

(2024) 04 CHH CK 0030
In the Chhattisgarh High Court
Case No : Writ Petition (C) No. 1562 Of 2012

High Court Of Chhattisgarh

APPELLANT

Vs

T.K.Jha

RESPONDENT

Date of Decision : 19-04-2024

Acts Referred:

Right to Information Act, 2005 — Section 6(1), 8, 8(1), 8(1)(e), 8(1)(j), 19, 19(3), 19(4)

Citation : (2024) 04 CHH CK 0030

Hon'ble Judges : Sanjay S. Agrawal, J

Bench : Single Bench

Advocate : Abhijeet Mishra, T. K. Jha, Shyam Sundar Lal Tekchandani

Final Decision : Allowed

Judgement

1. By way of this petition, the petitioners are questioning the legality and propriety of the order dated 14.05.2012 (Annexure P-1) passed by Respondent No.2-State Information Commission (hereinafter referred to as "the Commission") in Appeal Case No.1589/2011, whereby, the second appeal preferred by Respondent No.1-T. K. Jha under Section 19(3) of the Right to Information Act, 2005 (hereinafter referred to as "the Act, 2005") has been allowed while directing the petitioners to supply the informations as sought by him with regard to Annual Confidential Reports of three Judicial Officers.

2. Briefly stated the facts of the case are that on 19.08.2009, the Respondent No.1-T.K. Jha has moved an application (Annexure P/2) under Section 6(1) of the Act, 2005 before the Public Information Officer, High Court of Chhattisgarh, seeking Annual Confidential Reports of as many as three Judicial Officers, namely Shri G. Minahjuddin, Shri Sandeep Buxy and Shri Surendra Tiwari. The said application was rejected by the Assistant Public Information Officer-Cum-Deputy Registrar, High Court of Chhattisgarh, Bilaspur vide its order dated 19.08.2009 (Annexure P-3) holding that the alleged informations, regarding the Annual Confidential Reports of the Judicial Officers, are confidential in nature and

disclosure of it would not serve any public purpose and, with these observations, the said application made under Section 6 (1) of the Act, 2005 was rejected.

3. Being dissatisfied with the refusal of the aforesaid application, the Respondent No.1 questioned the same before the First Appellate Authority i.e. the Registrar General, High Court of Chhattisgarh, by submitting inter alia that the alleged informations are not exempted under Section 8 of the Act, 2005, therefore, the order as passed by the Public Information Officer rejecting his application deserves to be set aside. It appears that the said appeal was not decided in time, therefore, the second appeal was preferred by the said Respondent before the Commission under Section 19 (3) of the Act, 2005, who in turn, vide its order impugned dated 14.05.2012 has allowed the same on finding that the alleged informations are not exempted from the provisions prescribed under clauses (e) & (j) of Section 8(1) of the Act, 2005 and, accordingly directed the petitioners to supply the alleged informations to the said respondent. This is the order, which has been impugned by way of this petition.

4. Shri Abhijeet Mishra, learned counsel appearing for the petitioners submits that the finding of the Commission holding that the petitioners are not exempted from disclosure of the alleged informations under Section 8(1) of the Act, 2005, even in absence of recording a finding as to whether the disclosure of the same is necessary for the larger public interest or not. It is, therefore, contended that the order impugned, is apparently contrary to law and deserves to be quashed. It is contended further that the order impugned as passed by the Commission ignoring the mandate of Section 19 (4) of the Act, 2005 is clearly unjustified and bad in law. In support, he placed his reliance upon the principles laid down by the Supreme Court in the matter of Girish Ramchandra Deshpande versus Central Information Commissioner and others, reported in (2013) 1 SCC 212.

5. On the other hand, learned counsels appearing for the Respondents have supported the order impugned as passed by the Commission.

6. I have heard learned counsel appearing for the parties and perused the entire papers.

7. From perusal of the record, it appears that the Respondent No.1-T. K. Jha, while moving an application under Section 6(1) of the Act, 2005 before the Public Information Officer has prayed for supply of Annual Confidential Reports of as many as three Judicial Officers, which was rejected by the said authority vide its order dated 19.08.2009 by observing inter alia that the informations, as sought for, were related to other Judicial Officers and are, therefore, confidential in nature and observed further that the disclosure of it would not serve any public purpose. In consequence, the information as claimed by the said Respondent under Section 6 (1) of the Act, 2005, has been refused. An appeal was preferred there against by the Respondent No.1 before the First Appellate Authority-the Registrar General, High Court of Chhattisgarh under Section 19 of the Act, 2005, but the same was, however, not decided despite the reminders being made on

26.11.2009, 29.06.2010 and 28.03.2011 which compelled him to approach the Commission on 12.05.2011 by preferring the second appeal under Section 19 (3) of the Act, 2005, who in turn, vide its order impugned has observed that the relations between the employer and the employee cannot be held to be fiduciary in nature as defined under clause(e) of Section 8(1) of the Act, 2005 nor would be entitled to be exempted from disclosure of those Annual Confidential Reports of other Judicial Officers under clause (j) of Section 8 (1) of the Act, 2005. The petitioners are, thus, held to be not exempted from the disclosure of those Annual Confidential Reports of other Judicial Officers under Section 8 (1) of the Act, 2005. The question, which, therefore, arises for determination in this petition is as to;-

"Whether the finding of the Commission holding that the petitioners are not exempted from disclosure of the Annual Confidential Reports of Judicial Officers under Section 8(1) of the Act, 2005 could be held to be sustainable in the eye of law?"

8. In order to ascertain the answer of the aforesaid question, it is necessary to examine the provisions prescribed under Section 8(1) of the Act, 2005, which provides as under:-

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

(a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;

(b) information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;

(c) information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;

(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;

(e) information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;

(f) information received in confidence from foreign government;

(g) information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;

(h) information which would impede the process of investigation or apprehension

or prosecution of offenders;

(i) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers:

Provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over:

Provided further that those matters which come under the exemptions specified in this section shall not be disclosed;

(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.

(2) Notwithstanding anything in the Official Secrets Act, 1923 (19 of 1923) nor any of the exemptions permissible in accordance with sub-section (1), a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests.

(3) Subject to the provisions of clauses (a), (c) and (i) of sub-section (1), any information relating to any occurrence, event or matter which has taken place, occurred or happened twenty years before the date on which any request is made under section 6 shall be provided to any person making a request under that section:

Provided that where any question arises as to the date from which the said period of twenty years has to be computed, the decision of the Central Government shall be final, subject to the usual appeals provided for in this Act.

9. A bare perusal of the aforesaid provision would, thus, shows that it divided into two parts. The first part contains the list of information as provided therein under clauses (a) to (j) of sub-section (1) which can be denied to disclose under the conditions provided therein, while second part permits the disclosure of even the exempted information, but under certain contingencies. I am, however, concerned with the scope and interpretation of clauses (e) and (j) of sub-section (1) of the aforesaid provision and from its perusal, it appears that there shall be no obligation to give any information available to a person in a fiduciary capacity, or with regard to the personal information of any individuals and disclosure of which has no nexus to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individuals, unless and until the competent authority is satisfied that the larger public interest warrants the

disclosure of such information. It is, thus, evident that no one can claim any information of any individuals as a matter of right, unless the competent authority is satisfied that the larger public interest justifies for disclosure of such information. The satisfaction of the competent authority for its disclosure in the larger public interest is, thus, sine qua non for disclosure of such informations.

10. According to the Black's Law Dictionary, the word "fiduciary" means one who owes to another duties of faith, trust, confidence and condore and a "fiduciary relationship" is a relationship in which one person is under a duty to act for the benefit of another on matters within the scope of relationship. Fiduciary relationship, thus, means the relationship of trust and confidence and, when confidence is reposed by one person to other person, then presumptions under the law would be the "fiduciary", e.g., person in whom such confidence is reposed will not betray it. The Annual Confidential Reports of other Judicial Officers which are kept by their employer, i.e. High Court of Chhattisgarh, in a fiduciary capacity cannot be disclosed unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information.

11. In the instant matter, the Respondent No.1 being a Judicial Officer has claimed the Annual Confidential Reports of other Judicial Officers, which have been kept confidentially by their employer i.e. the High Court of Chhattisgarh and a bare perusal of his application, made under Section 6 (1) of the Act, 2005, would show that it was not the requirement of any public purpose, rather appears to have been claimed for his personal use. Therefore, under such circumstances, he cannot claim the said information of other Judicial Officers as a matter of right.

12. Besides, the confidential reports maintained by the High Court of Chhattisgarh being employer can be treated as records pertaining to personal information of those employees/Judicial Officers and publication of the same is prohibited under Section 8(1)(j) of the Act, 2005, as this is the matter between the employer and the employee and are governed by the Service Rules, which, therefore, falls under the expression "Personal Information" and the disclosure of which has no relationship to any public activity or public interest as held by the Supreme Court in the matter of Girish Ramchandra Deshpande (supra), wherein it has been held at paragraph-12, as under:-

"12.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 or 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. In view of the settled principles of law as laid down in the above-referred matter, the finding of the Commission holding that the petitioners are not exempted from disclosure of Annual Confidential Reports of Judicial Officers under Section 8(1) of the Act, 2005 even without recording a finding that the larger public interest warrants the disclosure of such information, is apparently contrary to law and cannot be held to be sustainable in the eye of law.

14. Consequently, the petition is allowed and the order impugned dated dated 14.05.2012 (Annexure P-1) passed by the Respondent No.2-State Information Commission in Appeal Case No.1589/2011 is hereby set aside.

No order as to costs.