

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 21.11.2014

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W.P.(C) 7923/2013

THDC INDIA LIMITED

..... Petitioner

versus

T. CHANDA BISWAS

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr Neeraj Malhotra and Mr P. Garg.

For the Respondents : Mr S. Nanda Kumar and Mr Parivesh Singh.

CORAM:-

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J (ORAL)

1. The petitioner impugns an order dated 29.04.2014 passed by the Central Information Commission (hereafter 'CIC') allowing the respondent's appeal and directing the petitioner to provide information relating to the proceedings of the Departmental Promotional Committee (hereafter 'DPC') for the years 2006, 2007 and 2009.

2. The controversy to be addressed is whether the petitioner can be compelled to disclose the minutes of the DPC proceedings held for promotion to the post of AGM.

3. The brief facts to address the aforesaid controversy are as under:-

3.1 The petitioner is a public corporation incorporated under the Companies Act, 1956. The entire share capital of the petitioner is held

between the Government of India and Government of Uttar Pradesh and the petitioner functions under the aegis of Ministry of Power. The respondent is an employee of the petitioner corporation and holds the post of a Deputy General Manager. The respondent filed an application under the Right to Information Act, 2005 (hereafter 'the Act') on 14.08.2009 seeking information with respect to meetings of the DPC. The relevant extract of her application dated 14.08.2009 indicating the information sought by her is quoted below:-

- “a) Attested Copy of DPC 2007 & attested copy of DPC 2008 proceedings for the post of AGMs.
- b) Attested Copy of Marks allotted by DPC Members in DPC 2007 for the post of AGMs.
- c) Attested Copy of Marks allotted by DPC Members in DPC 2009 for the post of AGMs.
- d) What are the criteria followed for promotions from DGM to AGM.
- e) Attested Copy of DPC 2006 proceedings for the post of DGM.
- f) Name of all eligible Senior Managers who appeared for DPC 2006 interview for the post of DGMs.
- g) How many were promoted as DGM w.e.f. 01.04.2006 and their names.
- h) What are the criteria followed for promotion from Sr. manager to DGM in 2006.”

4. The CPIO responded to the said application and declined to provide the information with respect to the DPC minutes as well as the interview marks obtained by candidates, whose promotion was considered by the

DPC. However, the other information as sought for was provided to the respondent.

5. Aggrieved by the CPIO's response of 14.09.2009, the respondent preferred an appeal before the First Appellate Authority. According to the respondent, she did not receive a response to the said appeal and, therefore, preferred a second appeal before the CIC.

6. At the material time the CIC was already considering another appeal preferred by the respondent with respect to denial of information relating to ACRs and promotions made from grade E-6 to E-7 for the year 2006 and made from grade E-7 to E-7A for the year 2007 and 2009. Both the appeals were taken up for hearing together and were disposed of by a common order dated 03.03.2010, directing the petitioner to provide the information sought by the respondent.

7. Aggrieved by the aforesaid common order dated 03.03.2010, the petitioner preferred a petition before this Court being W.P.(C) 2506/2010, which was disposed of by a judgment dated 08.03.2013. In so far as the petitioner's grievance regarding denial of information as sought by the application dated 14.08.2009 was concerned, this court remanded the matter to CIC to consider it *de novo*. This Court also clarified that the petitioner would be free to raise objections with regard to provisions of Section 8(1) (j) and Section 11 of the Act and the CIC was further directed to dispose of the appeal having regard to the judgment of the Supreme Court in **Girish Ramchander Deshpande Vs. CIC and Anr.**: (2012) 9 SCALE 700, and the judgment of this Court in **Arvind Kejriwal vs CPIO**

Officer & Anr.: 183 (2011) DLT 662 and *RK Jain vs UOI*: 2012 V AD (DEL) 443.

8. The CIC disposed of the said appeal and rejected the petitioner's contention that DPC proceedings were covered under Section 8 (1) (e) of the Act. The CIC further held that the ratio of the decision of the Supreme Court in **Girish Ramchander Deshpande** (*Supra*) and the decision of this Court in **Arvind Kejriwal** (*Supra*) would not be applicable as the respondent could not be considered as a third party since she was an officer of the organization. Accordingly, the CIC directed the petitioner to provide copies of DPC proceedings for the years 2006, 2007 and 2009.

9. The learned counsel for the petitioner has submitted that DPC proceedings contain confidential information about other officers and this being third party information cannot be disclosed to the respondent. It is contended that such information is exempt from disclosure under Section 8(1) (e) and Section 8 (1) (j) of the Act. It is further contended that the CIC had not found that the disclosure of such information was necessary in public interest. In addition, neither proceedings under Section 11 of the Act nor under Section 19 (4) of the Act were followed. The learned counsel referred to the decision of this Court in **THDC India Ltd vs. R.K. Raturi**: **W.P.(C) 903/2013** rendered on 08.07.2014 and contended that the issues agitated were covered by the said decision.

10. The learned counsel for the respondent was unable to dispute that the decision in the case of **R.K. Raturi** (*Supra*) authoritatively decided the issue involved in this petition. He, however, submitted that the matter be

remanded to the CIC for considering it afresh in the light of the aforesaid decision.

11. In **R.K. Raturi** (*Supra*) the respondent therein was also an employee of the petitioner corporation and was considered by the selection committee for promotion. He sought information with regard to the DPC minutes and the ACRs of other candidates, which was denied and the matter was carried in appeal to the CIC. The CIC directed the petitioner to provide photocopies of the DPC proceedings including the grading statement pertaining the recommended candidates as well as ACRs of the respondent therein. This Court following the decision of a Coordinate Bench in **Arvind Kejriwal** (*Supra*) held that the service record of a Government Employee contained in DPC Minutes was personal to such officer. Accordingly, this Court concluded that DPC minutes could not be provided to the respondent therein as it contained grading and interview marks of other employees and such information was exempt under Sections 8 (1) (e) and 8 (1) (j) of the Act. The Court further held that such information, *albeit*, personal could be disclosed in larger public interest. However, the procedure contemplated under Section 11 (1) and 19 (4) of the Act would necessarily have to be followed. The relevant extract of the said decision is quoted below:-

“11. This Court is also of the opinion that the finding of public interest warranting disclosure of the said information under Sections 8(1)(e) and 8(1)(j) of the RTI Act and the procedure contemplated under Sections 11(1) and 19(4) of the RTI Act are mandatory in nature and cannot be waived. In the present case, the CIC has directed the petitioner to provide DPC minutes to the respondent

without considering the defence of the petitioner under Section 8(1)(e) of the RTI Act and without following the procedure specified under Sections 11(1) and 19(4) of the RTI Act. It is pertinent to mention that Sections 11(1) and 19(4) of the RTI Act incorporate the principles of natural justice. Further, in the present case no finding has been given by CIC as to whether public interest warranted such a disclosure.”

12. I find no reason to differ from the aforesaid decision. I am also unable to agree with the contention that the matter be remanded back to the CIC for considering it afresh as the conclusion in the case of **R.K. Raturi** (*Supra*) is definite; DPC minutes cannot be disclosed except in public interest and that too after following the procedure specified under Sections 11(1) and 19 (4) of the Act.

13. In my view, the reasoning of the CIC that the respondent being an officer of the petitioner cannot be considered as a third party, is not sustainable. The information relating to ACRs and grading of an employee are personal to him and in this respect other employees are, definitely, not entitled to share that information. Accordingly, the petition is allowed and the impugned order date 29.04.2013 is set aside. The parties are left to bear their own costs.

VIBHU BAKHRU, J

NOVEMBER 21, 2014

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