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W.P(MD).Nos.9785 and 9897 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 08.07.2022

ORDER PRONOUNDED ON : 19 .07.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

**W.P.(MD).Nos.9785 and 9897 of 2012
and
MP(MD).No.2 of 2012**

W.P(MD).No.9785 of 2012

Beach Mineral Sands Co.,Pvt.,Ltd.,
No.163, Thiruchendur Road
Kuttam Post
Tirunelveli District

...Petitioner

Vs

1.The Central Information Commission
Represented by its Information Commissioner
Club Building (Near Post Office)
Old JNU Campus, New Delhi 110 067

2.Dr.D.Dhaya Devadas
President, Federation of Indian Placer
Mineral Industries, IA, Prasad Street
Seethapathy Nagar, Velachery
Chennai 600 042

....Respondents

W.P(MD).No.9897 of 2012

Indian Ocean Garnet Sands Company Pvt.,Ltd.,
146, Palayamkottai Road
Tuticorin 628 003



W.P(MD).Nos.9785 and 9897 of 2012

Vs

1.The Central Information Commission
Represented by its Information Commissioner
Club Building (Near Post Office)
Old JNU Campus, New Delhi 110 067

2.Dr.D.Dhaya Devadas
President
Federation of Indian Place Mineral Industries
1A, Prasad Street, Seethapathy Nagar
Velachery, Chennai 600 042

....Respondents

Prayer in W.P(MD).No.9785 of 2012: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling the proceedings of the 1st respondent made in Decision No.CIC/SG/A/2012/001483/19457 dated 04.07.2012 and quash the same.

Prayer in W.P(MD).No.9897 of 2012 : This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the proceedings of the first respondent made in Decision No.CIC/SG/A/2012/001483/19457 dated 04.07.2012 and quash the same in so far as the petitioner is concerned.

For Petitioner : Mr.R.Murali
For Mr.M.Sureshkumar
in W.P.No.9785 of 2012

Mr.D.Srinivasaraghavan
For Mr.V.Sanjeevi
in W.P.No.9897 of 2012

For R1 : Mr.V.Malaiyendran
Standing Counsel
in both petitions

For R2 : Mr.N.Dilipkumar
in both petitions



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COMMON ORDER

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Both the writ petitions have been filed challenging an order passed by the Central Information Commission under which the Indian Rare Earth Limited was directed to furnish certain information connected with the writ petitioner Companies and other Companies.

2. According to the writ petitioners, they are involved in mining of garnet and ilmenite by obtaining license from the Central and State Governments and after approval from various departments of the Government including the Atomic Mineral Department. The petitioners had further contended that the second respondent herein (Information seeker) claiming to be the President of the Federation of Indian Placer Mineral Industries is a business rival to the petitioners. The petitioners and the second respondent are involved in mining operations of minerals owned by both the companies. The second respondent has filed various litigations against the petitioners herein and also against the similarly placed mining lease holders. According to the petitioners, the sole intention of the second respondent is to give trouble to similar business man so that his business would develop.

3. They further contended that a similar attempt to seek information was made by the petitioner under the Right to Information Act and the same



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was rejected by the first respondent herein by an order dated 31.12.2008 by relying upon Section 8(1)(d) of Right to Information Act.

4.The petitioners had further contended that the second respondent seems to have filed an application under RTI Act on 19.12.2011 before the Public Information Officer of Indian Rare Earth Limited asking for certain particulars in respect of six companies which are situated in Tuticorin and Tirunelveli District and which are involved in mining, ilmenite and other minerals.

5.The second respondent had sought for details of year wise, mineral wise and quantity supplied made by Indian Rare Earth Ltd., to the six companies. The Public Information Officer and the Appellate authority have rejected the said request, relying upon Section 8(1)(d) of the Right to Information Act. Thereafter, the second respondent has filed a second appeal before the first respondent. On 10.05.2012, the said first respondent after issuing notice to the Public Information Officer of Indian Rare Earth Limited, had proceeded to pass the impugned order directing the authorities to furnish information as requested by the second respondent. The said order is under challenge in the present writ petitions by two companies out of six companies for which the information was sought for.



6.The learned counsel for the petitioners has contended as follows:

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(i).Though the second respondent claims to be a President of an Association, in his individual capacity he is carrying on mineral operations. The second respondent in his individual capacity is having mineral license for carrying out operations. Hence, the said individual is clearly a competitive firm vis-a-vis Companies about which the second respondent is now seeking information.

(ii).The second respondent had originally made an attempt for seeking information. The said request was rejected by the Central Information Commission by its order dated 31.12.2008. Hence, the second attempt should not have been answered in favour of the second respondent.

(iii).The information sought for by the second respondent is relating to the year wise, mineral wise and quantity supplied by the Indian Rare Earth Limited to the named six companies. This particular information if revealed would certainly affect the business of the writ petitioners companies. They further contended that the disclosure would harm the competitive position of the petitioners company.

(iv).The first respondent Central Information Commission has only considered the commercial interest of the Indian Rare Earth Limited which is a public sector undertaking and it has not considered the competitive commercial interest of the writ petitioners company about which information



is being sought for by the second respondent.

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(v).Even assuming that the disclosure would be required in the larger public interest, then the procedure contemplated under Section 11 of R.T.I Act should have been followed.

(vi).The first respondent has passed the impugned order by merely issuing notice to the Indian Rare Earth Limited (Information provider) without issuing any notice to the writ petitioners companies about whom certain information is being sought for. The information which is being sought for, relates to a third party, namely the petitioners company and hence, a notice to the said third party is mandatory under Section 11 of the Right to Information Act. The learned counsel for the petitioners also relied upon a judgment of the Hon'ble Supreme Court reported in **2013 Volume-6 Scale 49 (R.K.Jain .Vs. Union of India & another)** to impress upon the Court that where there is a possibility of a third party pleadings privacy as a defence. In such an event, notice ought to be issued to such a third party. The learned counsel had relied upon Paragraph No.13 of the said order which is extracted as follows:

“13. On the other hand Section 11 deals with third party information and the circumstances when such information can be disclosed and the manner in which it is to be disclosed, if so decided by the Competent Authority. Under Section 11(1), if the information relates to or has been supplied by a third party and has been treated as



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confidential by the third party, and if the Central Public Information Officer or a State Public Information Officer intends to disclose any such information or record on a request made under the Act, in such case after written notice to the third party of the request, the officer may disclose the information, if the third party agrees to such request or if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party...”

(vii).The typed set of papers filed on the side of the second respondent herein will disclose that the second respondent as an individual has filed W.P(MD).No.1233 of 2012 as against the official respondents and also the writ petitioners herein for the relief of mandamus directing an enquiry into an illegal beach sand mining by the petitioners and other companies. Hence, it is evident that right from the year 2012 onwards, the petitioners in their individual capacity is attempting to initiate actions as against the petitioner companies. Hence, any request made on the part of the second respondent under the guise of a company should only be considered to be a camouflage mode to find out the commercial interest of the petitioners company.

(viii). There is no public interest whatsoever in the present application under the RTI Act. The Indian Rare Earth Limited (Information provider) is a Public Sector Undertaking and hence, the business activities of the said undertaking are always subject to the scrutiny of the Government authorities.



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Therefore, the information sought for by the petitioners is likely to affect only the petitioners company and without hearing the petitioners company, the impugned order has been passed. Hence, they prayed for allowing the writ petitions.

7.Per contra, the learned counsel for the second respondent (Information seeker) has contended as follows:

(i). A perusal of Section 8(1)(d) of Right to Information Act indicates that first of all the information sought for should be of commercial confidence, trade secrets or intellectual property, the disclosure of which would harm competitive position of a third party. Even if both these ingredients are satisfied, if the competent authorities comes to a conclusion that larger public interest warrants the disclosure of such information, the competent authority can disclose the information.

(ii).In the impugned order, the first respondent has arrived at a conclusion that by disclosure of the year wise or quantity wise minerals supplied by the Indian Rare Earth Limited to some of the companies would not affect the commercial interest of the Indian Rare Earth Limited. After arriving at such a conclusion, the first respondent commission need not issue any notice to the said third party whose alleged confidential interest are likely to be harmed. Hence, the first respondent Commissioner was right in directing the Public Information Officer of Indian Rare Earth Limited to



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disclose the information as sought for by the second respondent herein.

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(iii). Only when the information sought for relates to or has been supplied by a third party and has been treated as confidential by that third party, notice under Section 11 of RTI Act to the said third party is mandatory. Otherwise, even without issuing notice to the third party, the information provider can disclose the information to the information seeker. He had further contended that the above said words should only be read so as to give a meaning that merely an information relating to the third party does not require a mandatory notice unless such an information has been supplied by the third party and has been treated as confidential by the third party.

8. In the present case, it is not the case of the petitioner that they supplied some information to the Indian Rare Earth Limited and they have requested the Public Sector Undertaking not to disclose the said information. The supply of information relating to the year wise or quantity wise minerals by Indian Rare Earth Limited to the petitioners company could never be considered to be a confidential information or the disclosure of that would harm the competitive position of the petitioners company. The learned counsel further contended that the second respondent has been lodging various complaints as against the writ petitioners company and other companies for being involved in an illegal mining of the beach sand. The



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defence of the said company was that they received the minerals from the Indian Rare Earth Limited. Unless the Indian Rare Earth Limited discloses the year wise and quantity wise minerals, he would not be in a position to expose the illegal activities of the petitioners company. Hence, the public interest outweighs the so called competitive business interest and confidentiality of the petitioners company. Hence, he prayed for sustaining the impugned order.

9.The learned counsel for the respondent had relied upon the judgment of the Delhi High Court reported *in AIR 2010 Delhi 216 (Arvind Kejriwal .Vs. Central Public Information Officer)*.

10.The learned Counsel for the respondent further relied upon a Five Judges Bench Judgement of the Hon'ble Supreme Court reported *in (2020) 5 Supreme Court Cases 481 (Central Public Information Officer, Supreme Court of India Vs. Subhash Chandra Agarwal)*. The learned counsel referred to Paragraph Nos.71,72,126,141,142, 254 and 261 to contend that the Hon'ble Supreme Court has held that the larger public interest as contemplated under Section 8(1)(d) and Section 11 of RTI Act would subsume the commercial interest of the private parties. Hence, he prayed for dismissal of the writ petitions.



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11. I have considered the submissions made on either side.

12. Various provisions under the Right to Information Act are sought to be interpreted by the counsel appearing on either side to contend that under what circumstances a notice under Section 11 of RTI Act to a third party is mandatory before disclosing an information relating to a third party.

13. According to the petitioners, the second respondent is a competitive business man who had already initiated public interest litigation as against the petitioner companies and other companies alleging violation of the statutory provisions in mining. When such a person seeks informations about the business activities of the petitioners company from Indian Rare Earth Limited, naturally it involves competitive commercial activities of the petitioners warranting a mandatory notice under Section 11 of the Right to Information Act.

14. The sum and substances of the submissions of the learned counsel for the respondent is that no confidentiality or competitive commercial interest involved when the information provider is directed to disclose the information relating to year wise or quantity wise minerals supplied by them to the petitioners company.

15. The relevant provisions under the Right to Information Act are extracted as follows:



Section 2(n): “ third party' mean a person other than the citizen making a request for information and includes a public authority.

8(1)(d): Information including Commercial confidence, trade secrets or intellectual property, the disclosure of which would harm competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information.

(11)(i): Third party information: (1).where the CPIO or the SPIO, as the case may be, intends to disclose any information or record, or part thereof on a request made under this Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the CPIO or the SPIO, as the case may be, shall, within 5 days from the date of receipt of the request, give a written notice to such third party of the request and of the fact that the CPIO or the SPIO , as the case may be, intends to disclose the information or record, or part thereof, and invite the third party to make a submissions in writing or orally, regarding whether the information should be disclosed and such submission of the third party shall be kept in view while taking a decision about disclosure of information.

Provided that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure overweighs in importance any possible harm or injury to the interests of such third party”

16.In the light of the said statutory provision, it is clear that except the information seeker, all other persons including a Public Information Officer



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shall be treated as a third party. In the present case, the second respondent is the information seeker and the Public Information Officer of Indian Rare Earth Limited should also be considered to be a third party. The information sought for relates to six companies which are having business transactions with Indian Rare Earth Limited. Hence, the six companies about which information is being sought for, would also have to be treated as third party. Hence, there cannot be any doubt that the information sought for from the Indian Rare Earth Limited relates to the third parties who are the petitioners before this Court.

17.A perusal of Section 8 of Right to Information Act reveals that it deals with the exemption from disclosure of information. As per Section 3 of RTI Act, subject to the provisions of this Act, all the citizens shall have the right to information.

18.Section 8 of RTI Act enumerates the exemption for Right to information of a citizen. A careful perusal of Section 8(1)(d) of RTI Act reveals that any information of a third party including the commercial confidence, trade secrets or intellectual property falls within the exemption. The word 'including' found in Section 8(1)(d) is only for an illustrative purpose like that of commercial confidence, trade secrets or intellectual property. At the time of interpreting Section 8(1)(d) of RTI Act, the following aspects have to be taken into consideration.



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(i).The information should relate the commercial confidence, trade secrets or intellectual property of a third party.

(ii).The disclosure of the same is likely to harm the competitive business of the said third party.

(iii).If both the above said conditions are satisfied then the competent authority should arrive at a finding whether the disclosure of the said information would be required in the larger public interest.

(iv).Only if all the above mentioned ingredients are satisfied, the public information officer/competent authority should resort to issuing notice under Section 11(1) of RTI Act.

19.A perusal of Section 11 of RTI Act indicates the following factors.

(i).The competent authority should intend to disclose any information which relates to a third party.

(ii).which has been supplied by a third party and has been treated as confidential by the said third party.

(iii).If any one of these ingredients are satisfied, the competent authority shall issue notice to the third party inviting his submission in writing or in oral whether the said information could be disclosed or not.

(iv).After going through the said submission of the third party, the competent authority is at liberty to disclose the information or refuse to disclose the information as the case may be. The objection by the third party



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will not preclude the competent authority from disclosing the information if he is satisfied that the disclosure of the said information is required in public interest and the said public interest outweighs any possible harm or injury to the interest of such third party. In short, a third party has no veto power to stall the disclosure. However, if the disclosure of any trade or commercial secrets which is protected by law is sought for, that cannot be disclosed even in public interest.

20. In the present case, the petitioners contend that the information seeker is a competitor in business who is involved in mining operation as that of the petitioner company. This fact has not been disputed in the counter. On the other hand, the typed set of papers filed on the side of the respondents indicate that by an order dated 12.12.2013 a batch of writ petitions have been disposed of by the Madurai Bench of Madras High Court directing the parties to place the relevant material before the expert committee that was constituted by the State Government to enquire into the allegation of illegal mining. In the said batch, the second respondent herein in his individual capacity had filed W.P(MD).No.1233 of 2012 as against the official respondents and the private companies seeking mandamus to conduct an enquiry against illegal beach sand mining. Hence, the allegation made by the writ petitioners that the second respondent is a business competitor and he has camouflaged himself under an association cannot be brushed aside. At the



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same time, the second respondent in his individual capacity and as president of an Association is taking up the cause of eradicating the illegal mining activities of the certain companies. It is true that the second respondent is both running a beach mineral company and also working as a President of an Association which fights against the illegal mining operations. The learned counsel for the respondent had relied upon various paragraphs of the Five Judgment Bench of the Hon'ble Supreme Court reported in **2020 5 SCC 481 (Central Public Information Officer, Supreme Court of India Vs. Subhash Chandra Agarwal)** to contend that the public interest involved in the present disclosure of information is more than the harm that is likely to be inflicted upon the private companies.

21.Paragraphs Nos. 21, 23 and 24 of the judgment of the Delhi High Court reported **in AIR 2010 Delhi 216 (Arvind Kejriwal .Vs.Central Public Information Officer)** are extracted as follows:

“21.This Court has considered the above submissions. It requires to be noticed that under the RTI Act information that is totally exempt from disclosure has been listed out in Section 8. The concept of privacy is incorporated in Section 8(1)(j) of the RTI Act. This provision would be a defense available to a person about whom information is being sought. Such defence could be taken by a third party in a proceeding under Section 11(1) when upon being issued notice such



third party might want to resist disclosure on the grounds of privacy. This is a valuable right of a third party that encapsulates the principle of natural justice inasmuch as the statute mandates that there cannot be a disclosure of information pertaining to or which 'relates to' such third party without affording such third party an opportunity of being heard on whether such disclosure should be ordered. This is a procedural safeguard that has been inserted in the RTI Act to balance the rights of privacy and the public interest involved in disclosure of such information. Whether one should trump the other is ultimately for the information officer to decide in the facts of a given case.

23.What is, however, important to note is that it is not as if such information is totally exempt from disclosure. When an application is made seeking such information, notice would be issued by CIC or the CPIOs or the State Commission, as the case may be, to such 'third party' and after hearing such third party, a decision will be taken by the CIC or the CPIOs or the State Commission whether or not to order disclosure of such information. The third party may plead a 'privacy' defence. But such defence may, for good reasons, be overruled. In other words, after following the procedure outlined in Section 11(1) of the RTI Act, the CIC may still decide that information should be disclosed in public interest overruling any objection that the third party may have to the disclosure of such information.

24.Given the above procedure, it is not possible to agree with the submission of Mr.Bhushan that the word 'or' occurring in Section 11(1) in the phrase information “ which relates to or has been supplied by a third party” should be read as 'and'. Clearly, information relating to a third party would also be third party information within the meaning of



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Section 11(1) of the RTI Act. Information provided by such third party would of course also be third party information. These two distinct categories of third party information have been recognized under Section 11(1) of the Act. It is not possible for this Court in the circumstances to read the word 'or' as 'and'....”

22.A reading of the judgment of Division Bench of Delhi High Court clearly reveals that any information which relates to the third party would also be a third party information within the meaning of Section 11(1) of RTI Act. It need not be an information supplied by the third party and has been treated as confidential by the said third party. Hence, if an information is relating to a third party (not being an information supplied by the said third party) even then notice is mandatory under Section 11(1) of the Act. The main reason for such a mandatory notice under Section 11(1) of the RTI Act is that, once the information seeker receives the information from the information provider relating to a third party, it no longer remains in the private domain and the received information can then be disclosed by the information seeker to the whole world. The said judgment of the Division Bench of Delhi High Court was quoted with approval by the Hon'ble Supreme Court in Five Judgment Bench reported ***in 2020 5 SCC 481 (Central Public Information Officer, Supreme Court of India Vs. Subhash Chandra Agarwal)***.

23.Whether an information is relating to the Commercial confidential,



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trade secrets or intellectual property or not and whether the disclosure would harm the competitive position of the third party or not, can be decided by the competent authority only after issuing notice to the said third party. After hearing the said third party, the competent authority is at liberty to arrive at a finding that the larger public interest warrants disclosure of such information. Section 11 of RTI Act only mandates the competent authority that the submission of the said third party shall be kept in view while taking a decision about disclosure of the information. It is not an impediment for the competent authority to disclose the information. Despite objection from the third party, the information may be disclosed, if the same is required in larger public interest. Unless the third party is heard, the competent authority would not be in a position to arrive at a finding whether a particular information would harm the said third party or not. The nature of harm that is likely to be inflicted upon the third party can be decided only after hearing the said third party. Unless the nature of the harm is placed before the competent authority by the third party, the competent authority cannot arrive at a conclusion whether larger public interest would outweigh the said harm or not.

24. Therefore, the competent authority should arrive at a conclusion relating to the comparative hardship of the harm inflicted to the third party and the larger public interest only after hearing the said third party. Only if



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the third party is heard, the competent authority will be in a position to find out whether the information sought for, would fall within the trade or commercial secrets which are protected by law or not as contemplated under the provision to Section 11(1) of RTI Act.

25.The second respondent is admittedly a competitive business man of the writ petitioner company. However, he is fighting against the alleged illegal mining activities of the writ petitioner companies. In the present case, the finding that has been arrived at by the competent authority is that the disclosure of the information would not affect the commercial interest of the information provider. But the information sought for relates to the commercial transaction of the writ petitioner company with the information provider. Therefore, the first respondent would not be right in directing the Public Information Officer of the Indian Rare Earth Private Limited to disclose the information without hearing the writ petitioners. The said order is clearly in violation of Section 11(1) of the RTI Act.

26.In view of the above said discussion, the impugned order passed by the first respondent is set aside. The matter is remitted back to the file of the first respondent for fresh consideration and for passing orders in accordance with law after affording due opportunity to the writ petitioners and the second respondent (Information seeker). The said exercise shall be completed within



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a period of 12 weeks from the date of receipt of a copy of this order.

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27. With the above said observation, the said writ petitions are allowed.

No costs. Consequently, connected miscellaneous petition is closed.

19 .07.2022

Internet : Yes/No

Index : Yes/No

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R.VIJAYAKUMAR, J.

msa

Pre-delivery order made in

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and
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