

THE HIGH COURT OF TRIPURA
AGARTALA

WP(C) 231 OF 2010

Dr. Dayashis Chakma,
 Medical Officer,
 Son of Shri Ranjan Bikash Chakma,
 C/O office of the PGP, Chhailengta,
 P.O. Chailengta,
 P.S.Longtraai Valley,
 District-Dhalai Tripura.

....**Petitioner**

- Vs -

- 1. The State Chief Information Commissioner,**
 Tripura Information Commission,
 P.N. Complex, Gorkhasbasti,
 P.O. Kunjaban, P.S. East Agartala,
 District-West Tripura.
- 2. The Director of Health Service,**
 (Head of the Public Authority)
 Government of Tripura,
 P.N. Complex, Gorkhabasti,
 P.O. Kunjaban, P.S. East Agartala,
 District- West Tripura.
- 3. The Chief Medical Officer**
 (First Appellate Authority)
 Dhalai District, Ambassa,
 P.O. & P.S. Ambassa, Tripura.
- 4. The Sub Divisional Medical Officer**
 (State Public Information Officer)
 C/O Office of the Chhailengta Sub-Divisional Hospital,
 P.O. Chhailengta, P.S. Longtraai Valley,
 District-Dhalai Tripura.
- 5. Mr. Prem Das Dahiya,**
 Son of Late Shri Ram Sarup
 Vill & P.O. Nahara, District-Sonepat,
 Pin-131103, Haryana.

....**Respondents**

BEFORE
THE HON'BLE MR. CHIEF JUSTICE DEEPAK GUPTA
THE HON'BLE MR. JUSTICE S.C. DAS

For the petitioner : Mr. A.K.Bhowmik,
 Sr. Advocate,
 Mr. M. Debbarma, Advocate.

For the respondent No. 1 : Mr. S.M.Chakraborty,
 Sr. Advocate,
 Ms. P. Sen, Advocate.

For the respondent No.5 : Mr. Somik Deb, Advocate.

Date of hearing & delivery
 of Judgment & order : **12.08.2015**

Whether Fit for Reporting : **No**

JUDGMENT & ORDER (ORAL)

(Deepak Gupta, C.J.)

This writ petition is directed against the order dated 10.05.2010 passed by the Tripura Information Commission whereby it has allowed the appeal filed by the information seeker (respondent No.5 herein) and has held that he is entitled to the information sought by him.

2. The main grounds of challenge raised by the petitioner who is the person whose information was sought is that the information is covered by Section 8(j) of the Right to Information Act. His second contention is that the order has been passed in violation of Section 19(4) of the Act since no notice was issued to the petitioner before passing the order. The last contention on behalf of the petitioner is that the Tripura Information Commission has condoned the delay in filing the petition without issuing notice to any party and therefore, the rules of natural justice have been violated.

3. The facts giving rise to this petition are that the information seeker sought information relating to the date of birth, place of birth and other particulars with regard to the birth certificate of the petitioner herein and also copy of the declaration of his nationality and his scheduled tribe Certificate etc. The Principal Information Officer declined to give this information on the grounds that this information was exempted from being handed over to any other person in terms of Section 8(1)(e) and 8(1)(j) and Section 11 of the Act. The appeal filed by the information seeker (respondent No.5 herein) was also rejected.

It would be pertinent to mention that both the Principal Information Officer and the Appellate authority heard the petitioner before deciding the matter. Thereafter, the information seeker filed a second appeal to the State Information Commission. We have perused the records of the State Information Commission and we find that admittedly there was delay in filing the second appeal. The respondent No.5 who was the appellant before the State Information Commission sent a fax message on 01.04.2010 addressed to the Commission wherein he stated that he had not filed the appeal within the stipulated period of 90 days and he gave reasons why he could not do so. This fax message was entertained on 1st April, 2010 itself and this message was made part of the record and on the basis of this fax message the delay was condoned even before issuing notice to the parties who were made respondents in the appeal i.e. the first appellate authority and the State Public Information Officer. As

far as the present petitioner is concerned, he was not even made a party in the said appeal.

4. We may firsts deal with the preliminary objection raised by Mr. Somik Deb. His preliminary submission is twofold but is based on Section 23 of the Act which reads as follows:-

“23. Bar of jurisdiction of courts.—*No court shall entertain any suit, application or other proceedings in respect of any order made under this Act and no such order shall be called in question otherwise than by way of an appeal under this Act.”*

5. Mr. Deb submits that in view of the bar contained in Section 23, no Court including the High Court can entertain any proceedings and writ petitions are also proceedings and therefore, no proceedings lie before the High Court against any order of the State Information Commission. The Second limb of his argument is that even if the writ jurisdiction of the High Court is not ousted, the same can only be exercised only when there is complete lack of jurisdiction in the State Information Commissioner and merely because the jurisdiction has been exercised rightly or wrongly is not a ground to interfere in the order of the State Information Commissioner. These arguments have been raised only for the purpose of being rejected. There is no merit whatsoever in the arguments.

As far as the first argument is concerned, it is against the whole concept of the Constitution of India where the rule of law is granted primacy. The right of judicial review is a part of the basic structure of the Constitution and the decision of any

authority is subject to judicial review under Article 226 or under Article 32 of the Constitution of India. The law in this regard is absolutely clear.

A Constitution Bench of the Apex Court in **L. Chandra Kumar V. Union of India, (1997) 3 SCC 261** held as follows:-

**“78.
We, therefore, hold that the power of judicial review over legislative action vested in the High Courts under Article 226 and in this Court under Article 32 of the Constitution is an integral and essential feature of the Constitution, constituting part of its basic structure. Ordinarily, therefore, the power of High Courts and the Supreme Court to test the constitutional validity of legislations can never be ousted or excluded.**

79. We also hold that the power vested in the High Courts to exercise judicial superintendence over the decisions of all courts and tribunals within their respective jurisdictions is also part of the basic structure of the Constitution. This is because a situation where the High Courts are divested of all other judicial functions apart from that of constitutional interpretation, is equally to be avoided.”

6. The Apex Court has repeatedly held that equality, rule of law, judicial review and separation of powers though different concepts are part of the basic structure of the Constitution. There can be no rule of law if there is no equality before the law; and rule of law and equality before the law would be empty words if their violation was not a matter of judicial scrutiny or judicial review and judicial relief. Reference may be made to the judgment of the Apex Court in **M. Nagaraj V. Union of India, (2006) 8 SCC 212** in this behalf.

7. One of the cornerstones of our Constitution scheme is that judicial review is part and parcel of the basic structure of the Constitution. Every decision which affects the rights of any party is subject to judicial review. Policy matters may be beyond the scope of judicial review but when any administrative decision affects the rights of the parties then that decision can be challenged though the grounds of challenge may be limited. As far as judicial or quasi judicial authorities are concerned, their judgments and orders are definitely amenable to the writ jurisdiction of this Court. Therefore, we have no hesitation in rejecting the first submission of Mr. Deb that this Court has no jurisdiction in the matter.

8. Coming to the second argument, as far as the scope of judicial review of administrative action is concerned, the principles in this regard are absolutely clear. One of the first principles laid down is that a person in whom discretion is vested must exercise his discretion upon reasonable grounds. A discretion does not empower a man to do what he likes merely because that is his will—he must exercise the discretion by following a course of reason and he must act reasonably. The rules of natural justice are also to be read into every administrative and judicial action. One of the greatest achievements of the development of the legal jurisprudence in India has been the development of the principles of natural justice and one of the main facets of natural justice is the right to be given a fair hearing. No man should be condemned unheard.

Every person whose rights are to be affected has an undeniable right to be heard in the matter.

9. The principles of natural justice have been accepted in our jurisprudence in all administrative and quasi judicial and judicial actions and it is too late in the day for the respondent No.5 to urge that even violation of these principles is not amenable to writ jurisdiction. From the facts we have narrated above, it is apparent that the State Information Commission did not deem it fit to issue notice to the respondents arrayed before it before condoning the delay. From the records we find that no application filed for condonation of delay but on the date when the matter was taken up by the Commission some fax message was received and merely on the basis of that fax message the delay was condoned without even giving the other party a chance of being heard.

10. These are not errors of jurisdiction as is sought to be made out by Mr. Somik Deb. But this is total unreasonableness and violation of the rules of natural justice and no Court can condone such violation of the principles of natural justice. Therefore, we reject the second contention of Mr. Deb and hold that the rules of natural justice have been violated in such a flagrant manner that the decision is amenable to the writ jurisdiction of this Court.

11. Reliance placed by Mr. Deb on the judgment of the Apex Court in **Kurupati Maria Das V. Dr. Ambedkar Seva**

Samajan, (2009) 7 SCC 387 is totally misplaced. First of all the difference is that, in that case the Court was considering a Constitutional bar created under Article 243 (z) (g) of the Constitution of India wherein it is stated that any election to the municipality shall not be called in question except by an election petition. This bar is created under the Constitution and even after the election petition is decided by the concerned Election Commission, the writ Court still have jurisdiction to interfere in the matter. In a case arising out of the Right to Information Act, this Court may not straightway entertain an appeal against order of the appellate authority or the order of the State Public Information Officer because a hierarchy has been created where an appeal lies to the State Information Commission but the order of the State Information Commission is definitely amenable to the writ jurisdiction of this Court.

In this behalf we may take judicial notice of the fact that the Supreme Court itself has filed writ petitions in the Delhi High Court challenging the orders passed by the Chief Public Information Commissioner based at New Delhi whereby the Supreme Court was directed to grant certain information. Day in and day out orders are being passed by High Courts and no authority under the Right to Information Act has been placed before us by Mr. Deb to show that any Court in the country has held that the writ jurisdiction of the Court is barred.

12. Reliance placed by Mr. Somik Deb on the judgment of in **Mafatlal Industries Ltd. V. Union of India, (1997) 5 SCC 536** is also similarly misplaced. That was a case where the High

Court had entertained writ petitions for refund of tax which had wrongly been collected from the writ petitioners without following the procedure laid down in Section 11-B of the Central Excise and Salt Act. The Apex Court held as follows:-

“No suit for refund of duty is maintainable in that behalf. So far as the jurisdiction of the High Courts under Article 226 of the Constitution--- or of this Court under Article 32--- is concerned, it remains unaffected by the provisions of the act. Even so, the Court would, while exercising the jurisdiction under the said articles, have due regard to the legislative intent manifested by the provisions of the Act.”

13. The Court held that the writ jurisdiction of the High Court was not affected by the bar created under Section 11-B of the Act but while exercising its jurisdiction the Court should exercise in restraint and should act in accordance with the mandate of Section 11 of the said Act. The Apex Court did not hold that the High Court had no jurisdiction but only held that the mandate of the law should be followed and that is what we intend to do in the present case.

14. Coming to the merits of the case, we may make reference to the certain provisions of the Right to Information Act. Section 2(n) defines third party as follows:-

“third party” means a person other than the citizen making a request for information and includes a public authority.

15. Section 8 provides exemptions from disclosure of information. This section provides that certain information may not be disclosed even under the Right to Information Act. We may

make reference to certain provisions not for purpose of deciding the merits of the case but only for the purpose of deciding as to who is the third party within the meaning of the Right to Information Act.

16. Clause (d) of sub Section (1) of Section 8 exempts information which may be related to commercial confidence, trade secrets, intellectual property of rights etc. Sub-Section (e) deals with information available to a person in his fiduciary relationship such as an information which may be available with the counsel in relation to his client or a Chartered Accountant in relation to his client. Clause (g) deals with information the disclosure of which may endanger the life or physical safety of any person and Clause (j) deals with personal information of an individual the disclosure of which is not related to any public interest. We are making reference to these Clauses not to decide the case on merits but only with a view to decide who is a third party.

17. Section 11 deals with third party information and sub Section (1) reads as follows:-

“11. Third Party information.—(1) Where a Central Public Information Officer or the State Public Information Officer, as the case may be, intends to disclose any information or record, or part thereof on a request made under this Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within five days from the receipt of the request, give a written notice to such third party of the request and of the fact that the

Central Public Information Officer or State Public Information Officer, as the case may be, intends to disclose the information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party shall be kept in view while taking a decision about disclosure of information.

Provided that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party.”

18. Section 19(4) which has been relied upon by Mr. A.K.Bhowmik, Learned Sr. counsel for the petitioner reads as follows:-

“(4) If the decision of the Central Public Information Officer or State Public Information Officer, as the case may be, against which an appeal is preferred relates to information of a third party, the Central Information Commission or State Information Commission, as the case may be shall give a reasonable opportunity of being heard to that third party.”

19. Who is a third party? It is contended by Mr. Deb that the only third party is a non citizen with regard to whom information is sought and submits that since the respondent No.5 has disputed the citizenship of the petitioner, he is not a third party. We are totally unable to accept this contention. The language of section 2 is absolutely clear. Third party means any person other than the person making a request for information. We have to read section 2(n) in conjunction with Section 8 and Section 11. Under Section 8 as pointed out by us above, the party whose trade secrets or commercial information is sought would

also be a third party. The party whose life may be endangered because of the disclosure of the information would also be a third party. The party whose personal information is sought under sub Section (j) of Section 8 is also a third party. In such cases where information is sought with regard to a third party in case the State Public Information Officer was the appellate authority do not straightway reject the application and want to provide the information, they must issue notice to the third party in terms of Section 11, hear the third party and then decide whether the public interest outweighs the private interest of the individual. Even the information of a third party can be disclosed under certain circumstances but the third party has been given a right to appear before the authorities under the Right to Information Act and point out that the disclosure of the information is not for the public interest or that the disclosure of the information may cause harm or injury to the interest of the third party and therefore, the same may not be disclosed. In the present case both the PIO and the Appellate authority had issued notice to the petitioner.

20. Section 19(4) in fact leaves no manner of doubt in this regard. The said section is absolutely clear that if the Central Public Information Officer or State Public Information Officer as the case may be against whose order an appeal is preferred has declined to give an information of a third party then the Central Information Commission or the State Information Commission must give a reasonable opportunity of being heard to that third party.

21. At the cost of repetition, we are again mentioning that we are not going into the merits of the case. Whether the information is covered by Section 8 or not, is not for us to decide. However two authorities had held this information was covered under Section 8 of the Right to Information Act. Therefore, if the Information Commissioner was to take a contrary view it was bound to hear the third party who is the present petitioner in the present case. No order could have been passed in his absence because that order affects his rights.

22. In view of the above discussion, we allow the writ petition, set aside the order of the Tripura Information Commission and remit the matter back to the Tripura Information Commission to decide the case afresh. It is made clear that the Tripura Information Commission must issue notices to the petitioner as well as to the State Public Information Officer i.e. the Sub Divisional Medical Officer, respondent No.4 and the Appellate authority i.e. the Chief Medical Officer, respondent No.3 and after giving them a hearing shall first decide whether there are sufficient grounds to condone delay or not. Only in case the delay is condoned, then the appeal shall be heard on merits.

23. The appeal is allowed in the aforesaid terms with costs assessed at Rs. 5000/-. The costs only to be borne by the respondent No.5.

24. The record of the Commission is returned to Mr. S.M.Charkaborty, learned Sr. counsel.

25. The writ petition accordingly stands disposed of.

JUDGE

CHIEF JUSTICE