

102

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-19362-2023

Date of decision: 02.09.2023

Shish Pal

...Petitioner

Versus

State Information Commission, Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Prateek Mahajan, Advocate for the petitioner.

Ms. Rajni Gupta, Addl. A.G., Haryana
for the respondents.

VIKAS BAHL, J. (ORAL)

1. This is a Civil Writ Petition filed under Articles 226/227 of the Constitution of India for the issuance of a writ, order or direction especially in the nature of certiorari for quashing the order dated 14.02.2023 (Annexure P-17) passed by the State Information Commission, Haryana-respondent No.1 in Appeal Case No.4901 of 2022 titled as “*Shish Pal Vs. The State Public Information Officer and another*”. Challenge in the present writ petition has also been made to the order dated 16.06.2022 (Annexure P-8) passed by respondent No.3 and order dated 05.07.2022 (Annexure P-10) passed by respondent No.2.

2. Brief facts of the present case are that the petitioner had filed

an application before the State Public Information Officer under the Right to Information Act, 2005 (hereinafter referred to as “the Act of 2005”), in which, the following information was sought:-

“It is humbly submitted that the following information may please be supplied as early as possible:-

- 1. Please provide a certified copy of Divyang Certificate of all Person with Benchmark Disability Candidates who had been shortlisted for document verification held on dated 23-25 July, 2019 for the post of Clerk, Advertisement. No. 01/2018 and for which final Result had been declared on 27/07/2019.*
- 2. Please provide a certified copy of Verification report of Disability Certificate of all selected Person with Benchmark Disability Candidates by concerned authority for the post of Clerk, Advertisement. No. 01/2018.*

It is requested that all the requisite documents/certified copies desired above may please be provided under attestation by your office & send details of additional charges, if any, at under mentioned address. However, the requisite fee in the shape of Postal order of Rs.30 has been enclosed against the minimum required fee of Rs.10/- to cover the cost of information charges.”

3. In the reply, vide letter dated 16.06.2022 (Annexure P-8), the SPIO stated that the information sought was personal information and was exempted from disclosure under Section 8(1)(j) of the Act of 2005. Aggrieved against the same, the petitioner had filed the first appeal on 23.06.2022 (Annexure P-9), which was dismissed vide order dated 05.07.2022 (Annexure P-10). The petitioner, thereafter, filed the second

statutory appeal on 09.07.2022 (Annexure P-11) and in the grounds of appeal, specific reference was made to the judgment dated 16.05.2018 passed by the Central Information Commission which, as per the case of the petitioner, squarely covered the case in favour of the petitioner. The Second Appellate Authority i.e. the State Information Commission, Haryana, vide its order dated 14.02.2023 (Annexure P-17) dismissed the said appeal without making any reference to the judgment dated 16.05.2018 relied upon by the petitioner.

4. Learned counsel for the petitioner has submitted that the issue, in the present case, is “as to whether the Disability Certificate which has been submitted by the shortlisted candidates in pursuance of the Advertisement No.1 of 2018 can be given to the petitioner who himself has participated in pursuance of the said advertisement and is himself disabled to the extent of 80%”. It is submitted that the Central Information Commission, while considering a similar case, had observed that the Certificate issued by the authority which is an essential pre-requisite to claim the benefits/concessions prescribed under social welfare legislations cannot become a private or personal document of the holder and would be a public document within the meaning of Section 74 of the Indian Evidence Act and that the Certificate which has been issued by a public authority to a candidate, who becomes a public servant or beneficiary of the public scheme based on the Certificate of disability, could not be stated to be ‘private’ or ‘personal’ but is a document which is a public document as per Section 74(iii) and is accessible under Section

76 of the Indian Evidence Act. It is contended that in the said judgment, the provisions of Section 8(1)(j) as well as Section 11(1) of the Act of 2005 were also considered and it was observed that in case, the Disability Certificate is to be treated as a personal document then it was incumbent upon the authorities under the Act to examine whether the disclosure would cause an unwarranted invasion of privacy and whether the disability information relates to public activity or not. It is argued that once, the said decision had been specifically referred to in the grounds of appeal, then, it was incumbent upon the authority to have considered the said judgment. It is further argued that in the impugned order dated 14.02.2023, reliance has solely been placed upon a letter dated 05.01.2021 issued by the Chief Secretary to Government of Haryana, in which also, it has been mentioned that conditional access is available when larger public interest is satisfied. It is submitted that the matter has not been considered by the authority even in light of the same as there is no discussion on the question of a larger public interest being involved or not.

5. Learned counsel for the petitioner has further referred to the said instructions dated 05.01.2021 to highlight the fact that the said instructions are based upon the judgment passed by the Hon'ble Supreme Court in **“Central Public Information Officer, Supreme Court of India Vs. Subhash Chander Aggarwal”**, reported as **2020(5) SCC 481** and it is argued that even the said judgment and its true import have not been considered by the State Information Commission, Haryana, while

considering the second statutory appeal filed by the petitioner. Learned counsel for the petitioner has further placed reliance upon a **judgment dated 16.08.2023** passed by this Court in **CWP-17672-2023** titled as **“Rajwinder Singh Vs. State of Punjab and others”**, in which, the authorities have been specifically directed to pass speaking orders and detailed directions have also been given with respect to all the necessary points which are required to be noted at the time of adjudicating cases under the Act of 2005. It is submitted that the impugned order is also in violation of the said judgment. Learned counsel for the petitioner has prayed that the impugned order dated 14.02.2023 be set aside and the State Information Commission, Haryana, be directed to reconsider the matter after taking into consideration the judgment passed by the Hon’ble Supreme Court in the case of ***Central Public Information Officer, Supreme Court of India*** (Supra), the judgment passed by this Court in the case of ***Rajwinder Singh*** (Supra) and also the judgment dated 16.05.2018 (Annexure P-18) passed by the Central Information Commission, and pass a fresh order after granting due opportunity of hearing to the petitioner/his representatives.

6. Learned State Counsel has submitted that the State Information Commission, Haryana would decide the matter afresh after taking into consideration the judgment passed by the Hon’ble Supreme Court in the case of ***Central Public Information Officer, Supreme Court of India*** (Supra), the judgment passed by this Court in the case of ***Rajwinder Singh*** (Supra) and also the judgment dated 16.05.2018

(Annexure P-18) passed by the Central Information Commission.

7. This Court has heard learned counsel for the parties and has perused the paper book.

8. A perusal of Annexure P-11 (at page 52 of the paper book) which is the second statutory appeal filed by the petitioner before the State Information Commissioner would show that the petitioner had made a specific reference in his grounds of appeal to the judgment dated 16.05.2018 (Annexure P-18) passed by the Central Information Commission. Relevant portion of para 3 of the said grounds of appeal is reproduced hereinbelow:-

“3. Brief facts leading to the Appeal:-

(1) The SPIO, LUVAS University, Hisar cannot deny the information under section 8 (1) (j) of the RTI Act, 2005 as the information sought by the Applicant would serve a larger Public Interest and Public document.

Further, Central Information Commission vide Judgment No.CIC/Posts/A/2018/105570 has held that:

"6" A certificate issued by authority, which is an essential pre-requisite to claim benefits/concessions prescribed under social welfare legislations cannot become a private or personal document of the holder. It has to be a public document under Section 74 of Evidence Act, which says:

74. Public documents. *The following documents are public documents:-*

- (1) Documents forming the acts, or records of the acts--*
 - (i) of the sovereign authority,*
 - (ii) of official bodies and tribunals, and*
 - (iii) of public officers, legislative, judicial and executive, of*

any part of India or of the Commonwealth, or of a foreign country; of any part of India or of the Commonwealth, or of a foreign country:"

(2) Public records kept in any State of private documents.

*"7" The certificate issued by public authority to a candidate, who became public servant or beneficiary of public scheme based on the certificate of disability, which is submitted to and held by that public authority that appointed him or gave benefit from the public exchequer to him, could be neither the 'private' nor 'personal' nor 'third party information/document, but a public document as per Section 74 clause (iii). **This document is accessible under Section 76 of Evidence Act**, which says:-*

76. Certified copies of public documents.--Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefore, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal; and such copies so certified shall be called certified copies.--Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefore, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be

sealed, whenever such officer is authorized by law to make use of a seal; and such copies so certified shall be called certified copies." Explanation.--Any officer who, by the ordinary course of official duty, is authorized to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this section."

Hence the desired information sought by the Applicant cannot be denied under either Section 8(1)(j) or Section 11(1) of RTI Act.

(ii) The SPIO, LUVAS, Hisar cannot deny the certified copy of Verification report of Disability Certificate of selected Person with Disabilities candidates as any citizen has a right to see and verify the authenticity of disability certificate for the purpose of transparency in the recruitment.

Further it has been held by the Central Information Commission vide Judgment No.CIC/Posts/A/2018/105570 that:-

*"9" Assuming disability certificate is a personal document, the CPIO should have examined whether its disclosure would cause an unwarranted invasion of his privacy, does this disability information relates to public activity because it is concerned with public benefits being offered by the Government at the cost of the public exchequer, etc., as per Section 8(1)(j). Affirmative action, welfare measures and other benefits for disabled are important social welfare activities that promote public interest. **To ensure benefits reach the genuine persons, verification of the document of disability certificate is essential and its verification is equally necessary. This transparency will serve as a method to prevent corruption. Either competitor or any citizen has a right to see and verify the genuineness of disability***

certificate”

9. A perusal of the judgment dated 16.05.2018 (Annexure P-18) would show that the Central Information Commission had, after taking into consideration the provisions of the Indian Evidence Act more so, Sections 74 and 76 and also Section 8(1)(j) or Section 11(1) of the Act of 2005, observed that in case the Disability Certificate is to be treated as a personal document, then also the authorities have to further examine whether its disclosure would cause an unwarranted invasion of the privacy of the third party and that as to whether the disability information relates to public activity or not. It was further observed that either the competitor or any citizen has a right to see and verify the genuineness of the Disability Certificate so as to ensure that benefit of disability is reaching genuine persons and the same would also serve transparency as a method to prevent corruption.

10. The abovesaid judgment has not been considered in the order dated 14.02.2023 (Annexure P-17) passed by the State Information Commission, Haryana in spite of the same having been mentioned in the grounds of appeal and also being relevant with respect to the issue at hand. Primary reference in the said order dated 14.02.2023 has been made to the letter issued by the Chief Secretary to Government of Haryana dated 05.01.2021 which is based upon the judgment passed by the Hon’ble Supreme Court in the case of **“Central Public Information Officer, Supreme Court of India”** (Supra). Learned counsel for the petitioner has highlighted paragraphs 60 and 61 of the said judgment

which are reproduced hereinbelow:-

*“71. In **Arvind Kejriwal v. Central Public Information Officer and Another**, AIR 2012 Delhi 29, the Delhi High Court had examined and interpreted Section 11 of the RTI Act in the following manner:*

*“12. Section 11(1), (2), (3) and (4) are the procedural provisions which have to be complied with by the PIO/appellant authority, when they are required to apply the said test and give a finding whether information should be disclosed or not disclosed. If the said aspect is kept in mind, we feel there would be no difficulty in interpreting Section 11(1) and the so called difficulties or impartibility as pointed out by the appellant will evaporate and lose significance. This will be also in consonance with the primary rule of interpretation that the legislative intent is to be gathered from language employed in a statute which is normally the determining factor. The presumption is that the legislature has stated what it intended to state and has made no mistake. (See **Prakash Nath Khanna v. CIT**, (2004) 9 SCC 686; and several judgments of Supreme Court cited in **B. Premanand and Ors. v. Mohan Koikal and Ors.***

*13. Read in this manner, what is stipulated by Section 11(1) is that when an information seeker files an application which relates to or has been supplied by third party, **the PIO has to examine whether the said information is treated as confidential or can be treated as confidential by the third party. If the answer is in the possible sphere of affirmative or "maybe yes", then the procedure prescribed in Section 11 has to be followed for determining whether the larger public interest requires such disclosure. When information per se or ex facie cannot be regarded as confidential, then***

the procedure under Section 11 is not to be followed. All information relating to or furnished by a third party need not be confidential for various reasons including the factum that it is already in public domain or in circulation, right of third party is not affected or by law 38 AIR 2012 Delhi 29 is required to be disclosed etc. The aforesaid interpretation takes care of the difficulties visualised by the appellant like marks obtained in an examination, list of BPL families, etc. In such cases, normally plea of privacy or confidentiality does not arise as the said list has either been made public, available in the public domain or has been already circulated to various third parties. On the other hand, in case the word “or” is read as “and”, it may lead to difficulties and problems, including invasion of right of privacy/confidentiality of a third party. For example, a public authority may have in its records, medical reports or prescriptions relating to third person but which have not been supplied by the third person. If the interpretation given by the appellant is accepted then such information can be disclosed to the information seeker without following the procedure prescribed in Section 11(1) as the information was not furnished or supplied by the third person. Such examples can be multiplied. Furthermore, the difficulties and anomalies pointed out can even arise when the word “or” is read as “and” in cases where the information is furnished by the third party. For example, for being enrolled as a BPL family, information may have been furnished by the third party who is in the list of BPL families. Therefore, the reasonable and proper manner of interpreting Section 11(1) is to keep in mind the test stipulated by the proviso. It has to be examined whether information can be treated and

regarded as being of confidential nature, if it relates to a third party or has been furnished by a third party. Read in this manner, when information relates to a third party and can be prima facie regarded and treated as confidential, the procedure under Section 11(1) must be followed. Similarly, in case information has been provided by the third party and has been prima facie treated by the said third party as confidential, again the procedure prescribed under Section 11(1) has to be followed.

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16. Thus, Section 11(1) postulates two circumstances when the procedure has to be followed. Firstly when the information relates to a third party and can be prima facie regarded as confidential as it affects the right of privacy of the third party. The second situation is when information is provided and given by a third party to a public authority and prima facie the third party who has provided information has treated and regarded the said information as confidential. The procedure given in Section 11(1) applies to both cases.”

*72. We would clarify that Section 11(1) is not merely procedural but also a substantive provision which applies when the PIO intends to disclose information that relates to or has been supplied by a third party and has been treated as confidential by that third party. It requires the PIO to issue notice to the third party who may make submission in writing or orally, which submission has to be kept in view while taking a decision. Proviso to Section 11(1) applies in all cases except trade or commercial secrets protected by law. Pertinently, information including trade secrets, intellectual property rights, etc. are governed by clause (d) to subsection (1) of Section 8 and Section 9 of the RTI Act. **In all***

other cases where the information relates to or has been supplied by the third party and treated as confidential by that third party, disclosure in terms of the proviso may be allowed where the public interest in disclosure outweighs in importance any possible harm or injury to the interest of the third party. Confidentiality is protected and preserved in law because the public interest requires such protection. It helps and promotes free communication without fear of retaliation. However, public interest in protecting confidentiality is subject to three well-known exceptions. The first exception being a public interest in the disclosure of iniquity for there cannot be any loss of confidentiality involving a wrongdoing. Secondly, there cannot be any public interest when the public has been misled. Thirdly, the principle of confidentiality does not apply when the disclosure relates to matters of public concern, which expression is vastly different from news value or news to satiate public curiosity. Public concern relates to matters which are an integral part of free speech and expression and entitlement of everyone to truth and fair comment about it. There are certain circumstances where the public interest in maintaining confidentiality may be outweighed by the public interest in disclosure and, thus, in common law, it may not be treated by the courts as confidential information. These aspects would be relevant under the proviso to Section 11(1) of the RTI Act.”

11. A perusal of the above-reproduced paragraphs would show that in para 61, it has been observed that even in case the information is treated as confidential by the third party then also, the authority would be required to issue notice to the third party and after hearing them, the

authority is required to consider as to whether the public interest in disclosure outweighs any possible harm or injury to the interest of the third party. It was further observed that the public interest in protecting confidentiality is subject to three well known exceptions; first being public interest in the disclosure of iniquity for there cannot be any loss of confidentiality involving a wrongdoing, second being when the public has been misled and the third being when the disclosure relates to matters of public concern. In para 60, the Hon'ble Supreme Court has taken into consideration the judgment passed in the case of **"Arvind Kejriwal v. Central Public Information Officer and another"**, reported as **AIR 2012 Delhi 29**, wherein the Delhi High Court had noted that even as per Section 11(1) of the Act of 2005, where the information has been supplied by the third party, the authority has to first examine whether the said information is treated as confidential or can be treated as confidential by the third party and in case the answer is in affirmative then the procedure under Section 11 of the Act of 2005 has to be followed and then the second issue as to whether larger public interest requires disclosure of such information or not is to be considered by the authority. It was further observed that when the information per se or ex facie cannot be regarded as confidential then the procedure under Section 11 of the Act of 2005 is not required to be followed. It is the argument of learned counsel for the petitioner that in the light of the law laid down in the abovesaid judgment as well as provisions of Section 8(1)(j) and Section 11 of the Act of 2005, it was incumbent upon the State

Information Commission, Haryana to have first considered as to whether the information sought was to be treated as confidential by the third party or not and in case the authority came to the conclusion that the same is to be treated as confidential by third party then the procedure as mandated under Section 11 of the Act of 2005 was required to be followed and notice was required to be issued to the third party and after hearing all parties concerned, it was incumbent upon the authority to then consider whether public interest in case of disclosure of such information outweighs any possible harm or injury to the interest of the third party. Learned counsel for the petitioner had pointed out that as per the provision of Section 19(4) of the Act of 2005 even in case the State Information Commission, Haryana, comes to the conclusion that notice is required to be issued then the State Information Commission, Haryana, itself can issue notice to the said third party and on the said aspect alone, the matter is not required to be remanded by the State Information Commission. It is further the case of the petitioner that in case, the authority comes to the conclusion that the information could not be treated as confidential by the third party then the information was required to be supplied without following the procedure under Section 11 of the Act of 2005 and without issuing any notice to the third party.

12. A perusal of the order dated 14.02.2023 would show that the said aspects, the relevant provisions of the Act of 2005 as well as the relevant law on the issue at hand, have not been considered while passing the order dated 14.02.2023 and thus, keeping in view the abovesaid facts

and circumstances, the present Civil Writ Petition is partly allowed and the order dated 14.02.2023 (Annexure P-17) is set aside with a direction to the State Information Commission, Haryana to decide the second statutory appeal filed by the petitioner i.e., Appeal Case No.4901 of 2022 titled as “*Shish Pal Vs. The State Public Information Officer and another*” afresh after taking into consideration the judgment passed by the Hon’ble Supreme Court in the case of ***Central Public Information Officer, Supreme Court of India*** (Supra), the judgment passed by this Court in the case of ***Rajwinder Singh*** (Supra) and the judgment dated 16.05.2018 (Annexure P-18) passed by the Central Information Commission, in accordance with law after hearing all the parties concerned, as expeditiously as possible, preferably within a period of four months from the date the petitioner/his representatives and the respondent authorities appear before the State Information Commission, Haryana. The parties are directed to appear before the State Information Commission, Haryana on 14.09.2023.

02.09.2023*Pawan***(VIKAS BAHL)
JUDGE****Whether speaking/reasoned:- Yes/No****Whether reportable:- Yes/No**