

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 19.02.2018

+ **W.P.(C) 5547/2017 & CM No. 23333/2017**

CENTRAL BOARD OF DIRECT TAXES

..... Petitioner

versus

SATYA NARAIN SHUKLA

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr Ruchir Bhatia, Senior Standing Counsel
with Mr Gurpreet Shah Singh, Dy. CIT
(O&D), CBDT.
For the Respondent : Respondent in person.

CORAM:-

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner (hereafter 'CBDT') impugns an order dated 29.05.2017 (hereafter 'the impugned order') passed by the Central Information Commission (hereafter 'the CIC') in a second appeal preferred by the respondent under Section 19(3) of the Right to Information Act, 2005 (hereafter 'the Act').

2. By the impugned order, the CIC has, *inter alia*, directed disclosure of the information sought by the respondent and photocopies of responses received from Director Generals of Income Tax (DGs) to CBDT's letter dated 11.08.2015. According to CBDT, the said information is excluded from the scope of the Act as it emanates from the Directorate General of Income Tax (Investigation). The said office is placed in the Second

Schedule of the Act and, thus, any information received from the said office is excluded from the purview of the Act by virtue of Section 24(1) of the Act. CBDT also claims that the said information is exempt from disclosure under the provisions of Section 8(1)(h) of the Act.

3. Briefly stated, the relevant facts necessary to consider the aforesaid controversy are as under:-

4. The respondent filed an application dated 16.11.2015 seeking the following information under the Act:-

“(1) Photocopies of the letters no. F. No. 282/4/2012-IT(Inv) dated 1.10.2013 and No. 282/04/2012-IT(Inv. V)/140 dated 9.7.2015.

(2) Photocopies of the responses received from the DGs to the letter No. 282/4/012-IV (Inv. V)/192 dated 11.08.2015 from Shri Rajat Mittal, Under Secretary (Inv. V) CBDT.”

5. The Central Public Information Officer (CPIO) of CBDT responded to the petitioner's application by a letter dated 28.12.2015. He did not provide the photocopies of the letters as sought for at point no.1 but briefly indicated the contents of those letters. Insofar as the information sought at point no.2 is concerned, the CPIO responded as under:-

“Since, the matter is under investigation, hence under the provisions of Section 8(h) of RTI Act, 2005 (Information which would impede the process of investigation or apprehension or prosecution of offenders) information cannot be provided at this stage.”

6. Aggrieved by the response of the CPIO, the respondent preferred an appeal under Section 19(1) of the Act before the First Appellate Authority

(hereafter 'the FAA'). The said appeal was disposed of by an order dated 11.02.2016, whereby the FAA directed the CPIO to provide photocopies of the relevant letters as requested by the respondent as per point no.1 of his application. In respect of the respondent's request for responses received from the DGs to the letter dated 11.08.2015 is concerned, the FAA upheld the CPIO's decision that the said information was exempt under the provisions of Section 8(1)(h) of the Act and, therefore, could not be provided at that stage. However, the FAA directed the CPIO to convey the outcome of the investigations once the same are concluded.

7. Aggrieved by the decision of the FAA rejecting the request for furnishing the responses received from the DGs, the respondent preferred a second appeal before the CIC. The said appeal was allowed by the impugned order and the CPIO was directed to supply the information sought for by the respondent.

8. The controversy relates to the verification of the affidavits filed by the Members of Parliament (MPs) and Members of Legislative Assembly (MLAs) disclosing their assets to the Election Commission. The respondent had submitted a list of MPs and MLAs whose assets have allegedly increased more than fivefold after the previous election (that is, during the term of their office as elected representatives after the previous election).

9. The said list of MPs and MLAs were forwarded to the DGs for verification. By a letter dated 11.08.2015, the following instructions were issued to the DGs with regard to the list of MPs and MLAs provided by the respondent:-

“The undersigned is directed to convey that any such case, featuring in the list that is yet to be verified, should be got verified urgently. A comprehensive report of the verifications done as per guidelines fixed by the Board may also be provided, if not done earlier. The report may be submitted *within a month from the date* of this letter in the annexed proforma. It is requested that the “Brief outcome” column must sufficiently record the outcome and the suggested course of action.”

10. The learned counsel appearing for CBDT submitted that CBDT could not be compelled to provide the photocopies of responses received from the DGs because: (i) the information sought for is exempted from disclosure by virtue of Section 8(1)(h) of the Act; and (ii) that any information from Directorate General of Income Tax (Investigation) is excluded from the purview of the Act by virtue of Section 24(1) of the Act.

11. Section 8(1)(h) of the Act reads as under:-

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

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(h) information which would impede the process of investigation or apprehension or prosecution of offenders.”

12. It is clear from the above that only such information which would (i) impede the process of investigation; (ii) impede the apprehension or prosecution of offenders, is exempted from disclosure by virtue of Section 8(1)(h) of the Act. In the present case, there is no material to indicate that any investigation is being conducted, which would be impeded by disclosure

of the information sought for by the respondent. It is stated by CBDT that the Election Commission of India forwards the affidavits submitted by MPs and MLAs disclosing their assets for verification to CBDT. Such affidavits are forwarded by CBDT to the Directorate General of Income Tax (Investigation) for verification and the outcome of such verification is shared directly by the Directorate General of Income Tax (Investigation) with the Election Commission of India.

13. The petitioner further states that the verification exercise carried out by the Directorate General of Income Tax (Investigation) is only indicative in nature and any further action proposed under the Income Tax Act, 1961 has to be followed up by an assessment order, which is passed by the concerned assessing officers. The verification affidavits filed by the candidates cannot be equated with an investigation as referred to in Section 8(1)(h) of the Act. The process of investigation as contemplated under Section 8(1)(h) of the Act is one in the nature of a probe and an inquiry. Clearly, verification from records cannot be termed as an “investigation”.

14. Even if, it is assumed that the verification being conducted by the Directorate General of Income Tax (Investigation) is in the nature of an investigation, the same is no ground for denial of information. Only such information which impedes the process of investigation can be denied. Thus, it would be necessary for the CPIO to specify the CIC that: (a) the investigation was conducted or was proposed; and (b) the information sought would impede the process of investigation. It is apparent that in the present case, these conditions are not met. First of all, there is no assertion that any process of investigation is under way; and secondly, there is no

material to indicate that disclosure of the information as sought would impede any such investigation.

15. The suggestion that the expression “process of investigation” includes within its ambit an assessment proceedings resulting in the assessment order is plainly unmerited. The assessment proceedings merely relate to scrutiny of the Income Tax Returns and an assessment income on tax payable by an assessee. Plainly, such proceedings do not take the colour of investigation.

16. The next question to be addressed is whether the information sought for by the respondent is excluded from the purview of the Act.

17. Section 24(1) of the Act reads as under:-

“24. Act not to apply to certain organizations.— (1) Nothing contained in this Act shall apply to the intelligence and security organisations specified in the Second Schedule, being organisations established by the Central Government or any information furnished by such organisations to that Government:

Provided that the information pertaining to the allegations of corruption and human rights violations shall not be excluded under this sub-section:

Provided further that in the case of information sought for is in respect of allegations of violation of human rights, the information shall only be provided after the approval of the Central Information Commission, and notwithstanding anything contained in Section 7, such information shall be provided within forty-five days from the date of the receipt of request.”

18. A plain reading of Section 24(1) of the Act indicates that the provisions of the Act would not be applicable to Intelligence and Security

Organizations as specified in the Second Schedule. Further, any information received from such organizations falls under the exclusionary clause of Section 24(1) of the Act. CBDT is not one of the offices, public organizations which are specified under the Second Schedule; but, the Directorate General of Income Tax (Investigation) is. Thus, any information received from the Directorate General of Income Tax (Investigation) by any Public Authority would also fall within the exclusionary provisions of Section 24(1) of the Act. Indisputably, the information sought for by the respondent emanates from the Directorate General of Income Tax (Investigations) (various DGs who have called upon to submit a comprehensive report of verification). Thus, CBDT would be justified in denying such information to the respondent.

19. It was also contended by the respondent that since the information sought for by him related to allegations of corruption, the same falls within the exception to the exclusionary clause of Section 24(1) of the Act. The respondent is correct that by virtue of the first proviso to Section 24(1) of the Act, all information pertaining to allegations of corruption and human rights violations falls within the exception to Section 24(1) of the Act. In other words, notwithstanding that such information emanates from any of the organizations as specified under the Second Schedule of the Act, it is not excluded from the purview of the Act.

20. However, in the present case, it is difficult to accept that the information sought by the respondent pertains to allegations of corruption, as no such allegations have been made at any stage. The respondent had merely highlighted that the net wealth of certain MLAs and MPs had

increased fivefold and the respondent had sought verification of the same in order to bring about a higher level of transparency. No specific or general allegations of corruption were advanced by the respondent.

21. Thus, it is not possible to accept that the information as sought for by the respondent falls within the purview of the Act even though it emanates from the organization which is placed in the Second Schedule.

22. In view of the above, the order passed by the CIC cannot be sustained and is, accordingly, set aside. However, it is clarified that in the event any citizen was to make an allegation of corruption, the information as sought by the respondent would not be excluded from the scope of the Act.

23. The petition and the pending application are disposed of. The parties are left to bear their own costs.

FEBRUARY 19, 2018
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VIBHU BAKHRU, J