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HIGH COURT OF CHHATTISGARH, BILASPUR**Order reserved on : 14.07.2017****Order delivered on : 04.09.2017****Writ Petition (C) No.2172 of 2016**

High Court of Chhattisgarh, Through Registrar General, High Court of Chhattisgarh, Bilaspur, Civil and Revenue District Bilaspur (CG)

----Petitioner**Versus**

1. Chhattisgarh State Information Commission, through Secretary, Chhattisgarh State Information Commission, 1st Floor, Indravati Khand, Shashtri Chowk, Raipur (CG)
2. P.S. Chouhan, S/o Late Shri D.S. Chouhan, Aged about 78 years, R/o Smriti Bhawan, Near Green Chowk, Station Road, Durg (CG)

---- Respondents

For Petitioner	:	Mr.R.S. Marhas, Advocate
For Respondent No.1	:	Mr.Shyam Tekchandani, Advocate
For Respondent No.2	:	None present

Hon'ble Shri Justice Sanjay K. Agrawal**C.A.V.Order**

1. Impugning legality, validity and correctness of the order dated 21.3.2016 (Annexure P/1) passed by respondent No.1/State Information Commission, this writ petition under Article 226 of the Constitution of India has been filed.
2. Respondent No.2 made an application on 20.5.2015 to the Public Information Officer of the petitioner, seeking certain information relating to voluntary retirement of Mr.A.K. Patel, Additional District Judge, Durg and also demanded

documents including the copies of complaints in respect of corruption/judicial irregularities allegedly committed by Mr.A.K. Patel during 1998 to 2003 and action taken thereon. The Public Information Officer informed respondent No.2 that the information with regard to complaints made against Mr.A.K. Patel and the action taken thereon could not be given as no specific and detail information of complaints for the aforesaid period was furnished, therefore, in absence of clear and detail information, same could not be provided. However, some information was provided to respondent No.2 upon payment of usual charges. Respondent No.2 preferred an appeal before the Registrar General/First Appellate Authority under Section 19 (1) of the Right to Information Act, 2005 (hereinafter called as 'RTI Act') giving a detailed description of the facts pertaining to his case. The First Appellate Authority by its order dated 12.8.2015 dismissed the first appeal referring to the provisions of Section 8 (1) (e) & (f) of the RTI Act and also relying upon the judgment of the Supreme Court in the matter of Girish Ramchandra Deshpande Vs. Central Information Commissioner and others¹ holding that complaint made against judicial officers falls under the expression “personal information” and disclosure of which has no relationship to any public activity or in public interest. It was also held that respondent No.2 was

¹ (2013) 1 SCC 212

not able to establish that disclosure of the information sought was in larger interest and it was held that disclosure of information would cause unwarranted invasion of the privacy of the individual as defined under Section 8 (1) (j) of the RTI Act. Respondent No.2 preferred second appeal before the State Information Commission, Raipur. The State Information Commission partly allowed the appeal and held that complaints made against Mr. A.K. Patel, Additional District Judge do not amount to personal information and therefore, respondent No.2 is entitled to copies of the complaints made against Mr.A.K.Patel during 1998 to 2003.

3. Mr.R.S.Marhas, learned counsel for the petitioner, would submit that the impugned order passed by the State Information Commission is in teeth of Section 8 (1) (e) & (j) of the RTI Act.
4. Mr.Shyam Tekchandani, learned counsel appearing for respondent No.1, would support the impugned order.
5. Despite service of notice, none has appeared on behalf of respondent No.2.
6. I have heard learned counsel appearing for the parties, considered their rival submissions made hereinabove and also gone through the record with utmost circumspection.

7. From perusal of the impugned order, it appears that the State Information Commission has held that complaints made against Mr.A.K.Patel are not personal information of Mr.Patel, therefore, respondent No.2 is entitled for copies of those information and further held that since respondent No.2 has not pressed the second part of the information sought, it is not being considered and directed for supply of copies of complaints in relation of corruption/judicial irregularities committed by Mr.A.K. Patel during 1998 to 2003.

8. Section 8 (1) (j) of the RTI Act states as under:-

“8 (1) (j) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:

Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.”

9. The Supreme Court in the matter of Girish Ramchandra Deshpande (supra) considered the question whether income tax return is personal information and held as under:-

“12. We are in agreement with the CIC and the courts below that the details called for by the petitioner i.e. copies of all memos issued to the third respondent, show cause notices and orders of censure/punishment etc. are qualified to be personal information as defined in clause (j) of Section 8(1) of

the RTI Act. The performance of an employee/officer in an organisation is primarily a matter between the employee and the employer and normally those aspects are governed by the service rules which fall under the expression "personal information", the disclosure of which has no relationship to any public activity or public interest. On the other hand, the disclosure of which would cause unwarranted invasion of privacy of that individual. Of course, in a given case, if the Central Public Information Officer or the State Public Information Officer of the appellate authority is satisfied that the larger public interest justifies the disclosure of such information, appropriate orders could be passed but the petitioner cannot claim those details as a matter of right.

13. The details disclosed by a person in his income tax returns are "personal information" which stand exempted from disclosure under clause(j) of Section 8(1) of the RTI Act, unless involves a larger public interest and the Central Public Information Officer or the State Public Information Officer or the appellate authority is satisfied that the larger public interest justifies the disclosure of such information."

10. Similar is the proposition of law laid down by the Supreme Court in R.K. Jain Vs. Union of India & Anr.². The judgment of the Supreme Court in the matter of **Girish Ramchandra Deshpande** (supra) and **R.K. Jain** (supra) has been followed recently by the Supreme Court in the matter of Canara Bank Rep. By its Deputy Gen. Manager Vs. C.S. Shyam & Anr.³ and it was held as under:-

"14. In our considered opinion, the aforementioned principle of law applies to the facts of this case on all force. It is for the reasons that, firstly, the information sought by respondent No.1 of individual employees working in the Bank was personal in nature; secondly, it was exempted from being disclosed

2 (2013) 14 SCC 794

3 (2017) SCC Online SC 1023

under Section 8(j) of the Act and lastly, neither respondent No.1 disclosed any public interest much less larger public interest involved in seeking such information of the individual employee and nor any finding was recorded by the Central Information Commission and the High Court as to the involvement of any larger public interest in supplying such information to respondent No.1.

15. It is for these reasons, we are of the considered view that the application made by respondent No.1 under Section 6 of the Act was wholly misconceived and was, therefore, rightly rejected by the Public Information Officer and Chief Public Information Officer whereas wrongly allowed by the Central Information Commission and the High Court.”

11. Following the principles of law laid down by the Supreme Court in the matter of **Girish Ramchandra Deshpande** (supra), it is held that complaints made against the said judicial officer is personal information of judicial officer covered under Section 8(1) (j) of the RTI Act and exempted from disclosure.
12. The State Information Commission has not considered the matter in its right perspective and held that complaints are not personal information covered under Section 8 (1) (j) of the RTI Act and directed to supply the copies of complaints *qua* corruption/judicial irregularities committed by him during 1998 to 2003.
13. There is an additional reason for setting aside the order of State Information Commission. The State Information Commission has directed disclosure of information relating to

third party *i.e.* with regard to Mr. A.K. Patel, former judicial officer, but State Information Commission has not followed the mandate of Section 11 of the RTI Act by giving opportunity of personal hearing to third party before imparting information.

Section 11 of the Act of 2005 states as under:-

“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.

(2) Where a notice is served by the Central Public Information Officer or State Public Information Officer, as the case may be, under sub-section (1) to a third party in respect of any information or record or part thereof, the third party shall, within ten days from the date of receipt of such notice, be given the opportunity to make representation against the proposed disclosure.

(3) Notwithstanding anything contained in section 7, the Central Public Information Officer or State Public

Information Officer, as the case may be, shall, within forty days after receipt of the request under section 6, if the third party has been given an opportunity to make representation under sub-section (2), make a decision as to whether or not to disclose the information or record or part thereof and give in writing the notice of his decision to the third party.

(4) A notice given under sub-section (3) shall include a statement that the third party to whom the notice is given is entitled to prefer an appeal under section 19 against the decision.”

14. In the matter of **Reliance Industries Ltd. v. Gujrat State Information Commission and others**⁴, the Gujarat High Court has considered Section 11(1) of the Act of 2005 and held that, it is duty vested in the Public Information Officer to give an opportunity of personal hearing to the third party, to get his submissions, whether he treats the information as confidential and whether information should be disclosed, if the information is relating to or is supplied by the third party. When public body collects the information relating to or given by third party, it might not have been treated as confidential but third party can make a submission that now it is treating the said information as confidential. Moreover, when information is relating to third party it may not even known to that third party, when and what information relating to third party, was collected by public body. Therefore, Section 11(1) of the Act, 2005, gives mandate to Public Information Officer to give written notice to third

4 AIR 2007 Gujrat 203

party if he intends to disclose information relating to third party.

15. In the light of the aforesaid discussion, the impugned order passed by the State Information Commission directing supply of information is set aside and application filed by respondent No.2 would stand rejected.
16. The writ petition is allowed to the extent indicated hereabove. No order as to cost(s).

Sd/-
(Sanjay K.Agrawal)
Judge

B/-