
(2014) 11 BOM CK 0087
In the Bombay High Court
Case No : Writ Petition No. 863/2012

Sunflag Iron and Steel Company Ltd.	APPELLANT
Vs	
State Information Commission	RESPONDENT

Date of Decision : 14-11-2014

Acts Referred:

Right to Information Act, 2005 — Section 11, 11(1), 11(3), 19(4), 8

Citation : (2015) 1 ABR 152 : AIR 2015 Bom 38 : (2015) 4 MhLj 673 : (2015) 1 RCR(Civil) 798

Hon'ble Judges : Z.A. Haq, J

Bench : Single Bench

Advocate : R.P. Jog i/b A.C. Dharmadhikari, Advocate for the Appellant; A.B. Patil, Shamal Kadu, Advocates and Tajwar Khan, A.G.P, Advocate for the Respondent

Judgement

Z.A. Haq, J.—Heard Ms R.P. Jog advocate holding for Shri A.C. Dharmadhikari the learned advocate for the petitioner, Shri A.B. Patil, the learned advocate for the respondent no.1, Ms Tajwar Khan, the learned A.G.P. for the respondents 2 and 3 and Shri Shamal Kadu, the learned advocate for the respondent no.4.

2. Rule. Rule made returnable forthwith.

3. The petition takes exception to the order passed by the State Information Commission directing the Public Information Officer to provide the information sought by the respondent no.4 regarding Item Nos.4 and 5 stated in his application. According to the petitioner the information sought by the respondent no.4 and ordered to be provided, is concerned with the petitioner and as per the provisions of Section 19(4) of the Right to Information Act, 2005, (for short "Act of 2005") the Commission could not have directed the Public Information Officer to provide the information without giving notice and without granting hearing to the petitioner.

4. The respondent no.4 sought information as per his application dated 31 st

January, 2011 from the Public Information Officer. On receipt of the application, the Public Information Officer issued the communication dated 5th February, 2011 to the petitioner seeking its say as to why the information sought by the respondent no.4 as per Item Nos.2 and 3 of the application should not be provided to the respondent no.4. The petitioner submitted its reply dated 23 rd February, 2011 and opposed the supplying of the information to the respondent no.4. The Public Information Officer by the communication dated 4th March, 2011 informed the respondent no.4 that the information sought by him vide Item Nos.3, 4 and 5 of the application cannot be provided in view of the provisions of Section 11(3) and Section 8(1)(A), (D) and (E) of the Act of 2005. The respondent no.4 being aggrieved in the matter filed appeal before the State Commission which is allowed by the impugned order.

5. The submission on behalf of the petitioner is that the information sought by the respondent no.4 relates to the petitioner and it is confidential and cannot be provided to the respondent no.4. It is submitted that the Section 19(4) of the Act of 2005 casts an obligation on the Commission to grant opportunity of hearing to the party with which the information is related. It is submitted that the Commission has neither given any notice nor has granted hearing to the petitioner and therefore, the impugned order is illegal having been passed in contravention of the mandate of Section 19(4) of the Act of 2005. In support of her submissions the learned advocate has relied on the following judgments :-

(i) Mr. Surupsingh Hrya Naik Vs. State of Maharashtra and Others, ,

(ii) SKIL Infrastructure Private Limited & Anr. V/s. State Information Commissioner & Ors. reported at 2011 (Supp.) Bom. C.R. 835 and

(iii) R.K. Jain Vs. Union of India (UOI) and Another, .

6. Shri Kadu, the learned advocate for the respondent no.4 has submitted that the information sought vide Item No.5 is regarding Memorandum of Understanding executed between the Government of Maharashtra and the petitioner and the information contained in the document cannot be treated as "trade secret" or "of commercial confidence" and it cannot be said to be exempted under Section 8 of the Act of 2005. It is submitted that the information contained in the above mentioned document cannot be said to be information exclusively related to the petitioner and it being a Memorandum of Understanding executed on behalf of the Government of Maharashtra, the respondent no.4 is entitled for the information and it cannot be withheld on the objection raised on behalf of the petitioner. As far as the information sought vide Item no.4 of the application is concerned, it is submitted on behalf of the respondent no.4 that those documents are referred and relied upon in the Memorandum of Understanding executed by the Government of Maharashtra and therefore, the copies of those documents are also required to be supplied irrespective of the objection on behalf of the petitioner.

7. Shri A.B. Patil, the learned advocate for the respondent no.1 submits that he

represents the Commission in the present case which is an Adjudicatory Authority and therefore, he is not required to make any submissions as far as the merits of the matter are concerned.

Ms Tajwar Khan, the learned A.G.P. also submits that she represents the respondents 2 and 3 which are the Authorities and they have nothing to do with the subject matter.

8. Shri Patil, the learned advocate has not made any submissions on merits of the matter, however, to assist the Court has placed the copy of the judgment given by the Delhi High Court in Letters Patent Appeal No.719/2010 and other connected matters. In this judgment in paragraph no.15 it is held that the Section 11 of the Act of 2005 prescribes a procedure which enables the Authority to take fair and just decision after following the principles of natural justice. In paragraph no.16 of the judgment, however, it is laid down that the Section 11(1) of the Act of 2005 postulates two circumstances when the procedure has to be followed :

(i) When the information relates to a third party and can be prima facie recorded as confidential,

(ii) when the information provided by the third party to a Public Authority is considered as confidential information by the third party.

9. Shri Kadu, the learned advocate for the respondent no.4 has supported the impugned order and has relied on the following judgments :

(i) State of Jharkhand and Another Vs. Navin Kumar Sinha and Another, ,

(ii) judgment dated 25th June, 2007 given by the Madras High Court in Writ Petition (MD) No.5427/2010 and other connected matters.

10. After hearing the learned advocates for the respective parties and considering the judgments referred above, in my view, it cannot be said that in each and every case the notice under Section 19(4) of the Act of 2005 is required to be issued to third party and hearing is to be afforded to the third party before any directions for supplying the information are given. The Division Bench of Delhi High Court has considered the scope of Section 11(1) of the Act of 2005 and has laid down that the notice is required to be given to third party in case information prima facie is considered as confidential and if it affects the rights of privacy of the third party.

11. The Division Bench of Jharkhand High Court in the case of State of Jharkhand and Anr. V/s. Navin Kumar Sinha and Anr. (cited supra) has dealt with the requirement of issuance of notice to the third party and the relevant conclusions are found in paragraph nos. 26 and 27 as follows :-

"26. Section 8(1)(d) is relevant so far instant case is concerned which, inter alia, provides that the authority may refuse to give information relating to commercial confidence, trade secret or intellectual property, 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 question, therefore, that falls for consideration is as to whether disclosure of various documents submitted by the bidders is a trade secret or commercial confidence or intellectual property. Prima facie, we are of the view that once a decision is taken in the matter of grant of tender, there is no justification to keep it secret. People have a right to know the basis on which the decision has been taken. If tenders are invited by the public authority and on the basis of tender documents, the eligibility of a tender or a bidder is decided, then those tender documents cannot be kept secret, that too, after the tender is decided and work order is issued on the ground that it will amount to disclosure of trade secret or commercial confidence. If the authorities of Government refuse to disclose the document, the very purpose of the Act will be frustrated. Moreover, disclosure of information, sought for by the petitioner, cannot and shall not be a trade secret or commercial confidence; rather disclosure of such information shall be in public interest, inasmuch as it will show the transparency in the activities of the Government.

27. As stated in the supplementary counter affidavit, the documents were provided to the Legislative Assembly as per the reports submitted by one M.L.A., Chairman of Jharkhand Vidhan Sabha Committee. The document, disclosure of which sought for, is the experience certificate issued by one company in favour of successful bidder and also the document related to turn over and profit of the limited company. Since the tender process is completed and contract has been awarded, it will not influence the contract. Besides the above, a citizen has a right to know the genuineness of a document submitted by the tenderer in the matter of grant of tender for consultancy work or for any other work. As noticed above, the tender process is completed and the contract has been awarded, therefore, it will not influence the contract. In any view of the matter, the document in question cannot be treated as trade secret or commercial confidence. In our considered opinion a contract entered into by the public authority with a private person cannot be treated as confidential after completion of contract.

The Special Leave Petition (Civil) No.18030/2007 challenging the above mentioned judgment is dismissed by the Hon"ble Supreme Court on 5th October, 2007.

The Madras High Court in Writ Petition (MD) No.5427/2010 and other connected matters has dealt with the requirement of issuance of notice to the third party and the conclusions are recorded in paragraph no.11 and 12 of the judgment as follows :-

"11. Therefore, the principal contention that a right accrues to the petitioner to object may be correct in the context if a document is exclusively submitted by any person to the Government authorities such as property statements, income tax returns etc., but in a case of lease deeds and transport permits which

emanate from the statutory authorities and where the petitioner cannot be said to be in exclusive possession, he cannot have a right to object to its being divulged as a third party. The lease deeds pertaining to minerals as well as transport permits are not documents prepared or to be kept by a prospecting mine operator but prospecting a mine or mineral is a privilege conferred by the State to the individuals, who accepts the norms prescribed under Mines and Minerals Act 1957 and the rules framed thereunder.

12. In the present case, when the third respondent as an Information Officer, ordering notice to the petitioner and taking their objection and refusing to furnish the documents sought for by a citizen is clearly beyond the scope of the RTI Act. If the information is available with the State and such information is in exclusive custody of the State, the question of seeking any opinion from the third party on such issues may not arise, especially, when they are public documents. By disclosure of such information, no privilege or business interests of the petitioner are affected. On the other hand, such a disclosure may help any party to act upon those documents and take appropriate steps."

12. If the impugned order is examined in the light of the above referred judgments, it has to be held that the directions given by the Commission to provide the information as sought vide Item no.5 of the application given by the respondent no.1 cannot be said to be an information which can be considered as confidential and in the exclusive possession of the petitioner, it being a Memorandum of Understanding to which the Government of Maharashtra is a party. However, the information sought by the respondent no.4 vide Item No.4 of his application, cannot be provided to the respondent no.4 without hearing the petitioner and considering its objections. The information sought by the respondent no.4 vide Item no.4 of his application, does not specify the documents in respect of which the information is sought and the directions to provide the information on such vague request may prejudice the petitioner.

13. The reliance placed on behalf of the petitioner on the judgment given in the case of R.K. Jain V/s. Union of India & Anr. (cited supra) is misdirected inasmuch as in this case, the information sought related to the annual confidential reports of the third party which objected to the providing of the information. In the judgment given in the case of Surupsingh Hrya Naik V/s. State of Maharashtra & Ors. (cited supra) again the issue was about giving of information relating to the hospital records. In the judgment given in the case of SKIL Infrastructure Private Limited & Anr. V/s. State Information Commissioner & Ors. (cited supra) the issue about supplying the information which was not exclusively in the custody of the third party and which related to the transactions of the State Government, did not fall for consideration. The judgments relied on behalf of the petitioner do not assist the petitioner.

As far as the facts of the present case are concerned, information sought by the respondent no.4 vide item no.5 of his application is concerning the Memorandum of Understanding to which the Government of Maharashtra is party and it cannot

be said that the information is exclusively related to the petitioner. The directions issued by the Commission to provide the information to the respondent no.4 sought vide Item no.5 of his application cannot be faulted with. However, the directions given by the Commission to provide the information sought by the respondent no.4 vide Item No.4 of his application could not have been issued without hearing the petitioner and considering his objections.

14. Resultantly, the writ petition is partly allowed. The impugned order is modified maintaining the directions issued by the Commission to provide the information to the respondent no.4 sought by him vide Item No.5 of his application and the directions issued by the Commission for providing the information sought by the respondent no.4 vide Item no.4 of his application are quashed. The respondent no.4 is at liberty to make proper application, if so advised, and the Public Information Officer and/or the Commission shall consider the application, if so filed, according to the provisions of the Act of 2005.

In the circumstances, the parties to bear their own costs.