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

+ **W.P.(C) 8687/2011 and CM No. 19656/2011**

UNION OF INDIA

..... Petitioner

Through: Ms Anumita Chandra, Advocate.

versus

RAJIV RANJAN VERMA

..... Respondent

Through: Counsel (appearance not given).

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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22.01.2018

1. The petitioner (Union of India, Ministry of Law and Justice) has filed the present petition impugning an order dated 27.07.2011 (hereafter 'the impugned order') passed by the Central Information Commission (hereafter 'CIC') transferring the respondent's application under the Right to Information Act, 2005 (hereafter 'the Act') to the CPIO of Department of Personnel and Training (DoPT) under Section 6(3) of the Act. The CIC also observed that the information sought by the respondent was not exempt from disclosure under Section 8(1)(e) of the Act.

2. The principal controversy sought to be addressed in the present petition is whether the opinion and/or advice given by the Ministry of Law & Justice to other Departments of Central Government is exempt from disclosure under Section 8(1)(e) of the Act.

3. The respondent had filed an application dated 14.03.2011 under the Act seeking certain information in respect of an incident that occurred on

22.08.2010 at Mustafa Shopping Centre, Singapore. The relevant extract of the said letter indicating the information sought for by the respondent reads as under:-

“2. In respect of incidence dated 22.8.2010 at Mustafa Shopping Centre, Singapore, action is sought to be taken under Rule 12(d) of IAS (Probation) Rules, 1954, against my son in law namely Mr. Pranav Kumar, IAS, 2008 Batch, Bihar Cadre and for making effective defence, following information/documents are urgently required:-

(i) The legal opinion sought by the Cabinet Secretariat/PMO/DOP&T in the above matter.

(ii) The legal opinion provide by the Ministry of Law & Justice in full detail with notings and its complete substance and final conclusion.”

According to the respondent, the information sought by him was required for effectively defending the proceedings initiated against his son-in-law Mr Pranav Kumar.

4. The CPIO of the petitioner responded to the respondent's application by stating that the information sought by the respondent is neither specific nor clear as no date, period and file number had been given. The respondent was also informed as per general practice that the files were received from various Ministries/Departments and after examining the same they were returned to the Department concerned. The CPIO of the petitioner also stated that the advice tendered by the Ministry of Law and Justice is in a fiduciary capacity and, therefore, the respondent should approach the concerned Department for further information.

5. Aggrieved by the response of the CPIO of the petitioner, the respondent preferred an appeal under Section 19 of the Act before the First Appellate Authority (FAA). The said appeal was dismissed by the order dated 28.04.2011. This led the respondent to file the second appeal under Section 19 (3) of the Act before the CIC.

6. Before the CIC, the petitioner contended that the information sought by the respondent was not held by the Ministry of Law & Justice as the Ministry does not follow any strict practice of maintaining copies of opinions/advices it tenders to the concerned Department of the Central Government. It was contended that the files through which any Government Department seeks the opinion of Law Ministry on any given issue, is returned to the concerned Department after tendering an opinion/advice on the same file and, hence, the opinion/advice tendered by the Law Ministry becomes a part of the file, which is eventually returned to the Department concerned.

7. Before the CIC it was the petitioner's case that the information has to be sought with respect to a particular file then the appropriate manner to seek the same would be from the Department concerned from where the file had initially originated.

8. The CIC accepted the aforesaid contentions and held that the information as required by the respondent ought to be sought from the authority which is holding the relevant file. The CIC observed that in the present case, DoPT being the parent Department of Mr Pranav Kumar would have originated the file and, therefore, the information ought to be sought

from the said Department. Accordingly, the CIC directed the CPIO of the petitioner to transfer the application to the CPIO of DoPT and further directed that the concerned CPIO of DoPT to take appropriate action under the provisions of the Act with respect to the respondent's application under the Act.

9. The CIC also observed that the decision whether to disclose the information or not would have to be taken by the concerned Department and it will be open for the said Department to invoke the relevant provisions of Section 8(1) of the Act if it chooses not to provide the information as sought by the information seeker.

10. Ms Anumita Chandra, the learned counsel appearing for the petitioner contended that any advice or opinion given by the Ministry of Law & Justice would be privileged communication under Section 126 and 129 of the Indian Evidence Act, 1872 and neither the Ministry of Law & Justice nor the Department of the Central Government that seeks the legal opinion/advice could be compelled to disclose the information relating to such advice/opinion.

11. It is not necessary to adjudicate the said issue in this petition because – as rightly held by the CIC – the decision whether the information sought by the respondent is to be withheld from him would have to be taken by the concerned department (in this case, DoPT). Paragraph 13 of the impugned order is set out below:

“13. Thus, the Commission is of the view that the decision as to whether the legal opinion / advice tendered by the Law

Ministry to the concerned Department of the Government of India be disclosed or not under the RTI Act, has to be made by the Department seeking that advice and it shall be open to that Department / Ministry to invoke the relevant clause of Section 8(1) of the RTI Act if it chooses not to provide the information sought under the RTI Act.”

12. The issue whether DoPT can deny the information sought under section 8(1)(e) of the Act would arise only when the concerned CPIO responds to the respondent’s request.

13. In view of the above, no interference with the impugned order is called for at this stage. However, it is clarified that the question sought to be raised by the petitioner in this case is left open.

14. The petition and the pending application are disposed of.

VIBHU BAKHRU, J

JANUARY 22, 2018

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