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HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 1495 of 2014**

1. Chhattisgarh Public Service Commission Through The Public Information Officer Chhattisgarh Public Service Commission Shankar Nagar Raipur, Tahsil And Distt. Raipur C.G.

---- Petitioner**Versus**

1. Chhattisgarh State Information Commission Through Chief Information Commissioner Nirmal Chhaya Bhawan Meera Datar Road Shankar Nagar, Raipur C.G.
2. Deputy Secretary, Chhattisgarh State Information Commission Nirmal Chhaya Bhawan Meera Datar Road, Shankar Nagar Raipur C.G.
3. Dr. D.R. Patel R/o D -3, Adarsh Nagar, Avanti Vihar, Sector 01, Telibandha Raipur Tahsil And Distt. Raipur C.G.

---- Respondent**WPC No. 1568 of 2014**

1. Chhattisgarh Public Service Commission Through The Public Information Officer Chhattisgarh Public Service Commission Shankar Nagar Raipur, Tahsil And Distt. Raipur C.G.

---- Petitioner**Versus**

1. Chhattisgarh State Information Commission Through Chief Information Commissioner Nirmal Chhaya Bhawan Meera Datar Road Shankar Nagar, Raipur C.G.
2. Secretary, Chhattisgarh State Information Commission Nirmal Chhaya Bhawan Meera Datar Road, Shankar Nagar Raipur C.G.
3. Smt. Sarita Tiwari Deputy Commissioner (Development) Office Of The Divisional Commissioner Raipur Tahsil And Distt. Raipur C.G.

---- Respondent

For Petitioner

Shri Ashish Shrivastava, Advocate

For Respondent/CG State
Information CommissionShri Shyam Sunderlal Tekchandani,
Advocate

Order On Board

By

Prashant Kumar Mishra, J.

19/09/2018

1. Petitioner is aggrieved by the order passed by the Chhattisgarh State information Commission (henceforth 'the Commission') by which it has directed the petitioner to supply copies of the entire DPC (Departmental Promotion Committee) proceedings for promotion from the post of Joint Director (Mining) to the post of Additional Director (Mining).
2. There is no dispute about the fact that the record of DPC proceedings contains the grade and ACR (Annual Confidential Report) of all the officers who are falling within the zone of consideration.
3. In the matter of **R.K. Jain v Union of India and Another**¹ the Supreme Court considered the decisions of the Kerala High Court rendered in the matter of **Centre of Earth Science Studies, Thiruvananthapuram v Dr. Mrs. Anson Sebastian and Anr.**² and that of the Delhi High Court rendered in the matter of **Arvind Kejriwal v Central Public Information Officer**³ holding that once the information seeker is provided information relating to a third party, it no longer remains in the private domain. Such information seeker can then disclose in turn such information to the whole World. Therefore, for providing the information the procedure outlined under Section 11 (1) of the Right to Information Act, 2005 (henceforth 'the RTI Act') cannot be dispensed with.
4. In the matter of **Arvind Kejriwal** (supra) the Delhi High Court held thus from paras 22 to 26 :

1 (2013) 14 SCC 794

2 AIR 2010 Kerala 151 : (2010) 2 KLT 233

3 AIR 2010 Delhi 216

22. Turning to the case on hand, the documents of which copies are sought are in the personal files of officers working at the levels of Deputy Secretary, Joint Secretary, Director, Additional Secretary and Secretary in the Government of India. Appointments to these posts are made on a comparative assessment of the relative merits of various officers by a departmental promotion committee or a selection committee, as the case may be. The evaluation of the past performance of these officers is contained in the ACRs. On the basis of the comparative assessment a grading is given. Such information cannot but be viewed as personal to such officers. Vis-a-vis a person who is not an employee of the Government of India and is seeking such information as a member of the public, such information has to be viewed as constituting 'third party information'. This can be contrasted with a situation where a Government employee is seeking information concerning his own grading, ACR etc. That obviously does not involve 'third party' information.

23. What is, however, important to note is that it is not as if such information is totally exempt from disclosure. When an application is made seeking such information, notice would be issued by the CIC or the CPIOs or the State Commission, as the case may be, to such 'third party' and after hearing such third party, a decision will be taken by the CIC or the CPIOs or the State Commission whether or not to order disclosure of such information. The third party may plead a 'privacy' defence. But such defence may, for good reasons, be overruled. In other words, after following the procedure outlined in Section 11(1) of the RTI Act, the CIC may still decide that information should be disclosed in public interest overruling any objection that the third party may have to the disclosure of such information.

24. Given the above procedure, it is not possible to agree with the submission of Mr. Bhushan that the word 'or' occurring in Section 11 (1) in the phrase information "which relates to or has been supplied by a third party" should be read as 'and'. Clearly, information relating to a third party would also be third party information within the meaning

of Section 11(1) of the RTI Act. Information provided by such third party would of course also be third party information. These two distinct categories of third party information have been recognized under Section 11(1) of the Act. It is not possible for this Court in the circumstances to read the word 'or' as 'and'. The mere fact that inspection of such files was permitted, without following the mandatory procedure under Section 11(1) does not mean that, at the stage of furnishing copies of the documents inspected, the said procedure can be waived. In fact, the procedure should have been followed even prior to permitting inspection, but now the clock cannot be put back as far as that is concerned.

25. The logic of the Section 11(1) RTI Act is plain. Once the information seeker is provided information relating to a third party, it is no longer in the private domain. Such information seeker can then disclose in turn such information to the whole world. There may be an officer who may not want the whole world to know why he or she was overlooked for promotion. The defence of privacy in such a case cannot be lightly brushed aside saying that since the officer is a public servant he or she cannot possibly fight shy of such disclosure. There may be yet another situation where the officer may have no qualms about such disclosure. And there may be a third category where the credentials of the officer appointed may be thought of as being in public interest to be disclosed. The importance of the post held may also be a factor that might weigh with the information officer. This exercise of weighing the competing interests can possibly be undertaken only after hearing all interested parties. Therefore the procedure under Section 11(1) RTI Act.

26. This Court, therefore, holds that the CIC was not justified in overruling the objection of the UOI on the basis of Section 11(1) of the RTI Act and directing the UOI and the DoPT to provide copies of the documents as sought by Mr. Kejriwal. Whatever may have been the past practice when disclosure was ordered of information contained in the files relating to appointment of officers and which information included their ACRs, grading,

vigilance clearance etc., the mandatory procedure outlined under Section 11(1) cannot be dispensed with. The short question framed by this Court in the first paragraph of this judgment was answered in the affirmative by the CIC. This Court reverses the CIC's impugned order and answers it in the negative.

5. The Supreme Court eventually concluded that information relating to a third party cannot be provided as it would amount to invasion of the privacy of the individual. Similarly, if copy of the DPC proceedings are supplied it will invade the privacy of persons whose ACRs would be disclosed to the information seeker, therefore, the procedure outlined under Section 11 (1) of the RTI Act is to be followed, as the same cannot be dispensed with. If the said parties, whose ACRs have been considered by the DPC, agree and accord consent for supplying the information, the information may be supplied, but if even one of the candidate fallen within the zone of consideration refuses to accord consent, entire DPC proceedings cannot be supplied unless the Commission, for good reasons, overrules the objection.
6. In view of foregoing, the impugned orders passed by the Commission in both the writ petitions are set aside and both the matters are remitted back to the Commission to follow the mandatory provision outlined under Section 11 (1) of the RTI Act and thereafter, pass the final order after seeking consent of all the parties whose ACRs are contained in the DPC proceedings.
7. In the result, both the writ petitions are allowed to the extent indicated *supra*. No order as to costs.

Sd/-

Judge
Prashant Kumar Mishra

Gowri