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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 25404 of 2023

Tathagata Datta
Vs.
Central Information & Ors.

Mr. Tathagata Datta
... petitioner-in-person

Mr. Animesh Mukherjee,
Ms. Anamika Pandey
...for the respondents/Railways

1. Affidavit-of-service filed in Court today be kept on record.
2. The petitioner, appearing in person with the leave of court, challenges the order of the Chief Information Officer sitting in second appeal under the Right to Information act, 2005.
3. The petitioner sought for the inspection of certain documents which, according to the petitioner, are registers and public records, from the Eastern Railway.
4. However, the said information was refused by the first authority, prompting the petitioner to move the first appellate authority and, thereafter, the second appellate authority.

5. The refusal was apparently on the ground of exemption under Section 8(1)(j) of the Right to Information act, 2005.

6. Surprisingly, the petitioner, appearing in person with leave of Court, points out that the Information Commissioner in his decision, stated that he found that an appropriate reply as per 2005 Act had already been furnished by the respondents and, hence, no further intervention by the commission was required in the matter. For the redressal of his grievance, if any, the appellant therein (present petitioner) was granted leave to approach an appropriate forum.

7. Learned counsel appearing for the respondent-authorities places reliance on Section 24 of the 2005 Act and argues that the said Section provides that nothing contained in the Act shall apply to the Intelligence and Security Organizations specified in the Second Schedule.

8. Learned counsel points out that in Item No. 18 of the Second Schedule, "Financial Intelligence Unit, India" has been enumerated. Hence, one of the informations sought by the petitioner in Query No.-C, being office orders issued by the Ministry of Finance, Government of India, it is submitted that the Act is not applicable at all.

9. Learned counsel next places reliance on the proviso to Section 11(1) of the 2005 Act, which provides that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party.

10. Learned counsel next argues that Section 8(1)(j) of the 2005 Act also speaks about public interest, which is entirely absent in the present case.

11. Upon hearing learned counsel for the parties, it is clear that the argument of the respondents on Section 24 of the 2005 Act cannot be accepted. Section 24(1) of the 2005 Act provides that nothing contained in the Act shall apply to the “Intelligence and Security Organisations” specified in the Second Schedule.

12. The Second Schedule clearly enumerates certain specific institutions which come within the purview of such exception.

13. In Item 18 of the said Schedule, a specific unit of the Government, being the Financial Intelligence Unit, India has been enumerated.

14. However, the information sought by the petitioner from the Eastern Railways has nothing whatsoever to do with the Financial Intelligence Unit of India.

15. Query No. C, which has been relied on by the respondents for such argument, merely seeks the office orders in favour of creation of the concerned posts and necessary authority, which have been issued by the Ministry of Finance, Government of India, to create such posts, under which the public servants are at present working, as mentioned thereinabove.

16. Although the notifications and office orders of the Ministry of Finance are supposed to be on the public portal of the said Ministry, the petitioner herein seeks the specific office orders, on which the Eastern Railway relies on for the stipulated purpose as clearly enumerated in Query No.-C. Hence, the said office orders, which are supposedly relied on by the Eastern Railway, being public records, there could not have been any objection on the part of the respondents to furnish the same on such count. Section 24 of the 2005 Act, thus, is not applicable by any stretch of imagination to the present case.

17. Insofar as the respondents' reliance on Section 11(1) of the 2005 Act proviso is concerned, the same is also entirely besides the point. Section 11(1) of the 2005 Act provides that where a Central Public Information Officer or the State Public Information Officer, as the case may be, intends to

disclose any information or record or part thereof on request made under the Act, which relates to or has been supplied by a third party and has been treated as confidential by the third party, the rest of the provisions including the proviso follow.

18. The proviso merely qualifies sub-section (1) of Section 11 and does not add any further ingredients thereto. The premise of Section 11(1) of the 2005 Act is that the information has to be provided by a *third party* and has to be *confidential*. Neither of the said tests are met in the present case, since the attendance registers, classification chart, work load analysis report, duty rosters and office orders issued by the Ministry of Finance, on which the Eastern Railway relies on for the specific purpose as enumerated, cannot qualify as documents provided by a third party, nor can they, by any stretch of imagination, be deemed to be confidential documents of such (non-existent) third party. Thus, the reliance on Section 11 by the respondent-authorities is entirely misplaced.

19. The ground on which the authorities have refused the information is primarily Section 8(1)(j) of the 2005 Act. The said Clause provides that there shall be no obligation to give any citizen 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 Information Officer or the Appellate Authority, as the case may be, are satisfied that the larger public interest justifies the disclosure of such information. Again, the premise of clause (j) of Section 8(1) of the 2005 Act is that the information, for coming under the exemption, *has to relate to personal information*, the disclosure of which has no relationship to public activity or interest.

20. The information sought by the petitioner, in any of his queries, cannot be said to be ‘personal information’. All the information relate to the functioning of a public authority, the Eastern Railway, which has to ensure transparency as an implicit condition of discharge of public functions. Thus, there being no personal element involved, even regarding the attendance registers or the duty rosters, the said defence taken by the respondents cannot be accepted.

21. Accordingly, W.P.A. No. 25404 of 2023 is allowed on contest, thereby setting aside the order of the second appellate and the first appellate authorities confirming that of the Central Public Information Officer and directing the respondent no. 3, that is, the Senior Divisional Operations

Manager-cum-Public Information Officer, Sealdah Division, Eastern Railway, to furnish inspection to the petitioner regarding all the documents as mentioned in the query of the petitioner enumerated in Annexure P-1 at page 18 of the present writ petition, upon giving prior notice to the petitioner of the date(s) of such inspection.

22. Such exercise shall be concluded within an outer limit of six weeks from date.

23. There will be no order as to costs.

24. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)