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REPORTABLE

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1066 OF 2021**

**RAJENDRA GOYAL ALIAS RAJU
GOYAL,**
Age 44 Years, Occ.: Business,
Having office at Shop No. 4, Rashmi
Tanmay, 'G' Wing, Beverly Park, Mira
Road, Thane 401 107

...Petitioner

~ VERSUS ~

1. **THE PUBLIC INFORMATION
OFFICER DY. SUPERINTENDENT
OF POLICE,**
Anti-Corruption Bureau,
Thane Region, Thane
2. **ADDL. SUPERINTENDENT OF
POLICE, THE FIRST APPELLATE
AUTHORITY,**
Anti-Corruption Bureau,
Thane Region, Thane
3. **THE STATE INFORMATION
COMMISSIONER,**
The Second Appellate Authority,
State Information Commission,
Konkan Division, having office at
Room No. 528, 5th Floor, Konkan
Bhavan Annex. CBD, Belapur,
Navi Mumbai 400 614

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RAMCHNDRA
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4. **THE STATE OF MAHARASHTRA,**
Having their office at, Mantralaya,
Mumbai 400 023
5. **DILIP GHEVARE (TOWN
PLANNER),**
Swami Vivekanand Bhavan, Near RBK
School, Kanakia, Mira Road (East),
District Dhane 401 107

...Respondents

WITH
WRIT PETITION NO. 603 OF 2021

1. **STATE OF MAHARASHTRA,**
Through Deputy Superintendent of
Police, Anti Corruption Bureau, Thane
Region, Thane
2. **THE ADDITIONAL
SUPERINTENDENT OF POLICE,**
Anti Corruption Bureau, Thane and
First Appellate Authority under RTI
Act

...PETITIONERS

~ VERSUS ~

1. **RAJU GOYAL,**
R/o Shop No. 4, Rashmi Tanmay, 'G'
Wing, Beverly Park, Mira Road,
Thane 401 107
2. **THE STATE INFORMATION
COMMISSION,**
Konkan Division, Navi Mumbai.

...RESPONDENTS

APPEARANCES

FOR THE PETITIONER IN WP/1066/2021 & FOR SOME OF THE RESPONDENTS IN WP/603/2021	Mr Murtaza Najmi, with Davinder Sabharwal.
FOR THE PETITIONER STATE IN WP/603/2021	Mr SS Panchpor, AGP.
FOR THE STATE IN WP/1066/2021	Mr RP Kadam, AGP.
FOR UNION OF INDIA	Mr NR Bubna.

**CORAM : G.S.Patel &
Madhav J Jamdar, JJ**

DATED : 3rd March 2022

ORAL JUDGMENT (Per GS Patel J):-

1. This common order and judgment will dispose of both Writ Petitions. In both matters we issue Rule on 29th November 2021.
2. Writ Petition No. 1066 of 2021 is filed by one Rajendra Goyal Alias Raju Goyal (“**Goyal**”). Writ Petition No. 603 of 2021 is filed by the State of Maharashtra.
3. The 2nd Petitioner in Writ Petition No. 603 of 2021 is the Additional Superintendent of Police, Anti Corruption Bureau, Thane. Goyal is the 1st Respondent to the State Government’s

Petition. The State Information Commissioner is the 2nd Respondent.

4. In Goyal's Petition, the Public Information Officer ("PIO") of Anti Corruption Bureau, Thane is the 1st Respondent. The Additional Superintendent Police, the First Appellate Authority is the 2nd Respondent. The second Appellate Authority, the State Information Commissioner is the 3rd Respondent. The State of Maharashtra is the 4th Respondent. One Dilip Ghevare ("Ghevare"), Town Planner in Thane, has been added by an amendment as the 5th Respondent to Goyal's Petition.

5. Both Petitions deal with the same order, one dated 24th August 2020 issued by the Second Appellate Authority. Goyal wants this order implemented in full. The State Government asks that it be quashed and set aside.

6. One of the questions that arises from Goyal's Petition is the question of whether his Petition can at all be fairly said to be bona fide. Who is Goyal, and what does he claim to be? This may not be directly relevant to the filing of an RTI query. It is certainly a question of consequence when a party comes to this Court and invokes our jurisdiction under Articles 226 and 227 of the Constitution of India. In his Petition, Goyal begins by describing himself as a 'social activist', an expression that is increasingly fashionable these days when a party wants to be as vague as possible about what he or she really does. It seems to have now become an avocation alongside well-established disciplines to say that one is a

social activists as if that encompasses the universe of all activities without need of further clarity, and as if that automatically sanctifies or lends bona fides to the petitioner before the Court. But in Goyal's Petition itself at page 5, possibly by more by accident than design, we find that the truth slips out. Goyal himself says he is in the business of real estate. This becomes consequential when we see that entire purport and target of his Writ Petition is the 5th Respondent, Ghevare, the town planner in Thane.

7. Goyal's RTI application dated 18th January 2019 is apparently innocuous in the first part. It seeks a disclosure about an open enquiry, identified as Open Enquiry No. 58/Thane/2017. It then seeks the fullness of information about this enquiry until date.

8. It is the third sub-item of item 3 of the RTI application that goes further and says that what is demanded is, though in the context of the Open Enquiry No. 58/Thane/2017, **the papers relating to Dilip Ghevare. Of these papers in sub-item 3 an unqualified and open inspection is sought.**

9. There would ordinarily have been no difficulty with merely the enquiry report, but for the fact that the enquiry report has annexed to it a large amount of personal information pertaining to Ghevare and his family members. Sub-clause 3 makes it clear that the object of Goyal's affections or disaffections is in fact none other than Ghevare.

10. Now Section 8 of the Right To Information Act (“**RTI Act**”) reads thus:

“8. Exemption from disclosure of information.—(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 an 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 would 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.

(2) Notwithstanding anything in the Official Secrets Act, 1923 (19 of 1923) nor any of the exemptions permissible in accordance with sub-section (1), a public authority may

allow access to information, if public interest in disclosure outweighs the harm to the protected interests.

(3) Subject to the provisions of clauses (a), (c) and (i) of sub-section (1), any information relating to any occurrence, event or matter which has taken place, occurred or happened twenty years before the date on which any request is made under section 6 shall be provided to any person making a request under that section:

Provided that where any question arises as to the date from which the said period of twenty years has to be computed, the decision of the Central Government shall be final, subject to the usual appeals provided for in this Act.”

(Emphasis added)

11. Clearly the Section excludes certain classes of data and information from disclosure. Important amongst these is personal information in sub-clause (j).

12. The contours of sub-clause (j) received judicial interpretation in a judgment of the Supreme Court in *Girish Ramchandra Deshpande v Central Information Commissioner and Ors.*¹

13. In paragraph 11, the Supreme Court extracted sub-clauses (e), (g) and (j) of Section 8 of the RTI Act. Then in paragraphs 12 to 16, the Supreme Court said this:

“12. The Petitioner herein sought for copies of all memos, show cause notices and censure/punishment awarded to the third respondent from his employer and also details viz. movable and immovable properties and also the

1 (2013) 1 SCC 212.

details of his investments, lending and borrowing from Banks and other financial institutions. Further, he has also sought for the details of gifts stated to have accepted by the third respondent, his family members and friends and relatives at the marriage of his son. The information mostly sought for finds a place in the income tax returns of the third respondent. The question that has come up for consideration is whether the above-mentioned information sought for qualifies to be “personal information” as defined in clause (j) of Section 8(1) of the RTI Act.

13. **We are in agreement with the CIC and the courts below that the details called for by the petitioner i.e. copies of all memos issued to the third respondent, show cause notices and orders of censure/punishment etc. are qualified to be personal information as defined in clause (j) of Section 8(1) of the RTI Act. The performance of an employee/officer in an organization is primarily a matter between the employee and the employer and normally those aspects are governed by the service rules which all under the expression “personal information”, the disclosure of which has no relationship to any public activity or public interest. On the other hand, the disclosure of which would cause unwarranted invasion of privacy of that individual.** Of course, in a given case, if the Central Public Information Office or the State Public Information Officer of the Appellate Authority is satisfied that the larger public interest justifies the disclosure of such information, appropriate orders could be passed but the petitioner cannot claim those details as a matter of right.

14. The details disclosed by a person in his income tax returns are “personal information” which stand exempted from disclosure under clause (j) of Section 8(1) of the RTI Act, unless involves a larger public interest and the Central Public Information Officer or the State Public Information

Officer or the Appellate Authority is satisfied that the larger public interest justifies the disclosure of such information.

15. **The petitioner in the instant case has not made a bona fide public interest in seeking information, the disclosure of such information would cause unwarranted invasion of privacy of the individual under Section 8(1)(j) of the RTI Act.**

16. We are, therefore, of the view that the petitioner has not succeeded in establishing that the information sought for is for the larger public interest. That being the fact, we are not inclined to entertain this special leave petition. Hence, the same is dismissed.”

(Emphasis added)

14. The proposition that emerges is that the application must be bona fide in the public interest without causing an unwarranted invasion of privacy of the individual under Section 8(1)(j). The Petitioner must establish that the information sought for is in the larger public interest.

15. For completeness, we note that the Supreme Court decision in *Girish Ramchandra Deshpande* was a precursor by several years to the Supreme Court judgment regarding the right to privacy in *KS Puttaswamy (Retd) And Anr v Union of India And Ors*² (*Puttaswamy-II*). It is true that *Puttaswamy-II* was not directly concerned with the RTI Act. But it was facially concerned with the issue of privacy, one that we find reflected in Section 8(1)(j) of the RTI Act. In *Puttaswamy-II* the Supreme Court clearly held that the right to

2 2017 (10) SCC 1.

privacy is an essential component of Article 21 of the Constitution of India.

16. This becomes important from the perspective of the State Government's Writ Petition. To put it another way, now that we have this judicial interpretation of Section 8(1)(j), and in addition the pronouncement of the Supreme Court in *Puttaswamy-II*, there is no possibility at all of the State Government acting in violation of the right to privacy under Article 21.

17. The impugned order of 24th August 2020 was passed in an second appeal by Goyal against a dismissal of his first appeal. The first appeal challenged the rejection of his RTI application by the PIO. That rejection was by a letter by 29th January 2019. The first appeal failed by an order dated 13th February 2019.

18. This is what led Goyal to file a second appeal before the Second Appellate Authority. The operative operation of the impugned order has three clauses. The first is a direction to the PIO to give inspection as sought of all the documents in the open enquiry mentioned above and copies to be provided free of cost. There is no qualification at all in this part regarding material that might be exempted from disclosure under Section 8(1)(j). That is the first error on the part of the Second Appellate Authority.

19. The second paragraph of the impugned order, in our view, needlessly ventures too far afield. It castigates the First Appellate Authority — by name, something that should never be done — and

then says that that Authority ‘purposely’ and ‘deliberately’ wrongly rejected the first appeal by Goyal, ‘misguided’ him, and gave him the wrong answer. This is nothing but a finding of mala fides by the Second Appellate Authority against the First Appellate Authority. Such a finding is a finding of fact. It must be based on cogent and uncontroverted material. Here, there was no material at all before the Second Appellate Authority to return any such finding of mala fides, of the First Appellate Authority having acted ‘purposely’ and ‘deliberately’ wrongly, etc. There was no occasion for the Second Appellate Authority to express its displeasure.

20. But it does not stop there. The Second Appellate Authority then directed a show cause notice to be issued to the First Appellate Authority as to why disciplinary action under Section 20(1) of the RTI Act should not be taken against the First Appellate Authority. There is absolutely no warrant for this at all. Show causes notices are not to be issued, especially internally in administration, where the mere issuance can have a serious effect or impact on a service record, in this casual and off-hand manner, and based entirely on conjecture and surmise. If there is a signal failure here on the part of the Second Appellate Authority it is the failure to act with the necessary restraint and detachment.

21. Finally, the impugned order expresses its disappointment that against the Superintendent of Police in allegedly being negligent and not passing order in accordance with law on Goyal’s first appeal. Again, the Second Appellate Authority’s approach is entirely wrong.

22. The Second Appellate Authority completely misdirected itself on law and on the approach to be taken. It could not have shut its eyes to the existence of Section 8(1)(j) as interpreted by the Supreme Court way back in 2012. The law declared by the Supreme Court binds all, and the Second Appellate Authority is no exception to it. There is no manner of doubt that the enquiry report has references to annexures that detail Ghevare and his family's personal assets and personal affairs. Mr Panchpor tells us that this extends even to details of bank accounts, financial holdings, etc.

23. This brings us back to the first question of who Goyal is and his reasons for wanting this information. The answer to this is one that we have not received despite the putting the question repeatedly to Mr Najmi. The only answer we have received from Mr Najmi is that any person can put the criminal law into motion. Goyal has, we are told, reason to believe there is serious fraud and corruption by Ghevare. Goyal wants to stamp out corruption wherever he finds it. Therefore, according to Mr Najmi, and since Goyal is a social activist (and presumably, therefore, nothing more need be demanded of him to establish his credentials), Goyal is entitled to this information. He says it cannot be withheld. He questions how the State Government can possibly impeach an order passed by a State Information Commissioner. He calls this being both suitor and judge simultaneously.

24. The Petition filed by Goyal has one curious and, in our view, deafening silence. It tells us nothing at all about Goyal himself. It only tells us that he is a social activist, conceivably about as an

empty and expression as one could hope to find, and then reveals perhaps accidentally, that he is developer and stops at that. There is no record of any work done by Goyal in “social activism” against corruption. This is not an application by some responsible social action group. We understand and appreciate the right to public information and we endorse it. But if the statute has certain qualifications to that right, and these have not been found to be unconstitutional (or even challenged as ultra vires in this Petition), then what Goyal seeks from us is an express violation of the clear exception in the statute.

25. The logic seems to be this: since Goyal is a self-proclaimed activist, the provisions of Section 8 of the RTI Act will not apply to him. That is unacceptable. The submission is directly contrary to the decision of the Supreme Court in *Girish Ramchandra Deshpande*. It would also run afoul of *Puttaswamy-II*.

26. We do not believe we would be wrong in saying that Goyal’s application and his Petition do not satisfy us as being bona fide.

27. These considerations apart, as we have noted, the impugned order displays manifest errors on the face of the record. This is not a case of substituting our decision for a plausible or reasonable one by the Second Appellate Authority. The view taken by the Second Appellate Authority is one that is entirely unjustified in law and contrary to settled law, both statutory and jurisprudential. The entire decision-making process is vitiated.

28. This is why we are compelled to intervene in exercise of our Writ jurisdiction in the State Government Writ Petition.

29. Accordingly the following order:

- (a) Rule is made absolute in Writ Petition No. 603 of 2021.
- (b) Rule is discharged in Writ Petition No. 1066 of 2021.

30. No costs.

(Madhav J. Jamdar, J)

(G. S. Patel, J)