

Court No. 9

WPA 12636 of 2024

15.05.2024

(AD 89)

(S. Banerjee)

Sri Rajdip Mallik

Vs.

The State of West Bengal & Ors.

Mr. Rahul Karmakar

Mr. Santu Nandy

... for the petitioner

Mr. Arjun Roy Mukherjee

Mr. Uttam Kumar De

... for the State

Mr. Raja Saha

Mr. Sanjay Mukherjee

... for the WB Information Commission

Learned counsel for the petitioner argues that the petitioner applied for certain information in respect of a clinical establishment being run at a particular premise.

The first authority (SPIO) having rejected the same, the petitioner preferred a first appeal against the same. The first appellate authority remanded the matter to the SPIO, against which the petitioner preferred a challenge before the second appellate authority.

In its order, the second appellate authority has affirmed the rejection of the petitioner's application for information but on different grounds than those attributed by the SPIO. Whereas the SPIO had cited Section 8(1)(d) of the Right to Information Act, 2005, the second appellate authority supplemented the said

reason by stating that instead of Section 8(1)(d), the relevant clauses would be Section 8(1), clauses (e) and (j) of the said Act. It is argued that there is no ingredient as envisaged in Clauses (e) and (j) of the said Act in the present case, since there is no private element or personal information involved in the information sought by the petitioner.

Learned counsel appearing for the respondent appellate authority contends that the State Information Commissioner (second appellate authority), in its wisdom, has supplanted reasons for the refusal of the information. It is argued that the petitioner cannot have any locus standi to obtain fully personal information of a third-party. The disclosure of the same has no relationship to any public activity or interest and as such the discretion exercised by the second appellate authority was justified and in consonance with sub-Clause (j) of Section 8(1) of the 2005 Act.

Upon hearing learned counsel for the parties, it is clear that out of the two clauses cited by the second appellate authority, Clause 8(1)(e) cannot be applicable in the present case, since the information available to the SPIO was not in his fiduciary relationship.

However, an arguable case is made out by both the parties regarding applicability of Clause (j) of Section 8(1). The said Clause reads as follows:

“8.(1) ...

(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.”

A reading of the said provision clearly reveals certain ingredients which have to be satisfied for the exception provided therein to apply to a particular case. First, the information has to relate to personal information. Secondly, the disclosure has to have no relationship to any public activity or interest. Thirdly and alternatively, the information might cause unwarranted invasion to the privacy of an individual.

The exemption in such exception is that the CPIO or SPIO, as the case may be, has to be satisfied that larger public interest justifies the disclosure of the information.

Insofar as establishment of a clinical establishment is concerned, the same has to come within the purview of the Clinical Establishment (Registration and Regulation) Act, 2010.

To be registered under the said Act, an establishment has to undergo certain scrutiny and furnish certain relevant documents.

The furnishing of such documents and fulfillment of the criteria as stipulated in the said Act are a *sine qua non* for opening and operating a clinical establishment.

The petitioner is justified in arguing that illegal establishment and running of a clinical establishment might have serious consequences in the public law domain.

In the event the requisite criteria are not satisfied, the operation of the clinical establishment may not only lead to violation of law, but also shall adversely affect the interest of the patients who unknowingly are admitted and treated therein as well as the neighbourhood people, who might be adversely affected if certain criteria such as possession of valid fire license, waste management certificate as well as pollution control certificate are flouted.

Although the petitioner might be a competitor of the person in respect of whom the information was sought, the said factor *ipso facto* does not debar the petitioner from obtaining information if the same has even a slight connection with public interest.

In the present case, the information sought does not relate to “personal information” as such, since all the documents and information sought pertain to a valid registration being given to a clinical establishment under the governing statute. Moreover, the information may have certain connotations in the public law domain and affect the larger public interest in view of the observations made above.

However, insofar as item nos. 1, 3 and 4 of the query of the petitioner are concerned, those do not have any connection with the public domain. Item no. 1 seeks a copy of any rent agreement which might have been filed for getting the registration for running the clinical establishment, the terms and conditions of which are entirely a matter between the lessor and the lessee. Item no. 3 speaks about sanctioned building plan of the building, which hits at the root of the legality of the building and might affect the land owner, who has nothing to do with the clinical establishment as such. Item 3 speaks about the electricity bills, which also do not have a direct bearing on the issue in hand.

However, regarding the other items, I do not find that the bar under Section 8(1) clauses (e) or (j) of the 2005 Act are applicable in any manner.

Accordingly, WPA 12636 of 2024 is disposed of by partially modifying the impugned order of the second

appellate authority to the extent that the SPIO shall furnish the information sought by the petitioner in his query dated May 20, 2021 annexed at page 16 of the writ petition insofar as the same relates to item nos. 2, 5, 6, 7, 8, 9 and 10. It is made clear that the information sought under serial nos. 1, 3 and 4 shall not be furnished to the petitioner.

It is expected that the SPIO shall act on the basis of a server copy of this order and comply with the same by furnishing such information/document to the petitioner at the earliest, preferably within six weeks from the date of communication of this order to the said authorities.

There shall be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be supplied to the respective parties upon compliance of requisite formalities.

(Sabyasachi Bhattacharyya, J.)