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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Pronounced on: 7th January, 2016

+ LPA 24/2015 & CM No.965/2015

THE REGISTRAR SUPREME COURT OF INDIA Appellant

Through: Mr.A.S.Chandhiok, Sr. Advocate
with Mr. Ritesh Kumar and
Mr.Mayank Bamniyal, Advocates

Versus

COMMODORE LOKESH K. BATRA & ORS. Respondents

Through: Mr.Prashant Bhushan and Mr.Pranav
Sachdeva, Advocates

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE JAYANT NATH

J U D G M E N T

: **G.ROHINI, CHIEF JUSTICE**

1. This appeal has been preferred against the order of the learned Single Judge dated 04.12.2014 in W.P.(C) No.6634/2011. The writ petitioner is the appellant before us.

2. The respondent No.1 herein made two applications dated 17.12.2009 and 22.12.2009 under the Right to Information Act, 2005 seeking details of the cases pending before the Supreme Court of India in which the arguments have been heard and the orders are reserved during the period 2007-2009. The Central Public Information Officer (CPIO) of the Supreme Court of India had not provided the information on the ground that it was not available in that form. The appeals preferred by the respondent No.1 were

dismissed by the First Appellate Authority under the Act. However, the Second Appeals were disposed of by the Central Information Commission (CIC) by order dated 03.08.2011 directing the CPIO to provide the information within 15 days if available centrally and if the information sought was centrally not available to bring it to the notice of the competent authority in the Supreme Court to ensure that necessary arrangements are made in future for compiling such information and disclosing it in the public domain.

3. The said order of CIC dated 03.08.2011 was assailed in W.P.(C) No.6634/2011 by the Registrar, Supreme Court of India.

4. The learned Single Judge held that the order of CIC dated 03.08.2011 to the extent that it requires the information regarding the period for which the judgments are pending after being reserved to be placed in public domain cannot be sustained. However, the learned Single Judge upheld the direction of CIC to maintain the records in a manner so that the information regarding the period for which the judgments are pending after being reserved is available with the petitioner in future.

5. Assailing the said order of the learned Single Judge dated 04.12.2014 to the extent of upholding the direction of the CIC to maintain the records as mentioned above, the present appeal is filed by the writ petitioner.

6. We have heard Shri A.S. Chandhiok, the learned Senior Counsel appearing for the appellant and Shri Prashant Bhushan, the learned counsel appearing for the respondents.

7. The specific case of the CPIO is that no data is maintained by the Registry in the manner as sought for by the applicant. However, the contention of the respondent No.1 is that if such information has not been maintained in the past, a direction can be given for compiling of such information in future so as to enable the public to have the information about the pending cases.

8. Though the learned Single Judge accepted the plea of the writ petitioner/CPIO that the information is not collated and analyzed in the manner as sought by the respondent No.1 and that the Act does not enjoin a public authority to create, collect or collate information that is not available with it, it was opined that the said principle of law cannot be used to deny information that is available with a public authority but not in the form as is sought.

9. The said conclusion of the learned Single Judge is assailed in this appeal contending *inter alia* that having found that the information is not maintained by CPIO in the manner sought for, the learned Single Judge is not justified in upholding the direction of CIC for compiling such information for disclosure to public in future.

10. Drawing attention of this court to the definitions of “information” under Section 2(f) and “right to information” under Section 2(j) of the Act, it is vehemently contended by Shri A.S. Chandhiok, the learned Senior Counsel appearing for the appellant that the information to which the applicant can have access to is only the information which is held by any public authority. Thus, according to the learned Senior Counsel only that information which is already available with the public authority can be

supplied under the Act. Placing reliance upon the decision in ***CBSE v. Aditya Bandopadhyay & Ors.***; **(2011) 8 SCC 497**, the learned Senior Counsel further submitted that the Act does not enjoin a public authority to collect or collate the non-available information and then furnish to an applicant.

11. We have also heard the learned counsel appearing for the respondent No.1 at length.

12. In ***CBSE v. Aditya Bandopadhyay & Ors.*** (supra), it has been held:

“35. At this juncture, it is necessary to clear some misconceptions about the RTI Act. The RTI Act provides access to all information *that is available and existing*. This is clear from a combined reading of Section 3 and the definitions of “information” and “right to information” under clauses (f) and (j) of Section 2 of the Act. If a public authority has any information in the form of data or analysed data, or abstracts, or statistics, an applicant may access such information, subject to the exemptions in Section 8 of the Act. But where the information sought is not a part of the record of a public authority, and where such information is not required to be maintained under any law or the rules or regulations of the public authority, the Act does not cast an obligation upon the public authority, to collect or collate such non-available information and then furnish it to an applicant.....”

13. It is clear from the law laid down in ***CBSE v. Aditya Bandopadhyay & Ors.*** (supra) that an applicant under the Act has access to only such information that is available and existing with the public authority subject to the exemptions in Section 8. Section 19(8)(a) of the Act, no doubt, empowers the CIC or SIC to require the public authority to take any such

steps as may be necessary to secure compliance with the provisions of the Act including by providing access to information if so requested in a particular form. However, the word ‘form’ used in Section 19(8)(a)(i) again refers to the definitions of “information” and “right to information” under Section 2(f) and Section 2(j)(iv) apart from sub-Section (9) of Section 7 which provides that an information shall ordinarily be provided in the form in which it is sought. This aspect has also been considered in *CBSE v. Aditya Bandopadhyay & Ors.* (supra) and it was made clear in Para 64.1:

“64.1. Sub-clause (i) of Section 19(8)(a) empowers a Commission to require the public authority to provide access to information if so requested in a particular “form” (that is, either as a document, microfilm, compact disc, pen drive, etc.). This is to secure compliance with Section 7(9) of the Act.”

14. As we could see, even under Section 4(1)(a) of the Act, the public authority is obligated to maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information under the Act. The expression “record” has been defined in Section 2(i) as under:

“Section 2(i) “record” includes-

- (i) any document, manuscript and file;
- (ii) any microfilm, microfiche and facsimile copy of a document;
- (iii) any reproduction of image or images embodied in such microfilm (whether enlarged or not); and
- (iv) any other material produced by a computer or any other device;”

15. On a combined reading of Section 4(1)(a) and Section 2(i), it appears to us that the requirement is only to maintain the records in a manner which

facilitates the right to information under the Act. As already noticed above, “right to information” under Section 2(j) means only the right to information which is held by any public authority. We do not find any other provision under the Act under which a direction can be issued to the public authority to collate the information in the manner in which it is sought by the applicant.

16. We are, therefore, unable to agree with the conclusion of the learned Single Judge. Hence, the order under appeal to the extent of upholding the direction of CIC in the order dated 03.08.2011 not being in conformity with the provisions of the Act and the law laid down in ***CBSE v. Aditya Bandopadhyay & Ors.*** (*supra*) cannot be sustained.

17. Accordingly, the order under appeal to the extent of the impugned direction as well as the order of CIC dated 03.08.2011 are hereby set aside and the appeal shall stand allowed. CM No.965/2015 shall accordingly stand disposed of.

No costs.

CHIEF JUSTICE

JAYANT NATH, J

JANUARY 07, 2016

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