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

% *Date of Decision:* 20.09.2019

+ W.P.(C) 11830/2018 & CM APPL. 45825/2018

PUBLIC INFORMATION OFFICER Petitioner
Through Mr.Nitesh Kr.Singh, Adv.

Versus

MR. S. P. GOYAL Respondent
Through

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. The issue raised in this writ petition is as to whether a party to a case pending in a court can seek copies of documents which form part of the court record under the Right to Information Act, 2005.
2. The grievance of the respondent who had filed an application under the RTI Act centres around a dispute with his brother, Hira Lal Goyal. It is stated that illegal raids were conducted by the Income Tax Department on the premises of the respondent in 1993 on tip off the said brother. A search was carried out based on the alleged information supplied by the brother under Section 132 of the Income Tax Act on the premises of the respondent, his firms and other relatives. It is stated that on account of the illegal acts of the Income Tax Department, the respondent filed a civil suit for damages titled as "S. P. Goyal vs. Director of Income Tax & Ors." before the High Court of Madras. Later on, the matter is said to have been transferred to the Delhi High Court. Subsequently, on account of enhancement of pecuniary

jurisdiction, the matter stands transferred from the Delhi High Court to the District Court.

3. The respondent filed an application while the suit was pending in this court summoning the satisfaction folder from the office of the Director of Income Tax (Investigation), Civil Lines, Ludhiana. This court by order dated 28.10.2013 allowed the same and the records were summoned along with the satisfaction note relating to the raids conducted upon the group concern of the respondent on 14.10.1993.

4. The witness on behalf of the Income Tax Department appeared on 12.08.2016 to prove the satisfaction note. The sealed envelope was opened in the presence of the witness and for the purpose of hiding the identity of the informant white fluid was applied on the name and the signatures of the informant and the envelope was sealed again. The respondent did not cross-examine the said witness.

5. Immediately thereafter, the respondent filed an application on 26.09.2016 under the RTI Act. The following information was sought:

“1. That after putting fluid on the name of informer in satisfaction folder is again kept in sealed cover then what is purpose to keep on Court record if copies of satisfaction folder is not given to the Plaintiff.

2. Please inform how the Plaintiff should get the copies of satisfaction folder to cross the concerned officers against whom the subject case is going on.

3. Please inform to whom I should approach in the matter to get the copy of satisfaction folder to educe.

4. Please inform whether this order is Judicial order in true sense.”

6. The CPIO on 26.10.2016 regarding query No. 1 held that the same relates to judicial proceedings/judicial functions and declined the information. On queries No. 2 and 3, the CPIO held that the same amounts to seeking opinion or advice and does not form part of any record. On query 4, the CPIO held that the information amounts to overreacting to a decision of a judicial body which was authorised to provide information but has declined to do so. The appeal filed by the respondent was dismissed on 21.12.2016.

7. The CIC by the impugned order dated 20.08.2018 directed that the copy of the satisfaction folder be furnished to the respondent noting that the name of the informer on whose tip the raids were conducted has since been redacted. It also notes that no other part of the satisfaction folder is exempted from disclosure.

8. I may note that in the meantime, in the suit filed by the respondent, an application had been filed by the respondent under Section 76 of the Indian Evidence Act. The trial court while dealing with this application and an application of the IT Department declined to give a copy of the satisfaction note to the plaintiff or to be made known to the public at large and dismissed the said application of the respondent. It is in this light that the present writ petition has been filed by the petitioner seeking to impugn the order of the CIC.

9. I have heard learned counsel for the petitioner.

10. I may note that the respondent has in a communication dated 18.04.2019 to the then Presiding Judge of this court had stated that he is unable to appear before the court to attend the hearing of the court on

account of illness. It was prayed that the writ petition be disposed of in the absence of the respondent by considering the reply filed by the applicant.

11. None has appeared for the respondents on 30.04.2019 and 26.07.2019. None appeared for the respondent today also.

12. Learned counsel for the petitioner has stated that the CIC has not appreciated the fact that the documents, namely, the 'satisfaction folder' is a part of judicial proceedings initiated by the respondent himself and cannot be provided to the respondent.

Reliance is also placed on Rule 7 of the Delhi District Courts (Right to Information) Rules, 2008 to submit that there is a clear exemption granted with respect to judicial proceedings pending in a court of law. Reliance is also placed on a judgment of a Coordinate Bench of this court in the case of *The Registrar, Supreme court of India vs. R.S. Mishra, 2017 (244) DLT 179*.

It is also pointed out that the respondent has later on filed an RTI application dated 16.09.2018 seeking various information including the complete official address, total service and posting of the Presiding Officer-Sh. Mukesh Kumar, ADJ who had passed the order dated 12.08.2016 in the suit of the respondent.

13. The respondent has filed his written submissions. Allegations are made that the order of this court dated 28.10.2013 by which the 'satisfaction folder' was to be summoned has not be complied with by the trial court and that the learned Judge of the Trial Court did not comply with the said order of this Court and that the matter is being taken up with the Lok Pal. It is claimed that the satisfaction note/folder may be contrary to the rules and procedure of the Income Tax Act and that is why, officers of the Income Tax

are trying to hide their illegal acts. It is claimed that Section 22 of RTI Act notwithstanding anything inconsistent with any other law would supersede all other laws.

14. I may only note that the directions passed by the district court in the suit filed by the respondent in the order dated 01.05.2018 on the application filed by the respondent under Section 76 of the Indian Evidence Act. The court held as follows:-

“26. Viewing from the said perspective in my opinion the reasons which have been given by the department are quite cogent. The search report/satisfaction note has been placed before the perusal of the Court. The same can be perused by the Court at any point of time. There is no reason for giving the same to the plaintiff or made known to the public at large.

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28. That being the situation I am not inclined at this juncture to allow the search note or information to be given to the plaintiff. As such LA. No 184/2015 is allowed.

29. Coming to the second application U/s 76 of the Indian Evidence Act which was filed on the premise that once the evidence has been recorded and the documents become the part and parcel of the file the plaintiff is entitled to get the said document. In my opinion this application would have only come into play once the I.A. No. 184 of 2015 of the department would have been disposed of. Once I have decided the said application, in favour of the department obviously they are entitled to seek privilege/content that the document be through out kept in a sealed cover. At the cost of repetition I reiterate that the Court will at the time of final appreciation of evidence shall take into account the search report/satisfaction note to ascertain the fact as to whether the act of the defendants were tainted on any extraneous reasons or malafide exercise of power and authority.”

15. Hence, by the judicial order the civil court which is dealing with the suit filed by the respondent where the satisfaction folder has been filed has categorically refused to give a copy of the same to the respondent. The obvious remedy of the respondent was to challenge the said order in a higher forum but he has chosen to press the application under the RTI Act seeking copy of the said satisfaction folder.

16. Reference in this context may be had to the judgment of the Coordinate Bench of this Court in the case *The Registrar, Supreme court of India vs. R.S. Mishra*(supra). This is also a case where the RTI applicant had sought information pertaining to a judicial matter in which the applicant himself was a party. 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.

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.”

17. As per the above judgment, the judicial functions of a court are independent from the administrative function. The RTI Act cannot be resorted to in case information relates to a judicial function.

18. Even otherwise, this High Court under Section 28(1) of the RTI Act read with Article 232 of the Constitution of India has framed the Delhi District Courts (Right to Information) Rules, 2008. Rule 7 (iv), (v) and (vi) of the said Rules read as follows:-

“7. Exemption from disclosure of information: The Public Information Officer or the Assistant Public Information Officer may not provide the information to the applicant on the following grounds:

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(iv) The information amounts to intrusion in the judicial work of any court.

(v) The information amounts to overreaching a decision of any judicial body which was authorized to provide the information but has declined to do so.

(vi) The information to be sought relates to a judicial proceeding, or judicial functions or the matters incidental or ancillary thereto.

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19. Hence, in view of the above Rules, there is exemption from disclosure of information which pertains to judicial proceedings or judicial functions of the court. The application of the respondent seeking a copy of a document which forms part of the judicial record would clearly be exempted from Rule 7 of the aforementioned Rules. In fact the said court where the suit of the respondent is pending has by a judicial order declined to provide the said

document to the petitioner.

20. I may 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.”

21. Hence, the Delhi District Court rules will prevail.
22. Clearly, the impugned order has failed to take note of the correct legal position. The same is accordingly set aside.
23. The writ petition is allowed as above. Pending applications, if any, also stand disposed of.

SEPTEMBER 20, 2019/rb
connected and released on 08.11.2019

JAYANT NATH, J.