IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 27.08.2018

+ **W.P.(C) 11658/2017 & CM No. 47383/2017**

CENTRAL PUBLIC INFORMATION OFFICER ...Petitioner

Versus

HEMANTA KUMAR BEHERA ...Respondent

Advocates who appeared in this case:

For the Petitioner :Mr Zoheb Hossain, Sr. Standing Counsel for Revenue and Mr Piyush Goyal.

For the Respondent :Mr Jaladhar Das, Mr Dipak Kumar Jena.

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HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner (CPIO) has filed the present petition under Article 226 of the Constitution of India impugning the order dated 13.06.2017 (hereafter 'the impugned order') passed by the Central Information Commission (hereafter 'CIC').

2. By the impugned order, the CIC has allowed the second appeal preferred by the respondent under Section 19(3) of the Right to Information Act, 2005 (hereafter 'RTI Act') by directing the petitioner to provide the information as sought by the respondent by his application filed on 12.03.2016. The CIC has also called upon the petitioner to show cause as to why action should not be taken under Section 20(1) of the

RTI Act for failing to provide the information within the prescribed time.

Factual Background

3. On 12.03.2016, the respondent filed an application with the petitioner (CPIO, Office of the Income Tax Officer, Ward No. 32(5), New Delhi) seeking information in respect of the Sales Turnover Figure and Net Profit Figure of M/s P.K. Himatsingka & Co. for the Financial Years 2012-2013, 2013-2014 & 2014-2015 and copy of the firm's ITR - V return for the Assessment Year 2013-2014, 2014-2015 & 2015-2016.

4. On 08.04.2016, the petitioner denied the aforesaid information on the ground that the information sought for by the petitioner was a third party information and in the nature of personal information and thus, exempt from disclosure under Section 8(1)(j) of the RTI Act.

5. On 12.04.2016, the respondent filed an appeal under Section 19(1) of the RTI Act before the First Appellate Authority (FAA) for issuance of necessary directions to the petitioner for furnishing the information as sought by him.

6. On 27.06.2016, the respondent preferred a second appeal before the CIC under Section 19(3) of the RTI Act.

7. On 13.06.2017, the CIC passed the impugned order directing the petitioner to provide the information as sought by the respondent within a period of 10 days from the receipt of the impugned order. The CIC further called upon the petitioner to explain as to why penal action should be not taken in terms of Section 20(1) of the RTI Act for failing

to provide the information as sought by the respondent, within the prescribed time.

Submissions

8. Mr Hossain, the learned counsel appearing for the petitioner has assailed the impugned order on the ground that the CIC has failed to appreciate that the petitioner was justified in denying the information relating to the Income Tax Returns of M/s P.K. Himatsingka to the respondent, as the said information – being a third party information and in the nature of personal information – was exempt from disclosure by virtue of Section 8(1)(j) of the RTI Act. He placed reliance on the decision of the Supreme Court of India in ***Girish Ramchandra Deshpande v. Central Information Commissioner & Ors***: ***(2013) 1 SCC 212*** in support of his contention.

9. Mr Das, the learned counsel appearing for the respondent contested the aforesaid submission and contended that the company M/s P.K. Himatsingka & Co. was declaring a lower income than its genuine income for evading taxes. He also contended that similar information had been obtained from the department of Trade and Taxes, Ward 88, Govt of NCT of Delhi, Naval Head Quarters and Engineers Store Department, West Bengal.

Reasons and Conclusion

10. The principal question that falls for consideration of this Court is whether the details of profit declared by a third party and its Income tax

returns is exempt from disclosure under Section 8(1)(j) of the RTI Act.

11. Before proceeding further, it would be relevant to refer to Section 8(1)(j) of the RTI Act which 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,−
>
> xxxx xxxx xxxx xxxx
>
> (j) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:
>
> Provided that the information, which cannot be denied to the Parliament or a State Legislature shall not be denied to any person."

12. It is apparent from the above that three principal conditions must be met for the said clause to be applicable: first, that the information sought must qualify as personal information; second, that disclosure of such information should have no relationship to any public activity or interest; and third, that it would cause unwarranted invasion of the privacy of the individual.

13. Even if the aforesaid conditions are met, such information can be disclosed if the CPIO is satisfied that larger public interest justifies the disclosure of such information.

14. In ***Girish Ramchandra Deshpande*** (*supra*), the Supreme Court had examined the question whether the CIC was correct in denying information pertaining to a person's income tax returns on the ground that such information, fell within the scope of 'personal information'. Answering the aforementioned question in the affirmative, the Supreme Court held that the said details sought for, which were denied by the CIC, qualified to be personal information as defined in Clause (j) of Section 8(1) of the Act. The relevant observations made by the court are set out below:

> "14. The details disclosed by a person in his income tax returns are "personal information" which stand exempted from disclosure under clause (j) of Section 8(1) of the RTI Act, unless involves a larger public interest and the Central Public Information Officer or the State Public Information Officer or the Appellate Authority is satisfied that the larger public interest justifies the disclosure of such information."

15. In ***Secretary General, Supreme Court of India v. Subhash Chandra Agarwal: AIR 2010 Del 159***, a full Bench of this Court observed that the objective of freedom of information and objective of protecting personal privacy would often conflict when an applicant seeks access to personal information of a third party. The Court held that the Act had recognized the aforesaid conflict and had exempted personal information from disclosure under Section 8(1)(j) of the Act. However, such bar preventing disclosure of personal information could be lifted if sufficient public interest was shown. The relevant extract of the said decision is reproduced below:-

"114. There is an inherent tension between the objective of freedom of information and the objective of protecting personal privacy. These objectives will often conflict when an applicant seeks access for personal information about a third party. The conflict poses two related challenges for law makers; first, to determine where the balance should be struck between these aims; and, secondly, to determine the mechanisms for dealing with requests for such information. The conflict between the right to personal privacy and the public interest in the disclosure of personal information was recognized by the legislature by exempting purely personal information under Section 8(1)(j) of the Act. Section 8(1)(j) says that disclosure may be refused if the request pertains to "personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual." Thus, personal information including tax returns, medical records etc. cannot be disclosed in view of Section 8(1)(j) of the Act. If, however, the applicant can show sufficient public interest in disclosure, the bar (preventing disclosure) is lifted and after duly notifying the third party (i.e. the individual concerned with the information or whose records are sought) and after considering his views, the authority can disclose it. The nature of restriction on the right of privacy, however, as pointed out by the learned single Judge, is of a different order; in the case of private individuals, the degree of protection afforded to be greater; in the case of public servants, the degree of protection can be lower, depending on what is at stake. This is so because a public servant is expected to act for the public good in the discharge of his duties and is accountable for them.

115. The Act makes no distinction between an ordinary individual and a public servant or public official. As pointed out by the learned single Judge "— an individual's or citizen's fundamental rights, which include right to privacy - are not subsumed or extinguished if he accepts or holds public office." Section 8(1)(j) ensures that all

> information furnished to public authorities – including personal information [such as asset disclosures] are not given blanket access. When a member of the public requests personal information about a public servant, - such as asset declarations made by him - a distinction must be made between personal data inherent to the person and those that are not, and, therefore, affect his/her private life. To quote the words of the learned single Judge "if public servants – are obliged to furnish asset declarations, the mere fact that they have to furnish such declaration would not mean that it is part of public activity, or "interest". – That the public servant has to make disclosures is a part of the system's endeavour to appraise itself of potential asset acquisitions which may have to be explained properly. However, such acquisitions can be made legitimately; no law bars public servants from acquiring properties or investing their income. The obligation to disclose these investments and assets is to check the propensity to abuse a public office, for a private gain." Such personal information regarding asset disclosures need not be made public, unless public interest considerations dictates it, under Section 8(1)(j). This safeguard is made in public interest in favour of all public officials and public servants."

16. In view of the observations made by the Supreme Court in ***Girish Ramchandra Deshpande*** (*supra*), the question whether Income tax returns are personal information is no longer *res integra.* Indisputably, the information sought for by the petitioner is personal information. Such information could be disclosed only if the respondent could establish that disclosure of such information was justified by larger public interest. Even if the PIO was satisfied that disclosure of such information was justified, the PIO was required to follow the procedure given under Section 11 of the Act; that is, the PIO was required to give a notice to the

concerned employee stating that he intends to disclose the information and invite the person concerned to make submissions on the question whether such information ought to be disclosed. Admittedly, no such notice was issued.

17. Mere apprehension that a third party has declared income, which is lower than the true income, cannot justify disclosure of Income Tax Returns in larger public interest.

18. In view of the above, the impugned order directing the disclosure of personal information cannot be sustained. The impugned order is, accordingly, set aside.

19. The petition and the pending application are disposed of in the above terms.

VIBHU BAKHRU, J

AUGUST 27, 2018
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