

CENTRAL INFORMATION COMMISSION

Room No. 308, B-Wing, August Kranti Bhawan, Bhikaji Cama Place, New Delhi-110066

File No.CIC/LS/A/2010/000685

Appellant : Smt Durgesh Kumari
Respondent : Income Tax Department
Date of Hearing : 12.8.2011
Date of Decision : 26.8.2011

FACTS :

The matter, in short, is that when the appellant was working as Income Tax Officer in the Department, she was trapped by the CBI when allegedly accepting bribe. A criminal case was instituted against her and she was prosecuted therein. Vide RTI application dated 23.8.2009, she had sought the following information :-

“It is humbly requested to provide to the undersigned the copy of the entire sanction file bearing No CIT-Delhi-VII/Estt/Susp/DK/2006-07” prescribed fee in the proper format.

2. The CPIO had disposed of the matter vide order dated 10.9.2009 refusing to disclose any information in terms of section 8 (1) (h) of the RTI Act wherein he had also relied on this Commission’s decision in Appeal No 01/IC(A)/2006 (Ashok Kumar Agarwal Vs Department of Revenue). The relevant para of the order is extracted below :-

“Your attention is also invited to the decision of the Central Information Commission given in the case of Ashok Kumar Aggarwal Vs Department of Revenue, Ministry of Finance, in Appeal No 01/IC(A)/2006 wherein it is held that “there is due process of law under which the appellant may obtain the documents to defend himself in the relevant case through the trial court. At the stage when the court is duly seized of the matter and the exemption from disclosure of information under section 8 (1) (h) of the Act has correctly been applied by the appellate authority of the Department of Revenue.”

3. Dissatisfied with the decision of CPIO, the appellant had filed the first appeal which was decided by the AA vide order dated 22.12.2009. The AA had dismissed the appeal on the technical ground of the appeal having been filed after the expiry of prescribed time.

4. Thereupon, the appellant filed the present appeal before this Commission which came up for hearing before the Single Bench of Shri M.L. Sharma on 28.7.2010. In view of the legal issues raised by the appellant, the Single Bench decided to refer the matter to the Chief Information Commissioner for constituting a Full Bench in pursuance

whereof the Chief Information Commissioner constituted the Full Bench consisting of the following :-

- (i) Shri Satyananda Mishra, Chief Information Commissioner;
- (ii) Shri M.L. Sharma, Information Commissioner; &
- (iii) Shri Shailesh Gandhi, Information Commissioner.

5. The matter was heard by the Full Bench on 12.8.2011. The appellant was present along with her husband Shri Sudhir Kumar. The CBI which had been issued notice, being the necessary party, was represented by Shri Sumit Sharan, Dy Inspector General and Shri V.P. Sharma, Addl SP. The parties were heard.

6. The main contention of the appellant is that information can not be denied to her in a case in which she has been convicted and her appeal against conviction is presently pending in the High Court. According to her, the process of prosecution is over and the matter can not be said to be under prosecution any more in terms of section 8 (1) (h) of the RTI Act. She has also relied on the Single Bench decision of Shri Shailesh Gandhi, Information Commissioner in File No CIC/SG/A/2009/00015/2695 (Appeal No CIC/SG/A/2009/000015) (Prakash Chandra Vs Govt of NCT of Delhi) wherein the issue before the Bench was whether a copy of SP's report prepared by CBI could be furnished to the appellant. The present appellant has drawn the Commission's attention to the operative paras of the above decision which are reproduced below :-

“The Delhi High Court judgment quoted by the respondent was passed after the orders of the Commission quoted by respondent. Justice Ravindra Bhat's order in WP(C) No. 3114/2007 has clearly stated,

“13. Access to information, under Section 3 of the Act, is the rule and exemptions under Section 8, the exception. Section 8 being a restriction on this fundamental right, must therefore be strictly construed. It should not be interpreted in manner as to shadow the very right itself. Under Section 8, exemption from releasing information is granted if it would impede the process of investigation or the prosecution of the offenders. It is apparent that the mere existence of an investigation process cannot be a ground for refusal of the information; the authority withholding information must show satisfactory reasons as to why the release of such information would hamper the investigation process. Such reasons should be germane, and the opinion of the process being hampered should be reasonable and based on some material. Sans this consideration, Section 8(1)(h) and other such provisions would become the haven for dodging demands for information.

14. A rights based enactment is akin to a welfare measure, like the Act, should receive a liberal interpretation. The contextual background and history of the Act is such that the exemptions, outlined in Section 8, relieving the authorities from the obligation to provide information, constitute restrictions on the exercise of the rights provided by it. Therefore, such exemption provisions have to be construed in their terms; there is some authority supporting this view(See Nathi Devi V. Radha Devi Gupta 2005(2) SCC 201; B.R. Kapoor v. State of Tamil Nadu 2001 (7) SCC 231 and V. Tulsamma v.

**Sesha Reddy 1977(3) SCC 99 adopting-----
mandated class of restriction on the rights under the Act, which is
unwarranted.**

This judgment has effectively overruled the earlier orders of the CIC on this matter. In the instant case the investigations are clearly over and therefore we would only have to see whether releasing the information would impede the process of prosecution of offenders. If the basis of prosecuting the accused is the truth as it exists on the records, it is not possible to understand how it could impede the process of prosecution of the offender. If there are any details in the SP's report which would create any doubts in the mind of the judge who is conducting the trial, this must certainly be disclosed in the interests of justice. The Commission does not agree with the grounds given by the respondent to refuse giving the information, and cannot see how the truth could impede the prosecution. If anything justice demands that the truth must be placed before the Court. Therefore, the Commission does not find merit in the denial of the information under Section 8(1)(h).

However we do see merit in the respondent's grounds of section 8(1) (g). If some people have given information based on which the prosecution has been launched, revealing their identity could result in some harm to them, and revealing their identities would also reveal the source of information. The Commission directs that the PIO apply the severability clause of Section 10 and blank out the names of those who have provided the information in confidence.

The appeal is allowed.

The PIO will give the SP's report and copy of the said letter dated 07/12/2000 and the note portion of the file where the said letter was dealt with in Directorate of Vigilance to the appellant before 5 May, 2009."

The appellant forcefully pleads that the ratio of this decision squarely applies in her case and, therefore, orders of the CPIO and AA are liable to be set aside.

7. On the other hand, Shri Sumit Sharan, DIG, CBI, New Delhi, would plead that the completion of trial and conviction of the appellant therein does not mean that the process of prosecution is over in terms of section 8 (1) (h) of the RTI Act. According to him, pendency of the appeal filed before the High Court by the appellant is indicative of the fact that the process of 'prosecution' is still continuing and is not yet over and, therefore, requested information is barred from disclosure u/s 8 (1) (h) of the RTI Act. Shri Sharan has also placed reliance on the Delhi High Court judgement dated 10.11.2006 in WP(C) No 16712/2006 (Surinder Pal Singh Vs Union of India) in which it has been held that when a case is under prosecution, disclosure of any information in regard thereto may impede the prosecution of the offenders. He has drawn our attention to the operative para of the said order which is extracted below :-

"The Central Information Commission and the Appellate Authority and CPIO had held that the prosecution of the offender is pending before the Special Judge. If the prosecution of the offender is

pending and not yet complete, the information which is sought by the petitioner may impede the prosecution of the offender cannot be faulted. The emphatic argument by the learned counsel for the petitioner that since the process of investigation is already over as the chargesheet has already been filed by the Central Bureau of Investigation is not correct. Exemption from disclosure of information can be claimed for any information which may impede the process of investigation of apprehension or prosecution of offenders. Since the chargesheet has been filed the process of investigation has been completed but the petitioner can not be contend that there is no apprehension with the respondent that the information sought by the petitioner may impede the prosecution of the offender. Whether the respondents have apprehension or not is to be decided by the respondents in the present facts and circumstances. The apprehension of the respondents is not without any basis. In any case the prosecution of the offender is pending. Since prosecution of the offender is pending and has not been completed, it can not be inferred that divulgence of information will not impede the prosecution of the offender. The respondents, therefore, are justified in claiming exemption under Section 8 (1) (h) from disclosure of information sought by the petitioner. The argument of the learned counsel for the petitioner that since the process of investigation has been completed as chargesheet has already been filed can not be accepted and is contrary to all the circumstances under which exemption can be claimed under Section 8 (1) (h) of Right to Information Act, 2005.

The decision of decline the request of the petitioner for the information regarding sanction of his prosecution which may impede the prosecution of offender can not be faulted in the facts and circumstances. There is no error or illegality in the orders passed by the respondents seeking exemption under Section 8 (1) (h) of Right to Information Act, 2005 nor any procedural unreasonableness can be inferred.”

8. In the light of the above judgment, Shri Sharan would forcefully plead that disclosure of any information at this stage would impede the process of prosecution and such disclosure is barred u/s 8 (1) (h) of the RTI Act.

9. The matter in hand raises the following two issues :-

- (i) Whether, in view of the pendency of the appeal in the High Court, the matter can be said to be under prosecution in terms of section 8 (1) (h) of the RTI Act; and
- (ii) If it is held that the matter is still under prosecution, whether disclosure of requested information would impede the process of such prosecution, as contemplated u/s 8 (1) (h).

10 We will now take up these issues one by one. As regards issue No (i) above, it would be expedient to extract clause (h) of section 8 (1) which reads as follows :-

“(h) information which would impede the process of investigation or apprehension or prosecution of offenders”

A bare reading of the above clause would indicate that any information which tends to impede the process of investigation or apprehension or 'prosecution of offenders' is not to be disclosed under this Act.

11. Admittedly, the appellant has been tried and convicted by the trial court. Her appeal is pending before the High Court. In our opinion, the process of 'prosecution' is not yet over and it is still continuing, for, it is open to the court to affirm, modify or reverse the trial court judgement and thereupon any of the parties may further agitate the matter before the apex court. The process of prosecution, thus, is a continuing process which can be said to be over only when all judicial remedies have been fully exhausted. This is the situation in the present case.

12. It is common place that the word 'prosecution', as occurring in section 8 (1) (h), means and implies initiation and continuation of criminal proceedings in the competent court. Termination of proceedings in the trial court can not mean conclusion of proceedings when this very issue has been agitated before a higher judicial forum (High Court in the present case) either by the State or by the accused. In the premises, we hold that the case is still under 'prosecution' in terms of section 8 (1) (h).

13. As regards issue No (ii), the real question is whether disclosure of requested information would impede the process of ongoing prosecution. It may be apt to mention that a full fledged Code, namely, the Code of Criminal Procedure, 1973, has been enacted by the Parliament which contains extensive provisions for the conduct of investigation and prosecution. The Code provides for fair trial, in conformity with the principles of natural justice and has stood the test of time in its previous incarnations as also in the present one ever since the introduction of anglo-saxon system of justice in the country. No trial can be conducted without offering fair opportunity to the accused to defend himself. The Code provides for supply of copies of documents to the accused relied upon by the prosecution. The accused has a right to be defended by a Counsel of his choice. He has also the right to cross examine the witnesses produced against him. Besides, he can also produce witnesses in his defence. Section 313 of the code entitles him to explain or clarify the evidence proved against him at the trial. We may also add that, as per this Code, a copy of the sanction for prosecution is also required to be supplied to the appellant well before the commencement of trial. He also has the right to cross examine the authority who accorded the sanction for prosecution. Besides, the entire file, in which the matter of sanction for prosecution has been processed, is required to be produced before the Court for its perusal. Suffice it to say that the Code provides for fair trial in conformity with the principles of natural justice. Hence, in the premises, the request of the appellant for a copy of the file in which the sanction for prosecution was processed is difficult to appreciate. Hence, the contention of Shri Sumit Sharan that disclosure of requested information would impede the process of prosecution can not be taken lightly. Further more, as mentioned hereinabove, the Delhi High

Court has held that once the matter is before the court, disclosure of any information in regard thereto would impede the process of prosecution.

14. In the premises, we hold that disclosure of requested information would impede the process of prosecution.

15. To sum up, we hold that the present matter is still under 'prosecution' and the disclosure of requested information would impede the process of prosecution in terms of section 8 (1) (h) of the RTI Act. Hence, in our opinion, the decisions of CPIO and AA do not call for any interference. The appeal, therefore, is dismissed.

Order reserved and pronounced on 26th August, 2011.

Sd/-
(Satyananda Mishra)
Chief Information Commissioner

Sd/-
(M.L. Sharma)
Information Commissioner

Dissenting Decision in File No. CIC/LS/A/2010/000685

I have perused the majority decision given in the present matter by my colleagues Mr. Satyananda Mishra, Chief Information Commissioner and Mr. M. L. Sharma, Information Commissioner. The facts arising in the present matter have been stated in the majority decision and I am therefore, not repeating the same. Based on the facts and submissions of the parties, there are two main issues which have arisen for determination before the Bench. These issues have been enumerated in the majority decision and are as follows:

- (i) Whether, in view of the pendency of the appeal in the High Court, the matter can be said to be under prosecution in terms of Section 8(1)(h) of the RTI Act; and
- (ii) If it is held that the matter is still under prosecution, whether disclosure of requested information would impede the process of such prosecution, as contemplated under Section 8(1)(h) of the RTI Act.

As regards issue (i), I am in agreement with the majority ruling and find no reason as such to elaborate on the same. However, as regards issue (ii), I, most respectfully, disagree with the findings of the majority. At the outset, it would be relevant to mention the overriding effect of the RTI Act as mandated by Section 22 (of the RTI Act), which is as follows:

“22. Act to have overriding effect.- The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets, Act 1923 (19 of 1923), and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.”

Section 22 of the RTI Act expressly provides that the provisions of the RTI Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923, and any other law for the time being in force or in any instrument having effect by virtue of any law other than the RTI Act. Section 22 of the RTI Act, in no uncertain terms, lays down that as regards furnishing of information, the RTI Act shall override anything inconsistent contained in any other law. Therefore, as far as disclosure of information is concerned, if there is any provision in the Code of Criminal Procedure (the “CrPC”) which is inconsistent with the provisions of the RTI Act, it would undoubtedly be overruled by the RTI Act.

The RTI Act makes no exception to this provision of overruling effect and therefore the question of non- disclosure of information in accordance with CrPC does not arise. The Parliament does not provide for a specific overriding clause in all laws but it has done so in the form of Section 22 in the RTI Act, which would be rendered completely redundant if provisions contained in previously enacted laws were to be relied on to claim exemption from disclosure of information. Insertion of a *non- obstante* clause in Section 22 of the RTI Act was a conscious choice of the Parliament to safeguard the citizens’ fundamental right to information. It is a rule of statutory interpretation that a legislature does not introduce unnecessary clauses in legislations. Hence, it is imperative that Section 22 of the RTI Act is applied and not rendered ineffective. In this regard, it would be relevant to mention the observations of Sanjiv Khanna, J. of the High Court of

Delhi in Union of India v. Central Information Commissioner & Anr. 2009 (165) DLT 559, which are as follows:

“Section 22 of the RTI Act gives supremacy to the said Act and stipulates that the provisions of the RTI Act will override notwithstanding anything to the contrary contained in the Official Secrets Act or any other enactment for the time being in force. This non- obstante clause has to be given full effect to, in compliance with the legislative intent. Whenever there is a conflict between the provisions of the RTI Act and another enactment already in force on the date the RTI Act was enacted, the provisions of the RTI Act will prevail. It is a different matter in case RTI Act itself protects a third enactment, in which case there is no conflict. Once an applicant seeks information as defined in Section 2(f) of the RTI Act, the same cannot be denied to the information seeker except on any of the grounds mentioned in Section 8 and 9 of the RTI Act. The Public Information Officer or the appellate authorities cannot add and introduce new reasons or grounds for rejecting furnishing of information.” (Emphasis added)

Having laid down the above, I will now examine whether disclosure of the information sought by the Appellant would impede the process of prosecution as contemplated under Section 8(1)(h) of the RTI Act. At the hearing held before the Bench in the instant matter, I had asked Mr. Saran to explain how disclosure of information would impede the process of prosecution. Mr. Saran merely submitted that since prosecution was pending, disclosure of information would impede the process of prosecution. No further explanation was provided by Mr. Saran.

Section 8(1)(h) of the RTI Act provides as follows:

“8. Exemption from disclosure of information.- (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,-

...

(h) information which would impede the process of investigation or apprehension or prosecution of offenders;”

From a plain reading of the above provision, it follows that Section 8(1)(h) of the RTI Act exempts disclosure of information which would impede the process of investigation or apprehension or prosecution of offenders. Merely because the process of investigation or apprehension or prosecution of offenders is continuing, the bar stipulated under Section 8(1)(h) of the RTI Act is not attracted; it must be clearly established by the PIO that disclosure of the information would impede the process of investigation or apprehension or prosecution of offenders. If Parliament wanted to exempt all information relating to investigation or apprehension or prosecution, it would not have imposed the condition that disclosure should ‘impede’ the investigation or prosecution. In this regard, it would be relevant to note the observations of Ravindra Bhat, J. of the High Court of Delhi in Bhagat Singh v. CIC W.P. I No. 3114/2007 dated 03/12/2007:

“13. Access to information, under Section 3 of the Act, is the rule and exemptions under Section 8, the exception. Section 8 being a restriction on this fundamental right, must therefore be strictly construed. It

should not be interpreted in manner as to shadow the very right itself. Under Section 8, exemption from releasing information is granted if it would impede the process of investigation or the prosecution of the offenders. It is apparent that the mere existence of an investigation process cannot be a ground for refusal of the information; the authority withholding information must show satisfactory reasons as to why the release of such information would hamper the investigation process. Such reasons should be germane, and the opinion of the process being hampered should be reasonable and based on some material. Sans this consideration, Section 8(1)(h) and other such provisions would become the haven for dodging demands for information.

*14. A rights based enactment is akin to a welfare measure, like the Act, should receive a liberal interpretation. The contextual background and history of the Act is such that the exemptions, outlined in Section 8, relieving the authorities from the obligation to provide information, constitute restrictions on the exercise of the rights provided by it. Therefore, such exemption provisions have to be construed in their terms; there is some authority supporting this view (See *Nathi Devi v. Radha Devi Gupta* 2005 (2) SCC 201; *B. R. Kapoor v. State of Tamil Nadu* 2001 (7) SCC 231 and *V. Tulasamma v. Sesha Reddy* 1977 (3) SCC 99). Adopting a different approach would result in narrowing the rights and approving a judicially mandated class of restriction on the rights under the Act, which is unwarranted.” (Emphasis added)*

It is clear from the ruling of Ravindra Bhat, J. that the PIO, who is denying information under Section 8(1)(h) of the RTI Act, must show satisfactory reasons as to why disclosure of such information would impede the process of investigation or apprehension or prosecution of offenders. These reasons must be relevant and the opinion of the PIO that by disclosing the information, prosecution of offenders shall be impeded should be reasonable. The opinion of the PIO must be based on some material and cannot be a mere apprehension not supported by any evidence.

Mr. Saran has relied on the observations of the High Court of Delhi in *Surinder Pal Singh v. Union of India & Ors.* W. P. I No. 16712/2006 dated 10/11/2006 in support of his contention, the relevant portions of which have already been set out in the majority decision. I have perused the decision of the High Court of Delhi in the *Surinder Pal Singh Case* in totality, which pertains to the scope of Section 8(1)(h) of the RTI Act.

In the *Surinder Pal Singh Case*, information sought by the applicant was denied on the basis of Section 8(1)(h) of the RTI Act, which had been upheld by the Commission and was the subject matter of the writ before the High Court. The main contention of the applicant before the High Court was since the charge sheet had already been filed before the Special Judge, disclosure of information would not impede the process of investigation. The Court appears to have rejected the contention of the applicant on the basis that exemption from disclosure of information can be claimed for any information which may impede apprehension or prosecution of offenders; it is not restricted to merely investigation. The Court has observed that even though the process of investigation may have been completed on filing of charge sheet, there may still be an apprehension that such disclosure may impede the prosecution of the offender. The High Court also observed that this apprehension (of the respondents) was not without any basis

and therefore ruled that the information sought was exempted from disclosure under Section 8(1)(h) of the RTI Act.

From my reading of both the decisions referred to above, it appears that whether there would be an impediment to investigation or prosecution would have to be decided by the Respondent on the facts and circumstances of the case and must be based on certain reasons. Both decisions lay down the scope of Section 8(1)(h) of the RTI Act and substantiate each other in interpreting Section 8(1)(h) of the RTI Act. Given the same, the *Surinder Pal Singh Case* does not lend any additional support to Mr. Saran's contention. It is pertinent to mention that the majority has observed that "...the Delhi High Court has held that once the matter is before the court, disclosure of any information in regard thereto would impede the process of prosecution". I humbly disagree with the said observations as the High Court in the *Surinder Pal Singh Case* did not at any point, lay down that once the matter is before the Court, disclosure of any information in regard thereto would impede the process of prosecution. The Court only held that merely because investigation was over, it could not be assumed that no impediment could be claimed. If the PIO could show impediment to the prosecution, exemption could still be claimed under Section 8 (1)(h) of the RTI Act.

Given the above case law rulings, in the present matter, information has been denied simply on the claim that such disclosure would impede the prosecution of offender(s). However, Mr. Saran has failed to explain how such disclosure would actually be an impediment to the process of prosecution, as laid down above by the High Court of Delhi. The denial of information by the PIO appears to be a mere blanket statement not supported by any cogent evidence or material on the basis of which it can be clearly demonstrated that such disclosure would in fact attract the exemption contained in Section 8(1)(h) of the RTI Act. When denying a right to the citizen, it has to be established beyond doubt that prosecution or apprehension of an offender would be impeded. In other words, the burden placed under Section 19(5) of the RTI Act has not been discharged while establishing that the denial of information under Section 8(1)(h) of the RTI Act was justified.

At this juncture, I would like to mention that the Supreme Court of India in a three Judge Bench decision in *Director of Education v. Pushpendra Kumar & Ors.* (Decided on 13/05/1998) has held that "*an exception cannot subsume the main provision to which it is an exception and thereby nullify the main provision by taking away completely the right conferred by the main provision*". The principle that an exception to the main provision must be strictly construed was also applied by a five Judge Bench in *Nathi Devi v. Radha Devi Gupta* 2005 (2) SCC 201. The right to information is a fundamental right of the citizens, which is reflected in Section 3 of the RTI Act which provides that subject to the provisions of the RTI Act, all citizens shall have the right to information. However, this information can be denied on the basis of Sections 8 and 9 of the RTI Act only. Since Section 8 and 9 of the RTI Act are in the nature of an exception, they cannot be interpreted in a manner which would subsume the main provision i.e. Section 3. In line with the Supreme Court rulings laid down above, Sections 8 and 9 of the RTI Act must be construed in a manner which would not render the right conferred to citizens under the RTI Act as completely redundant, or constrict it in a manner not stipulated in the Act.

On the basis of the reasons enumerated above, I reject Mr. Saran's contention that the information sought was exempted under Section 8(1)(h) of the RTI Act and

find the arguments put forward for the denial of information to be untenable. Hence I cannot agree with the majority decision, and it is my considered opinion that the information sought by the Appellant is not covered by the exemption of Section 8(1)(h) of the RTI Act and hence should be disclosed.

Order reserved and announced on September 6, 2011.

Sd/-
(Shailesh Gandhi)
Information Commissioner

Authenticated true copy. Additional copies of orders shall be supplied against application and payment of the charges, prescribed under the Act, to the CPIO of this Commission.

(Aakash Deep Charkravarti)
Additional Registrar

Address of Parties :-

1. Shri S.K. Palsani
DIG CBI ACB,
Central Bureau of Investigation,
CGO Complex, Block No 3,
Lodhi Road, New Delhi-110003
2. Shri K.K. George
ITO (HQ) XII,
Income Tax Department,
O/o Commissioner of Income Tax,
Vikas Bhawan, IP Estate, New Delhi
3. Ms Durgesh Kumari
2nd Floor, 35/16, Ashok Nagar,
New Delhi