

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No.1044 of 2014
Reserved on:07.12.2016
Decided on:18.01.2017**

M.S.Malik

.....Petitioner

Vs.

Central Information Commission & others

.....Respondents

CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Mr.Ashish Gupta, Advocate, for the petitioner.

Mr.Sumeet Goel, Standing Counsel, for respondents No.2 to 4.

G.S.Sandhawalia J.

The challenge in the present writ petition is to the orders dated 16.06.2009 (Annexure P3), 08.07.2009 (Annexure P5) and 05.07.2013 (Annexure P9) whereby the application of the petitioner seeking information has been rejected under the Right to Information Act, 2005 (for short, the 'Act').

The reasoning given in the order passed by respondent No.1/ Commission dated 05.07.2013 (Anneuxre P9) is that the information sought would fall under the exemption clause under Section 8(1)(g) & (h) of the Act and therefore, the second appeal was, accordingly, dismissed. It was held that by providing the said information, the strength and weaknesses of any individual evidence as assessed and evaluated by various officers of the CBI would come into the hands of the accused and the proposed strategy for prosecuting him. Besides, it would also reveal the identity of the individual officers along with the chain of command recording comments and views in

favour and against the evidence at hand and probably, the evidence against each individual person sought to be made as accused in the case. It would also expose the officers to possible threats to their personal safety apart from also revealing the identities of the various sources of information which might have been collected and incorporated as evidence. In view of the above reasoning given, the petitioner, who was seeking the information, was, thus, denied the same. Resultantly, this Court has been approached.

The petitioner, who is a retired Director General of Police, Haryana, was, as per his case, allegedly falsely implicated in the FIR No.Chandigarh CBI ACB, Chandigarh 2006 RCCHG 2006 A0017 dated 19.06.2006, on the administrative orders of Shri Vijay Shankar, IPS, the then Director, CBI. It is the case of the petitioner that the said officer was the batch-mate of the then DGP, Haryana, namely, Shri Nirmal Singh, who had a service rivalry with the petitioner and thus, he had been falsely implicated in the above-noted case. Resultantly, he had filed an application dated 27.04.2009 (Annexure P1), seeking various information pertaining to the above-said FIR. It is pertinent to mention that at the present point of time, this Court is only concerned with the information qua points B & C, as admittedly, the copy of the preliminary enquiry, mentioned at Sr.No.A has already been supplied to him. The information sought reads as under:

“A) Certified copy of the preliminary enquiry No. PECHG.2005A0002 dated 25.8.2005 regarding recruitment in G.R.P. against Sh. Ravi Azad, IPS, the then SP/GRP/Haryana, Ambala and two Deputy

Superintendents of Police who were Chairman and members of the Section Board.

B) Statement of all the witnesses recorded while conducting the preliminary enquiry No. PECHG.2005A0002 dated 25.8.2005 prior to the registration of criminal case vide FIR No.Chandigarh CBI ACB, Chandigarh 2006 RCCHG 2006 A0017 dated 19.06.2006 against Sh. Ravi Azad, IPS the then SP/GRP/Haryana, Ambala and others.

C) Certified copy of the official case file of the CBI containing remarks/ opinion/ observations/ recommendations made by Sh. Vijay Shankar, IPS, the then Director, CBI in the case registered vide FIR No.Chandigarh CBI ACB, Chandigarh 2006 RCCHG 2006 A0017 dated 19.06.2006 under Section IPS 120-B, 420, 468, 471 & 201 and PC Act 1988 Sections 13 (2) r/w 13(1)(d) for including the name of the Dr. M.S.Malik, IPS (Retd.) former Director General of Police, Haryana in the final report u/s 173 CR.P.C. and for recommending the prosecution of Dr.M.S.Malik, IPS (Retd.) in the court of Special Judge, CBI, Ambala in this criminal case registered against Sh. Ravi Azad, IPS, the then S.P./GRP, Haryana, Ambala and Chairman of the Selection Board and two Deputy Superintendents of Police & members of the Selection Board namely Sh. Udai Shankar and Sh. Arun Kumar vide FIR as mentioned above.”

The information was denied to him vide order dated 16.06.2009, passed by respondent No.3-CPIO, on the ground that case was pending trial in the Court of the Special Judge, CBI, Ambala and none of the documents sought have been relied upon by the CBI in its

CWP-1044-2014

charge-sheet filed before the Court. It was held that the information could not be supplied as it would impede the process of prosecution and is exempted under Section 8(1)(h) of the Act.

The petitioner filed First Appeal that his name has been included in the array of accused at the last stage and, as mentioned above, it was on account of department rivalry. While supplying a copy of the preliminary enquiry report, asked for, as per clause A, the remaining information sought was again denied on the ground that there was an exemption under Section 8(1)(g) and 8(1)(h) of the Act and the disclosure of the statements would endanger the life and physical safety of the witnesses and identify the source of information or assistance given in confidence for law enforcement or security purposes and impede the process of prosecution.

Resultantly, the petitioner filed a Second Appeal before the respondent No.1-Commission, claiming that the documents could not be withheld and that it was required to be ascertained at what stage of investigation and at whose instance the name of the petitioner had been added in the case as an accused. Initially, respondent No.1-Commission rejected the same on 12.01.2011 (Annexure P7) on the ground that they had examined the notings recorded at various levels and therefore, the apprehension that his name has been added arbitrarily at the highest level because of some partisan reasons was not borne out as per the record and his Second Appeal, had, accordingly, been dismissed.

However, the said order was challenged before this Court in CWP-3879-2011 by the petitioner and the same was allowed on

26.03.2013 (Annexure P8) on the ground that the ambit of respondent No.1 was only to see whether the information sought fell under any of the exemption clauses under Section 8 of the Act which had not been done and that it was not the jurisdiction of the Commission to read and appreciate the files in question. Resultantly, the matter was remanded for fresh decision, which has resulted in passed of the subsequent order dated 05.07.2013 (Annexure P9).

Counsel for the petitioner has, thus, vehemently submitted that the petitioner has been brought into the ambit of being an accused, against whom the charge-sheet has been filed and therefore, as such, he was entitled for the statements of the witnesses which had been recorded while conducting the preliminary enquiry dated 25.08.2005. Similarly, the recommendations of the then Director, CBI, for including the name of the petitioner in the FIR, filed under Sections 120-B, 420, 468, 471 & 201 and PC Act 1968 Sections 13(2) and 13(1)(d) was required by supplying the certified copy of the official case file.

Counsel for respondents No.2 to 4, on the other hand, submitted that the order passed by the Commission was well justified, in the facts and circumstances of the case. That the challan had been presented and the case was pending adjudication before the Trial Court. The information sought was well within the ambit of Section 8(1)(g) & (h), in the facts and circumstances. The disclosure of the statements would identify the source of information and therefore, endanger the life and physical safety of the witnesses and assistance given in confidence for law enforcement or security purposes.

The issue which, thus, arises for consideration before this Court is whether the petitioner has an absolute right for the statements of all the witnesses recorded while conducting the preliminary enquiry and also the recommendations made by the then Director, CBI, for including his name in the FIR recorded under Section 13 of the Prevention of Corruption Act, 1988 and for recommending his prosecution.

The dispute primarily revolves around the selection process resorted to by one Ravi Azad, who was serving as Superintendent of Police, Railways, who was entrusted for filling up 160 posts of Constables exclusively from candidates belonging to the Scheduled Caste category in Haryana Armed Police and 350 posts of Constable (all categories) in Government Railway Police by direct recruitment. The Selection Board comprised of two more officials, i.e., Shri Arun Kumar, Deputy Superintendent of Police, Headquarter, GRP, Ambala Cantt and Shri Uday Shankar, Deputy Superintendent of Police, Ambala and the FIR had been registered under the directions passed by this Court on account of the fact that there was a discrepancy in the waiting list and the original had not been produced. This Court had noticed that the original record depicting the marks awarded had not been produced and the same had been referred to the CBI for investigation, which revealed that the whole selection process had been fabricated and the original record had been destroyed which had led to the initiation of criminal prosecution.

The above facts, as noticed, would go on to show that the petitioner was never accused, as such, at the initial stage, when the directions were issued on 13.12.2004 by this Court in CWP-18346-2004

titled *Shailender Kumar Vs. State of Haryana & others*, to lodge an FIR. In pursuance of the same, a preliminary enquiry was conducted on 25.08.2005, which was registered against Ravi Azad IPS and 2 other DSPs' and other members of the Selection Board. The said members had been nominated by the Director General of Police, Haryana on 22.09.2003. On the basis of the preliminary enquiry and the observations and recommendations made by the then Director, CBI, the name of the petitioner had, thus, been included.

Section 8 of the Act provides the exemption from disclosure of information. Under Section 8, various categories have been delineated wherein there would be no obligation to the authorities to give any information, provided the said information would fall within the ambit of the said section. In the present case, Section 8(1)(g) & (h) would be applicable. The same 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,-

(g) Information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes.

(h) Information which would impede the process of investigation or apprehension or prosecution of offenders.”

The identification of the source of information is such that it could threaten the safety of an individual. The source could be an

informer to the police and who may play significant role in giving the information to the police and there would be public interest, as such, involved. Therefore, it would be in the public interest in maintaining the confidentiality of such a person and therefore, the legislature, in its wisdom, has exempted these kinds of information from disclosure. The assistance, thus, given in confidence by such persons to the prosecution, could also be compromised by the disclosure of the information. The same could endanger the life and physical safety of the said persons and therefore, would attract the exemption clause under the Act, as such. Giving the petitioner the said information would only result in ensuring that such kind of source which the police has, would not be there in future once such information is disclosed at the asking of an accused. The far-reaching consequences of disclosing the confidentiality of the information received, thus, would overwhelm the right of the petitioner, as such.

Similarly, under Section 8(1)(h), once the prosecution of the offender is still in the pipeline, as it is not disputed that the challan has been filed but the trial is in progress, therefore, the definition 'prosecution of the offender' has to be read separately apart from the earlier part wherein the exemption is claimed for the purpose of investigation. The investigation might be over but the prosecution of the offender continues and therefore, vital public interest which is available to the prosecution, as such, pertaining to the accused of corruption, thus, would be compromised if the required information, as such, is allowed to be acceded at the request of the petitioner. The apprehension which has

been, thus, put-forth by the respondent-authorities, cannot be said to be make-belief and is an actual apprehension and not a mere camouflage to deny the information. The procedure or the methodology involved in the investigation, as such, would also be, thus, exposed and would lead to hampering the prosecution case, if, at this stage, the information is supplied which is of vital public interest and any deviation allowed, would, thus, only lead to the impeding the prosecution of the offenders. The intrusion into the supervision, as such, of the investigation, which is sought by an accused person, would only expose the officers to the external pressures and constrict the freedom with which the investigation had been conducted and the prosecution which has to be carried on. It would only be counter-productive to the criminal trial which is yet to be concluded. The petitioner, as noticed, is asking for certified copies of the official case file which would contain the remarks of the investigating officers and the supervisory remarks of the then Director, CBI. The information, as such, therefore, would necessarily fall within the ambit of Section 8(1)(g) & (h) and as such, cannot be supplied to him. The respondent-Commission has, thus, rightly come to the conclusion that by disclosing all the said information would endanger the life and physical safety of the persons apart from identifying the source of information.

As noticed, the ambit of the Commission is only to see whether the denial of the information sought was justified by the authorities or not, under the Act. The information was, rightly denied, on the above grounds. The Commission was, thus, well justified in coming to the conclusion that by giving the noting portion of the remarks and the

CWP-1044-2014

reasons which had prevailed with the then Director, CBI to include the name of the petitioner as an accused, would fall within the ambit of Section 8(1)(g) & (h) as the noting portion would identify the source of information from whom the assistance had been given in confidence for the law enforcement. Therefore, the Commission has given valid reasons, as such, in not allowing the appeal of the petitioner for the claim of the information. Once the Act provides for exemption from disclosure of certain types of information provided the respondents can justify denial on the grounds that it falls under the said provisions, then the said order does not suffer from any legal infirmity, as such, which would warrant interference by this Court, under Articles 226/227 of the Constitution of India.

Resultantly, finding no merit in the present writ petition, the same is, hereby, dismissed.

JANUARY 18th, 2017
sailsh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes

Whether Reportable:

Yes