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

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Date of Decision: 19.11.2019

+ W.P.(C) 7057/2019

VED PRAKASH AGGARWAL Petitioner
Through Petitioner in person

versus

MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE
CHANGE, UNION OF INDIA (THROUGH SECRETARY)
AND ORS. Respondents

Through Ms.Monika Arora, CGSC with
Mr.Harsh Ahuja & Mr.Kushal
Kumar, Advs. for R-1 to R-3.

Mr.Aniruddha Deshmukh, Advocate
for R-4.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. The present petition is filed under Article 226 r/w 227 of the Constitution of India seeking to impugn the order dated 28.05.2019 passed by the Central Information Commission, New Delhi. Other connected reliefs are also sought.
2. The petitioner filed an application under the RTI Act on 4.5.2018. The copy of the application is not attached to the Writ Petition. However, the appellate authority of NGT has reproduced the contents of the application in its order. By the said application the petitioner sought details of directions passed by NGT against the respondent in the matter being OA 177/2013

titled Sushil Raghav vs. State of UP and Others and M.A.No. 640 titled Sushil Raghav vs. State of UP.P.& Ors.

3. As is apparent from the record, the CPIO by his reply dated 31.5.2018 noted that all orders and judgments pronounced by NGT are uploaded on the website (www.greentribunal.gov.in). Same can be downloaded from the website. As the applicant had also sought copies of all documents the reply stated that the applicant is at liberty to apply for certified copies at the Filing Counter of NGT.

4. Aggrieved by the said order dated 31.5.2018 the petitioner preferred an appeal before the First Appellate Authority. The same was disposed of on 13.8.2018 stating that there is no infirmity or irregularity in the view taken by the CPIO. The appeal was accordingly dismissed.

5. A second appeal was filed before CIC. CIC by the impugned order dated 6.5.2019 and 28.5.2019 upheld the order holding that the appellant can obtain copies in terms of NGT (Practice and Procedure) Rules 2011. Regarding information relating to third parties same are exempted under section 8(1)(j) of the RTI Act. However, the CIC issued a strict warning to the Deputy Commissioner, MHRD then CPIO who failed to transfer the relevant RTI Application to CPIO NGT.

6. I have heard the petitioner appearing in person. He has vehemently argued that a warning had been issued to the wrong CPIO as the said CPIO never dealt with the case of the petitioner. He secondly submits that when he has a right to seek copies of orders under the RTI Act he cannot be denied the same on the ground that he is free to apply for certified copies of the same from the NGT. He insists that he does not wish to follow the procedure for applying for certified copies and should be granted the copies in exercise

of his rights under the RTI Act.

7. As far as the second plea of the petitioner is concerned, namely, that oblivious of the procedure and rules, NGT should grant certified copies under the RTI Act, the said submission is misplaced. Reference in this context may be had to the judgment of a co-ordinate Bench of this court in the case of ***Registry Supreme Court of India vs. R.S.Mishra, 2017 (244) DLT 179***. That was a case in which the RTI application had sought information regarding a judicial matter in which the applicant himself was a party. In those circumstances, this court held as follows:-

“45. Section 22 of the RTI Act has an overriding effect over other laws in case there are inconsistencies. However, Section 22 of the RTI Act does not contemplate to override those legislations, which aims to ensure access to information.

46. In fact, it contemplates harmonious existence with the other enactments which, like the RTI Act, also provides for dissemination of information. In *Namit Sharma Vs. Union of India*, (2013) 1 SCC 745, the Supreme Court has held as under:-

“79. Let us now examine some other prerequisites of vital significance in the functioning of the Commission. In terms of Section 22 of this Act, the provisions of the Act are to be given effect to, notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923 and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act. This Act is, therefore, to prevail over the specified Acts and even instruments. The same, however, is only to the extent of any inconsistency between the two. Thus, where the provisions of any other law can be applied harmoniously, without any conflict, the question of repugnancy would not arise.”

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THE JUDICIAL FUNCTIONING OF THE SUPREME COURT OF INDIA IS SEPARATE/ INDEPENDENT FROM ITS ADMINISTRATIVE FUNCTIONING. THE DISSEMINATION OF INFORMATION UNDER THE SCR IS A PART OF JUDICIAL FUNCTION, EXERCISE OF WHICH CANNOT BE TAKEN AWAY BY ANY STATUTE. THE SCR WOULD BE APPLICABLE WITH REGARD TO THE JUDICIAL FUNCTIONING OF THE SUPREME COURT; WHEREAS FOR THE ADMINISTRATIVE FUNCTIONING OF THE SUPREME COURT, THE RTI ACT WOULD BE APPLICABLE.

62. Also, the judicial functioning of the Supreme Court of India is separate/independent from its administrative functioning. In the opinion of this Court, the RTI Act cannot be resorted to in case the information relates to judicial functions, which can be challenged by way of an appeal or revision or review or by any other legal proceeding.

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71. Consequently, the decision to allow or deny inspection or to give copies of the judicial file is clearly a part of and/or in the course of discharge of judicial function.

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73. Consequently, the SCR would be applicable with regard to the judicial functioning of the Supreme Court; whereas for the administrative functioning of the Supreme Court, the RTI Act would be applicable and information could be provided under it. The dissemination of information under the SCR is a part of judicial function, exercise of which cannot be taken away by any statute. It is settled legal position that the legislature is not competent to take away the judicial powers of the court by statutory prohibition. The legislature cannot make law to deprive the courts of their legitimate judicial functions conferred under

the procedure established by law.”

8. I may also note that the Co-ordinate Bench of this court in the above noted judgment of *The Registrar, Supreme Court of India v. R.S.Mishra* (supra) has held that the Supreme Court Rules are not inconsistent with the RTI Act and the same are not repealed by section 22 of the RTI Act. The court held as follows:

“45. Section 22 of the RTI Act has an overriding effect over other laws in case there are inconsistencies. However, Section 22 of the RTI Act does not contemplate to override those legislations, which aims to ensure access to information.

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48. Section 22 provides for repugnancy vis-a-vis provisions contained in the Official Secrets Act, 1923 and any other law for the time being in force, which other law, by virtue of the principle of ejusdem generis, would also have to be of the same nature as the Official Secrets Act, 1923, namely, a statute contemplating lack of transparency/access to information. [See: F.C.I Vs. Yadav Engineer & Contractor, (1982) 2 SCC 499, paras 4, 10, 12; Ishwar Singh Bagga Vs. State of Rajasthan, (1987) 1 SCC 101, para 9; and State of U.P. Vs. Harish Chandra and Co., (1999) 1 SCC 63, para 10].

49. Since both the RTI Act, 2005 and the SCR aim at dissemination of information, there is no inherent inconsistency, other than the procedural inconsistency at the highest between the RTI Act and the SCR.

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53. The preamble shows that the RTI Act has been enacted only to make accessible to the citizens the information with the public authorities which hitherto was not available. Neither the Preamble of the RTI Act nor does any other provision of the Act disclose the purport of the RTI Act to provide additional mode for accessing information with the public authorities which has already formulated rules and schemes for making the

said information available. Certainly if the said rules, regulations and schemes do not provide for accessing information which has been made accessible under the RTI Act, resort can be had to the provision of the RTI Act but not to duplicate or to multiply the modes of accessing information.

54. This Court is further of the opinion that if any information can be accessed through the mechanism provided under another statute, then the provisions of the RTI Act cannot be resorted to as there is absence of the very basis for invoking the provisions of RTI Act, namely, lack of transparency. In other words, the provisions of RTI Act are not to be resorted to if the same are not actuated to achieve transparency.”

9. Reference may be had to a judgment of this court in the case of ***Registrar of Companies & Ors. vs. Dharmendra Kumar Garg & Anr., ILR (2012) VI Delhi 499***. That was a case in which the petitioner therein sought certain information from the ROC under the RTI Act relating to a particular company. In those facts, a Co-ordinate Bench of this court held as follows:-

“35. The mere prescription of a higher charge in the other statutory mechanism (in this case Section 610 of the Companies Act), than that prescribed under the RTI Act does not make any difference whatsoever. The right available to any person to seek inspection/copies of documents under Section 610 of the Companies Act is governed by the Companies (Central Government's) General Rules & Forms, 1956, which are statutory rules and prescribe the fees for inspection of documents, etc. in Rule 21A. The said rules being statutory in nature and specific in their application, do not get overridden by the rules framed under the RTI Act with regard to prescription of fee for supply of information, which is general in nature, and apply to all kinds of applications made under the RTI Act to seek information. It would also be complete waste of public funds to require the creation and maintenance of two parallel machineries by the ROC - one under Section 610 of the Companies Act, and the other under the RTI Act to provide the same information to

an applicant. It would lead to unnecessary and avoidable duplication of work and consequent expenditure.

36. The right to information is required to be balanced with the need to optimize use of limited fiscal resources. In this context I may refer to the relevant extract of the Preamble to the RTI Act which, inter alia, provides:-

"AND WHEREAS revelation of information in actual practice is likely to conflict with other public interests including efficient operations of the Governments, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information;

AND WHEREAS it is necessary to harmonise these conflicting interests while preserving the paramountcy of the democratic ideal;" (emphasis supplied).

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42. Firstly, I may notice that I do not find anything inconsistent between the scheme provided under Section 610 of the Companies Act and the provisions of the RTI Act. Merely because a different charge is collected for providing information under Section 610 of the Companies Act than that prescribed as the fee for providing information under the RTI Act does not lead to an inconsistency in the provisions of these two enactments. Even otherwise, the provisions of the RTI Act would not override the provision contained in Section 610 of the Companies Act. Section 610 of the Companies Act is an earlier piece of legislation. The said provision was introduced in the Companies Act, 1956 at the time of its enactment in the year 1956 itself. On the other hand, the RTI Act is a much later enactment, enacted in the year 2005. The RTI Act is a general law/enactment which deals with the right of a citizen to access information available with a public authority, subject to the conditions and limitations prescribed in the said Act. On the other hand, Section 610 of the Companies Act is a piece of special legislation, which deals

specifically with the right of any person to inspect and obtain records i.e. information from the ROC. Therefore, the later general law cannot be read or understood to have abrogated the earlier special law.”

10. Reference may also be had to the judgment of the Karnataka High Court in the case of ***State Public Information Officer & Deputy Registrar, Karnataka vs. N. Anbarasm, AIR 2010 Kar 64***. This was a case in which the petitioner therein filed an application under the RTI Act seeking some guidelines and other details regarding pending matters. In those facts, the Karnataka High Court held as follows:-

“3. The respondent herein filed an application before the Public Information Officer-Deputy Registrar of High Court of Karnataka, Bangalore, for furnishing the certified copies of the following information/documents as per the provisions of Section 6(1) of the Right to Information Act, 2005:

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..... As it is open for the respondent to obtain certified copies of the order sheet pending as well as the disposed of matters, the State Chief Information Commissioner is not justified in directing the petitioner to furnish copies of the same free of costs. If the order of the State Chief Information Commissioner is to be implemented, then, it will lead to illegal demands. Under the Rules, any person who is party or not a party to the proceedings, can obtain the orders of the High Court as per the procedure prescribed in the Rules mentioned supra. The State Chief Information Commissioner has passed the order without applying his mind to the relevant Rules of the High Court. The State Chief Information Commissioner should have adverted to the High Court Rules before proceeding further. Since the impugned order is illegal and arbitrary, the same is liable to be quashed.”

11. In view of the above judgments, it is clear that when information can

be accessed through a mechanism provided in a statute then the provisions of RTI Act cannot be resorted to. Even otherwise, the information that is being sought by the petitioner pertains to judicial record of matters pending/disposed of by NGT. It would be within the rights of NGT to control the manner in which copies of such records/orders can be obtained by the members of the public.

12. The CPIO in the present case passed the following order:-

“It is to bring the kind notice of the Applicant that all the orders and judgments pronounced by the NGT are uploaded in the website (www.greentribunal.gov.in) as per the in house procedure adopted. The same can be downloaded from the website. Further, the applicant has sought the copies of all documents filed by the respondents. The applicant is at liberty to apply for certified copy in the filing counter of NGT in prescribed form along with requisite amount of fees and the decision to provide certified copy shall be decided on merit by the Competent Authority as per the NGT (Practice and Procedure), Rule 2011. In case the respondents have filed the replies, and if they are independent public authorities, the applicant is at liberty to apply directly to the said public authorities.”

13. It is clear from the above directions of CPIO that the petitioner was at liberty to apply for certified copies of the documents, which he was seeking. The orders and judgments were available on the website.

14. The impugned order passed by CIC has also reiterated the above observations. Hence, there is no infirmity in the impugned order to that extent.

15. Regarding the plea of the petitioner that a warning has been issued to a wrong functionary, in my opinion, this issue is misplaced inasmuch as the

functionary against whom a warning has been issued has not raised any grievance in this regard. Further the petitioner did not elaborate his pleas in any manner.

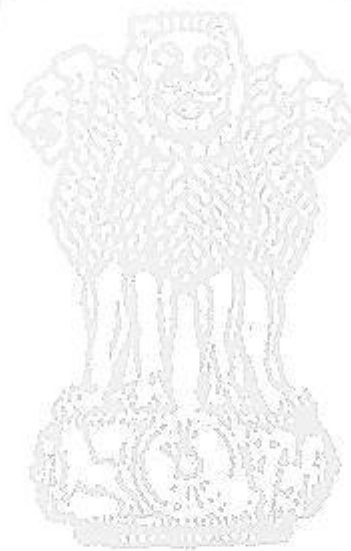
16. There is no merit in the present petition and the same is dismissed.

JAYANT NATH, J.

NOVEMBER 19, 2019/n

corrected & released on 28.11.2019.

HIGH COURT OF DELHI



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