn/ Dr. R. S. Gupta.

Sir,

With reference to the Appeal No. 247/2017/PGC/DRTI/Edn. as cited in the subject above. In this connection, the school authorities has submitted their reply on 16/11/2017, Ref. No. Geeta.-2/2017-18/461(Copy enclosed).

As per order No. F. DE 15 (265)/ACT/POLICY/2008/6718 -6741 dated 05/09/2008 (Copy enclosed) under section 10 (2) of Delhi School Education Act, 1973, specifies that "the Managing Committee of every aided school shall deposit, every month, its share towards pay and allowances, medical facilities, pension. Gratuity, provident fund and other prescribed benefits with the Administrator shall disburse, or cause to be disbursed, with the last week of every month, the salary and allowances to the employees of aided schools" and whereas this power of the Administrator has been delegated to the Director of Education and whereas an undertaking has been given by the Department before the Hon'ble supreme Court in the matter of Environmental & Consumer Protection Foundation vs. Delhi Administration & Ors. Therefore, it is hereby ordered to disburse the salary to the employees of Aided Schools under the Directorate of Education through Electronic Clearance System from the month of September, 2008 onwards.

Thus, as per the order No. F. DE 15 (265)/ACT/POLICY/2008/ 6718-6741 dated 05/09/2008 (Copy enclosed) forwarding of the copy of attendance register of the staff school concerned need not be send alongwith the monthly salary bills to the Department. The following documents are being attached with the salary bills every month as per the information received from the school concerned.

1. Salary Form (GR-13).
2. GPF Deduction List.
3. DGEHS Deduction List.
4. K Form.
5. Income Tax Deduction List.
6. Vacancy Statement.
7. Variation Statement.
8. ECS List.
9. Challan @ 5IYo.
10. CHallan @ 8.33%
11. Form-A

12. Bill NPS. Submitted please,"

6. On 12th February, 2018, on the basis of reply submitted before the appellate authority, the appeal was disposed of in the following terms:

"OFFICE OF THE APPELLATE AUTHORITY DELHI RIGHT TO INFORMATION ACT 2001

PUBLIC GRIEVANCE COMMISSION

GOVT. OF NATIONAL CAPITAL TERRITORY OF DELHI

Date of hearing 12th February, 2018

Applicant Dr. RS. Gupta

R/o H.No. 677-A (First Floor)

Nyaya Khand-2, Indira Puram,

Ghaziabad, U.P. -201014

Competent Authority Additional Director of Education (Act-II)

Directorate of Education,

Old Secretariat, Delhi-110054

Appeal No. 247/2017/PGC/DRI/Edn.

Application Filed on 25/05/2017

Response of Competent Authority No response received

Appeal Filed on 20/07/2017

First hearing in PGC 04/09/2017

Scheduled

1. Brief facts of the Appeal

Dr. RS. Gupta filed Form-A during May, 2017, under the Delhi RTI Act, 2001, with the Competent Authority i.e. Additional Director of Education (Act-II), Directorate of Education, seeking information on total 3 counts.

Dr. RS. Gupta did not receive a response from the office of Additional Director of Education (Act -II), Directorate of Education, hence he filed an Appeal during July, 2017 before the Appellate Authority/PGC under Section 7 of Delhi Right to Information Act. 2001.

2. Proceedings in the Public Grievance Commission

The Public Grievance Commission has so far convened two hearings on 4th September, 2017 and 12th February, 2018. At today's hearing on 12/02/2018, the attendance was as follows:

Present

Sh. Bharat Bhushan Gupta, DDE (Zone-XII), Dte. of Education

Relevant facts emerging during the hearing

3. 1 At the last hearing held on 04/09/2017, directions given by the PGC were as follows:

"Competent Authority i.e. Additional Director (Act- II), Directorate of Education is directed to clarify whether as per the Act and Rules or under any other order of the Directorate, it is mandatory for the aided schools to submit copy of attendance register every month to the Education Department. Competent Authority shall further clarify what documents are required to be submitted by the aided school authorities for release of salary to the staff members. The clarification should be submitted to the Appellate Authority/Chairman (PGC) before the next date of hearing. A senior officer, well conversant with the facts of the case, must be deputed on the next date of hearing".

3.2 At today's hearing on 12/02/2018, Sh. Bharat Bhushan Gupta, DDE (Zone-XII), Directorate of Education submitted a reply dated 09.02.2018 before the next Appellate Authority (copy placed in file). A copy of the same was given to the appellant during the hearing.

3.3 DDE (Zone-XII) further informed that as per the order No.F.DE15 (265)/ACT/POLICY/2008/6718-6741 dated 05/ 09/2008, issued by the Director (Education), copy of attendance register of the school staff concerned need not be sent alongwith the monthly salary bills to the Department. He has also mentioned the documents which are attached with the salary bills each month by the school.

4. Directions of the Appellate Authority/PGC.

4.1 On perusal of the reply, it is observed that the department has provided satisfactory reply to the clarification sought by the Appellate Authority/PGC on the last date of hearing. With the above directions/ observations, the present appeal case is ordered to be disposed of before the Appellate Authority/ Member (PGC).

Sd/

(SUDHIR YADAV)

APPELLATE AUTHORITY/MEMBER (PGC)

21/03/18"

7. The appellant was still unsatisfied and impugned the order by filing a writ petition before this court. The learned Single Judge dismissed the same noting that the appellant had received his personal information and that there was no infirmity in the order refusing to furnish information pertaining to other staff members of the school. The learned Single Judge also noted that in view of

section 22 of the RTI Act, Section 8(1)(j) and the principles stated in the said section would apply to the facts of this case. The relevant portion of the impugned order reads as under:

"10. It is clear from a perusal of the RTI application filed by the petitioner that he was seeking the complete copies of the school staff attendance registers. This has been rightly refused as the information pertains to private information of other employees and would tantamount to invasion of the Right to Privacy. The petitioner has received his personal information. Accordingly, in my opinion, there is no infirmity in the impugned order to warrant any interference by this court.

11. It is also quite clear that under section 22 of the RTI Act the provisions of the said Act would have effect notwithstanding anything inconsistent contained in any other law for the time being in force or any instrument having effect by virtue of law other than the Act. Section 22 of the RTI Act reads as follows:-

"22. Act to have overriding effect.-The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923 (19 of 1923), and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act."

12. Keeping in view the said provisions and section 8(1)(j) of the RTI Act, the principles stated in the said section would apply to the facts of this case. Section 8(1)(j) of the RTI Act reads as follows:-

"8. Exemption from disclosure of information.-(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,-

(j) information which relates to personal information 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 unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:

Provided that the information, which cannot be denied to the Parliament or a State Legislature shall not be denied to any person."

13. Clearly giving personal information to the petitioner of other employees would be an invasion of the privacy of the individual. There is no larger public interest involved to warrant taking a different view.

14. Another plea raised by the petitioner was that some of the schools have in response to separate RTI applications confirmed that attendance record of the staff is sent to respondents No.5 and 6. Merely because some of the schools in response to the RTI Application sent by the petitioner have mentioned that they are sending the attendance sheet to the Govt. of NCT of Delhi cannot be a ground to give copies of the said attendance sheet to the petitioner. This plea of

the petitioner is misplaced.

15. As far as the plea of the petitioner that the hearing was not given by the concerned functionary, respondents No.2 and 3 in their counter-affidavit which is sworn by the Deputy Secretary, Public Grievance Commission, Govt. of NCT of Delhi clearly states that the hearing was given by respondent No.3. Respondent No.3 has signed the order and dated it as 21.3.2018. I see no reason to disbelieve the said averment of respondent No.2 and respondent No.3. This plea is rejected.

16. Even otherwise as noted above, there is no merit in the contentions raised by the petitioner.

17. There is no merit in the petition. Petition is accordingly dismissed."

8. The appellant, who appeared in person before us, assailed the order of the learned Single Judge by urging that the information sought by the appellant cannot be refused. He raised two-fold submission. Firstly, he submits that the authority deciding the appeal was not empowered and authorized to do so. He argued that on 12th February, 2018 as well as on 21st March, 2018, there was no inherent power with respondent No.3 to act as the Appellate Authority. The specific authorization issued in this behalf being letter dated 20th March, 2018 was received by the department only on 22nd March, 2018. Till such time the authorization was received, the officer could not discharge the role and function of Appellate Authority. Secondly, he argues that respondent No.8 in the writ petition had submitted false information to PGC on 12th February, 2018, without approval of the competent authority. He argues that the reply placed on record is absurd and did not, in any manner justify the stand taken in the said communication, so as to deny the information to the appellant. Lastly, the appellant asserts that the information pertaining to himself has also not been supplied.

9. Mr. Gautam Narayan, learned ASC on behalf of the respondent No.1 and Mr. Parvinder Chauhan, learned Counsel on behalf of the school, who appeared on advance notice, submitted that the information sought by the appellant cannot be furnished, as the same is specifically covered under Section 8(1)(j) of the RTI Act. Without prejudice, Mr. Narayan submits that although personal information pertaining to the appellant has been furnished to him as recorded in the impugned order, yet in order to put the controversy at rest, he has no objection to provide the same once again, if the court were to issue such a direction. Learned ASC further submitted that it was not mandatory for aided schools to submit the copy of the attendance register every month to the Education Department for the release of the salary to the staff members. He explained that now disbursement is done through the ECS system and therefore, furnishing of attendance register alongwith monthly bills is not a requirement. He further argued that such information is kept by the school and not forwarded to the Education Department. With respect to the competence of the appellate

authority, he clarified that respondent No.3 was authorized to hear the appeal under the RTI Act as an 'appellate authority'. He also pointed out that vide notification dated 12th December, 2017, respondent No.3 had been appointed as a Whole Time Member of the Public Grievance Commission and could, therefore, authoritatively and legally discharge the functions of the Appellate Authority. Therefore, as on the date of the hearing, as well as deciding the appeal, he was fully competent and had the jurisdiction to pass the order. Later, vide order dated 20th March, 2018, he was appointed as the Head of the Department for the Commission as the post of the Chairman was vacant at that time. This appointment is being misconstrued by the appellant as the authorization to act as the appellate authority.

10. We have given due consideration to the submissions advanced by the parties and have carefully perused the record. Under section 7 of the DRTI Act, any person aggrieved by an order of the competent authority, or any person who has not received any order from the competent authority within thirty working days, may appeal to the Public Grievances Commission. The organizational structure of the Commission comprises of the chairman and members. The appeal was decided by the Commission, through Respondent No.3 who was its member. Except for making a bald assertion, the appellant is unable to demonstrate as to how respondent No.3, who was member of the Public Grievance Commission, could not act as the Appellate Authority. The fact that respondent No.3 was declared as the Head of the Department for the Commission vide order dated 20th March, 2018, does not mean that authority to discharge the functions of the Appellate Authority stood conferred only from the said date by virtue of such appointment. Therefore, there is no merit in the contention of the appellant that the order dated 20th March, 2018 has been passed by an authority not competent to decide the appeal. We also do not find any merit in the contention of the appellant that the stand of the DOE before the Appellate Authority is not supported by the Policy document dated 05.09.2008 relied upon by them. The Department of Education has categorically stated on record that from 2008 onwards, salary to employees of aided schools is disbursed through the ECS, and therefore, it is not necessary to send a copy of the attendance register along with salary bills for such disbursement. We therefore, fail to understand how Department of Education, can be compelled to furnish the information that is not available in the records not maintained by them at least from September 2008 onwards. Further, the appellant is seeking attendance record of the other staff members of the Geeta Senior Secondary School No.2, Sultanpuri, Delhi. Since the information requested relates to attendance record, it would entail revealing medical and personal information of an individual. The attendance record is part of service record which is a matter between the employee and the employer and ordinarily these aspects are governed by the service rules which fall under the expression "personal information". The disclosure of this information ex-facie has no relationship to any public activity or public interest and pertinently, the appellant is not able to explain or show any nexus between the personal information

sought and the public interest involved, for seeking its disclosure. Thus, in our view, in absence of even a remote connection with any larger public interest, disclosure of information would be exempted as the same would cause unwarranted invasion of the privacy of the individual under section 8(1) (j) of the RTI Act. Petitioner has thus failed to establish that the information sought for is for any public interest, much less 'larger public interest'. Therefore, we are not inclined to entertain this appeal.

11. Before parting we may add that Appellant has argued that several Aided schools have stated that they are enclosing their monthly record of staff attendance register with their salary bills and hence, it is not the third-party information. We are not inclined to accept this contention in view of the categorical stand taken by the DOE. If some schools are volunteering their information to DOE, it does not mean that information qua the employees of the school in question does not pertain to a third party. Lastly, as is borne out from documents placed on record and as observed by the Learned Single Judge, we have no reason to accept Appellant's contention that he is not in receipt of information relating to his personal record. Nevertheless, since Mr. Narayan without prejudice has agreed to furnish the same, we direct accordingly. Let the information pertaining to appellant's personal attendance record, that was provided earlier, be furnished to him once again, within 3 weeks from today. The appeal is dismissed with the above directions.