GAHC010125642014

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/3608/2014

M/S GUWAHATI CARBON LIMITED and ANR.
A COMPANY INCORPORATED UNDER THE PROVISIONS OF THE COMPANIES ACT, 1956 AND HAVING ITS REGD. OFFICE SITUATED AT PUB BORAGAON, GORCHUK, GHY-35, ASSAM, REP. BY SRI SANJIB KUMAR BARUAH, COMMERCIAL MANAGER

2: SANJIB KUMAR BARUAH
S/OLT. D.P. BARUAH
R/O ROYAL PINK HOUSE
BYE LANE NO.2
ADARSHAPUR
KAHILIPARA
GHY-1

VERSUS

THE CENTRAL INFORMATION COMMISSIONER and 3 ORS
CUM 2ND APPELLATE AUTHORITY, A BODY CONSTITUTED UNDER THE RIGHT TO INFORMATION ACT,2005, ROOM NO.308, 2ND FLOOR, AUGUST KRANTI BHAWAN, DHIKAJI CAMA PLACE, NEW DELHI-66

2:THE ADDL. COMMERCIAL OF CENTRAL EXCISE and SERVICE TAX COMMISSIONERATE
CUM 1ST APPELLATE AUTHORITY
G.S. ROAD
BHANGAGARH
GHY-5

3:THE DY. COMMISSIONER OF CENTRAL EXCISE
CUM CENTRAL PUBLIC INFORMATION OFFICER
G.S. ROAD
BHANGAGARH
GHY-5

4:SHARMISTHA MITRA
SINHA
57/1/1 DHARAMATALLA LANE
FLAT NO.101
FIRST FLOOR
SIBPUR
HOWRAH
WEST BENGAL-71110

Advocate for the Petitioners : Mr. A. Das, Advocate

Advocate for the Respondents : Mr. S. C. Keyal, SC, Central Excise

BEFORE

HONOURABLE MR. JUSTICE DEVASHIS BARUAH

Date of Hearing : 04.08.2023

Date of Judgment : 04.08.2023

JUDGMENT AND ORDER (ORAL)

The instant writ petition has been filed challenging the order dated 27.05.2014 passed by the respondent No.1 as the Second Appellant Authority under the Right to Information Act, 2005 whereby the decision of the First Appellate Authority under the Right to Information Act, 2005 dated 15.12.2011 was upheld.

2. The facts involved in the instant case is that the respondent No.4 herein had filed an application before the Central Public Information Officer, Office of the Assistant Commissioner of Central Excise, G. S. Road, Bhangagarh on 01.09.2011 seeking various information under the provisions of Right to Information Act, 2005.

3. A perusal of the said information so sought for would show that the said information pertains to granting of the eligibility status of the petitioners'

Company under the Industrial Policy of 1997 and the exemption to be granted in terms with the Central Excise Notification No.33/99-CE and Notification No.32/99-CE, both dated 08.07.1999 and the orders passed by the public authorities. It reveals from the records that the said application was rejected by the Public Information Officer, i.e. the respondent No.3. Thereupon, the respondent No.4 preferred an appeal before the First Appellate Authority, i.e. the respondent No.2. The respondent No.2 vide an order dated 15.12.2011, taking into account that the information so sought for were in respect to certain actions and orders being passed by the public authorities which can be revealed under the Right to Information Act, 2005 directed the respondent No.3 to provide copies of all documents containing the information sought for by the respondent No.4 within 30 days of the receipt of the said order subject to realization of the appropriate fees as laid down in the Right to Information (Regulation of Fee & Cost) Rules, 2005. The petitioners herein being aggrieved preferred a second appeal before the respondent No.1 and the second appeal was dismissed vide an order dated 27.05.2014 thereby affirming the order passed by the First Appellate Authority. Being aggrieved, the petitioners are before this Court under Article 226 of the Constitution.

4. Mr. A. Das, the learned counsel appearing on behalf of the petitioners submits that the First Appellate Authority as well as the Second Appellate Authority did not take into consideration Section 8 (1) (d) and 8 (1) (e) which were exceptions from disclosure of information and the case of the petitioners herein falls squarely within the said purview of the said provisions, and as such, the First Appellate Authority as well as the Second Appellate Authority erred in law in directing the respondent No.3 to provide the said information.

5. This Court finds it relevant at this stage to take note of that Section 8 (1)

begins with the non-obstinate phrase "notwithstanding anything contained in this Act". The import of this phrase is that Sub-Section (1) of Section 8 carves out an exception to the general obligation to disclose under the Right to Information Act, 2005 (for short, 'The RTI Act') where the conditions set out in any of the Sub-Clauses in Clause (1) of Section 8 are satisfied, the Information Officer is under no obligation to provide information to the applicant. It is further seen that by expressly enumerating the circumstances in which the disclosure of information may be restricted on the ground of certain identified harm, the RTI Act negates the notion that the information may be withheld on the grounds of confidentiality simplicitor. A harm under Section 8(1) must be identified and invoked to justify the non-disclosure of a document requested for under the RTI Act. It is also pertinent to note that Clauses (a), (b), (c), (f) (g) and (h) to Sub-Section (1) of Section 8 provide an absolute exemption from the obligation of disclosure under the RIT Act. However, Clauses (d), (e), (i) and (j) to Sub-Clause (1) of Section 8 provide qualified exemption from disclosure, viz. while Sub-Clause (a) of Clause (1) of Section 8 provides an unconditional exemption wherein it is determined that the disclosure of the information sought would prejudicially affect the sovereignty and integrity of India. But on the other hand, Sub-Clause (d) to Clause (1) of Section 8 provides that the information is exempted from disclosure where such document/disclosure would harm the competitive position of a third party. It is further relevant to take note of that the said exemption under Section 8 (1) (d) is qualified by the phrase "unless the competent authority is satisfied that larger public interest warrants the disclosure". Thus the exemption under Sub-Clauses (d) and (e) of Clause (1) of Section 8 is not absolute but is qualified and cannot be invoked where there exist the larger public interest. It is further seen that where the Information

Officer determine that larger public interest warrants a disclosure, the exemption in Sub-Clauses (d) and (e) of Clause (1) of Section 8 cannot be invoked as the information must be disclosed.

6. It is also relevant to take note of Section 11 of the Right to Information Act, 2005 which relates to disclosure of third party information. It is pertinent to note that third party information in terms with Section 11 (1) of the RTI Act are information which have been supplied by a third party and has been treated as confidential by the third party.

7. This Court further finds it relevant to take note of the judgment of the Constitution Bench in the case of ***Central Public Information, Supreme Court of India vs. Subhash Chandra Agarwal***, reported in ***(2020) 5 SCC 481*** wherein at paragraph No.70, the Supreme Court in its majority judgment after making a copious detail of the various earlier pronouncements observed what comes within the ambit of personal information. The said paragraph being relevant is quoted herein under:-

> "…….
>
> ***70.*** *Reading of the aforesaid judicial precedents, in our opinion, would indicate that personal records, including name, address, physical, mental and psychological status, marks obtained, grades and answer sheets, are all treated as personal information. Similarly, professional records, including qualification, performance, evaluation reports, ACRs, disciplinary proceedings, etc. are all personal information. Medical records, treatment, choice of medicine, list of hospitals and doctors visited, findings recorded, including that of the family members, information relating to assets, liabilities, income tax returns, details of investments, lending and borrowing, etc. are personal information. Such personal information is entitled to protection from unwarranted invasion of privacy and conditional access is available when stipulation of larger public interest is satisfied. This list is indicative and not*

exhaustive."

8. In the backdrop of the above, let this Court, therefore, take note of the information which were sought for vide the application dated 01.09.2011. From a perusal of the information so sought for as enumerated from Clauses 1 (a) to 1 (x), the said information pertains to public activity except the information so sought for in Clause 1(g). The information as regards Clauses 1 (a), (b), (c), (d), (e), (f), (h), (i), (j), (k), (l), (m), (n), (o), (p), (q), (r), (s), (t), (u), (v), (w) and (x) are information which are in relation to claiming exemption in terms with the Industrial Policy of 1997 and the Notification issued by the Central Excise Authorities granting exemption as well as the exemption and benefits so granted to the petitioners" Company by the Central Excise Authorities.

9. Under such circumstances, this Court is of the opinion that there is no infirmity in the order passed by the First Appellate Authority dated 15.11.2011 in directing the said information in respect to the information so sought for in the application dated 01.09.2011 from Clauses 1 (a) to 1 (x) except Clause 1(g).

10. Now coming to the information as regards Clause 1 (g) of the Application, this Court enquired with the learned counsel for the petitioners as to whether the petitioners claimed confidentiality while furnishing the list of manufacturers or suppliers of the equipments/machineries of plants before the Central Excise Department. The learned counsel for the petitioner submitted that he has no instructions in that regard. It is also relevant to take note of that there is no pleading to the effect that confidentiality was claimed at the time of furnishing the information pertaining to the list of manufacturers/suppliers of the equipments/machineries of the plants before the Central Excise Department. Taking into account the above, it is the further opinion of this Court that the

information sought for under Clause 1 (g) of the application dated 01.09.2011 would not come within the ambit of Section 11 of the Right to Information Act, 2005.

11. This Court further finds it relevant to take note of another submission of the learned counsel for the petitioners which pertains to Section 19 (4) of the RTI Act in as much as it is the submission of the learned counsel for the petitioners that the reasonable opportunity had to be given to the third party when an appeal is preferred relating to the information of third party. The said submission though at the first blush looks attractive but the same is misconceived taking into account that the petitioners herein did not claim confidentiality to come within the ambit of Section 11 of RTI Act.

12. In that view of the matter, this Court does not find any merit in the instant writ petition for which the instant writ petition stands dismissed.

JUDGE

Comparing Assistant