(2017) 08 DEL CK 0091

In the Delhi High Court

Case No : 13219 of 2009 & CM 14393 of 2009

MUNICIPAL CORPORATION DELHI — APPELLANT

Vs

RAJBIR — RESPONDENT

Date of Decision : 24-08-2017

Acts Referred:

Right to Information Act, 2005, Section 11, Section 19(3), Section 8(1)(j) - Third party information - Appeal - Exemption from disclosure of information

Citation : (2017) 08 DEL CK 0091

Hon'ble Judges : Vibhu Bakhru

Bench : SINGLE BENCH

Advocate : Biji Rajesh, Eshita Baruah, Gaurang Kanth, V.K. Sharma

Final Decision : Disposed off

Judgement

1. The petitioner (hereafter ''MCD'') has filed the present petition, inter alia, impugning an order dated 06.10.2009 (hereafter ''the impugned order'') passed by the Central Information Commission (hereafter ''the CIC''). By the impugned order, the CIC has allowed respondent''s appeal and has directed MCD to disclose the information sought by him. The MCD claims that the information which it is called upon to disclose is exempt from such disclosure under Section 8(1)(j) of the Right to Information Act, 2005 (hereafter ''the Act'').

2. Briefly stated, the relevant facts necessary to address the controversy in this petition are as under:- 2.1 On 18.02.2009, respondent filed an application under the Act seeking information relating to one Dr Ashok Rawat (one of the employees of MCD). The contents of the said application indicating the information sought by respondent are set out below:-

"Kindly provide the Assets and Liabilities of D.H.O. Shahdara North Zone Mr Ashok Rawat Ji.

1. Monthly salary

2. Details of his children with age; how many are school going; their monthly school fee and other expenditure; name of school

3. Whether any transportation is availed of by the children; if yes, give details

4. Whether he is in possession of his own house or in Govt. Accommodation; if it is on private rent the details of the rent agreement be supplied.

5. Whether he has any immovable property in his name, his wife''s name or in the name of his children.''

6. Whether any immovable property was purchased after entering into service in MCD in Delhi.

7. Details of property which was disclosed by him at the time of joining.

8. Details of anything more than Rs.10,000/- which was purchased by him during his service, with date when the appropriate disclosure was made to the department and the same was duly assessed in his assessment of the financial year.

9. Whether the Government vehicle was being utilised for personal use or not."

2.2 Initially, by a letter dated 17.03.2009, the Public Information officer (PIO) of MCD declined to provide any information, inter alia, stating that the information as sought by respondent was not ''information'' as defined under Section 2(f) of the Act.

2.3 The respondent''s application was transferred to the concerned PIO by a letter dated 25.05.2009. Thereafter, the concerned PIO of MCD sent a letter dated 18.06.2009 declining to provide information sought at serial nos.5, 6 and 7 in the RTI application, for the following reasons:-

"The information sought for by the applicant through this point, being secret documents/information which cannot be disclosed in the absence of a general or special order, under provisions of GIO (S.O.114) under sub-rule (1) of Rule 18 of CCS (Conduct) rules. 964 Clause 110 of the "Manual of Office Procedure", Rule 11 of CCS (Conduct) Rules, 1964 as the information sought for herein covers under section 8(j) of the RTI Act, 2005."

2.4 Aggrieved by the same, respondent preferred an appeal before the First Appellate Authority (hereafter ''the FAA'') impugning the action of the PIO in denying the information sought. The FAA partially allowed the appeal by an order dated 20.05.2009 directing disclosure of information sought at serial nos.2 and 3 in the RTI application.

2.5 Aggrieved by the non-disclosure of the complete information as sought, respondent preferred a second appeal under Section 19(3) of the Act.

2.6 The said appeal was allowed by the impugned order and the CIC has directed disclosure of all information pertaining to queries at serial nos.1 and 4 to 9. The

CIC rejected MCD''s contention that the information as sought for by respondent was exempt from disclosure under Section 8(1)(j) of the Act. The CIC was of the view that disclosure of information pertaining to assets of public servants which is collected by a public authority cannot be construed as invasion of the privacy of an individual.

3. Ms Biji Rajesh, learned counsel for the MCD contended that information regarding the personal assets of its employees is required to be treated as confidential and merely because employees of MCD are required to disclose their assets to MCD, the same would not exclude such information from the scope of Section 8(1)(j) of the Act. She referred to the decision of a Coordinate Bench of this Court in Allahabad Bank v. Nitesh Kumar Tripathi: 2013 SCC OnLine Del 2491 in support of her contention. She also referred to the decisions of the Supreme Court in Girish Ramchandra Deshpande v. Central Information Commission &Ors.: 2013 (1) SCC 212 and R. K. Jain v. Union of India & Anr.: (2013) 14 SCC 794.

4. Mr V K Sharma, the learned counsel for the respondent stated that he was no longer pressing for disclosure of the information as initially sought by the respondent and had limited his request to information sought at serial nos.5, 6 and 7 in his RTI application. The said information being (a) whether Dr Ashok Rawat held any immovable property in his name; (b) whether any immovable property was purchased by him after entering service with MCD in India including Delhi; and (c) the details of his properties at the time of joining of service with MCD. Mr Sharma further stated that although at serial no.5, respondent had sought information as to the immovable property in the name of Dr Ashok Rawat''s wife and children as well; he was no longer seeking that information.

5. In view of the above, the only question required to be addressed is whether MCD is obliged to disclose details of the immovable properties held by its employees or whether such information is exempt from disclosure under Section 8(1)(j) of the Act.

6. Before proceeding further, it would be relevant to refer to Section 8 (1)(j) of the Act which reads as under:- "8. Exemption from disclosure of information. - (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,-

xxxx xxxx xxxx xxxx

(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."

7. It is apparent from a plain reading of Clause (j) of Section 8(1) of the Act that

personal information which has no relationship to any public activity or interest would be exempt from disclosure. However, such information can be disclosed provided that the PIO or the Appellate Authority under the Act is satisfied that larger public interest justifies such disclosure. In the present case there is no reason to believe that disclosure of information sought by respondent is for some larger public interest. Respondent has not provided any credible justification for seeking information regarding the personal assets of the MCD employee in question. Although, it has been contended that disclosure of assets of public servants and their families would serve to stem corruption, however, in the present case, no particular facts have been disclosed by respondent which will indicate that the information sought would serve a larger public purpose. In view of the above, the only question that needs to be answered is whether the information sought by respondent qualifies to be "personal information", the disclosure of which has no relationship with any public activity or interest.

8. In Girish Ramchandra Deshpande (supra), the Supreme Court had examined the question whether the CIC was correct in denying information pertaining to service career, details of assets and liabilities and movable and immovable properties of the respondent therein (who was employed as an enforcement officer) on the ground that the information sought, fell within the scope of ''personal information''. Answering the aforementioned question in the affirmative, the Supreme Court held that the said details sought for, which were denied by the CIC, qualified to be personal information as defined in Clause (j) of Section 8(1) of the Act.

9. In Secretary General, Supreme Court of India v. Subhash Chandra Agarwal: AIR 2010 Del 159, a full Bench of this Court observed that the objective of freedom of information and objective of protecting personal privacy would often conflict when an applicant seeks access to personal information of a third party. The Court held that the Act had recognized the aforesaid conflict and had exempted personal information from disclosure under Section 8(1)(j) of the Act. However, such bar preventing disclosure of personal information could be lifted if sufficient public interest was shown. The relevant extract of the said decision is reproduced below:- "114. There is an inherent tension between the objective of freedom of information and the objective of protecting personal privacy. These objectives will often conflict when an applicant seeks access for personal information about a third party. The conflict poses two related challenges for law makers; first, to determine where the balance should be struck between these aims; and, secondly, to determine the mechanisms for dealing with requests for such information. The conflict between the right to personal privacy and the public interest in the disclosure of personal information was recognized by the legislature by

exempting purely personal information under Section 8(1)(j) of the Act. Section 8(1)(j) says that disclosure may be refused if the request pertains 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." Thus, personal information including tax returns, medical records etc. cannot be disclosed in view of Section 8(1)(j) of the Act. If, however, the applicant can show sufficient public interest in disclosure, the bar (preventing disclosure) is lifted and after duly notifying the third party (i.e. the individual concerned with the information or whose records are sought) and after considering his views, the authority can disclose it. The nature of restriction on the right of privacy, however, as pointed out by the learned single Judge, is of a different order; in the case of private individuals, the degree of protection afforded to be greater; in the case of public servants, the degree of protection can be lower, depending on what is at stake. This is so because a public servant is expected to act for the public good in the discharge of his duties and is accountable for them.

115. The Act makes no distinction between an ordinary individual and a public servant or public official. As pointed out by the learned single Judge "----- an individual''s or citizen''s fundamental rights, which include right to privacy - are not subsumed or extinguished if he accepts or holds public office." Section 8(1)(j) ensures that all information furnished to public authorities - including personal information [such as asset disclosures] are not given blanket access. When a member of the public requests personal information about a public servant, - such as asset declarations made by him - a distinction must be made between personal data inherent to the person and those that are not, and, therefore, affect his/her private life. To quote the words of the learned single Judge "if public servants ---- are obliged to furnish asset declarations, the mere fact that they have to furnish such declaration would not mean that it is part of public activity, or "interest". ----- That the public servant has to make disclosures is a part of the system''s endeavour to appraise itself of potential asset acquisitions which may have to be explained properly. However, such acquisitions can be made legitimately; no law bars public servants from acquiring properties or investing their income. The obligation to disclose these investments and assets is to check the propensity to abuse a public office, for a private gain." Such personal information regarding asset disclosures need not be made public, unless public interest considerations dictates it, under Section 8(1)(j). This safeguard is made in public interest in favour of all public officials and public servants."

10. There can be no doubt that the information sought by respondent is personal information concerning an employee of MCD. Such information could be disclosed only if respondent could establish that disclosure of such information was justified by larger public interest. Even if the PIO was satisfied that disclosure of such information was justified, the PIO was required to follow the procedure given under Section 11 of the Act; that is, the PIO was required to give a notice to the concerned employee stating that he intends to disclose the information and invite the employee to make submissions on the question whether such information ought to be disclosed.

11. In view of the above, the impugned order directing the disclosure of personal information relating to the employee of MCD cannot be sustained. The impugned order is, accordingly, set aside.

12. MCD has already paid cost of Rs.5000/- and this Court does not consider it apposite to direct refund of the same.

13. The petition along with the pending application is disposed of.

