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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 2655/2017, CM No. 11552/2017**

UNION OF INDIA

..... Petitioner

Through: Mr. Jasmeet Singh, Mr. Srivats
Kaushal and Mr. Sevank Maheshwari,
Adv.

versus

RAMANAND TIWARI

..... Respondent

Through:

AND

+ **W.P.(C) 2672/2017, CM No. 11603/2017**

UNION OF INDIA

..... Petitioner

Through: Mr. Jasmeet Singh, Mr. Srivats
Kaushal and Mr. Sevank Maheshwari,
Adv.

versus

RAJENDER KUMAR

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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09.05.2019

1. As these petitions involve identical issues, both have been heard together and are being disposed of by this common order. There is no appearance for the respondents in both the writ petitions.
2. The facts in W.P.(C) 2655/2017 are, on September 25, 2014, respondent Ramanand Tiwari filed an application under Right to

Information Act, 2005 ('Act of 2005' in short) before the CPIO, Department of Legal Affairs seeking certified copy of the opinion of the learned Attorney General of India ('AG' in short), on the request of the CBI with regard to necessity for obtaining sanction in relation to prosecution of Ex-Chief Minister of Maharashtra. Since the opinion of the learned AG was sought for by the CBI for which the petitioner Department, i.e., Department of Personnel and Training is the administrative Ministry as per Govt. of India (Allocation of Business) Rules, 1961, the Department of Legal Affairs transferred the RTI application to the CPIO of the petitioner organization.

3. On October 17, 2014, CPIO has declined to provide the information on the ground that the same is exempted under Section 8(1)(e)&(h) of the Act of 2005. On October 25, 2014, the respondent filed an appeal before the first appellate authority. It is the case of the petitioner that the appeal was examined and the appellate authority finding the decision of the CPIO to be in accordance with law disposed of the appeal as no further action was required. Thus, respondent filed a 2nd Appeal before the Central Information Commission (in short 'CIC') on January 29, 2015. The CIC in its order dated June 28, 2016 by relying upon its earlier decision dated June 8, 2015, wherein it was held that a lawyer can claim to be in fiduciary relationship

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with his clients and not vice-versa, held that plea of fiduciary relationship was not available with the petitioner but only with the learned AG. As a result the CIC had directed the petitioner to provide information to the respondent within four weeks from the receipt of its order.

4. The facts in W.P.(C) 2672/2017 are, on February 14, 2014, respondent Rajender Kumar filed an application under the Act of 2005 before the CPIO, Department of Personnel and Training, seeking three information, which are as under:

"I. Copies of all references / correspondence made by CBI to the Ministry of Law and Justice through Dept. Of Personnel and Training, in connection with Ishrat Jahan encounter case and CBI FIR No. SCB Mumbai RC-BS1/SI/2011/0005-2011 dated 16.12.2011 and also the reply given by the Ministry / Department to CBI or any other department in this connection.

II. Copy of the CBI letter and / or reference by the CBI in the above case seeking the opinion of the Attorney General of India, sent through Department of Personnel and Training about the requirement / necessity of seeking sanction for prosecution of serving and retired officers of Intelligence Bureau (Ministry of Home Affairs), Government of India, in connection with the Ishrat Jahan encounter case and CBI FIR No. SCB Mumbai RC-BS1/SI/2011/0005-2011 dated 16.12.2011.

III. Copy of the opinion of the Attorney General sent to CBI or its controlling authority (Department of Personnel and Training) in the case mentioned in Para 1 and 2 above."

5. On February 19, 2014, CPIO declined to provide the information as being exempted under section 8(1)(e)&(h) of the Act of 2005. On February 26, 2014, respondent filed the 1st Appeal. The First Appellate Authority vide its order dated April 7, 2014 found the decision of the CPIO to be in accordance with law and held that the information as regards the opinion of the learned AG is exempted under Section 8 (1)(e)(g) and (j) of the Act of 2005 and accordingly disposed of the appeal. On August 4, 2014, respondent filed 2nd Appeal before the CIC, which passed the impugned order relying upon its earlier decision dated June 8, 2015 wherein it was held that a lawyer can claim to be in fiduciary relationship with his client and not vice-versa, and held that the plea of fiduciary relationship was not available with the petitioner, but only with the learned AG.

6. With regard to query nos. 1 and 2, the CIC held the same relates to CBI, which is exempted under Section 24 (1) of the Act of 2005 and thus other information was not obtainable under the Act of 2005. In other words, with regard to the opinion of the learned AG, as sought by the CBI, with respect to prosecution of offenders, CIC has only held that exemption under Section 8 (1) (e) did not apply to it.

7. Mr. Jasmeet Singh, learned counsel appearing for the petitioner

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submits that CIC failed to appreciate that the privilege accorded to communication between an advocate and client is in the interest of justice and is necessary for full and frank discourse between the two in respect of all aspects of a matter. In other words, it is his submission that, it is a well settled law that a lawyer and the client are in the nature of fiduciary relationship and for such information exchanged in furtherance of such relationship are entitled to be covered under the exemption under Section 8(1)(e) of the Act of 2005. He submits in the case in hand, the communication between the learned AG and the Government needs to be protected in the national interest due to sensitivity of the issue in respect of which privileged communication may be exchanged. That apart, it is his submission that the protection accorded to the fiduciary relationship between an advocate and his client under Section 8 (1)(e) of the Act of 2005 is equally applicable in view of Section 126 of the Indian Evidence Act, which permits disclosure only if client expresses consent. It is his submission that the view of the CIC that the fiduciary relationship is qua relationship of the learned AG and his client, i.e., the petitioner herein, but the petitioner does not hold such a position would mean that what cannot be done directly can be done indirectly. That apart, it is his submission that CIC has failed to

appreciate that the respondent has sought disclosure of legal opinion tendered by the ld. AG, which disclosure would interfere and impede with the prosecution of the offenders in the particular cases and thus needs to be protected under Section 8(1)(h) of the Act of 2005. In support his submission, Mr. Singh, would rely upon the Judgments of the Punjab and Haryana High Court and Gauhati High Court in the cases of *Karamjit Singh v. State of Punjab and Ors. MANU/PH/2352/2009* and *Binoya Dutta v. State of Meghalaya and Ors., MANU/GH/0874/2009*. According to Mr. Singh, in *Binoya Dutta (supra)*, the Gauhati High Court has clearly held that the communication between the Advocate General with the State Government cannot be disclosed in view of Section 8(1)(e) of the Act unless larger public interest warrants disclosure of such information, which is not the case of the respondents herein.

8. I agree with the submissions made by Mr. Jasmeet Singh by relying upon the Judgement of the Gauhati High Court wherein in Para 13, it is stated as under:

"13. The relationship between the Advocate General and the State Government as well as with the departments of the State Government is fiduciary in nature, as it is based on trust and confidence. The State Government reposes special confidence on the Advocate General, who is bound to act in good faith with due regard to the interest of the State

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Government and who is to protect the interest of the State Government. Any communication issued by the Advocate General to protect the interest of the State Government, and which is not for his own interest or benefit but for the benefit of the State Government as to whom he stands in a relation implying and necessitating great confidence and trust on the one part and the high degree of good faith on the other, are the information available to the State Government or its departments in fiduciary relationship with the Advocate General. The Advocate General owes to the State Government the duties of good faith, trust and confidence and he has a duty to act for and give advice to the Government on the matters falls within their relationship. Any communication between the Advocate General and the State or its instrumentalities issued in order to perform the duties of a legal character cannot therefore be disclosed, in view of the exemption enumerated in Section 8(1)(e) of the Act, unless larger public interest warrants the disclosure of such information. It is not the case of the Petitioner that the communications between the Advocate General and the department of the State Government as well as the Chief Secretary of the State though are exempted from disclosure under Section 8(1)(e) of the Act, since disclosure of such informations are required in larger public interest, such disclosure is required to be made. It is also not the case of the Petitioner that part of such informations can be disclosed by invoking the provisions of Section 10 of the Act. Perusal of the communications, which have not been furnished to the Petitioner, reveals that those were issued for the benefit of the State Government and not for personal benefit or interest of anyone. There is also no overriding public interest involved for disclosure of such information."

9. In the case in hand also there is nothing in the orders passed by the CIC that indicates existence of any larger public interest warranting

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disclosure of the information as sought. The impugned orders are set aside.

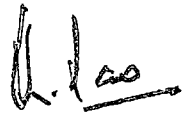
The petitions are disposed of.

10. In view of my aforesaid conclusion, the plea of Mr. Jasmeet Singh from the perspective of Section 126 of the Evidence Act is not required to be gone into more particularly, the issue has to be seen from the perspective of the RTI Act.

CM No. 11552/2017 in W.P.(C) 2655/2017 (for stay)

CM No. 11603/2017 in W.P.(C) 2672/2017 (for stay)

Dismissed as infructuous.


V. KAMESWAR RAO, J

MAY 09, 2019/jg

Corrected and released on

1st June, 2019.