

(2016) 02 MAN CK 0003
In the Manipur High Court
Case No : W.P. (C) No. 642 of 2015

Phairembam Sudesh Singh	Vs	APPELLANT
The State of Manipur and Others		RESPONDENT

Date of Decision : 02-02-2016

Acts Referred:

Constitution of India, 1950 — Article 19(1)(a)
Right to Information Act, 2005 — Section 19 (1), Section 19(3), Section 2(f)(i),
Section 24, Section 24 (4), Section 24(4), Section 3, Section 6, Section 7, Section 8

Citation : (2016) 02 MAN CK 0003

Hon'ble Judges : Kh. Nobin Singh, J.

Bench : Single Bench

Advocate : Th. Khagemba, Advocate, for the Appellant; R.S. Reisang, Sr. Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

Kh. Nobin Singh, J.—1. Heard Shri Th. Khagemba, learned counsel appearing for the petitioner and Shri R.S. Reisang, learned Senior Government Advocate appearing for the respondents.

2. By the instant writ petition, the petitioner has questioned and challenged the validity and correctness of the decision dated 26-06-2015 taken by the State Chief Information Commissioner, Manipur Information Commission, Imphal, Manipur.

3.1 According to the petitioner, he is an ex-constable and he filed an application dated 01-12-2012 under section 6 of the RTI Act, 2005 seeking information as detailed therein. As the said information sought for by him were not provided within the time specified under Section 7 of the said Act, he preferred a First Appeal on 05-11-2014 under Section 19 (1) of the RTI Act before the Appellate Authority i.e., the Principal Secretary (Home), Government of Manipur who disposed it of by issuing an order dated 10-11-2014 and informed the petitioner that the said information could not be provided to him on the ground that the

Police Department, Government of Manipur was exempted from the purview of the RTI Act vide Notification dated 15-10-2005 issued by the State of Manipur which was followed by a Corrigendum dated 25-10-2005.

3.2 Since the State Information Commission was not functioning, at that point of time, for want of the State Chief Information Commissioner, the petitioner filed a writ petition being W.P. (C) No. 963 of 2014 praying for a direction to the respondents therein to provide the said information. While the said writ petition was pending, the Manipur Information Commission became functional on the appointment of the State Chief Information Commissioner and accordingly, the said writ petition was dismissed as withdrawn with a liberty to approach the appropriate forum. Thereafter, the petitioner preferred a Second Appeal before the Manipur Information Commission under Section 19(3) of the RTI Act on 03-06-2015 which was rejected by the State Chief Information Commissioner on technical ground and accordingly, a fresh Second Appeal being Appeal Case No. 17 of 2015 was preferred on 17-06-2015 on the similar grounds taken before the first Appellate Authority.

4. Being aggrieved by the said decision dated 26-06-2015 of the State Chief Information Commissioner, the present writ petition was filed by the petitioner on the inter-alia grounds that since the information sought for by him were with regard to service records, they had nothing to do with the security of the State; that they fell within the meaning of Section 2(f)(i) and (j) of the RTI Act and therefore, it was the duty of the respondents to furnish the said information; that in a similar matter pertaining to the Police Department, Government of Manipur, the information were furnished by the Police Department in compliance with the order dated 10-09-2012 passed by the Hon''ble Gauhati High Court, Imphal Bench in W.P. (C) No. 554 of 2012 despite the said Notification dated 15-10-2005 and corrigendum dated 25-10-2005 being issued by the State Government and that the said information did not fall under the exemption as stipulated in Section 8 of the RTI Act. The writ petition is contested by the respondents by filing an affidavit-in-opposition contending inter-alia that the first Appellate Authority as well as the Manipur Information Commission had rejected the appeals on the ground that the Police Department, Government of Manipur was exempted from the purview of RTI Act vide the said Notification dated 15-10-2005 issued by the State Government under Section 24 (4) of the RTI Act, 2005.

5. The subject matter in issue relates to the interpretation of the provisions of Section 24 of the RTI Act, 2005 and in particular, Section 24 (4) which is reproduced herein below:

"Section 24(4). Nothing contained in this Act shall apply to such intelligence and security organisations, being organisations established by the State Government, as that Government may, from time to time, by notification in the Official Gazette, specify:

Provided that the information pertaining to the allegations of corruption and

human rights violations shall not be excluded under this sub-section:

Provided further that in the case of information sought for is in respect of allegations of violation of human rights, the information shall not be provided after the approval of the State Information Commission and, notwithstanding anything contained in Section 7, such information shall be provided within forty-five days from the date of the receipt of request."

6. Shri Th. Khagemba, learned counsel appearing for the petitioner has heavily relied upon the judgment and order dated 13-10-2015 passed by this court in W.P. (C) No. 880 of 2014 wherein this court had examined the question as to whether the petitioner therein was entitled to information sought for by him when the Police Department, Government of Manipur had been exempted and no allegation pertaining to corruption and violence of human rights had been made by him. Similar issue has arisen in the present case and the only difference is that in the said case, the information sought for was with regard to the recruitment process of Sub-Inspector of Police whereas in the present case, the information sought for by the petitioner are as regards his service namely the initial appointment, suspension order, documents relating to departmental proceedings, termination order etc. On perusal of the said judgment and order, this court is of the view that the issue involved herein is covered by it and in that case, this court held that the information sought for by the petitioner therein which pertained to allegations of corruption, would be covered by the expression "information pertaining to allegations of corruption". It has further been held that if any information has the potential to raise a serious question of the existence of corruption or violation of human rights, it can be certainly considered to be "pertaining to allegations of corruption and human rights violation". The para 12 thereof is as under:

"12. This issue can be viewed from another perspective. The legislature in their anxiety to keep certain organisations which are engaged in activities involving sensitive information, secrecy of the State, have sought to keep these organisations away from the purview of the Act by including such organisations in the Second Schedule of the Act as far as Central Organisations are concerned and in the official gazette in respect of State organisations. It does not, however, mean that all information relating to these organisations are completely out of bound of the public. For example, even though the Central Bureau of Investigations is one of the organisations included in the Second Schedule to the Act, it does not mean that all information relating to it are out of bound of the public. If one looks at the website of the Central Bureau of Investigation which is in the public domain, there are so many information about the organisation which are already voluntarily made open to the public. This is for the simple reason that disclosure of these information does not in any way compromise with the integrity of the organisation or confidentiality of the sensitive nature of works undertaken by this organisation. The purpose of excluding all these organisations from the purview of the Act as provided under Section 24 is to merely protect

and ensure the confidentiality of the sensitive works and activities undertaken by these organisations. Therefore, if there are any information which do not impinge upon the confidentiality of the sensitive activities of the organisation and if such information is also relatable to the issues of corruption or violation of human rights, disclosure of such information cannot be withheld. Similarly, in respect of the police organisations in the State of Manipur if anybody seeks any information which does not touch upon any of the sensitive and confidential activities undertaken by the police department and if the said information also can be related to the issues of any allegation of corruption or violation of human rights, such information cannot be withheld. We may further clarify this position by borrowing the concept of doctrine of "pith and substance". The doctrine of "pith and substance" was evolved by the courts primarily to determine whether a particular law relates to a subject mentioned in one list or the other and while doing so, the Court looks into the substance of the enactment. Thus, if the substance of the enactment falls within the Union List then the incidental and encroachment by the enactment on the State list would not make it invalid. Thus, the essence of this doctrine centred round the substantive part of the enactment or the core subject of the enactment. Though this doctrine cannot be invoked to decide the issue raised in this petition, the principle behind it may be referred to while deciding the issue at hand. By doing so, this Court will hold that if any information relates to the core activity of the organisation because of which such an organisation has been excluded from the purview of the Act, any such information can be withheld except which relates to allegation of corruption and violation of human rights. Therefore, if there be any information which does not relate to the principal or the core function of the organisation which is sought to be protected by including in Section 24 of the Act, but if it can have some reference or relatable to corruption or violation of human rights, such an information cannot be withheld. It may be observed that the core function of the police organisation is to maintain law and order, security of the State and discharge such activities which are related to and ancillary to these functions. In that context, undertaking the exercise of a recruitment process is not part of the core function of the police department. It is some function which could be outsourced to any other agency like the Public Service Commission etc. and this activity does not form part of the core function of the Police Department which cannot be outsourced to any other agency. Of course, recruitment of intelligence officials may form part of the core function. But in the present case, such is not the case. The recruitment in issue is the general recruitment process of the personnel of the police department generally."

While passing the said judgment and order, this court has agreed to and subscribed to the views of the Hon'ble Punjab and Haryana High Court rendered in its order dated 28-04-2011 in LPA No. 744 of 2011 and LPA No. 745 of 2011 wherein it has examined the scope of the expression "information pertaining to allegations of corruption and human rights violence" as regards the issue whether any information, in respect of encroachment of the public post or of

filling up the public post, can be said to be "information pertaining to allegations of corruption and human rights violence". The said Hon"ble High Court has observed that this expression is not defined in the Act and that the public officers are to be attentive, fair and impartial in the performance of their functions and at no time should afford any undue preferential treatment to any group or individual or improperly discriminate against any group or individual, or otherwise abuse the power and authority vested in them and information which relates to the working of a public office and whether such office acted in accordance with laws would be relevant so as to exclude the allegation of corruption. The said Hon"ble High Court has further held that the information sought for which is in respect of the number of vacancies which have fallen to the share of the specified category and whether such posts have been filled up from amongst the eligible candidates, if disclosed, will lead to transparent administration which is antithesis of corruption and help in dispelling favouritism, nepotism or arbitrariness. Accordingly, the Hon"ble Punjab & Haryana High Court are directed for furnishing of such information.

7. This court proposes to add further observations to its earlier judgment and order referred to above. There can be no any dispute that the RTI Act, 2005 is enacted with the avowed objective of conferring a statutory right on the citizens in India to have access to Government-controlled information or to seek information from Central Government/State Governments, local bodies and other competent authorities as a matter of right. The idea is that it would prove to be instrumental in bringing in transparency and accountability in Government and Public Institutions which would help in bringing the growth of corruption in check. The scope of the Act is wide enough to cover all the Constitutional Institutions and subject to exemptions, universally applies to all Public Authorities. Section 3 gives statutory recognition to the right to information subject to the other provisions of the Act. Section 8 sets out limitations on the right of access as exemptions from disclosure of information. Similarly, Section 24(4) confers power on the State Government to exempt any intelligence and security organisation established by it from the purview of the provisions. It may be noted that the right to information is a facet of "freedom of speech and expression", as contained in Article 19(1)(a) of the Constitution, which are the foundation of all democratic organisations. Fundamental rights should not be cut down by too restricted an approach. Even prior to the enactment of RTI Act, 2005, the expression "freedom of speech and expression" has been construed by the Hon"ble Supreme Court, in a catena of decisions, to include not only liberty to propagate one's views, ideas, opinions and thoughts but also the right to acquire information. In other words, the right to information can be said to be a fundamental right subject to the exemptions as contained in Section 8 and 24 of the RTI Act. As has been held by the Hon"ble Punjab & Haryana High Court, the expression "information pertaining to allegations of corruption and human rights violence" is not defined in the Act but it has a wide connotation in view of the objective sought to be achieved in the Act. The relevance of transparency and

accountability in the administration has arisen because of the corruption being rampant and power allegedly being misused by the Public Authorities in the country. Article 19 of the Universal Declaration of Human Rights, 1948 provides that everyone has the right to freedom of pinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. To comprehend the intent of the Legislature while enacting the RTI Act specially as regards the said expression, the provisions of the Act, as a whole, are to be read keeping in mind the purpose for which the RTI Act is enacted and it may further be noted that the exemptions cannot be construed so as to defeat the very objective sought to be achieved in the RTI Act, 2005. Therefore, it has been rightly held by this court in the said case of Md. Abid Hussain v. State of Manipur, W.P. (C) No. 880 of 2014 that any information which does not touch upon any of the sensitive and confidential activities undertaken by the Police Department, Government of Manipur cannot be withheld at all. In other words, access to such information cannot be denied to the citizens. It can be seen from the facts of the present case that the information sought for by the petitioner have nothing to do with the sensitive and confidential activities undertaken by the Police Department, Government of Manipur and therefore, the same cannot be denied to him.

8. In view of the above, the instant writ petition is allowed and consequently, the decision/order dated 26-06-2015 passed by the State Chief Information Officer, Manipur Information Commission, Imphal in Appeal Case No. 17 of 2015 is quashed and set aside with the direction that the respondent No. 4 shall provide the information sought for by the petitioner within a period of three weeks from the date of receipt of a copy of this judgment and order. There shall be no order as to costs.