

(2020) 08 DEL CK 0094

In the Delhi High Court

Case No : Civil Writ Petition No. 11399 Of 2016

Goods & Service Tax Network

APPELLANT

Vs

Information Commissioner, CIC & Anr

RESPONDENT

Date of Decision : 18-08-2020

Acts Referred:

Companies Act, 1956 — Section 25

Right To Information Act, 2005 — Section 2(f), 3, 6, 8(1), 8(1)(d), 8(1)(e), 8(1)(j), 19

Citation : (2020) 08 DEL CK 0094

Hon'ble Judges : Jayant Nath, J

Bench : Single Bench

Advocate : Ravinder Singh, Ankita Patnaik, Raveesha Gupta, J.K. Mittal, Vandana Mittal, Priyanka Saxena

Final Decision : Disposed Of

Judgement

Jayant Nath, J

1. This writ petition is filed by the petitioner seeking an appropriate writ of certiorari for quashing order dated 13.10.2016 passed by respondent

No.1/Information Commissioner, CIC.

2. It is pleaded in the petition that the petitioner is a non-government private limited company registered under Section 25 of the Companies Act, 1956.

The Government of India holds 24.5% equity in the Company and all States of Union of India including Government of NCT of Delhi and Puducherry

together hold 24.5% equity shares. Balance 51 % equity shares are held by other non-governmental financial institutions. It is stated that the Company

was set up primarily to provide IT infrastructure and services to the Central and State Governments, tax payers and other stakeholders for

implementation of the Goods and Services Tax.

3. It is pleaded that the petitioner Company is responsible for providing a uniform interface for the tax payer and a common and shared IT infrastructure between the Central Government and the States.

4. Respondent No. 2 is said to have filed an RTI application addressed to CPIO of the petitioner Company on 16.08.2014 seeking the following information:-

â??A. Number of Meetings of GSTN's Board of Directors held from 28.03.2013 till date along with the date of each meeting.

B. Date on which the AGM of GSTN has been held in the year 2013 and 2014.

C. Copies of Minutes of all the Board meetings as referred above along with minutes of the AGM.

D. Total no. of Resolutions passed by the GSTN's Board of Directors from 28.03.2013 till date, along with the date of each resolution.

E. Copies of the Resolutions as referred to above.â??

5. It is pleaded that the concerned CPIO on 17.09.2014 provided information to respondent No. 2 for points A and B above. For points C to E, the said

information was in relation to the minutes of the meetings of the Board of Directors which was confidential and hence, could not be made open to the

public at large. It is further pleaded that respondent No. 2 has not been able to establish any public interest in seeking the said information from the

petitioner Company and therefore, information sought by respondent No. 2 as above is exempt from disclosure under Section 8(1) (d) and Section 8(1)

(j) of the RTI Act, 2005.

6. Respondent No. 2 being aggrieved by the order dated 17.09.2014 of CPIO, filed a first appeal dated 20.09.2014 under Section 19 of the RTI Act.

The Appellate Authority dismissed the appeal on 20.10.2014.

7. Respondent No. 2 aggrieved by the said order dated 20.10.2014 preferred an appeal before respondent No. 1. Vide the impugned order dated

13.10.2016, respondent No. 1 has directed the petitioner to provide copies of the minutes of the board meetings as well as the resolutions for the

period 1.04.2013 to 31.12.2015 after severance of the record containing information which is exempted from disclosure under the RTI Act. Needful

was to be done within four weeks. Hence, this writ petition.

8. Respondent No. 2 has filed a counter-affidavit. In the counter-affidavit, it has

been pleaded that the petitioner has misunderstood the RTI Act in relation to an application seeking/obtaining information. It is stated that the provisions of Section 6 of the RTI Act unambiguously do not mandate any applicant to establish that the information that is being sought is in larger public interest. It is further pleaded that the petitioner has misunderstood the provisions of Sections 8(1)(j) of the RTI Act. It is pleaded that information as sought at points C to E of the RTI application does not cause any unwarranted invasion of privacy as claimed by the petitioner.

9. I have heard learned counsel for the parties.

10. A perusal of the grounds to the writ petition would show that various pleas are taken as to why the impugned order may be set aside. Most of these pleas have been reiterated by learned counsel for the petitioner. The following pleas have been urged:-

(i) It has been pleaded that under Section 8(1)(d) of the RTI Act, it is not obligatory for a public authority to disclose information relating to commercial confidence, trade secrets or intellectual property unless the competent authority is satisfied that larger public interest warrants such disclosure. It is pleaded that in the present case, admittedly no public interest has been pleaded or established.

(ii) It is further stated that the petitioner company has been primarily set up to provide IT infrastructure and services to the Central and the State Governments, tax payers and other stake holders for implementing GST. It is responsible for protection of the networking system which includes intellectual property data as well as other commercial confidential information that went into building the technology infrastructure for implementing GST. All this is contained in the resolutions and minutes of the Board. It is strongly urged that all this information squarely falls within the ambit of Section 8(1)(d) of the RTI Act.

(iii) It is reiterated that respondent No. 1 has failed to appreciate that minutes/resolutions of the board meetings, minutes of the AGM contain issues relating to the petitioner's policies, IT infrastructure, commercial activities, strategies, future plans and other financial and administrative aspects which would harm the petitioner Company as well as government's competitive position.

(iv) It is further pleaded that it is settled law that where an applicant is seeking a

large quantity of data and information of different types and nature

and has not indicated any bona fide interest in seeking such information, the information should invariably outweigh the costs of providing it and it should not be done.

11. Learned counsel for the petitioner also relies upon a judgment of a Coordinate Bench of this court in the case of Reserve Bank of India vs.

Kishanlal Mittal, 2013 SCC OnLine Del 266 2to support his contentions. He also relies upon a judgment of the CIC in the case of Kishanlal vs. CPIO,

2011 SCC OnLine CIC 16779.

12. I may first look at the operative portion of the impugned order dated 13.10.2016. The operative portion of the order reads as follows: -

14. The Commission, after hearing the submissions of both the parties and perusing the records, observes that the Commission in Kishanlal Mittal

v. CPIO, BSNL has held:

.. it is already settled law that the minutes of the meeting(s) of the Board and its Committee(s) cannot be held back by Public Authorities on any

account other than situation which falls within any of the exemptions as discussed in Section 8(1) of the RTI Act.....

In view of this, the Commission directs the respondent to provide copies of minutes of Board meetings as well as Resolutions for the period

01.04.2013 to 31.12.2015 after severance of the record containing information which is exempted from disclosure under the RTI Act within a period of

four weeks from the date of receipt of a copy of this order

Hence, as per the directions given by respondent No. 1, the petitioner herein was to provide copies of the minutes of the board meetings as well as

resolutions for the stated period after severance of the record containing information which is exempted from disclosure under the RTI Act.

13. Reference may be had to Section 8(1)(d) of the RIT Act. The same 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-

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(d) information including commercial confidence, trade secrets or intellectual

property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;â??

Hence, under Section 8(1)(d) of the RTI Act, information of commercial confidence, trade secrets, etc. disclosure of which would harm the

competitive position of a third party, are exempt from being disclosed under the RTI Act. The exception being where a competent authority is satisfied

that larger public interest warrants the disclosure of such information.

14. In this context reference may be had to the judgment of the Constitution Bench of the Supreme Court in the case of *Supreme Court of India vs.*

Subhash Chandra Agarwal, 2019 SCC OnLine SC 1459. The Supreme Court interpreted and elaborated the above provision as follows:-

â??25.

Sub-section (1) of Section 8 begins with a non-obstante clause giving primacy and overriding legal effect to different clauses under the sub-section in

case of any conflict with other provisions of the RTI Act. Section 8(1) without modifying or amending the term â??informationâ?, carves out

exceptions when access to â??informationâ?, as defined in Section 2(f) of the RTI Act would be denied. Consequently, the right to information is

available when information is accessible under the RTI Act, that is, when the exceptions listed in Section 8(1) of the RTI Act are not attracted. In

terms of Section 3 of the RTI Act, all citizens have right to information, subject to the provisions of the RTI Act, that is, information â??held by or

under the control of any public authorityâ??, except when such information is exempt or excluded.

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113. The exemptions to right to information as noted above are contained under Section 8 of the RTI Act. Before we analyse the aforesaid provision,

we need to observe basic principles, concerning interpretation of exemption clauses. There is no doubt it is now well settled that exemption clauses

need to be construed strictly. They need to be given appropriate meaning in terms of the intention of the legislature [see *Commissioner of Customs*

(Import) v. Dilip Kumar & Ors., (2018) 9 SCC 40; *Rechnungshof v. Ãsterreichischer Rundfunk*, C-465/00].

114. At the cost of repetition we note that the exemption of right to information

for confidential information is covered under Section 8(1)(d), exemption from right to information under a fiduciary relationship is covered under Section 8(1)(e) and the exemption from private information is contained under Section 8(1)(j) of the RTI Act.

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121. Section 8(1)(d) of the RTI Act has limited the action of defence of confidentiality to only commercial information, intellectual property rights and those which are concerned with maintaining the competitive superiority. Therefore, aforesaid section is only relatable to breach of confidence of commercial information as classically developed. Although there are examples wherein commercial confidentiality are also expanded to other types of breach of confidential information, however, under Section 8(1)(d) does not take into its fold such breach of confidential information actions.â??

15. I may now in the light of the above stated legal position look at the facts of this case. The facts of this case show that respondent No. 1

Commission has directed that the copies of minutes of the board meetings and resolutions be provided for the period 01.04.2013 to 31.12.2015 after

severance of the record containing information which is exempt from disclosure under the RTI Act. In my opinion, the directions appear to be vague.

This is so as the petitioner claims that the entire information which is subject matter of the minutes of the board meetings and resolutions contain

confidential information which are exempt in terms of Section 8(1)(d) of the RTI Act. Hence, while complying with the above directions of respondent

No. 1, the petitioner would well be within its right to sever virtually the entire information as stated in the minutes of the board meetings.

16. Further, a perusal of the impugned order shows that respondent No. 1 noted the above submissions of the petitioner to the effect that the

information being sought is confidential in nature and pertains to commercial aspects of the Company, etc. However, the impugned order does not

adjudicate the said contention of the petitioner and passes the aforementioned directions. No reasons are given for rejecting the contention of the petitioner.

17. In my opinion the minutes of the board meetings are bound to contain some confidential information relating to the commercial aspects of the

company, the technological aspects of the technology and other IT network that it is providing to various governments/government agencies. It would

include information of commercial confidence, information which can be termed to be trade secrets, information which can be termed to be intellectual

property regarding the various IT technologies used. Disclosure of such information is likely to harm the interest of the petitioner. Respondent has

failed to show that larger public interest warrants the disclosure of such information. This aspect has not been noted or stated in the impugned order.

18. In the above context, reference may also be had to the judgment of the Supreme Court in the case of Central Board of Secondary Education &

Anr. vs. Aditya Bandhopadhyay & Ors., (2011) 8 SCC 497. In the said judgment, the Court held that indiscriminate and impractical demands under

the RTI Act for disclosure of all and sundry information unrelated to transparency and accountability would be counterproductive as it will adversely

affect the efficiency of the administration and result in executive getting bogged down with non-productive work of collecting and furnishing

information. The relevant para of the said judgment reads as follows:-

“67. Indiscriminate and impractical demands or directions under the RTI Act for disclosure of all and sundry information (unrelated to transparency

and accountability in the functioning of public authorities and eradication of corruption) would be counterproductive as it will adversely affect the

efficiency of the administration and result in the executive getting bogged down with the non-productive work of collecting and furnishing information.

The Act should not be allowed to be misused or abused, to become a tool to obstruct the national development and integration, or to destroy the peace,

tranquillity and harmony among its citizens. Nor should it be converted into a tool of oppression or intimidation of honest officials striving to do their

duty. The nation does not want a scenario where 75% of the staff of public authorities spends 75% of their time in collecting and furnishing

information to applicants instead of discharging their regular duties. The threat of penalties under the RTI Act and the pressure of the authorities under

the RTI Act should not lead to employees of a public authorities prioritising “information furnishing”, at the cost of their normal and regular

duties.”

In my opinion, the above judgment may apply to the facts of this case. The application for information as framed seems to seek indiscriminate and

impractical demands for disclosure of all and sundry information. However, a firm

conclusion cannot be reached as full details are not on record.

19. Reference on this aspect may be had to the judgment of the Coordinate Bench of this court in the case of Reserve Bank of India vs. Kishanlal

Mittal (supra). In that case also the applicant had sought minutes of meetings of RBI Board for two years and minutes of meetings of the Committee

of Directors. This court in that case held as follows:-

“7. It would thus be seen that the Commission did not at all deal with the view taken by the CPIO and the First Appellate Authority that the

information sought by the respondent was exempt under Section 8 (1)(d) of the Act which exempts that information including commercial confidence,

trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is

satisfied that larger public interest warrants the disclosure of such information. The Commission did not opine that the minutes of the board meetings

for the last two years would not contain any information in the nature of commercial confidence, trade secret or intellectual property of the petitioner-

bank, the disclosure of which could harm the competitive position of a third party. The Commission also did not take the view that larger public interest

warranted disclosure of the information sought by the respondent. In fact, probably, the Commission could not even have recorded such a finding

without examining the minutes of the board meetings held in the last two years.

It is true that the Commission directed exclusion of the information which was exempt under Section 8(1)(d) of the Act, but, that, in my view, was not

a correct approach to deal with the matter. By doing so, the Commission left the whole thing to the discretion of the petitioner to decide as to which

information would be exempt from disclosure and which information would not attract the exemption provisions contained in the Act. The correct

approach, in my view, would have been to call upon the petitioner-bank to satisfy the Commission as to how and to what extent the information sought

by the petitioner, included matters of commercial confidence, trade secret or intellectual property of the petitioner the disclosure of which would harm

the competitive position of a third party and then take a view in the matter. For this purpose, the Commission could also have examined such part of

the information which the petitioner claimed to be exempt under Section 8(1)(d) of the Act, without disclosing the same to the respondent. Of course,

if the Commission was of the view that larger public interest warranted disclosure of the information, it could have directed such disclosure even if the information was in the nature of commercial confidence, trade secret or intellectual property of the petitioner, but, to leave it to the petitioner to decide as to which information was exempt from disclosure and which could be disclosed to the applicant is likely to result in further litigation since the applicant may not be satisfied with the decision of the petitioner-bank in this regard and may be constrained to again knock at the door of the Commission.â??

20. In that case also, the CIC had passed a decision to give the Minutes of the Board Meeting directing expunction of information which was exempt under Section 8(1)(d) of the Act. Hence, as noted by the aforementioned judgment, the CIC left the whole thing at the discretion of the petitioner which was held not to be the correct approach.

21. A perusal of the reply given by the CPIO dated 17.09.2014 to respondent No. 2â??s application shows that there were in all 10 Board Meetings that had been held. Further details are not on record. In the facts of this case, it would be for the CIC to go into the minutes of the Board Meetings and of the AGMs and to determine as to which of the information which is contained in the minutes attracts the provision of Section 8(1)(d) of the Act, namely, are exempt from disclosure and which portion of the minutes can be given to respondent No. 2 in response to his application under the RTI Act. The CIC while looking at the aforesaid matter afresh may keep into account the above observations of the Supreme Court to determine as to whether the demand of respondent No. 2 for minutes of all the Board Meetings for the stated period would fall in the category of being counterproductive and a misuse/abuse of the RTI Act that was frowned upon by the Supreme Court.

22. In my opinion, the impugned order is contrary to the legal position and is set aside. The matter is remanded back to the CIC for fresh consideration as above.

23. The petition stands disposed of. Pending applications, if any, also stand disposed of.