

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10690 OF 2017

THE CENTRAL PUBLIC INFORMATION OFFICER
AURANGABAD

VERSUS

THE CENTRAL INFORMATION COMMISSIONER
AND ANOTHER

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Advocate for Petitioner : Shri Chaudhary K.B.

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CORAM : RAVINDRA V. GHUGE, J.

Dated: September 06, 2017

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PER COURT :-

1. The petitioner is aggrieved by the direction dated 17.7.2017 issued by respondent No.1, directing the petitioner to submit the details about the salary /PF accumulations of the wife to respondent No.2 herein, who is litigating against his estranged wife.

2. The strenuous submissions of the learned counsel for the petitioners is that no public interest is involved in the information sought by the second respondent / husband in relation to the earnings of the wife. Section 8(1)(e) and 8(1)(j) of the Right to Information Act, 2005 (RI Act) would absolve the petitioner from submitting any information to the said husband.

Reliance is placed on the judgment delivered by the Delhi High Court in the matter of Vijay Prakash Vs. Union of India and others [AIR 2010 Delhi 7], especially paragraph Nos. 20 to 23.12.2013.

3. It is strenuously contended that the EPF Account holder under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 is the wife of respondent No.2. She is employed in Aditya Birla Minacs World Wide Limited. The details of her PF account have been supplied by the husband including the account number, establishment id and the name of the employee. What is sought is an information regarding the account statement of her PF accumulation.

4. Shri Choudhary strenuously submits that no public interest is involved and the husband cannot seek this information as his case is covered by Section 8(1)(e) and (j) of the RI Act.

5. Having considered his submissions and having gone through the judgment cited, it needs mention that the husband is litigating against his estranged wife. In the ongoing litigation, with the intention of defending himself before the District Court, the husband moved the petitioner for seeking information as

regards the PF accumulations of his wife. By a cryptic order dated 19.5.2016, which does not contain reasons, except that the information sought is not required in public interest under Section 8(1)(e), his application was rejected.

6. The first appellate authority by order dated 15.7.2016, again by a cryptic and unreasoned order, rejected the application of the husband under Section 8(1)(e) claiming that no public interest is involved. By the order dated 17.7.2017, the Central Information Commission has allowed the appeal of the husband and has concluded that the information sought is personal information and it needs to be supplied.

7. Section 8(1)(e) and (j) of the RI Act reads as under:-

"8. Exemption from disclosure of information.—

(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,-

(a)

(b)

(c)

(d)

(e) information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the

larger public interest warrants the disclosure of such information;

(f)

(g)

(h)

(i)

(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."

8. Information available to a person in his fiduciary relationship can be withheld. There is no fiduciary relationship between a husband and his wife. Section 8(1)(e) would therefore, not entitle the petitioner for withholding the information regarding PF accumulation.

9. Learned counsel for the petitioner has canvassed Section

8(1)(j) by contending that there would be no obligation on the petitioner to give any citizen any information which relates to the relationship or privacy of an individual as it would cause unwarranted invasion of the privacy of the individual.

10. The Delhi High Court was dealing with the information being sought by a husband in relation to his wife, who was an employee of the Indian Air Force. The said information was sought under Section 8(1)(j) and that was in relation to her services with the Indian Air Force. The Air Vice Marshall of the Indian Air Force, who was the designated appellate authority, refused to supply the information sought as it was, firstly, not in public interest and secondly, it was in relation to her service with the Indian Air Force. On the basis of the 'public interest argument' of the husband, the information pertaining to her service with the Indian Air Force was not supplied as the same could not have been used in a private dispute.

11. In the instant case, the husband is seeking information with regard to his wife, specifically in relation to a private dispute, which is said to be under the Protection of Women from Domestic Violence Act, 2005. It also cannot be ignored that in matters of statutory contributions under acts like the Payment of

Gratuity Act, 1972 and the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 ("1952 Act"), a nominee of the employee has to be stated. This indicates that the husband or wife in their *inter se* relations, could be a nominee of the partner who is in employment.

12. Though this information is not before this Court, the contention of the petitioner will have to be tested as to whether the said contention could be referable to Section 8(1)(e) or 8(1)(j) contending that personal information cannot be disclosed to a citizen if it is not in public interest. The claimant / husband cannot be termed as a third party citizen. He is the husband of the employee, whose PF details are being sought. The petitioner's case, within the framework of Section 8(1)(e), fails.

13. Section 8(1)(j) was never canvassed by the petitioner before any of the authorities below, except in this Court for the first time. I am considering the submissions of the petitioner even under Section 8(1)(j) since law need not be pleaded.

14. Testing the case of the petitioner under Section 8(1)(j), the petitioner would not be obliged to give any information to an unrelated citizen if it causes unwarranted invasion on the privacy

of an individual.

15. The Honourable Apex Court in the matter of Bihar Public Service Commission Vs. Saiyed Hussain [2012 (13) SCC 61], has considered Section 8 and has concluded that the Act provides for a free access to information with the object of making governance more transparent and accountable. Information sought is normally to be supplied unless the right to information is subjected to inbuilt restriction within the Statute itself. The right to information would not be an uncontrolled right and the constitutional limitation enshrined in Article 21 of the Constitution of India would have to be balanced with the right to privacy. The authority withholding information has to apply its mind and form an objective opinion.

16. It is further held in the Bihar PSC case (supra) that fiduciary relationship refers to a person having the duty to act for the benefit of another, showing good faith and candour when such other person reposes complete trust and special confidence in a person discharging duties. Disclosure of personal information could be restricted so as to avoid unwarranted invasion of the privacy of an individual by supplying information to a third party.

17. In the matter of R.K.Jain Vs. Union of India [2013 (14) SCC 794], the Honourable Apex Court concluded that the authority has to decide whether confidential information could be disclosed to a third person. It also has to consider whether such disclosure would amount to the invasion of the privacy of a public servant. It is the prerogative of the competent authority to decide whether the disclosure of such information would open gates of privacy to a third party.

18. It cannot be lost sight of in this case that the relation between the person seeking information of the lady, who is employed in a private company, is that of a husband and wife. On account of a marital discord, the wife has dragged the husband before the District Court. For the purposes of his litigation, the husband requires the information about the salary and provident fund accumulations of the wife. Such information could also be acquired by the husband by making an application before the District Court. Rather than perpetuating the hardships of the husband, the CIC has found it fit to direct the petitioner to disclose the said information.

19. In this backdrop, it is imperative that the petitioner must

first come to a conclusion, either under sub-clauses (e) or (j) of Section 8(1) that the information is confidential and cannot be disclosed. It is only when the competent authority justifies the non-disclosure under the first part of sub-clauses (e) or (j) that the second part in the said sub-clauses would have to be considered to the extent of whether the information is required to be disclosed in larger public interest. In my view, the petitioner has failed in the first place to justify its refusal to disclose the information. The husband seeking information cannot be said to be a stranger or a third party. The information sought by him also cannot be said to be confidential.

20. In my view, if matrimonial matters are being prosecuted by the parties, there should not be any embargo on divulging the PF accumulations of the wife since the said information is sought by the husband to be placed before the District Court. It also cannot be ignored that the wife is not before this Court and has not challenged the impugned order.

21. Considering the above, I do not find that the stand taken by the petitioner would fall either under Section 8(1)(e) or Section 8(1)(j).

22. This petition being devoid of merits is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

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akl/d