

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 17.09.2019

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.16542 of 2019
and
W.M.P.No.16176 of 2019

Mr.Nithyaesh Natraj

... Petitioner

..Vs..

1.The Central Information Commissioner,
Central Information Commission,
Baba Gangnath Marg, Munirka,
New Delhi - 110 067.

2.The Central Public Information Officer,
Ministry of Finance,
Department of Economic Affairs (RTI Cell)
North Block, New Delhi - 110 001.

... Respondents

PRAYER : Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent in Second Appeal No. CIC/ DOEAF/ A/ 2018/ 164198-BJ-FINAL dated 08.02.2019 and quash the same and consequently to direct the 1st & 2nd respondents to provide the information sought by the petitioner within a time frame to be fixed by this Court.

For Petitioner : Mr.L.Narasimha Varman
For Respondents : Mr.K.Venkataswamy Babu

SPC

ORDER

The order passed by the Information Commissioner of the Central Information Commission in proceedings dated 08.02.2019, is under challenge in the present writ petition.

2. The writ petitioner states that he had preferred RTI Application under Section 6(1) of the Right to Information Act, 2005 before the Public Information Officer i.e., the Department of Legal Affairs being the public authority vide Registration No.MOLAW/R/2017/50010 requesting for the furnishing of the following details:

"Please provide the following information:

a) The letter dated 17.10.2008 written by Minister of Finance to the Ministry of Consumer Affairs wherein he wanted to know from Minister of Consumer Affairs wherein he wanted to know from the Minister of Consumer Affairs the status of National Spot Exchange, apprehending substantial regulatory concern owing to the fact that promoters of national spot exchanges are directly/indirectly commodity futures exchanges regulated by the FMC and that these are related entities.

b) The letter dated 29.05.2014 from Forward Market Commission to the Ministry of Consumer Affairs wherein FMC has recommended suppression of the Board of National Spot Exchange Limited and appointment of reputed professionals.

c) All correspondences and communications between Ministry of Corporate Affairs and the Ministry of Corporate Affairs on the NSEL issue from 01.08.2013 till date.

d) The final copy of the letter/opinion/communication from/to the Ministry of Consumer Affairs on the NSEL issue from 06.09.2013 till date the Ministry of Corporate Affairs on Amalgamation of National Spot Exchange Limited with Financial Technologies India Limited under Section 396 of the Companies Act, 1956.

e) Letter/Communication from/to Ministry of Consumer Affairs to Ministry of Law and Justice on the action which can be initiated against NSEL for violating conditions of exemptions granted under Forward Contracts Regulation Act.

f) Letter/Communication from/to Ministry of Consumer Affairs to Ministry of Law and Justice on the NSEL issue from 01.01.2012 till date.

g) Letter along with supporting documents and annexure received by Ministry of Consumer Affairs from the Market Commission dated 09.11.2011.

If any information is not available in your office, please forward to the concerned office in terms of Section 6(3) of RTI Act, 2005."

3. The learned counsel for the petitioner states that the request was not provided by the Public Authority within the statutory period of 30 days as per the Right to Information Act, 2005. Thus, the writ petitioner moved first appeal dated 09.09.2016 and the said appeal was forwarded to the concerned first Appellate Authority on 20.02.2017. Aggrieved by the said action, the petitioner moved second appeal before the first respondent which was admitted on 22.01.2017. However, there was no hearing or any notice or communication issued by the first respondent to the petitioner as regards the hearing of the second appeal filed. The writ petitioner earlier filed W.P.No.31387 of 2017 with a prayer to dispose of the second appeal filed on 22.01.2017 under RTI Act within a time frame. This Court on 05.12.2017 passed an order directing the 1st respondent to dispose of the second appeal within a period of eight weeks from the date of receipt of the copy of the order. Even thereafter, no order has been passed and the writ petitioner filed Contempt Petition No.1973 of 2018 and thereafter the first respondent passed an order on 08.02.2019, the said order is under challenge.

4. The learned counsel for the writ petitioner states that the first respondent has taken a protection under Section 8(1) (h) of the RTI Act, 2005 by stating that the information which would impede the process of investigation or apprehension or prosecution of offenders need not be furnished to information seekers. The learned counsel for the petitioner states that he requested to provide the communications between Ministry of Law and Justice and Ministry of Consumer affairs in relation to National Sport Exchange and Financial Technologies (India) Limited. There cannot be any impediment for furnishing these informations which cannot affect the investigation or other meetings of the Officials or the Ministry concerned.

5. This apart, it is contended that as per Section 8 (i) of the Act, Cabinet Papers-including records of deliberations of the Council of Ministers, Secretaries and other officers; provided that the decision of Council of Ministers, the reasons thereof and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete or over. Proviso clause further states that those matters which come under the exemptions specified in this section shall not be disclosed.

6. Relying on the said provision, the learned counsel for the petitioner states that there is no bar for providing the

informations nor there is an impediment. Thus, the information sought for by the writ petitioner was erroneously not provided.

7. This Court is of the considered opinion that the Information Commissioner of the Central Information Commission after furnishing the reasons, has taken a final decision as follows:

"Keeping in view the facts of the case and the submissions made by both the parties as also the decisions referred to above no further intervention of the Commission is required in the matter. However, the Commission instructs the respondent to furnish the broad outcome of the investigation as and when it gets completed in the public domain in accordance with the provisions of the RTI Act, 2005.

The Appeal stands disposed accordingly."

8. In the above final decision, the Information Commissioner in unequivocal terms held that the Commission instructs the respondents to furnish the broad outcome of the investigation as and when it gets completed in the public domain in accordance with the provisions of the RTI Act, 2005.

9. Thus, there is no total prohibition which was issued by the Information Commissioner. Contrarily, the Information Commissioner in clear terms held that the informations sought for by the writ petitioner shall be provided after the broad outcome of the investigation as and when it gets completed in the public domain and in accordance with the provisions of RTI Act, 2005. Thus, only after the completion of the investigation and after the deliberations are offered in this regard the writ petitioner would be entitled to get an information from the Ministry concern. Even at that stage, if certain documents are protected or prohibited, then those documents need not be furnished to the writ petitioner and in such an event, adequate reasons are to be provided. At the outset, the informations to be provided must be within the provisions of the RTI Act. The exempted documents which all are protected need not be furnished. However, the reasons are to be stated for not furnishing the said documents to the Right to Information Officer and he has given a clear direction to the respondent to furnish the informations after the broad out come of the information as and when it gets completed.

10. This being the order, this Court is of the opinion that the impugned order is very much inconsonance with Section 8 I of the Act. There is no infirmity as such.

11. This being the principles to be followed, there is no infirmity as such in respect of the order passed by the Information Commissioner of the Central Information Commission.

12. Accordingly, the present writ petition is devoid of merits and stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

s/d-

Assistant Registrar (CS VIII)

True Copy

Sub-Assistant Registrar

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To

1. The Central Information Commissioner,
Central Information Commission,
Baba Gangnath Marg, Munirka,
New Delhi - 110 067.
2. The Central Public Information Officer,
Ministry of Finance,
Department of Economic Affairs (RTI Cell)
North Block, New Delhi - 110 001.

+1 CC to Mr.K.Venkataswamy Babu, Advocate sr 79794.

W.P.No.16542 of 2019

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AD(CO)
SP(25/11/2019)

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