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

+ **W.P.(C) 1000/2016**

HIRA LAL BANSAL

..... Petitioner

Through: Mr Saurabh Jain, Advocate.

versus

CENTRAL INFORMATION COMMISSION
& ORS

..... Respondents

Through

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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10.08.2017

VIBHU BAKHRU, J

1. The present petition was moved on 08.02.2016 and notice was issued to the respondents on that date. Despite service of notice, none has been appearing on behalf of the respondents. This Court does not consider it apposite to defer the hearing of this matter to await the appearance on behalf of the respondents.

2. The petitioner has filed the present petition impugning an order dated 01.10.2015 (hereafter 'the impugned order') passed by the Central Information Commissioner (hereafter 'the CIC') upholding the decisions of respondent no.3 (hereafter 'the CPIO') and respondent no.2, the First Appellate Authority (hereafter 'the FAA'), rejecting the petitioner's request for disclosure of Form No.1 sent by the Chief Judicial Magistrate, Bikaner, Rajasthan for testing of a drug in batch no.28 manufactured by M/s Ronald

Pharmaceuticals Pvt. Ltd. (hereafter 'Ronald Pharma').

3. The said information has been denied to the petitioner on the ground that it would reveal the details, address, name of the company that manufactured the drug in question and would also reveal the particulars of the offence alleged. Learned counsel for the petitioner stoutly contests the aforesaid finding.

4. Briefly stated the relevant facts necessary to address the controversy in the present petition are as follows:-

4.1 The petitioner was working as an Assistant Drugs Controller, Government of Rajasthan and superannuated from the services on 31.10.2012. During his tenure of service, he had the occasion to render assistance in a case (Case no.1250/07 captioned as '*M/s Ronald Pharmaceuticals Pvt. Ltd. v. Drug Controller*') filed before the Chief Judicial Magistrate (CJM), Bikaner, Rajasthan. During the course of the proceedings in that matter, the learned CJM had sent a drug sample for testing to the Central Drugs Laboratory, Kolkata (hereafter 'CDL Kolkata'). CDL Kolkata sent its report dated 01.11.2006, with regard to the said sample, to the court of the learned CJM pointing out that the batch number of the sample sent was different from the batch number referred to in the Form No.1: the batch number of the drug was DE-27 while Form No.1 stated the batch number to be DE-28.

4.2 The petitioner states that in view of the above discrepancies, certain disciplinary proceedings have been commenced against the petitioner and his post retirement benefits have been withheld. It is in the aforesaid context

that the petitioner required information as to the Form No.1 allegedly sent to CDL Kolkata and, accordingly, the petitioner filed an application under the Right to Information Act, 2005 (hereafter 'the RTI Act') before the CPIO on 12.08.2014 requesting for the attested copy of Form No.1. The relevant extract of the petitioner's application is set out below:-

“You are requested to please send me the photo state attested copy of form No.1 sent by Chief Judicial Magistrate, Bikaner (Rajasthan) vide Sr. No. 01/06 dated 25-01-2006 of sample No. BKR/HLB/Sept. 04/04 of Drug cortiflam-D (Dex chlorpheniramine Maleate Tablet USP) Batch no DE 28 Manufactured by M/s Ronald Pharmaceutical Pvt. Ltd. Manjusr Distt. Baroda.”

4.3 The information as sought for by the petitioner was denied by the CPIO by an order dated 15.09.2014 on the ground that it was exempt under Section 8(1)(d) of the RTI Act. The CPIO claimed that such information related “*to commercial confidentiality, trade secrets and disclosure of which would harm the competitive position of third party.*”

4.4 Aggrieved by the aforesaid decision, the petitioner preferred an appeal before the First appellate Authority (FAA), *inter alia*, contending that no confidential information was sought by the petitioner and the information sought was intentionally denied to the petitioner.

4.5 The FAA disposed of the appeal by an order dated 13.11.2014. The FAA did not comment on the question whether information sought was confidential and would harm the competitive position of a third party; the FAA rejected the petitioner's appeal on the ground that “*disclosure of desired information would impede the process of investigation/ongoing*

court proceeding and is exempted under Section 8 (1) (h) of Right to Information Act, 2005". The petitioner was also advised to approach the concerned court to get a copy of the Form No.1 in question.

4.6 The petitioner asserts that the proceedings before the CJM concluded on 31.07.2007 and, therefore, there was no ongoing proceedings that were pending, which would be affected by the disclosure of a copy of Form No.1. In any event, even assuming that such proceedings were still pending, providing a copy of Form No.1 could not possibly impede or obstruct any such proceedings.

4.7 Aggrieved by the aforesaid decision of the FAA, the petitioner preferred a second appeal under Section 19(3) of the RTI Act before the CIC.

4.8 The CIC has also rejected the said appeal, by the impugned order. The CIC concurred with the CPIO that disclosure of information sought by the petitioner would harm the "*image, goodwill, reputation and in turn competitive position*" of Ronald Pharma in the market. According to the CPIO, if Form No.1 is revealed in public domain, it would reveal the details of Ronald Pharma, "*its address, drug sample in question, particulars of the offence alleged, and the matter on which opinion from Central Drugs Laboratory*" was required.

5. This Court is of the view that none of the aforesaid grounds are sustainable. The name of the manufacturer is not confidential. The fact that the said manufacturer had commenced proceedings before the learned CJM is also in public domain. Form No.1 is only a memorandum under the cover

of which drug samples are sent for testing. It indicates what the drug purports to be; the distinguishing number on the packet sent; the particulars of offence (if any); matters on which opinion is required; and the fee paid.

6. The CPIO had denied the information sought by the petitioner claiming that such information was exempt from disclosure by virtue of Section 8(1)(d) of the RTI Act, which 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,—

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(d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;"

7. It is at once apparent that the exemption in terms of Section 8(1)(d) was not available in respect of the information sought by the petitioner as Form No.1 could not be termed as information forming '*commercial confidence*'; it is not a '*trade secret*'; and definitely does not constitute '*intellectual property*'. This Court finds it difficult to accept that disclosure of the particular Form No.1 as sought by the petitioner, would in any manner harm the image, goodwill, reputation or the competitive position of the company in question.

8. The proceedings pursuant to which the samples were sent for testing are already in public domain.

9. It is also relevant to note that the FAA did not reject the petitioner's appeal on the ground that it was exempt under Section 8(1)(d) of the RTI Act; the petitioner's appeal by the FAA had been rejected only on the ground that the disclosure of the desired information would impede the progress of investigation and thus was exempt under Section 8(1)(h) of the Act.

10. In view of the above, the only question to be examined by the CIC in petitioner's appeal was whether the disclosure of the information sought for by the petitioner would impede the progress of any ongoing investigation or court proceedings and thus was exempt under Section 8(1)(h) of the Act. It is apparent that the CIC did not subscribe to the FAA's view.

11. The petitioner has produced copies of the order sheets in Case no. 1250/07 and the same clearly indicate that the proceedings in that case - in the context of which Form No.1 was sent - stand concluded. Therefore, there can be no question of the disclosure of such Form No.1 impeding any ongoing court proceedings or investigation; and, plainly, the information sought for by the petitioner could not be withheld on the ground of Section 8(1)(h) of the Act.

12. In view of the above, the impugned order is set aside. The respondents are directed to disclose the information as sought for by the petitioner within a period of six weeks from today.

13. The petition is allowed.

VIBHU BAKHRU, J

AUGUST 10, 2017/pkv