IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.No.30304 of 2011
and
M.P.No.1 of 2011

The Regional Director,
Ministry of Corporate Affairs,
5th Floor, Shastri Bhavan,
No.26, Haddows Road,
Chennai - 600 006. ... Petitioner

Vs.

P.Balachander ... Respondent

Prayer: Writ petition filed under Article 226 of the Constitution of India for writ of Certiorari calling for the records of the Central Information Commission, New Delhi pertaining to case No.CIC/SS/A/2011/000895 dated 31.10.2011 and quash the same.

For Petitioner : Mr.B.K.Girish Neelakandan CGSC

For Respondent : Mr.Prakash Goklaney (No appearance)

ORDER

This writ petition has been filed challenging the order dated 31.10.2011 passed by the Central Information Commission, New Delhi in case No.CIC/SS/A/2011/000895.

2.It is the case of the petitioner that the respondent is a representative of Mr.R.Subramanian, the Managing Director of M/s.Subhiksha Trading Services Ltd. According to the petitioner, they have launched prosecution against Mr.R.Subramanian, the Managing Director of M/s.Subhiksha Trading Services Ltd., the company and other Directors for having caused wrongful loss to the General Public and Banks including Nationalised Banks to the tune of more than Rs.1000 Crores. It is the case of the petitioner that Mr.R.Subramanian, the Managing Director of M/s.Subhiksha Trading Services Ltd., has instigated his representative, the petitioner herein, to unlawfully stall the prosecution launched by the petitioner against Mr.R.Subramanian, M/s.Subhiksha Trading Services Ltd., and other directors and officers in charge of the said Company. It is the case of the petitioner that prosecution has been launched by them under Section 209 of the Companies Act, 2013 seeking for search and seizure of the properties belonging to M/s.Subhiksha Trading Services Ltd., Mr.R.Subramanian, its Managing Director and others involved in the day to-day affairs of the said Company.

3.According to the petitioner, the respondent made a request on 26.04.2010 under the Right to Information Act to inspect the list of official records maintained by the Office of the Regional Director (SR), Ministry of Corporate Affairs, Chennai - 600 006 under Section 4(1)(a) of the Right to Information Act, 2005. The list of records sought for inspection are as follows:

> "(a).The list of all records maintained as per Section 4(1)(a) of the Right to Information Act specifically the indexes maintained under the said provisions.
>
> (b).The list of records held by the office as per Section 4(1)(b)-(v) of the Act.
>
> (c).The records as per Section 4(1)(b)(xiv) of the Act."

4.According to the petitioner, they permitted the respondent to inspect the aforementioned records on 26.05.2010 after prior intimation to the petitioner's office. It is the case of the petitioner that the respondent was called upon to inspect the records on 21.06.2010 at the petitioner's office. Accordingly, the respondent also inspected the aforementioned records.

5.It is the case of the petitioner that after inspecting the records, the respondent vide letter dated 24.06.2010, requested the petitioner to furnish the copies of items as per Section 4(b)(I-VI) and XIV of the Right to Information Act as applicable to the office of the petitioner and also the movement Register. It is the case of the petitioner that they sent a detailed reply dated 16.07.2010 to the respondent with a copy of the Right to Information Act manual pertaining to the Regional Director (SR) Ministry of Corporate Affairs, Chennai -6. It is the case of the petitioner that the respondent requested copies of all the registers inspected by him by his representation dated 26.07.2010. On receipt of the representation of the respondent dated 26.07.2010, the petitioner sent a reply dated 09.08.2010 requesting the respondent to intimate the petitioner the exact details of the Registers which are available in the office of the petitioner. According to the petitioner, on 02.09.2010, the respondent requested the copies of the required registers and thereafter, on 05.10.2010, the office of the petitioner furnished the copies of the said registers after collecting the prescribed fee applicable under the Right to Information Act, 2005. According to the petitioner, the respondent once again requested for inspection of registers through requisition dated 22.10.2010. It is the case of the petitioner that they also allowed the respondent to inspect the registers on 30.11.2010 and 02.12.2010 pursuant to the petitioner's letter dated 19.11.2010.

6.It is the case of the petitioner that the respondent once again made a request on 03.12.2010 requesting for copies of the following registers inspected by him earlier.

> "(a).From 01.01.2010 - 30.04.2010 all pages from Tapal Register - Technical.
>
> (b).From 01.01.2010 to till date all pages from Dispatch Register in inspection wing.
>
> (c).From 01.01.1996 to till date pages from file movement register.
>
> (d).From 01.01.2010 to till date pages from CL and RH leave Register."

7.According to the petitioner, on receipt of the requisition dated 03.12.2010 made by the respondent, it was informed by the petitioner to the respondent that the matter is being referred to Ministry of Corporate Affairs, New Delhi and copies will be furnished after getting necessary clearance from the Ministry. According to the petitioner, the office of the petitioner addressed a letter dated 18.01.2011 to the Ministry of Corporate Affairs, New Delhi, requesting to give necessary instructions in this regard. According to the petitioner, in the meanwhile, the respondent filed first appeal dated 21.01.2011 under Section 19(1) of the Right to Information Act, 2005 before the first appellate Authority, the petitioner herein. After receipt of the first appeal, it was informed to the respondent through letter dated 17.02.2011 that the matter has been referred to the Ministry of Corporate Affairs, New Delhi and further reply will be furnished on receipt of instructions from the Ministry of Corporate Affairs, New Delhi. According to the petitioner, on the same day, a reminder was sent to the Ministry of Corporate Affairs, New Delhi by the office of the petitioner. According to the petitioner, on 01.03.2011, the office of the petitioner received the instructions from the Ministry of Corporate Affairs, New Delhi and advised the office of the petitioner to decide the appeal in accordance with the provisions of RTI Act. Thereafter, the first appeal filed by the respondent was rejected by the petitioner on 10.03.2011 on the ground that there is no larger public interest involved in the first appeal to furnish the copies to the respondent. Aggrieved by the order dated 10.03.2011 passed by the petitioner, the respondent preferred second appeal before the Central Information Commission, New Delhi, praying to set aside the order passed by the first appellate Authority. The Central Information Commission, New Delhi, in the second appeal, directed the office of the petitioner to provide certain documents to the respondent within two weeks. The operative portion of the order reads as follows:

> "............
>
> 4.Having heard the parties and perused the relevant documents in file, it has been observed that the information sought by the appellant after inspection of records, was voluminous. CPIO is hereby directed to provide information/documents pertaining to Point No.1,2,4 up to 100 pages and on point No.3 pertaining to file movement register which relates to books of accounts, the CPIO will provide information for only that part of the records requested, after severance of the record containing information, which is exempted from disclosure by invoking Section 10 of the RTI Act. The documents are to be provided to the appellant, within two weeks of the receipt of this order, on payment basis."

Aggrieved by the order dated 19.10.2011, this writ petition has been filed.

8.Heard Mr.B.K.Girish Neelakandan, learned Central Government Standing Counsel appearing for the petitioner and despite service of notice on the respondent and a counsel having entered appearance in the matter, there is no representation on his side. Even on the last two occasions viz., 29.01.2020 and 05.02.2020, there was no representation on the side of the respondent.

9.According to the learned counsel for the petitioner, the records sought for by the respondent are confidential records and pertains to information, which would impede the process of investigation that has already been launched against M/s.Subhiksha Trading Services Ltd.,its Managing Director Mr.R.Subramanian and other Directors in charge of the day to day affairs of the Company pertaining to the loss of more than Rs.1000 crores to the General Public and Banks including Nationalised Banks. According to the learned counsel for the petitioner, prosecution has been launched under Sections 209 & 210 of The Companies Act, 2013 against M/s.Subhiksha Trading Services Ltd., its Managing Director and other Directors and other officers in-charge of day to-day affairs of the Company on the ground that the Company and other officials are attempting to destroy, mutilate, alter, falsify or secrete the records. According to the learned counsel for the petitioner, if the records sought for by the respondent are furnished to him, it will impede the process of investigation by the petitioner. Further, it is his case that the respondent is a third party and he has been instigated by Mr.R.Subramanian, the Managing Director of M/s.Subhiksha Trading Services Ltd., to seek for information under the RTI Act to impede the process of investigation, which would be detrimental to various creditors, depositors and public financial institutions. According to him, the Central Information Commission, without considering the aforementioned factors, has reversed the findings of the first appellate Authority on 14.01.2011, which has rejected the request of the respondent for the aforementioned reasons. According to the learned counsel for the petitioner, the Central Information Commission, New Delhi, has not taken into account, the prosecution launched against M/s.Subhiksha Trading Services Ltd., and its Directors for loss caused by them to various creditors which includes the depositors and public financial institutions. According to him, the Central Information Commission has also not taken into consideration, the several criminal cases pending against the Company as well as its Directors and other officers involved in the day to-day affairs of the Company.

10.DISCUSSION:

Admittedly, M/s.Subhiksha Trading Services Ltd., and its Managing Director Mr.R.Subramanian are defaulters to various public financial institutions including General public for non refund of depositors' money. It is also an admitted fact that several cases both civil and criminal are pending against M/s.Subhiksha Trading Services Ltd., as well as its Directors. As seen from the affidavit filed in support of the writ petition the prosecution has been launched under Section 209 of The Companies Act, 2013 for search and seizure of all the properties and records belonging to M/s.Subhiksha Trading Services Ltd.,its Managing Director and other Directors as well as the other officers involved in the day to-day affairs of the Company as there is an apprehension that the Company and its officials may destroy, mutilate, alter and falsify the records/properties. Section 209 of The Companies Act, 2013 reads as follows;

> " 209. Search and seizure
>
> (1).Where, upon information in his possession or otherwise, the Registrar or inspector has reasonable ground to believe that the books and papers of a company, or relating to the key managerial personnel or any director or auditor or company secretary in practice if the company has not appointed a company secretary, are likely to be

destroyed, mutilated, altered, falsified or secreted, he may, after obtaining an order from the Special Court for the seizure of such books and papers,-

(a).enter, with such assistance as may be required, and search, the place or places where such books or papers are kept; and

(b). seize such books and papers as he considers necessary after allowing the company to take copies of, or extracts from, such books or papers at its cost.

(2).The Registrar or inspector shall return the books and papers seized under sub-section (1), as soon as may be, and in any case not later than one hundred and eightieth day after such seizure, to the company from whose custody or power such books or papers were seized:

PROVIDED that the books and papers may be called for by the Registrar or inspector for a further period of one hundred and eighty days by an order in writing if they are needed again:

PROVIDED FURTHER that the Registrar or inspector may, before returning such books and papers as aforesaid, take copies of, or extracts from them or place identification marks on them or any part thereof or deal with the same in such other manner as he considers necessary.

(3).The provisions of the Code of Criminal Procedure, 1973 relating to searches or seizures shall apply, mutatis mutandis, to every search and seizure made under this Section."

11.Sections 210 of The Companies Act, which deals with investigation into affairs of Company reads as follows:

"210. Investigation into affairs of company

(1).Where the Central Government is of the opinion, that it is necessary to investigate into the affairs of a company,-

(a).on the receipt of a report of the Registrar or inspector under section 208;

(b).on intimation of a special resolution passed by a company that the affairs of the company ought to be investigated; or

(c).in public interest,
it may order an investigation into the affairs of the company.

(2).Where an order is passed by a court or the Tribunal in any proceedings before it that the affairs of a company ought to be investigated, the Central Government shall order an investigation into the affairs of that company.

(3).For the purposes of this section, the Central Government may appoint one or more persons as inspectors to investigate into the affairs of the company and to report thereon in such manner as the Central Government may direct."

12.The case of the petitioner is that M/s.Subhiksha Trading Services Ltd., its Managing Director Mr.R.Subramanian, other Directors and other Officers involved in the day to day affairs of the Company have committed serious financial irregularities, mismanagement and siphoning of funds. As seen from the above, it is clear that only to stall the investigation launched by the petitioner, the respondent has sought for the Information under the RTI Act.

13.Section 8(h) of the Right to Information Act, 2005 deals with Exemption from disclosure of information, which would impede the process of investigation. Section 8(h) of the RTI Act, 2005, reads as follows:

"8(h).information which would impede the process of investigation or apprehension or prosecution of offenders;"

14.Since M/s.Subhiksha Trading Services Ltd., its Managing Director Mr.R.Subramanian and other Directors and other Officers involved in the day to-day affairs of the Company are being prosecuted for financial irregularities and for siphoning of funds and the respondent only at the instigation of Mr.R.Subramanian has sought for information under the RTI Act, the Central Information Commission, New Delhi, ought to have considered these factors and come to the conclusion that the petitioner is exempted from disclosure of information under Section 8(h) of the RTI Act, 2005, on the ground that the information sought for by the respondent would impede the process of investigation, which has already been launched by the petitioner under Section 209 and 210 of the Companies Act, 2013 as well as for various other offences under various other enactments.

15.For the foregoing reasons, this Court is of the considered view that the impugned order dated 31.10.2011 passed by the Central Information Commission, New Delhi, in case No.CIC/SS/A/2011/000895, is not in accordance with law as the information sought for by the respondent is outside the scope of the Right to Information Act as the petitioner is exempted from providing information under Section 8(h) of the RTI Act, 2005.

16.In the result, the impugned order dated 31.10.2011 passed by the Central Information Commission, New Delhi, in case No.CIC/SS/A/2011/000895, is hereby quashed and the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

sms

To

The Central Information Commission, New Delhi

+1cc to Mr.B.K.Girish Neelakandan, Advocate SR.No.12288

W.P.No.30304 of 2011
and
M.P.No.1 of 2011

PVS(CO)
GMY(10/06/2020)