

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
207**

Date of decision:02.08.2018

CWP-27053-2017

UNION OF INDIA

...PETITIONER

V/S

AMIT SOOD AND OTHERS

...RESPONDENTS

CWP-27066-2017

UNION OF INDIA

...PETITIONER

V/S

AMIT SOOD AND ANOTHER

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Vivek Chauhan, Advocate,
for the petitioner.

Mr. Amit Sood-respondent No. 1.

None for respondents No. 2 and 3.

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AUGUSTINE GEORGE MASIH, J.

By this order, I propose to decide two writ petitions which arise out of orders passed by the Central Information Commission (hereinafter referred to as 'CIC') dated 10.10.2017 (Annexure P-6), vide which appeal preferred by respondent No. 1 has been accepted and the information, as sought by respondent No. 1, has been ordered to be supplied to him except for the information sought at para-7 in the RTI application (impugned order in CWP No. 27053 of 2017) whereas the order under challenge in CWP No. 27066 of 2017 is also dated 10.10.2017 (Annexure P-6) wherein the appeal of respondent No. 1 has been allowed. As the issue

involved in both these writ petitions for consideration was identical, counsel for the petitioner as well as respondent No. 1, who appears in person, submitted that the cases be heard together and a common order be passed therein.

2. The facts in brief are that respondent No. 1, filed two applications seeking information under the Right to Information Act. In one he sought information regarding findings of the Court of enquiry conveyed on 08.04.2015 against him and the decision of the competent authority (subject matter of CWP No. 27053 of 2017) and in the other consideration of his letter dated 15.12.2015 addressed to the GOC-in-C Western Command HQ, file notings from the date of its receipt and its inception; name and designation of officers who considered the letter; rules/regulations which lay down timeline for disposal of matters such as the letter in question (subject matter of CWP No. 27066 of 2017). This information was denied to respondent No. 1 on the plea that the information, which is being sought, is exempt from disclosure as per the provisions of Section 8 (1) (e) of the Right to Information Act i.e. fiduciary relationship.

3. After the First Appeal preferred by respondent No. 1-applicant was dismissed, he filed Second Appeal. In this appeal, the writ petitioner submitted that the terms of fiduciary relationship would include a relationship in which one person is under a duty to act for the benefit of the other on the matters within the scope of the relationship and the various officials may have given their notings in discharge of their duty to act or give advice to their authority/competent authority on matters falling within the scope of that relationship. It was also asserted that the relationship of a

public servant with the Government can be fiduciary in respect of a particular transaction or an act when the law requires that the public servant must act with utmost good faith for the benefit of the Government reposing confidence in the integrity of the public servant. The notings have been furnished by the officials in confidence and trust reposed by them in the Government to serve public purpose and interest and, therefore, supplying such an information, which would impeach the confidence, trust and the confidentiality attached, would amount to betrayal of such faith reposed by the officials. It would further amount to compromising or affecting the confidentiality and identity of the fiduciary relationship, sanctity whereof needs to be upheld. It has further been asserted that these opinions and notings are primarily inputs which may or may not be binding upon the competent authority or department and, therefore, this information, which is merely for the purpose of providing inputs for a proper considered decision by the competent authority, cannot be supplied betraying the faith reposed by an official in the system. During the appeal, on a suggestion put forth by the Commission, Section 8 (1) (g) was also sought to be pressed into service by asserting that disclosure of the names of the persons, who would have put in their inputs in the form of notings, would endanger the life and physical safety of such persons and, therefore, the said information has rightly been denied to respondent No. 1.

4. These grounds were duly considered by the CIC but not accepted in the light of the observations of the Delhi High Court in its judgment dated 07.10.2010 in the matter of **Union of India vs. R.S.Khan**, AIR 2011 Delhi 50, which had further relied upon the observations of a Division Bench of the same Court in **Union of India vs. L.K.Puri**, 151

DLT 2008 resulting in filing of these writ petitions rejecting the stand of the petitioner and directing the supply of the information, as has been sought for by respondent No. 1 in his applications under the Right to Information Act except for what was denied to him in the impugned order, which has been referred to above.

5. Learned counsel for the petitioner has reiterated the submissions, which have been pressed into service before the CIC, by asserting that the fiduciary relationship would be violated as this would lead to a situation where because of the honest opinion given by the officers/officials at different stages of the consideration of the matter would expose them to unnecessary harassment. The confidentiality and the faith posed in the institution by the employees cannot be made available and provided to respondent No. 1. It is submitted that the fiduciary relationship has to be honoured, respected and protected as the public servant who had acted in good faith for the benefit of the Government and reposed confidence, would be exposed which means honest opinion would be compromised with by disclosing the same. The notings in the file are of utmost sensitive nature as the same pertains to the opinions which have been recorded to pursue the matter through proper channel so that there is scrutiny at each stage and the inputs are put-in so that the competent authority can take a well considered decision on a particular issue. Disclosure of information would not be in the interest of the institution and, therefore, the same has rightly been denied to respondent No. 1. It has been asserted that in case the names of the officers/officials are disclosed, that would unnecessarily expose them to possible intimidation or harassment at a later stage which may not be conducive for the institution as such the

employees would prefer not to put forth their honest opinions because of the fear which may creep in leading to incomplete and inapt opinions/material affecting the efficiency of the system as a whole. He, therefore, prays for allowing both these writ petitions by setting aside the impugned orders dated 10.10.2017 (Annexure P-6) passed by the CIC therein.

6. On the other hand, respondent No. 1, who appears in person, supports the orders impugned by asserting that the information, which is being sought by him, relates to his personal case and he has not sought any information, which is not connected with or does not have any relationship with the disciplinary proceedings initiated against him. He places reliance upon the judgment in R.S.Khan's case (supra) to assert that the employee, against whom the disciplinary proceedings are held, should be provided the said information so that he is aware of the reasons and the grounds, which have been instrumental in resulting in the final decision taken by the competent authority and he can, accordingly, take further proceedings in the matter. Assertion has also been made that if such information is not supplied it would amount to denying him the right to defend himself in an effective manner putting him to disadvantage to press his legal rights for redressal of his grievance. He, therefore, prays for dismissal of the writ petitions.

7. I have considered the submissions made by the counsel for the petitioner as well as respondent No. 1 and with their assistance, have gone through the impugned orders as also the material placed on record.

8. What has been pressed into service for denying information to respondent No. 1 is Section 8 of the RTI Act, which provides for exemption from disclosure of information. Emphasis has been laid upon sub-section 1

(e) of Section 8 of the RTI Act. Section 8 (1) (e) is reproduced herein below:-

“Section 8-Exemption from disclosure of information

(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,

xxx xxx xxx xxx

“(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;”

A perusal of these provisions would show that merely because the information available is in fiduciary relationship, provided it is so, would not be enough unless the competent authority is satisfied otherwise that it is in larger public interest warranting disclosure. The basic thing, therefore, is whether the information available with the petitioner, which pertains to the findings, opinions and recommendations of the Court of enquiry held against respondent No. 1, would fall within the ambit of fiduciary relationship in the first instance, that would determine the applicability of the exemption from disclosure of such information.

9. What is required to be seen is whether a Government servant performing his official functions, which includes making notes on a file, would fall within the term 'fiduciary relationship'. This aspect has to be seen in the context of a person, who is seeking information. If the information sought by a person relates to his personal matter, the same would not fall within the ambit of the term 'fiduciary relationship' whereas if that information is sought by a third person, who is a stranger to the issue, or the

information sought pertains to the other than the employee himself, then the said term would come into effect. However, that also in itself would not absolutely bar for supplying information to a third person despite there being a fiduciary relationship as an exception is carved in this regard also i.e. where the competent authority is satisfied with the larger public interest would warrant disclosure of such information. This leaves no manner of doubt that there is no blanket bar with regard to supplying information, which is available even in a fiduciary relationship.

10. Present is a case where admittedly, the information, which has been sought by respondent No 1 in one case, relates to findings of the Court of enquiry convened against him on 08.04.2015 and the decision of the competent authority, while in the other, it relates to consideration of his letter dated 15.12.2015 addressed to the GOC-in-C Western Command HQ where file notings from the date of its receipt and its inception; name and designation of officers who considered the letter and the rules/regulations laying down timeline for disposal of matters such as the letter in question. This Court is in agreement with the opinion, as has been expressed by the Delhi High Court in R.S.Khan's case (supra), where it has been held that the official notings would not fall within the ambit of the term 'fiduciary relationship' and have to be supplied to the affected persons as respondent No. 1 herein.

11. Hon'ble Supreme Court in **Central Board of Secondary Education and Anr. vs. Aditya Bandopadhyay and others**:(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. In para 22, it has been held as follows:-

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 share-holder, 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.”

12. While dealing with a case under the RTI Act, Hon'ble Supreme Court in **Khanapuram Gandaiah vs. Administrative Officer**, (2010) 2 SCC 1, while refereeing to the definition of 'information' as provided under Section 2 (f) held as below:

“10. xxxxxxxxxxxxxxxxxxxx

This definition shows that an applicant under Section 6 of the RTI Act can get any information which is already in existence and accessible to the public authority under law. Of course, under the RTI Act an applicant is entitled to get copy of the opinions, advices, circulars, orders etc., but he cannot ask for any information as to why such opinions, advices, circulars, orders etc. have been passed, especially in matters pertaining to judicial decisions.”

13. In view of the above, the plea of protection of Section 8 (1) (e) for exemption from supplying information, as sought by respondent No. 1, is not sustainable and therefore, is rejected.

14. Resort to take shelter of Section 8 (1) (g) for seeking exemption from disclosure of information as it would endanger the life and physical safety of the persons who would have given their comments on the notings or would identify the source of information cannot be said to be of such a nature as would fall within the term “assistance in confidence for law enforcement or security purposes” as is provided for in this Section. No reasons, grounds or justification is given to press this exemption which was not initially invoked for rejecting the information sought by respondent No.

1. It may be pointed out that no factual background has been pleaded to

support or substantiate this plea as raised now. This ground/plea is, thus, rejected.

15. There is no merit in the submissions, which have been put forth by the leaned counsel for the petitioner which would call for interference by this Court in the impugned orders.

In view of the above, orders dated 10.10.2017 (Annexure P-6), which are under challenge in both the writ petitions, are upheld. The writ petitions stand dismissed with no order as to costs.

2nd August, 2018
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(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/non-speaking *Yes/No*

Whether Reportable *Yes/No*