

**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND**

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

Writ Appeal Nos.376 and 377 of 2018

COMMON JUDGMENT: {Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan}

Bharat Sanchar Nigam Limited, (for short "the appellant herein"), is in appeal aggrieved by the order passed by the Learned Single Judge in W.P.Nos.36596 and 37051 of 2017 dated 07.11.2017. W.P.No.36596 of 2017 was filed by the 1st respondent herein seeking a mandamus to declare the inaction of the Central Information Commissioner, in taking action against the Central Public Information Officer for not disposing of his application dated 01.04.2016 under Section 6 of the Right to Information Act, 2005 (for short "the 2005 Act"), as illegal and arbitrary. A consequential direction was sought to punish the Central Public Information Officer under Section 20 of the 2005 Act. The appellants in W.A.No.376 of 2018 had filed W.P.No.37051 of 2017 seeking a direction from this Court to call for the order passed by the Central Public Commission dated 19.06.2017, and to declare the said order as illegal and arbitrary.

Facts, to the limited extent necessary, are that the 1st respondent herein filed an application on 01.04.2016 seeking copies of the transportation bills received from him from 2008 to 2012, copies of PLB pipe material allocated to him during the said period – route-wise and division wise, copies of the minutes of the meeting between himself and BSNL during the said period etc. The said application was rejected by the Central Public Information Officer, i.e the Deputy General Manager (Admn), BSNL, by his

order dated 13.04.2016 holding that this information could not be furnished in view of Section 8(1)(b) of the 2005 Act.

Aggrieved thereby, the 1st respondent herein preferred an appeal to the first appellate authority (General Manager, BSNL) who, by his order dated 16.05.2016, rejected the appeal under Section 8(1)(b) of the 2005 Act. Against the said order passed by the first appellate authority, the 1st respondent herein carried the matter in appeal to the Chief Information Commissioner who, by his order dated 19.06.2017, held that the information sought for did not attract the exemption available under Section 8(1)(b) of the 2005 Act. The Central Public Information Officer was directed to provide the information, sought for by the 1st respondent, within 15 days from the date of receipt of a copy of the order.

The 1st respondent herein filed W.P.No.36596 of 2017 contending that the information sought for was not furnished despite the order of the Chief Information Commissioner dated 19.06.2017, and the Chief Information Commissioner should have taken action against the Central Public Information Officer (DGM, BSNL) under Section 20 of the 2005 Act. The appellants in W.A.No.376 of 2018 filed W.P.No.37051 of 2017 to set aside the said order of the Chief Information Commissioner dated 19.06.2017.

In the order under appeal dated 07.11.2017, the Learned Single Judge observed that Section 8(1)(b) of the 2005 Act prohibited information expressly forbidden to be published by any Court of law or Tribunal; and when there is no such Court order, prohibiting the information sought by the 1st respondent, Section 8(1)(b) of the 2005 Act was not attracted. The plea of BSNL, that

the information sought for was not available, was rejected by the Learned Single Judge holding that this plea was neither raised before the Central Information Commission nor before the Central Public Information Officer, and such a contention could not be allowed to be raised, for the first time, before this Court. While W.P.No.36596 of 2017 was allowed, W.P.No.37051 of 2017 was dismissed; and the Central Information Commission was directed to take action against the Central Public Information Commissioner (DGM (Admn), BSNL), under Section 20 of the 2005 Act for not implementing the order dated 19.06.2017. The entire exercise was directed to be completed by the Central Information Commission within two months from the date of receipt of a copy of the order.

Smt. T.Bala Jayasree, learned Standing Counsel for the BSNL, would submit that the civil disputes, between the appellant herein on the one hand, and the 1st respondent on the other, were referred to a Sole Arbitrator who passed an award on 01.04.2014; the said award, among others, dealt with the request of the 1st respondent that certain documents be produced; the said request was rejected by the arbitrator; in the petition, filed under Section 34 of the Arbitration and Conciliation Act, 1996 ("the Act" for short) by the 1st respondent herein in A.A.O.P.No.23 of 2014, the District Judge, Rajahmundry had, by her order dated 26.10.2015, rejected a similar contention, urged by the 1st respondent, that the copies sought for should be furnished; against the order passed by the District Judge, the 1st respondent herein has preferred C.M.A.No.159 of 2016 which is pending before a Division Bench of this Court; as furnishing of these documents would prejudice the

case of the appellant herein before the Division Bench, the 1st respondent cannot claim, as of right, that these documents should be furnished to him; having failed to secure these documents, either before the Arbitrator or before the Civil Court, the 1st respondent has now taken the right to information route to secure copies of these documents; and since the entitlement of the 1st respondent to these documents is the subject matter of C.M.A. No.159 of 2016, pending before a Division Bench of this Court, this Court should suspend the order of the Learned Single Judge, and await the decision of the Division Bench in C.M.A.No.159 of 2016 regarding the entitlement of the 1st respondent to be furnished these documents. She would further submit that, if an interim order of suspension is not passed, the General Manager, BSNL would be prosecuted, under the 2005 Act, for not providing the information sought for.

On the other hand Sri P.Gopal Das, learned counsel for the 1st respondent, would submit that the request of the 1st respondent under the 2005 Act, for certain information to be furnished to him, was rejected both by the original authority, and the first appellate authority, who are officers of the BSNL; it is only if the request, for the information sought for to be furnished, falls within the ambit of Section 8 of the 2005 Act, can such a request be refused; Section 8(1)(b) of the 2005 Act has no application to the present case; mere pendency of a dispute before the Arbitral Tribunal, or before the Courts, does not enable the authorities concerned to refuse to furnish the information sought for under the 2005 Act; and, since the order of the Chief Information Commissioner dated 19.06.2017 was not implemented by the authorities concerned, the 1st

respondent was constrained to invoke the jurisdiction of this Court, and seek a direction to the Chief Information Commissioner to take action against the Central Public Information Officer under Section 20 of the 2005 Act.

Before all the authorities under the 2005 Act reliance was placed, on behalf of the appellant, on Section 8(1)(b) of the 2005 Act. Section 8 of the 2005 Act relates to exemption from disclosure of information and under Sub-Section (1) thereof, notwithstanding anything contained in this Act, there shall be no obligation to give any citizen information falling within the ambit of Clauses (a) to (j) thereunder. Since reliance is placed by Smt. T.Bala Jayasree, learned Standing Counsel for the BSNL, on Section 8(1)(b) of the 2005 Act, it is necessary to examine its scope.

It is only information, expressly forbidden to be published by any Court of law or tribunal or the disclosure of which may constitute Contempt of Court, which is exempt from being furnished in terms of Section 8(1)(b) of the 2005 Act. It is not even the case of the appellant herein that the information, which the 1st respondent had sought, was expressly forbidden to be published by any Court of law or Tribunal. It is also not their case that disclosure of this information would constitute Contempt of Court. It is evident, therefore, that Section 8(1)(b) of the 2005 Act is not attracted to the facts of the present case. The justification given by the appellants, for not furnishing the information sought by the 1st respondent, is that this information is sought to be used by the 1st respondent in the pending proceedings before a Division Bench of this Court which would prejudice the case of the appellant herein. While it is not clear how the appellant would be prejudiced, on the

information sought for being furnished, we shall proceed on the premise that it would.

The 2005 Act was enacted to ensure greater and more effective access to information, and it is for this reason that the Freedom of Information Act, 2002 was sought to be made more progressive, participatory and meaningful. On the advice of the National Advisory Council, certain changes were incorporated to ensure smoother and greater access to information. The 2005 Act, as is evident from its preamble, is an Act to provide for setting out the practical regime of the right to information, for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority.

“Public authority” is defined, under Section 2(h) of the 2005 Act, to mean any authority or body or institution of self-government established or constituted, among others, by any law made by Parliament or by notification issued or order made by the appropriate Government. It has not been disputed before us that the BSNL is a public authority. Section 6(1) of the 2005 Act enables a person, who desires to obtain any information under this Act, to make a request in writing to the Central Public Information Officer specifying the particulars of the information sought for by him. Section 6(2) of the 2005 Act stipulates that an application, making a request for information, shall not be required to give any reason for requesting the information, or any other personal details except those that may be necessary for contacting him. Section 7(2) of the 2005 Act stipulates that, if the Central Public Information Officer fails to give a decision on the request for

information within the period specified under sub-section (1), the Central Public Information Officer must be deemed to have refused such a request.

The 2005 Act provides for an appeal thereagainst, and a further appeal to the Central Information Commissioner. The obligation placed by the 2005 Act, on the Central Public Information Officer, to provide the information sought for by any person, is required to be promptly discharged. Apart from the information specified in Section 8, the 2005 Act does not restrict the kind of information which the public authority is required to furnish. The mere fact that the 1st respondent herein has a pending dispute with the appellant herein does not discharge the Central Public Information Officer, a statutory authority under the 2005 Act, from his obligation of providing the information sought for by the 1st respondent herein. It is only if the information sought for falls within the ambit of any of the exemptions, under Section 8 of the 2005 Act, can the Central Public Information Officer refuse to provide the information sought for.

As noted hereinabove, Clause (b) of Section 8(1) of the 2005 Act has no application to the case on hand, and is not attracted even in cases where one of the parties, to a pending litigation with the organisation where the Central Public Information Officer is employed, seeks information connected to such a dispute. As mere pendency of inter-se disputes would not justify refusal to provide the information sought for, as it does not fall within the ambit of any of the exemptions stipulated under Section 8 of the 2005 Act, the Central Public Information Officer was obligated to provide the information sought for by the 1st respondent.

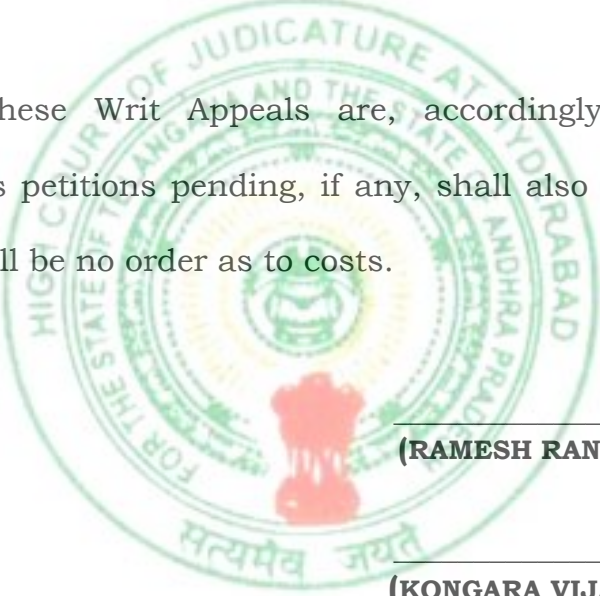
Section 20 of the 2005 Act relates to penalties and, under Sub-Section (1) thereof, where the Central Information Commissioner is of the opinion that the Central Public Information Officer has, without reasonable cause, refused to receive an application for information, or has not furnished the information within the time specified, or has malafidely denied the request for information, or has knowingly given incorrect, incomplete or misleading information, or destroyed information which was the subject of the request, or obstructed in any manner in furnishing the information, a penalty of two hundred and fifty rupees for each day, till the application is received or information is furnished, shall be imposed subject to a limit of twenty-five thousand rupees.

The order of the Learned Single Judge obligated the Central Information Commission to take action, against the Central Public Information Officer, under Section 20 of the 2005 Act for not implementing his order dated 19.06.2017. While failure, on the part of the authorities concerned, to provide the information sought for would, undoubtedly, attract the penal provisions of the 2005 Act, the fact remains that the appellant herein cannot be denied its right of challenging the validity of the order, of the Central Information Commission, in writ proceedings under Article 226 of the Constitution of India, and a reasonable time taken to do so, may not justify imposition of penalty.

As we are satisfied that refusal by the appellant herein, to provide the information sought for, does not fall within any of the exemptions stipulated under Section 8 of the 2005 Act, the appellant herein is bound to furnish the information sought for by the 1st respondent herein. Suffice it, in order to protect the

interests of the appellant herein, if they are permitted to furnish the information, sought for by the 1st respondent, within three weeks from today. If the information is furnished within the time stipulated hereinabove, the Central Information Commission shall not take any further action against the appellant herein under Section 20 of the 2005 Act. Failure on the part of the appellant herein to furnish the information sought for, within the afore-stipulated period of three weeks, would require the Central Information Commission to take such action as is necessary to ensure compliance of the order passed by the Learned Single Judge.

Both these Writ Appeals are, accordingly, disposed of. Miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.



(RAMESH RANGANATHAN, ACJ)

(KONGARA VIJAYA LAKSHMI, J)

15th March, 2018

Note: Issue C.C by 20.03.2018.

JSU

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI



Writ Appeal Nos.376 and 377 of 2018

Date: 15.03.2018

JSU