

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.338 OF 2019

The State Public Information Officer,
The Deputy Director of Vigilance,
Directorate of Vigilance,
Altinho, Panaji-Goa.

... Petitioner

V e r s u s

1. Shri Vinesh V. Arlekar,
r/o Shradha Niwas,
House No.B-50,
Vidya Enclave, Porvorim,
Bardez, Goa.

2. First Appellate Authority,
Director of Vigilance,
Altinho, Panaji-Goa.

... Respondents

Mr. Pravin Faldessai, Government Advocate for the Petitioner.

Mr. A.D. Bhobe and Ms. Annelise Fernandes, Advocates for the
Respondent no.1.

Coram :- C. V. BHADANG, J.

Date :- 25th June 2019.

ORAL JUDGMENT

1. Rule, made returnable forthwith. Mr. Bhobe, learned Counsel waives service on behalf of the contesting respondent no.1. Heard finally by consent of parties.

2. The challenge in this petition is to the common order dated 16.11.2018 passed by the Goa State Information

Commission (Commission, for short) in Appeal Nos.161/2018/CIC and 162/2018/CIC and the subsequent common order dated 07.01.2019 in Review Appeal No.01/2018/CIC and Review Appeal No.2/2018/CIC.

3. The brief facts necessary for the disposal of the petition may be stated thus.

The first respondent filed two applications before the Public Information Officer (PIO) under Section 6(1) and 7(1) of the Right to Information Act, 2005, (Act, for short). The first of such applications was filed on 12.01.2018 and the second one on 18.01.2018. By these applications, the petitioner sought certified copies of the entire file (notings side and the correspondence side) of enquiry/investigation conducted by the Anti Corruption Branch (ACB) and Technical Section of the Directorate of Vigilance against the petitioner. The information was in relation to a complaint dated 21.11.2011 filed by Mr. Jayesh Patel and Smt. Heena Patel. The said complaint was filed to the Superintendent of Police (ACB), Director of Vigilance alleging certain misconduct against the first respondent. Indisputably, the competent authority has conducted investigation and the first respondent has been proceeded against in two departmental enquiries. In

both these departmental enquiries, chargesheets have been served on the respondent and the departmental enquiries are stated to be in progress. Admittedly, there are no criminal proceedings initiated against the first respondent.

4. The PIO refused to furnish the information on the ground that it is exempted under Section 8(1)(h) of the Act, inasmuch as, in the opinion of the PIO, the information if supplied, would impede the process of investigation.

5. Feeling aggrieved, the first respondent challenged the same in two separate appeals before the Director of Vigilance which is the First Appellate Authority. The First Appellate Authority by an order dated 20.04.2018, concurred with the view taken by the PIO and dismissed the appeals. The first respondent carried the matter in two separate Second Appeals being Second Appeal Nos.161/2018 and 162/2018 before the Commission. The Commission by the impugned order dated 16.11.2018, has allowed the appeals and has directed the PIO to furnish the information as sought for. The petitioner sought review of the said order in two separate review applications (which are registered as 'Review Appeal' nos.1/2018 and 2/2018), which have been dismissed on 07.01.2019. Hence, this petition.

6. I have heard Mr. Faldessai, the learned Additional Government Advocate for the petitioner and Mr. Bhobe, the learned Counsel for the first respondent. Perused record.

7. Mr. Faldessai, the learned Additional Government Advocate has made the following submissions :

(i) That the term 'investigation' is not defined under the Act and would take into its ambit not only investigation by police in respect of criminal prosecution but would also include the investigation conducted by the competent authority preceding a departmental enquiry.

(ii) That, although in a matter of criminal prosecution the investigation would come to an end, when the chargesheet is filed, in a case where a person is proceeded departmentally, the investigation would continue till the completion/conclusion of the departmental enquiry.

(iii) That, although the chargesheets have been served in the two departmental enquiries on the first respondent, the departmental enquiry is still pending and thus the 'investigation' in this case can be said to be in progress.

(iv) The Commission was in error in holding that the investigation would come to an end when the chargesheet is served on the concerned employee.

(v) That the Commission was also in error in holding that the petitioner has failed to show as to how the supply of the information sought for would impede the process of investigation.

8. On behalf of the petitioner, reliance is placed on the decision of the Central Information Commission (CIC, for short), in the case of **Shri Shankar Sharma, First Global & Ms. Devina Mehra v. Department of Income Tax, Mumbai** in **F.No.CIC/AT/A/2007/00007, F.No. CIC/AT/A/2007/00010 & F.No.CIC/AT/A/2007/00011** decided on 10.07.2007 and **Mr. Sarvesh Kaushal vs. Food Corporation of India in Appeal Nos.243/ICPB/2006 and 244/ICPB/2006** decided on 27.12.2006. Although the learned Additional Government Advocate did not dispute that the decisions of CIC are not binding on this Court, it is submitted that they have persuasive value.

9. It is submitted that the information which is relevant for the purpose of the departmental enquiry has already been

furnished to the petitioner and the information as sought for comprising of the file notings cannot be divulged being exempt under Section 8(1)(h) of the Act.

10. Mr. Bhobe, the learned Counsel for the first respondent has made the following submissions :

(i) That the PIO being a statutory authority designated under Section 5 of the Act is distinct from the public authority, for which he acts as a PIO. In his capacity, as a PIO, he is not competent to challenge any order directing furnishing of information.

(ii) The learned Counsel has pointed out the cause title of the petition in order to submit that the State Public Information Officer (SPIO) has been shown to be the petitioner and the petition at the instance of the SPIO is not competent.

(iii) That Section 8(1)(h) of the Act read as a whole would indicate that it pertains to the process of investigation in an offence. It is pointed out that the word "investigation" appears in conjunction with the apprehension or prosecution of the offenders, which would indicate that, it is confined to the investigation of an offence and would not take into its ambit

the investigation conducted by the competent/disciplinary authority in contemplation of a departmental enquiry.

(iv) Alternatively, it is submitted that even assuming that the word "investigation" would take into its ambit, the collection of evidence by disciplinary authority for the purpose of initiation of a departmental inquiry, such investigation would come to an end and would stand concluded once a chargesheet is served on the delinquent employee.

(v) That the two decisions of the Central Information Commission are rendered in a different factual background and are distinguishable on facts.

(vi) In any event, the petitioner has failed to show as to how and the manner in which the supply of the information would result into impeding the process of investigation. The learned Counsel in this regard has placed reliance on the decision of the Delhi High Court in the case of **UPSC vs. R. K. Jain 2012(282)ELT 161 (Del)**.

11. The following points fall for determination in this petition:

(i) Whether the PIO is competent to challenge an order directing supply of information under the Act or whether it is for the 'Public Authority', to challenge any such order if aggrieved ?

(ii) Whether the term "investigation" as used in Section 8(1)(h) of the Act includes an investigation by disciplinary authority in contemplation of a disciplinary enquiry against a delinquent employee or whether the term investigation has to be confined to the matter of an investigation of an offence ?

(iii) If the term "investigation" includes the investigation conducted by a disciplinary authority for the purpose of initiation of a departmental enquiry, whether such 'investigation' would conclude with the service of the chargesheet on the delinquent employee or whether it would continue till the conclusion of the departmental enquiry ?

(iv) Whether it is necessary for the public authority to demonstrate as to how supply of the investigation would impede the process of investigation in a given

case, before claiming exemption under Section 8(1)

(h) of the Act ?

12. On hearing the learned Counsel for the parties, I find that the petition has to fail on the basis of the findings which I propose to record on point nos.3 and 4 above. It is thus unnecessary to dwell on the point nos.1 and 2. This is because this Court would be slow in dwelling on issues which are academic in nature for the present purpose.

13. The Commission has allowed the appeal on two grounds, first that the investigation, in any event, would conclude once the chargesheets are served on the first respondent in the two departmental enquiries and second that the petitioner has failed to show as to how the information, if supplied, would impede the process of investigation.

14. The term 'investigation' has not been defined under the Act. In the case of **Shri Shankar Sharma** (supra), a search was conducted by the Deputy Commissioner of Income Tax (Investigation) on Mr. Shankar Sharma and Devina Mehra and the information sought was pertaining to the grounds on the basis of which the Deputy Commissioner had 'reason to believe' that the search was necessary. It is true that in para

17 of the judgment, the CIC has observed that the technical definition of 'investigation', as one finds in Criminal Law, cannot be imported into the act and the investigation as used in Section 8(1)(h) of the Act would mean all actions of law enforcement, disciplinary proceedings, enquiries and adjudications. Strictly speaking, the question of issue of initiation of disciplinary proceedings was not the issue before the CIC in the said case and the observations to the aforesaid effect, are orbiter in nature.

15. In the case of **Sarvesh Kaushal** (supra), the issue was whether the provisions of Section 8(1)(h) of the Act, can be called into aid to deny information on the ground of pendency of departmental enquiry/proceedings and whether a government official could seek for copies of documents connected with the proposed departmental proceedings.

16. The Commission has taken notice of its earlier decision by a Division Bench in the case of **Shri Gobind Jha vs. Army Hqrs. (CIC/80/2006/00039 dated 1.6.2006)**, which reads thus :

"While in criminal law, an investigation can be said to be completed with the filing of charge sheet in the appropriate court by an investigating agency,

in cases of vigilance related inquiries, misconduct and disciplinary matters, the investigation can be said to be over only when the competent authority makes a determination about the culpability or otherwise of the person or persons investigated against. In that sense, the word 'investigation' used in Section 8(1)(h) should be construed rather broadly and should include all inquiries, verification of records, assessments and so on which may be ordered in specific cases. In all such matters, the inquiry or investigation should be taken as completed only after the competent authority makes a prima facie determination about the presence or absence of guilt on receipt of the investigation/inquiry report from the investigation/inquiry officer". (Emphasis supplied)

17. It can thus be seen that the Division Bench of the Commission has observed that the word 'investigation' as used in section 8(1)(h) should be construed rather broadly and should include all inquiries, verification of records, assessments and so on which may be ordered in specific cases and for all such cases, the inquiry or investigation should be taken as completed only after the competent authority makes a "prima facie", determination about the presence or absence of guilt on receipt of the investigation/enquiry report from the investigation/enquiry officer. It is clear that the competent authority/disciplinary authority can form a "prima facie",

opinion on conclusion of the preliminary enquiry or the fact finding enquiry. The conclusion/finding, which the competent authority would reach on completion of the regular enquiry cannot be said to be "prima facie" opinion. It has to be a final opinion.

18. Thus, the two judgments of the Commission cited on behalf of the petitioner cannot come to the aid of the petitioner in this case. However, at the same time, I do not propose to record any final or binding opinion or conclusion as to whether 'investigation' within the meaning of Section 8(1) (h) of the Act would include only an investigation by police or a similar agency in the matter of prosecution of an offence or whether it would also include the investigation by the disciplinary authority in a matter of initiation of disciplinary authority. I proceed on the assumption that the 'investigation' as used in Section 8(1)(h) of the Act, would include 'investigation', by the disciplinary authority before the initiation of the disciplinary enquiry. However, any such investigation would stand 'concluded', once the chargesheet is served on the delinquent employee. It is not possible to accept that investigation in such a case would continue till the conclusion of the departmental inquiry. Thus, the said contention raised on behalf of the petitioner has to be rejected. In the present

case, admittedly, the two chargesheets have been served on the first respondent and thus the investigation, if any, stands concluded. Thus, it is not possible to accept that the information if furnished would impede the process of any such investigation.

19. The Commission, in my considered view, is right in holding that the public authority or the PIO cannot just stay content, while refusing to supply the information, by claiming that the information if supplied would impede the process of investigation and/or for that matter the apprehension or prosecution of any offender. It is necessary for the public authority to demonstrate with some semblance as to how the furnishing of information would impede the process of investigation. A useful reference may be made in this regard to the decision of the Delhi High Court in the case of **B. S. Mathur vs. Public Information Officer** (Writ Petition(c) 295/2011), which has been relied upon by the commission. This is what is held in para 19 of the Judgment :

“19. The question that arises for consideration has already been formulated in the Court’s order dated 21st April 2011: Whether the disclosure of the information sought by the Petitioner to the extent not supplied to him yet would “impede the

investigation" in terms of Section 8(1)(h) RTI Act ? The scheme of the RTI Act, its objects and reasons indicate that disclosure of information is the rule and non-disclosure the exception. A public authority which seeks to withhold information available with it has to show that the information sought is of the nature specified in Section 8 RTI Act. As regards Section 8(1)(h) RTI Act, which is the only provision invoked by the Respondent to deny the Petitioner the information sought by him, it will have to be shown by the public authority that the information sought "would impede the process of investigation." The mere reproducing of the wording of the statute would not be sufficient when recourse is had to Section 8(1)(h) RTI Act. The burden is on the public authority to show in what manner the disclosure of such information would „impede“ the investigation. Even if one went by the interpretation placed by this Court in W.P. (C) No.7930 of 2009 [Additional Commissioner of Police (Crime) v. CIC, decision dated 30th November 2009] that the word "impede" would "mean anything which would hamper and interfere with the procedure followed in the investigation and have the effect to hold back the progress of investigation", it has still to be demonstrated by the public authority that the information if disclosed would indeed "hamper" or "interfere" with the investigation, which in this case is the second enquiry."

20. In the present case, it has not at all been shown as to how the supply of the information sought for would impede the process of the investigation which is otherwise complete in this case. Admittedly, the information sought by the first respondent pertains to the action taken against him in pursuance of the complaint filed by Mr. Jayesh Patel and Mrs. Heena Patel on 21.11.2011. The information sought for is not a third party information.

21. I have carefully gone through the order passed by the commission and I do not find it suffers from any infirmity so as to require interference.

22. The petition is without merit and is accordingly dismissed with no order as to costs.

C. V. BHADANG, J.

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