

\$~49

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

+ **W.P.(C) 7360/2017**

THE CPIO, DEPARTMENT OF
PERSONNEL AND TRAINING

..... Petitioner

Through: Mr Sanjay Jain, ASG with Mr Rahul
Sharma and Mr C.K. Bhatt, Adv.

versus

CENTRAL INFORMATION COMMISSION
AND ANR

..... Respondents

Through

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

%

25.08.2017

VIBHU BAKHRU, J

CM No. 30372/2017

1. Exemption is allowed, subject to all just exceptions.
2. The application is disposed of.

**W.P.(C) 7360/2017 & CM 30370/2017 (Stay), CM 30371/2017
(Directions to R-1 for records)**

3. The petitioner has filed the present petition, *inter alia*, impugning an order dated 18.01.2017 (hereafter 'the impugned order') passed by the Central Information Commission (hereafter 'CIC') directing the petitioner to disclose the agenda item pertaining to respondent no.2 along with the minutes of the meeting of Civil Services Board (hereafter 'CSB'). The petitioner contends that the said information is exempt from disclosure under clause (i) of Section 8(1) of the Right to Information Act, 2005

(hereafter 'the Act'). It is also contended that such information is confidential in nature and is available with the petitioner in its fiduciary capacity and, thus, is also exempt from disclosure under clause (e) of Section 8(1) of the Act.

4. Respondent no.2 is an officer of the Indian Administrative Service (IAS) of 1991 batch of the Haryana State Cadre. He had filed an application on 06.07.2015, *inter alia*, seeking the following information:-

"1. Whether any agenda item was placed before the Civil Services Board regarding my deputation as Joint Secretary to Government of India under the Central Staffing Scheme-2014.

2. If so, a copy of the agenda item and the recommendation made by the Civil Services Board may be supplied. Ashok Khemka, IAS (Haryana: 1991) 6 July, 2015."

5. The aforesaid request for information was denied by the Central Public Information Officer (CPIO) of the petitioner stating the following:-

"With an understanding that the requested information is to be reckoned as adjuncts for an ACC proposal / note the same is exempted under Section 8(1)(i) of the RTI Act, 2005."

6. Aggrieved by the same, respondent no.2 preferred an appeal before the First Appellate Authority (FAA), *inter alia*, contesting the claim that the information sought by respondent no.2 was exempt from disclosure under Section 8(1)(i) of the Act. The relevant grounds urged by the said respondent before the FAA are set out below:-

"1. The matter is not pending before the Civil Services Board, which has already taken a decision in July-2014.

2. The ACC was to consider my appointment as Joint Secretary in GOI against CSS-2014, which period expired on 31.03.2015. The decision of the CSB cannot be given effect to by the ACC any longer.

3. The CPIOs reply that the requested information is to be reckoned as adjuncts for an ACC proposal/note is a falsehood.

4. The information which are contemplated to be considered as adjuncts for ACC proposal/notes in the future are not covered under section 8 (l)(i). If this were true, then all information is potentially exempt under section 8(l)(i), rendering RTI Act infructuous."

7. FAA rejected respondent no.2's appeal by an order dated 13.08.2015 upholding the decision of the CPIO. Aggrieved by the aforesaid decision of the FAA, respondent no.2 preferred a second appeal under Section 19(3) of the Act, before the CIC, which was allowed by the impugned order.

8. Before the FAA as well as before the CIC, the petitioner had also contended that the question, whether information with regard to matters before the Appointments Committee of the Cabinet (ACC) is exempt from disclosure, was *sub judice* before a Division Bench of this Court. The said contention was advanced before this Court as well.

9. The petitioner states that under the Central Staffing Scheme, the task of finalising the panel of officers, which are to be recommended for the posts of Under Secretary and above to serve the Centre on deputation, is entrusted to the CSB.

10. It is stated that CSB consists of the (a) Cabinet Secretary being the ex officio Chairman; (b) Secretary (Personnel) being ex officio member; (c) a Secretary to the Government of India; (d) Establishment Officer being ex

officio Member-Secretary; and (e) Secretary of the Administrative Ministry / Department concerned being a co-opted member. The petitioner states that the recommendations made by the CSB are forwarded to the ACC. In this regard, CSB is also assisted by the Screening Committee of Secretaries. The ACC approves a panel on the recommendation of the CSB and appointments are made on the basis of the approved panel.

11. Mr Sanjay Jain, learned ASG appearing for the petitioner submitted that the deliberations and recommendations of the CSB, thus, constitute highly sensitive information as they form the basic material on which senior officers are placed on deputation on posts with the Central Government.

12. Mr Jain had pointed out that in ***Union of India, Thr. Director, Ministry of Personnel, PG & Pension v. Central Information Commission & Sh. P.D. Khandelwal: W.P.(C) 8396/2009*** and other connected matters decided on 30.11.2009, a Coordinate Bench of this Court had, *inter alia*, held that information relating to ACC was not exempt from disclosure under Section 8(1)(e) and 8(1)(i) of the Act. This decision was carried in appeal before a Division Bench of this Court in ***Union of India v. P.D. Khandelwal: LPA 347/2010*** and other connected matters. By an order dated 12.07.2010, the Division Bench of this Court had stayed the operation of the order dated 30.11.2009 and subsequently, by an order dated 15.03.2017 had admitted the appeals. Mr Jain contended that in view of the above, the impugned order was liable to be stayed and the present petition ought to be deferred awaiting the decision of the Division Bench in LPA 347/2010 and other connected matters.

13. Mr Jain also contended that the information sought by respondent no.2 was highly sensitive information and disclosure of the same was also

not necessary in public interest. He submitted that since the deliberations of the CSB formed the basis for ACC to recommend a panel for deputation of senior officers, therefore, such information formed a part of the "cabinet papers", which were exempt from disclosure under Section 8(1)(i) of the Act. He reiterated that the information sought ought to be reckoned as *adjunct* to ACC proposals and, thus, was not required to be disclosed. In addition, he submitted that the said information was also exempted from disclosure for being held in a fiduciary capacity.

14. Next, Mr Jain also referred to the impugned order and submitted that the observation of the CIC that CSB was distinct from ACC was *ex facie* erroneous in the context of the exemption from disclosure available in respect of cabinet papers under Section 8(1)(i) of the Act.

15. He submitted that in terms of Section 8(1)(i) of the Act, all cabinet papers are exempt from disclosure and the first proviso to Section 8(1)(i) only carves out a limited exception pertaining to the decisions of the Council of Ministers. He submitted that deliberations of the Secretaries to the Government of India and other officers are thus not covered under the said proviso and have full protection against disclosure under clause (i) of Section 8(1) of the Act.

16. Lastly, Mr Jain submitted that CIC had directed disclosure of information in excess of what had been sought by respondent no.2 and, thus, the impugned order could not be sustained.

17. I have heard Mr Jain at length.

18. The principal question to be addressed is whether the information sought by respondent no.2 is exempt from disclosure under Section 8(1)(i)

of the Act.

19. The CIC had held that CSB was distinct from ACC and had proceeded on the basis that deliberations regarding an agenda item placed before CSB was not covered under the scope of the term "cabinet papers" and, thus, exemption under Section 8(1)(i) of the Act was not available in relation to information pertaining to CSB. This Court is of the view that even without going into the aforesaid question, the information sought by respondent no.2 could not be denied to him as it was not exempt from disclosure either under clause (e) or clause (i) of Section 8(1) of the Act.

20. As indicated above, respondent no.2 had sought information on two points, namely (i) whether an agenda item regarding his deputation as a Joint Secretary to the Government of India under the Central Staffing Scheme - 2014 was placed before CSB; and (ii) the copy of the agenda item and the recommendation made by CSB.

21. Although, there may be good grounds to hold that the agenda items and recommendations of the CSB do not qualify as cabinet papers, however, this petition can be disposed of without going into the said contentious issue and assuming that the said information falls within the scope of "cabinet papers" as contemplated under Section 8(1)(i) of the Act. This is so because it is obvious, that decision in regard to the said items of information sought by respondent no. 2 had been taken. The subject matter was regarding deputation of officers in the year 2014-15 and decisions regarding such postings would have indisputably been made. Admittedly, the subject matter is thus no longer live and/or in active consideration of the ACC.

22. Thus, notwithstanding that the information sought by respondent no.2

may be considered as 'cabinet papers', the same would be squarely covered by the first proviso to Section 8(1)(i).

23. Before proceeding further, it would be necessary to refer to clauses (e) and (i) of Section 8(1) of the Act as set out below:-

"8. Exemption from disclosure of information.—(1)
Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,—

XXXX XXXX XXXX XXXX

(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;

XXXX XXXX XXXX XXXX

(i) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers:

Provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over:

Provided further that those matters which come under the exemptions specified in this section shall not be disclosed;"

24. The contention that the first proviso to clause (i) of Section 8(1) of the Act is limited only to the decisions of the Council of Ministers and does not include deliberations of the Secretaries and other officers, is unmerited. As is apparent from the plain reading of clause (i) of Section 8(1) of the Act, the exemption from disclosure is available in respect of 'cabinet papers'. The scope of cabinet papers is not restricted as is amply clear from the express language of the said clause; the term 'cabinet papers' has an expansive

meaning and is extended to include '*deliberations of the Council of Ministers, Secretaries and other officers*'.

25. It is the stated case of the petitioner that agenda items considered by CSB and its deliberations / recommendations form a part of the records for the ACC to form a panel of officers. This is the principal basis on which the petitioner has claimed that such information is exempt from disclosure under Section 8(1)(i) of the Act. Thus, even according to the petitioner, the said information would form the basis of the decision made by ACC.

26. The first proviso to Section 8(1)(i) of the Act is applicable not only to the decisions of the Council of Ministers but also to all *material* on the basis of which such decisions are taken. The word 'material' is of a very wide import and would cover not only the deliberations of the Secretaries and other officers, which form a part of the 'cabinet papers' but also any other information or material taken into account by the Council of Ministers in arriving at its decision. Thus, it is apparent that the width of the information covered under the first proviso to clause (i) is not narrower than the width of said main clause. The proviso restricts the applicability of clause (i) not in the context of the width of the information covered but in the context of time. Thus, exemption from disclosure in relation to 'cabinet papers' would be available to the fullest extent by virtue of clause (i) till the relevant decisions pertaining to those cabinet papers are taken. It is clear that the legislative intention in enacting the first proviso to clause (i) is to remove the exemption available in totality, once the decision making process corresponding to the cabinet papers is complete. Thus, the applicability of clause (i) of Section 8(1) of the Act is confined only to the period when the cabinet papers are under consideration and not thereafter. Once the

deliberations are over and the decisions have been taken, the subject information contained in the cabinet papers is no longer exempt from disclosure.

27. It is also relevant to mention that the cabinet papers may still continue to be exempt from disclosure if the nature of information contained therein is covered under any of the clauses of Section 8(1) of the Act. This is made explicitly clear by the second proviso to Section 8(1)(i) of the Act.

28. The contention that information sought by respondent no.2 is covered under Section 8(1)(e) is also unmerited. The contention that such information is held in a fiduciary capacity, is unmerited. The scope of the expression 'fiduciary relationship' is no longer *res integra* and the Supreme Court in the case of ***Central Board of Secondary Education and Anr. v. Aditya Bandopadhyay and Ors: (2011) 8 SCC 497*** has authoritatively held that the expression 'fiduciary relationship' cannot be considered in a philosophical and wide sense and must be construed as is normally understood and refers to persons who act in a fiduciary capacity.

29. The relevant extract from the decision of the Supreme Court in ***Aditya Bandopadhyay*** (*supra*) is set out below:-

“22. In a philosophical and very wide sense, examining bodies can be said to act in a fiduciary capacity, with reference to students who participate in an examination, as a government does while governing its citizens or as the present generation does with reference to the future generation while preserving the environment. But the words 'information available to a person in his fiduciary relationship' are used in Section 8(1)(e) of RTI Act in its normal and well recognized sense, that is to refer to persons who act in a fiduciary capacity, with reference to a specific

beneficiary or beneficiaries who are to be expected to be protected or benefited by the actions of the fiduciary - a trustee with reference to the beneficiary of the trust, a guardian with reference to a minor/physically/infirm/mentally challenged, a parent with reference to a child, a lawyer or a chartered accountant with reference to a client, a doctor or nurse with reference to a patient, an agent with reference to a principal, a partner with reference to another partner, a director of a company with reference to a shareholder, an executor with reference to a legatee, a receiver with reference to the parties to a lis, an employer with reference to the confidential information relating to the employee, and an employee with reference to business dealings/transaction of the employer. We do not find that kind of fiduciary relationship between the examining body and the examinee, with reference to the evaluated answer-books, that come into the custody of the examining body.”

30. Plainly, the information sought by respondent no.2 is in relation to the deliberations of a committee. The said information has not been provided to the petitioner in any fiduciary capacity. If the expression ‘fiduciary’ is considered in a wide sense, as contended by the learned ASG, no information pertaining to any public authority would be outside the scope of exemption. The information regarding CSB meetings are that of the public authority and not of the persons involved in such deliberations. Such information is not held by the petitioner on behalf of any other person.

31. Before concluding, it is also necessary to address the grievance that CIC had directed disclosure of information in excess of what was sought by respondent no.2. In this regard, it is sufficient to clarify that the impugned order must be read to direct disclosure of such information as was sought by respondent no.2 in the application dated 06.07.2015, albeit by redacting any personal information pertaining to third parties.

32. This Court does not find any merit in the present petition. Accordingly, the petition and the applications are disposed of with the aforesaid clarifications.

VIBHU BAKHRU, J

AUGUST 25, 2017
RK

