
(2012) 11 DEL CK 0168

In the Delhi High Court

Case No : Writ Petition (C) 7248 of 2012 and CM No. 18689 of 2012

Reliance Industries Ltd. and Another

APPELLANT

Vs

The Chief Information Commissioner and Others

RESPONDENT

Date of Decision : 21-11-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Right to Information Act, 2005 — Section 8, 8(1)(d), 8(1)(e)

Citation : (2013) 5 AD 307 : (2013) 196 DLT 131 : (2013) 133 DRJ 45

Hon'ble Judges : D. Murugesan, C.J.;Rajiv Sahai Endlaw, J

Bench : Division Bench

Advocate : A.M. Singhvi with Mr. R. Sasiprabhu, Mr. Shivshankar and Mr. Somiran Sharma, for the Appellant; Neeraj Malhotra, for R-2, 3 and 5 and Mr. Jatan Singh, CGSC with Mr. Tushar Singh, for UOI/R-6, for the Respondent

Final Decision : Allowed

Judgement

Rajiv Sahai Endlaw, J.

CM No. 18690/2012 (for exemption)

Allowed, subject to just exceptions.

The application is disposed of.

WP(C) No. 7248/2012

1. This writ petition impugns the order dated 06.11.2012 of the Central Information Commission (CIC) allowing the appeal preferred by the respondent No. 4 Mr. Arun Kumar Agarwal and directing the Public Information Officer (PIO) of the respondent No. 3 Securities and Exchange Board of India (SEBI) to provide the information sought, to the respondent No. 4. Though as per the Roster of this Court, the writ petition challenging the order of the CIC is to be heard by a Single Judge of this Court but the same is listed before us because the petitioner has also sought a declaration of "Sections 8(1)(d) and 8(1)(e) of

the Right to Information (RTI) Act, 2005 as ultra vires, unconstitutional and violative of Article 14 of the Constitution of India". We have as such first heard the senior counsel for the petitioner on the vires of Sections 8(1)(d) and 8(1)(e) of the RTI Act inasmuch as if we do not find any merit in the said challenge, the petition so far as challenging the order dated 06.11.2012 of the CIC, is to be considered by a Single Judge Bench of this Court. Section 8 of the RTI Act details the information which is exempt from disclosure. Clauses (d) and (e) of Sub-section (1) thereof exempts from disclosure:

(i) Information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party; and,

(ii) Information available to a person in his fiduciary relationship. However both the aforesaid exemptions are subject to:

unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information.

2. Though the petitioner who is opposing the disclosure claiming exemption under Sections 8(1)(d) and 8(1)(e) supra, has sought declaration of the entire Sections 8(1)(d) and 8(1)(e) as ultra vires but the senior counsel for the petitioner has confined the challenge only to the "proviso" to the aforesaid exemptions. It is contended, that the "proviso" virtually takes away the exemption provided for in Sections 8(1)(d) and 8(1)(e) and is too widely worded leaving unguided discretion in the Competent Authority to override the exemption by citing public interest, without defining "larger public interest" and is thus arbitrary and violative of Article 14 of the Constitution of India. It is alternatively contended that the said "proviso" may be required to be "read down".

3. We are unable to find any merit in the challenge to the vires of the "proviso" aforesaid to Sections 8(1)(d) and 8(1)(e). "Public interest" is an expression which has found its way in several legislations and has been repeatedly and elaborately interpreted by the Courts and the ground of "public interest" being an amorphous, nebulous or vague and indefinite concept held to be not available for assailing the provision. It thus cannot be said that the use of the words "public interest" in the "proviso" vests unguided discretion in the Competent Authority.

4. The words "in the interest of the general public" were in *Mrs. Maneka Gandhi Vs. Union of India (UOI)* and *Another*, held to have a clearly well defined meaning and not vague or undefined. Similarly in *Premium Granites and Another Vs. State of Tamil Nadu and Others*, as well as in *Orissa Textile and Steel Ltd. Vs. State of Orissa and Others*, , it was held that "public interest" was a definite concept and exercise of power "in public interest" though required to satisfy the test of reasonableness if challenged, cannot be said to be vesting unguided power. In between, in *Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi*

Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another, , it was also held that the concept of public interest must, as far as possible, receive its orientation from the Directive Principles which embody par excellence the constitutional concept of public interest.

5. We may also notice that it is not always feasible and practical to lay down exhaustive guidelines and which can cover all the contingencies. Moreover, the guidelines can be gathered from the setting of the Act.

6. The RTI Act, as per its Preamble, is to fulfill the constitutional goal, of establishment of a democratic republic, which requires an informed citizenry vital to its functioning, and to set out the practical regime for citizens to secure access to information under the control of Public Authorities. The Preamble to the Act itself notices that revelation of information may conflict with other public interest inter alia of preservation of confidentiality of sensitive information and the Act attempts to harmonize these conflicting interests "while preserving the paramountcy of democratic ideal".

7. The "proviso" aforesaid to Sections 8(1)(d) and 8(1)(e) which carves out an exception to the information exempt from disclosure, is one of the facets of such harmonization of conflicting interest. While information including commercial confidence, trade secrets or intellectual property or made available to Public Authority in fiduciary relation, has in recognition of the principle of "preservation of confidentiality of sensitive information" been exempted from disclosure, but such exemption is not available when "larger public interest warrants the disclosure of such information". It thus cannot be said that the proviso taken away what has been given under Sections 8(1)(d) and 8(1)(e). Notice may be taken of the recent judgment of the Apex Court in Central Board of Secondary Education and Another Vs. Aditya Bandopadhyay and Others, . Though there was no challenge therein to the vires of the "proviso" aforesaid to Sections 8(1)(d) and 8(1)(e), but the Supreme Court nevertheless noticed that such harmonization is essential for preserving democracy and that "it is difficult to visualize and enumerate all types of information which require to be exempted from disclosure in public interest" and that "the legislature has however made an attempt to do so" and further that "the Courts and Information Commissions enforcing the provisions of RTI Act have to adopt a purposive construction, involving a reasonable and balanced approach which harmonizes the two objects of the Act, while interpreting Section 8 and the other provisions of the Act". The right to information was held to be a cherished right intended to be a formidable tool in the hands of responsible citizens to fight corruption and to bring in transparency and accountability.

8. We have ourselves enquired from the senior counsel for the petitioner as to what guiding principles possibly could have been laid down or as to what should be the "reading down" of the proviso. No reply has been forthcoming. Rather, it is stated that the argument of "reading down" may not have been appropriate.

9. The Supreme Court recently in *Namit Sharma Vs. Union of India* (W.P.(C) No. 210/2010 decided on 13.09.2012) held, that mere apprehension of abuse against some persons is no ground to hold a law illegal or unconstitutional; that to raise a plea of Article 14, arbitrariness has to be brought out in clear terms; that one of the known concept of constitutional interpretation is that the legislature cannot be expected to carve out scientifically perfect or logically complete classification which may satisfy the expectations of all concerned and the Courts would respect the classification dictated by the wisdom of the legislature; it was also noticed that exemptions u/s 8 have been widely worded keeping in mind the need to afford due protection to privacy, national security and the larger public interest and a balance is to be struck between them.

10. As aforesaid, the expression "public interest" is a well understood one. Moreover, a person claiming exemption thereunder, if faced with the plea of public interest by the information seeker, has several foras available to satisfy that there is no larger public interest warranting disclosure. The RTI Act provides for two appeals, first to the Appellate Authority and then to the CIC against the orders of the PIO and thereafter the remedy of judicial review under Article 226 of the Constitution of India is also available. All the said foras and the High Courts in exercise of powers of judicial review are found to be competent to go into the question of public interest.

11. As far back as in *Gobind Vs. State of Madhya Pradesh and Another*, it was held that privacy/dignity claims can be denied when an important countervailing interest is shown to be superior. It is thus not as if the proviso aforesaid to Sections 8(1)(d) and 8(1)(e) provides for anything new.

12. Accordingly, the challenge to the vires of Sections 8(1)(d) and 8(1)(e) of the RTI Act is rejected. As far as the challenge to the order dated 06.11.2012 of the CIC on merits is concerned, the same as aforesaid is to be considered by the learned Single Judge. The senior counsel for the petitioner states that the time granted by the CIC to SEBI for providing information is expiring tomorrow and unless operation of the order of the CIC is stayed, the writ petition may become infructuous. On this submission, the writ petition be listed before the learned Single Judge as per Roster for consideration, on 22nd November, 2012.

No costs.