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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 26th July, 2021

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LPA 90/2021 & CM APPL. 8367/2021

HAR KISHAN

..... Appellant

Through Mr. Milind P. Singh, Advocate

versus

PRESIDENT SECRETARIAT THROUGH
ITS SECRETARY & ANR.

..... Respondents

Through Mr. Anurag Ahluwalia, Central
Government Standing Counsel with
Mr. Abhigyan Siddhant, Advocate for
UOI.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGMENT

D.N. PATEL, CHIEF JUSTICE (ORAL)

Proceedings have been conducted through video conferencing.

1. Being aggrieved and dissatisfied by the judgment and order of the Learned Single Judge in W.P. (C) No. 7976/2020 dated 12.01.2021 as modified *vide* order dated 29.01.2021 (Annexure P-1 collectively to the memo of this appeal), the Appellant has filed the present Appeal. The impugned orders are assailed by the Appellant (Original Petitioner) on the ground that the Appellant was entitled to be provided with the information sought for under the Right to Information Act, 2005 (hereinafter referred to

as 'Act') seeking the details of the Residential Address and Father's Name of all the selected candidates, who were appointed to the post of Multi-Tasking Staff (MTS) by Respondent No. 1.

Factual matrix

2. The Appellant (Original Petitioner) preferred an application dated 06.08.2018 under the Act in respect of certain appointments of MTS at the Presidential Estate, Rashtrapati Bhawan, New Delhi and requested for information on six points. Central Public Information Officer (CPIO), Respondent No. 1 responded to the said application vide its reply dated 24.08.2018 and provided information with respect to Queries No. 1, 2 and 3. With respect to Queries No. 4 and 5, it was intimated to the Petitioner that no such information was available and qua Query No. 6, the stand was that the information sought was a personal information and could not be provided by virtue of the provisions of Section 8(1)(j) of the Act.

3. Dissatisfied with the reply, the Appellant filed a First Appeal under Section 19(1) of the Act on 05.09.2018 before the Appellate Authority under the Act. Receiving no response, the Appellant filed a Second Appeal under Section 19(3) of the Act before the Central Information Commission (CIC)/Respondent No. 2 herein, received at the office of the CIC on 21.11.2018 alleging denial of information on points 4, 5 and 6.

4. The Second Appeal was partly allowed and the CIC directed the First Appellate Authority to provide information to the Appellant regarding points No. 4 and 5 of the RTI Application, within a period of 30 days from the date of receipt of the order. The Appellant was, however, denied information against point No. 6 i.e. the details of the Father's Name and addresses of all the selected candidates in the selection relating to the Multi-Tasking Staff.

5. Challenging the aforesaid order of the CIC dated 17.07.2020 (Annexure P-1 to the memo of this Appeal), writ petition being W.P. (C) No. 7976/2020 was preferred by the Appellant. The order of the Central Information Commission dated 17.07.2020, reads as under:-

“FACTS:-

The Appellant vide his RTI application sought information on 06 points regarding the copy of Notification Circular No. A-35011/7/16-Admn.; total no of candidates who filled the online application form of MTS (Multi-Tasking Staff) examination. Notification Circular No. A-35011/7/16-Admn., and the total no. of candidates who appeared in this examination; all the name and address of Examination Centers in all over India where respective MTS examination was held and issues related thereto.

The CPIO, vide its letter dated 24.08.2018 provided a point-wise response to the Appellant. Dissatisfied by the response of the CPIO, the Appellant approached the FAA. The order of the FAA, if any, is not on the record of the Commission.

HEARING:-

Facts emerging during the hearing:

The following were present:

Appellant: Mr. Harkishan along with Mr. Milind P. Singh through VC;

Respondent: Mr. J. G. Subramanian, CPIO & Dy. Secy. through VC;

The Appellant reiterated the contents of the RTI application and stated that the information sought on points 04 and 05 of the application was wrongly denied by the CPIO stating that "No such information is available", which is wrong and misleading. He further submitted that the "total number of candidates as per every center separately who appeared in the

examination under reference along with the name and address of the examination centers of all the candidates who have been selected for appointment to the post of Multi Tasking staff", ought to be maintained by the Respondent Public Authority. He further alleged that irregular appointments had been done in the Respondent Public Authority and therefore, complete information should be disclosed in the larger public interest. In its reply, the Respondent reiterated the replies of the CPIO/FAA and stated that the available information had already been shared with the Appellant, as per the provisions of the RTI Act, 2005. As regards point nos. 04 and 05 of the application, it was submitted that the examination was conducted by IBPS and the selected lists of the candidates was sent by them. The Respondent did not maintain the information in their office and accordingly, a suitable reply was provided. With regard to point 06 regarding the complete residential address and the father's name of all the selected candidates who have been appointed to the post of Multi Tasking staff vide Notification circular No. 4-35011/7/16-Admn, it was submitted that the same could not be disclosed as per Section 8(1)(j) of the RTI Act, 2005. Moreover, its disclosure had no relationship to any public activity or interest and it would cause unwarranted invasion of the privacy of the individual. The information provided by the CPIO was also endorsed by the FAA vide its order dated 14.12.2018. The Appellant contested the above averments of the Respondent and submitted that the information sought on points 04 and 05 should be provided to him as it comes well within the definition of Section 2(j) of the RTI Act, 2005 as also being a matter of larger public interest. In addition, it was informed that the subject matter was contested at the Hon'ble High Court and a judgment dated 23.09.2019 in WP (C) 9714/2019 and CM 40087/2019 had been passed in this regard. In compliance of the above order of the High Court, a copy of the Report of the designated Committee to look into various complaints regarding recruitment in the President's Secretariat, was also provided to the Appellant. Upon disclosure of the aforesaid details, the Respondent submitted

that he was aware of the said decision but consistently maintained its earlier submissions.

The Commission felt that correct and timely response is the essence of the RTI mechanism enacted to ensure transparency and accountability in the working of Public Authorities. In this context, the Commission referred to the decision of the Hon'ble Delhi High Court in Mujibur Rehman vs Central Information Commission (W.P. (C) 3845/2007)(Dated 28 April, 2009) wherein it had been held as under:

"14 The court cannot be unmindful of the circumstances under which the Act was framed, and brought into force. It seeks to foster an "openness culture" among state agencies, and a wider section of "public authorities" whose actions have a significant or lasting impact on the people and their lives. Information seekers are to be furnished what they ask for, unless the Act prohibits disclosure; they are not to be driven away through sheer inaction or filibustering tactics of the public authorities or their officers. It is to ensure these ends that time limits have been prescribed, in absolute terms, as well as penalty provisions. These are meant to ensure a culture of information disclosure so necessary for a robust and functioning democracy."

With regard to providing a clear and cogent response to the Complainant, the Commission referred to the decision of the Hon'ble Delhi High Court in J P Aggarwal v. Union of India WP (C) no. 7232/2009 wherein it was held that:

"7 "it is the PIO to whom the application is submitted and it is who is responsible for ensuring that the information as sought is provided to the applicant within the statutory requirements of the Act. Section 5(4) is simply to strengthen the authority of the PIO within the department: if the

PIO finds a default by those from whom he has sought information. The PIO is expected to recommend a remedial action to be taken ", The RTI Act makes the PIO the pivot for enforcing the implementation of the Act,"

8 The PIO is expected to apply his / her mind, duly analyse the material before him / her and then either disclose the information sought or give grounds for nondisclosure."

The Hon'ble Delhi High Court in the case of Shri Vivek Mittal v. B.P. Srivastava, W.P. (C) 19122/2006 dated 24.08.2009 had upheld the view of the CIC and observed

" that a CPIO cannot escape his obligations and duties by stating that persons appointed under him had failed to collect documents and Information. The Act as framed, casts obligation upon the CPIOs and fixes responsibility in case there is failure or delay in supply of Information. It is the duty of the CPIOs to ensure that the provisions of the Act are fully complied with and in case of default, necessary consequences follow".

Furthermore, the Hon'ble High Court of Delhi in the matter of R.K. Jain vs. Union of India, LPA No. 369/2018, dated 29.08.2018, held as under:

"9 That apart, the CPIO being custodian of the information or the documents sought for, is primarily responsible under the scheme of the RTI Act to supply the Information and in case of default or dereliction on his part, the penal action is to be invoked against him only.

Furthermore, in OM No. 20/10/23/2007-IR dated 09.07.2009, while elaborating on the duties and responsibilities of the

FAA, it was stated that:

"3. Deciding appeals under the RTI Act is a quasi judicial/function. It is, therefore, necessary that the appellate authority should see that the justice is not only done but it should also appear to have been done. In order to do so, the order passed by the appellate authority should be a speaking order giving justification for the decision arrived at."

The Commission also noted that it should be the endeavour of the CPIO to ensure that maximum assistance should be provided to the RTI applicants to ensure the flow of information. In this context, the Commission referred to the OM No.4/9/2008-IR dated 24.06.2008 issued by the DoP&T on the Subject "Courteous behaviour with the persons seeking information under the RTI Act, 2005" wherein it was stated as under:

"The undersigned is directed to say that the responsibility of a public authority and its public Information officers (PIO) is not confined to furnish information but also to provide necessary help to the information seeker, wherever necessary."

DECISION:

Keeping in view the facts of the case and the submissions made by both the parties and in the light of the judgment dated 23.09.2019 of Hon'ble High Court in the matter of Shri Har Kishan Vs. President's Secretariat as also the allegations levelled by the Appellant regarding illegal appointments in the Respondent Public Authority, the Commission directs the FAA to exercise due diligence in responding to the issues raised by the Appellant on points 04 and 05 of the RTI application and furnish information in accordance with the provisions of the RTI Act, 2005 within a period of 30 days from the date of receipt of this order depending upon the condition for

containment of the Corona Virus Pandemic in the Country or through email to the Appellant.

The Appeal stands disposed accordingly.”

6. Learned Single Judge, after hearing the parties at length, vide judgment dated 12.01.2021, dismissed the writ petition and upheld the order of the CIC dated 17.07.2020 leading to the present Letters Patent Appeal. Learned Single Judge dismissed the writ petition primarily on twofold grounds: (a) information sought in respect of the name of the Father and residential address of a selected candidate is completely invasive and would amount to a roving and fishing enquiry and is thus protected under Section 8(1)(j) of the Act, which provides that personal information shall not be provided unless it has a relationship with any public activity or interest and in the opinion of the Authorities under the Act, its disclosure is in the larger public interest, and (b) while applying under the Act, seeking personal information, the Appellant failed to disclose his interest in the information sought i.e. his earlier employment in the same Department and the application of his daughter for the same post as also the concealment of these material facts in the writ petition.

Arguments canvassed by learned counsel for the Appellant:-

7. It is contended that the learned Single Judge erred in appreciating that the information sought was not personal information, but was already in the public domain. After the recruitment was made, a Committee was constituted to look into various complaints questioning the recruitment, and the report rendered by the Committee clearly evidenced that 10 candidates against the post of ‘Malis’ had been recruited on the basis of fake certificates

and even for the appointments on the post of 'MTS', it was found that unfair means had been adopted by the candidates and there was a recruitment scam. Thus, seeking details of the parentage and addresses of the selected candidates was an information touching upon public interest and could not be denied by the CIC.

8. Appellant did not seek any information which was an invasion into the privacy of any person as wrongly held by the learned Single Judge and the CIC, as matters relating to adopting unfair means in public recruitment cannot be termed as 'personal matters'.

9. Learned Single Judge failed to appreciate that Appellant did not conceal any information regarding his daughter. In fact, in the earlier writ petition being W.P.(C) 9714/2019, Appellant had categorically disclosed that his daughter, namely, Pooja had applied online for the post of MTS in the reserved category. When an objection was taken by the Respondent in the present writ petition, Appellant had requested for a short adjournment to bring the said fact on record but the adjournment was not granted. In any event, mentioning of such an information was not required either before the Authorities under the Act or in the writ petition, as the provisions of the Act do not impose any such condition for seeking information. It is not open to the Courts to impose a condition which does not exist in the Statute.

Arguments canvassed by learned counsel for the Respondent:-

10. Learned counsel for the Respondent, defending the impugned judgement, contends that the information sought against point No. 6 was a personal information and its disclosure would amount to invasion in the privacy of the person, whose personal details were sought and therefore, no disclosure could be made in accordance with Section 8(1)(j) of the Act.

Moreover, the disclosure had no relationship to any public activity or interest and the information was thus rightly denied by the CIC and the CPIO. The denial of information is in consonance with the provisions of the Act and thus no infirmity can be found with the impugned judgement.

Reasons

11. We have heard the learned counsels for the parties and looked into the facts and circumstances of the case and perused the provisions of the Act.

12. Before proceeding to adjudicate the issues raised by the Appellant, it is imperative to highlight the Query raised by the Appellant against point No. 6 and which is the bone of contention between the parties, as follows:-

“6. Kindly provide complete residential address and their father's name of all selected candidates who have been appointed to the post of Multi Tasking Staff, Notification Circular No. A-35011/7/16-Admn.”

13. There cannot be a dispute that right to get information under the Act is subject to the various provisions of the Act, more particularly, Sections 6 and 8 thereof. Section 8 of the Right to Information Act, 2005 deals with exemptions from disclosure of information and is extracted hereunder for ready reference:-

“8(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,—

(a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;

(b) information which has been expressly forbidden to be published by any court of law or tribunal or the

disclosure of which may constitute contempt of court;

- (c) information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;*
- (d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;*
- (e) information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;*
- (f) information received in confidence from foreign Government;*
- (g) information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;*
- (h) information which would impede the process of investigation or apprehension or prosecution of offenders;*
- (i) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers;*

Provided that the decisions 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:

Provided further that those matters which come under the exemptions specified in this section shall not be disclosed;

- (j) information which relates to personal information the disclosure of which has no relationship to any public activity or interest or which could cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information.*

Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.”

(emphasis supplied)

14. A reading of the aforesaid provision i.e. Section 8(1)(j) of the Act, makes it amply clear that notwithstanding the other provisions of the Act, there shall be no obligation to provide information to an applicant which relates to personal information, the disclosure of which has no relationship to any public activity or interest or which would cause unwarranted invasion of the privacy of the individual, unless the CPIO or the State Public Information Officer (SPIO) or the Appellate Authority is satisfied that larger public interest justifies such disclosure. There is no gainsaying that the Appellant cannot assert a right to seek information which is a personal information unless it has an element of public activity or interest. The information sought by the Appellant required personal details of the candidates selected to the post of MTS by Respondent No. 1 i.e. the names of their father and residential addresses respectively. This information by its very nature is personal to the candidates and as rightly held by the CIC

and the learned Single Judge, an invasion in their privacy. The Appellant has not placed any material on record to establish and substantiate that the information had any element of public activity or public interest. Even assuming for the sake of arguments in favour of the Appellant that there was irregularity or anomaly in the recruitment process, it did not justify seeking personal details of the selected candidates.

15. This Court upholds the view of the learned Single Judge that the personal information sought against point No. 6 by the Appellant has no relationship to any public activity or interest, and furnishing of this information by the CIC would cause unwarranted invasion into the privacy of the concerned individuals. No larger public interest justifies the disclosure of the residential addresses and fathers' names of the selected candidates.

16. Insofar as the second reasoning of the learned Single Judge to dismiss the writ petition is concerned, on a close scrutiny of the provision of the Act, we are of the view that the same cannot be agreed to. The learned Single Judge has observed that the Appellant had concealed the material facts that his daughter had applied for appointment to the post of MTS, both in the writ petition and in the RTI application and has also held that seeking of information after Appellant's daughter did not obtain employment points to an ulterior motive.

17. In order to address this issue, it is relevant to examine the provisions of the Act. Sub-sections (1) and (2) of Section 6 of the Act, which are relevant to the present controversy, are extracted hereinunder:-

“6. (1) A person, who desires to obtain any information under this Act, shall make a request in writing or through electronic means in English or Hindi or in the official

language of the area in which the application is being made, accompanying such fee as may be prescribed, to—

(a) the Central Public Information Officer or State Public Information Officer, as the case may be, of the concerned public authority;

(b) the Central Assistant Public Information Officer or State Assistant Public Information Officer, as the case may be, specifying the particulars of the information sought by him or her:

Provided that where such request cannot be made in writing, the Central Public Information Officer or State Public Information Officer, as the case may be, shall render all reasonable assistance to the person making the request orally to reduce the same in writing.

(2) An applicant making request for information shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him.”

18. Section 6(1) of the Act deals with request for obtaining information under the Act and the words used by the Legislature are ‘any information’. The Section is thus an enabling provision and a person desirous of obtaining information under the Act, before the Authorities mentioned therein, can apply to obtain any information under the Act in accordance with the procedure and mechanism set out therein. Sub-Section (2) of Section 6 of the Act clearly stipulates that an applicant making a request for information ‘shall not be’ required to give any reason for requesting the information or ‘any other personal details’ except those necessary for contacting him. A plain reading of the aforesaid provisions indicates that an applicant is not

required to furnish any personal details except which are necessary to contact him or even disclose a reason for seeking the information. We are unable to discern any mandate or requirement in the said provision which requires disclosure of information, personal to the applicant, as a pre-condition to seek information.

19. Having examined the provisions of Section 8 of the Act, which we have extracted in the earlier part of the judgement, we do not find any provision which requires the applicant to furnish any personal detail concerning him or her or his family, even for seeking personal information under Section 8(1)(j) of the Act. Learned counsel for the Respondent has been unable to point out any other provision of the Act which supports the view of the learned Single Judge that the Appellant was required to disclose in the application under the Act that he was an *ad hoc* appointee in the same Department or that his daughter was an aspirant to the post of MTS. Once there is no requirement to make any such disclosure in the application under the Act, in our view, non-disclosure of the said information in the writ petition becomes irrelevant and cannot be termed as 'concealment' as noted by the learned Single Judge. This part of the impugned judgement, therefore, requires to be set aside and accordingly, the costs imposed by the learned Single Judge as a consequence of the concealment also deserve to be waived.

20. We, accordingly, uphold the impugned judgement to the extent it has held that the information sought against point No. 6 cannot be furnished to the Appellant, but set aside the opinion and finding that personal information of the daughter of the Appellant ought to have been disclosed in the RTI application and the writ petition.

21. With these observations, the Appeal is partly allowed. Costs of Rs.25,000/- are accordingly waived in favour of the Appellant.

22. Pending application is hereby dismissed.

CHIEF JUSTICE

JYOTI SINGH, J

JULY 26, 2021/rk

