THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 04.12.2014

+ W.P.(C) 6634/2011 & CM No.13398/2011

THE REGISTRAR, SUPREME COURT OF INDIA ..... Petitioner

versus

COMMODORE LOKESH K.BATRA AND ORS. ..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Sidharth Luthra, Sr. Advocate with
Ms Maneesha Dhir, Mr K. P. S. Kohli,
Mr Satyam Thareja and Ms Neha Singhj.

For the Respondents : Mr Pranav Sachdeva for Mr Prashant Bhushan.

CORAM:-
HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner impugns an order dated 03.08.2011 passed by the Central Information Commission (hereafter the 'CIC') directing the Central Public Information Officer of the Supreme Court (hereafter 'CPIO') to provide information to respondent no.1 regarding pending cases which had been heard and orders reserved. The CIC had further directed that if the information sought was centrally not available, the necessary arrangement be made in future for compiling such information and disclosing the same in public domain.

2. Brief facts of the case are that on 17.12.2009, respondent no.1 filed an application under the Right to Information Act, 2005 (hereafter the 'Act') with CPIO seeking the following information:-

"(a) Total number of cases pending for judgements where 'Arguments have been heard prior to 31 December 2007 and Judgements are reserved'.

(b) Total number of cases pending for judgments where 'Arguments have been heard between period 01 January 2008 and 31 December 2008 and Judgments are reserved'.

(c) Total number of cases pending for judgements where 'Arguments have been heard between period 01 January 2009 and 15 December 2009 and Judgements are reserved'."

3. On 22.12.2009, respondent no.1 filed another application under the Act seeking the following information:-

"Kindly provide me information under RTI Act 2005 ,In respect of those cases where 'Arguments have been heard prior to 22. December 2009 and Judgements are reserved' in the Supreme Court. In this context following information is requested in respect of each such case.

(a) Case Number.
(b) Case Type.
(c) Date the Case was first admitted.
(d) Date when Judgement was reserved."

4. By an order dated 12.01.2010, CPIO rejected the application dated 17.12.2009 and informed respondent no.1 that the data is not maintained by the registry in the manner as sought for by him. The CPIO further advised that for all the information with regard to the matters *sub judice* before the Supreme Court, the Supreme Court Rules, 1966 and the Supreme Court of India, Practice & Procedure 'A Handbook of Information'- which are also available on the website of the Supreme Court of India- may be referred. A similar order dated 22.01.2010 was passed by CPIO in response to the RTI application dated 22.12.2009.

5. Respondent no.1 filed separate appeals (Appeal No.74/2010 & Appeal No.73/2010) before the First Appellate Authority (hereafter 'FAA') challenging the orders dated 12.01.2010 and 22.01.2010 respectively. By a common order dated 15.03.2010, FAA dismissed both the appeals. Respondent no.1, thereafter, filed separate appeals before the CIC challenging the order of FAA dated 15.03.2010. The CIC allowed the appeals, by the impugned order.

6. The learned senior counsel for the petitioner contended:-

6.1 That the information that can be disclosed or can be directed to be disclosed under the Act is the information which exists and is held by the public authorities in material form and no directions can be issued by the authorities under the Act to the public authorities to create, hold and maintain the information in any other manner. The Act does not cast any obligation on any public authority to collate such non-available information for the purpose of furnishing it to an RTI Applicant. Reliance was placed on ***CBSE v. Aditya Bandopadhyay*: (2011) 8 SCC 497**.

6.2 That the powers under sub-section (8)(a)(iv) of Section 19 of the Act cannot be stretched for creation of new record and the words 'maintenance and management' under the said provision relates to the records which are available and cannot be interpreted in a manner to include creation of information.

6.3 That the impugned order impinges upon the power entrusted upon the Supreme Court under Article 145 of the Constitution of India to make suitable rules for regulating the practice and procedure of the Supreme

Court by directing the authority to maintain the records in a particular manner. He submitted that the impugned order has the effect of directing amendment of the rules framed under Article 145 of the Constitution of India.

6.4 That the CIC in the case of in case of ***Shri Mani Ram Sharma v. The Public Information Officer*****: C1C/SM/A/2011/000101-AD, decided on 18.07.2011** had held that if the required information was not maintained in the manner as asked for, the CPIO could not be asked to compile the data. It was submitted that a bench cannot overrule the decision of a co-ordinate bench.

7. The learned counsel for the respondent contended:-

7.1 That the information which exists and is held by the public authority but is not being compiled or kept in a manner in which it is accessible in a transparent manner then a direction can be given to the public authorities to maintain and provide the information in a particular manner so as to achieve the object and purpose behind the Act.

7.2 That the validity of sub-section (8)(a)(iv) of Section 19 of the Act has not been challenged and the CIC as a guardian of the Act would ensure the proper implementation of the Act and can pass a direction to achieve the object of the Act.

7.3 That the information regarding the functioning of public institutions is a fundamental right enshrined under Article 19 of the Constitution of India. Reliance was placed on ***State of U.P v. Raj Narain*****:**

AIR 1975 SC 865 ***Union of India v. Association for Democratic Reforms*****: AIR 2002 SC 2112** and ***PUCL v. Union of India*****: (2003) 4 SCC 399**.

7.4 That the information needs to be disseminated to the public to ensure transparency and avoid misuse or abuse of authority. Reliance was placed on ***S.P. Gupta v. President of India & Ors.*****: AIR 1982 SC 149.**

7.5 That the rules made under Article 145 of the Constitution of India are subject to any law being made by Parliament and Act is a law made by Parliament that is binding on all public authorities including the executive, legislatures and the judiciary.

8. The principal controversy to be addressed is whether the CIC can issue a direction for disclosure of information in a form not maintained by a public authority. And, whether the CIC could give a direction for compiling of such information and its disclosure in future.

9. The expression "information" has been defined in Section 2(f) of the Act as under:-

> "(f) "information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force;"

10. It is apparent from the above definition that the word 'information' - *"material in any form"*- is used in an expansive sense; it is not

circumscribed by the manner in which it is kept or the medium on which it is stored. However, the manner in which information is maintained and the medium on which such information is stored is relevant for purposes of making it available to those who seek it. Undoubtedly, information regarding cases where the order has been reserved is information that is contained in the documents, including orders passed by courts, that are available with the Registry of the Supreme Court. In fact, the orders of the Supreme Court are placed on its website and thus, all information with respect to cases where judgment is reserved is otherwise available in public domain. However, the information is not collated and analyzed in the manner as sought by the respondent no.1. Thus, the only question is whether the same is required to be compiled in the manner as sought for by respondent no.1.

11. Insofar as the question of disclosing information that is not available with the public authority is concerned, the law is now well settled that the Act does not enjoin a public authority to create, collect or collate information that is not available with it. There is no obligation on a public authority to process any information in order to create further information as is sought by an applicant. The Supreme Court in ***Aditya Bandhopadhyay*** *(supra)* held as under:-

> "35. At this juncture, it is necessary to clear some misconceptions about the RTI Act. The RTI Act provides access to all information that is available and existing. This is clear from a combined reading of section 3 and the definitions of "information" and "right to information" under clauses (f) and (j) of Section 2 of the Act. If a public authority has any information in the form of data or

> analysed data, or abstracts, or statistics, an applicant may access such information, subject to the exemptions in Section 8 of the Act. But where the information sought is not a part of the record of a public authority, and where such information is not required to be maintained under any law or the rules or regulations of the public authority, the Act does not cast an obligation upon the public authority, to collect or collate such non-available information and then furnish it to an applicant."
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> (underlined for emphasis)

12. However, the above principle cannot be used to deny information that is available with a public authority, but not in the form as is sought. In the present case, it is the petitioner's stand that it does not maintain the data *"in the manner sought for"* and thus, has no obligation to provide the same to the respondent no.1. This stand is, clearly, unsustainable.

13. The first application filed by the petitioner (i.e. on 17.12.2009) was, essentially, to seek information as to how many cases were pending disposal after the arguments were heard and orders reserved. The information as to cases that have been heard and orders reserved is, undeniably, available with the petitioner. The fact that there may not be any document that provides an analysis or the breakup of the period for which the said cases are pending after the hearing has been completed, does not mean that the said information is not available with the petitioner. The information as to period for which the judgments are reserved would be ascertainable from the orders reserving the said judgments. In my view, the question whether such information is required to be reduced in the form as

required by respondent no. 1 has to be answered with reference to Section 7(9) of the Act.

14. Sub-section 9 of Section 7 of the Act also provides that information would ordinarily be provided in the form which is sought unless it would disproportionately divert the resources or would be detrimental to the safety or preservation of the record in question. Sub-section 9 of Section 7 of the Act is quoted below:-

> "(9) An information shall ordinarily be provided in the form in which it is sought unless it would disproportionately divert the resources of the public authority or would be detrimental to the safety or preservation of the record in question."

15. The obvious intention of the Parliament is to ensure that information is available to the public in a form that is convenient to them. In this view, the petitioner's contention that it has no obligation to provide the information, if it is not maintained in the form in which the respondent no.1 seeks it, cannot be accepted. In the event, it is not feasible for the petitioner to undertake an exercise of reducing the data available in the manner as is sought for by respondent no. 1, the petitioner could, nonetheless, provide such information as is readily available with the petitioner, which will enable respondent no.1 to ascertain such information. In this case, the petitioner could supply respondent no.1, the details of cases where the judgments were reserved and leave respondent no. 1 to search the orders reserving such judgments as the same are stated to be already in public domain.

16. The CIC had further directed that in the event such information was not centrally available, the impugned order should be brought to the notice of the competent authority to ensure that the same is compiled and placed in public domain. Indisputably, the period for which a case remains pending after the arguments, is relevant for any citizen who desires to know about the pendency of cases before the Supreme Court. Further, this is not a case where the petitioner does not have the data or the information that was sought for by the respondent no.1 but apparently, the information has been denied since that would require sifting through the data so available.

17. In the aforesaid back drop, the next question to be addressed is whether the CIC has the jurisdiction to issue/pass directions to ensure that necessary arrangements are made in future for compiling such information. Section 4(1)(a) of the Act enjoins every public authority to maintain records in a manner and the form, which would facilitate the right to information under the Act. Plainly, information as to pendency of judgments is vital information regarding functioning of the courts. The Supreme Court in the case of ***Anil Rai v. State of Bihar*****: (2001) 7 SCC 318** had also pointed out that the confidence of the litigants in the results of the litigation is shaken if there is an unreasonable delay in rendering a judgment after reserving the same and had further suggested that the first page of the judgment also bear the date on which the same was reserved. In view of the relevance of the information the CIC has directed that arrangements be made for disclosing such information.

18. The next aspect to be considered is whether the CIC could direct that such information be placed in the public domain. By virtue of Section

19(8)(a)(iv) of the Act, CIC has the power to direct a public authority for making necessary changes in its practice in relation to maintenance and management of records that is necessary to secure compliance with the provisions of Act. The Supreme Court in ***Aditya Bandhopadhyay*** *(supra)* has explained that the CIC's power to issue directions under Section 19(8)(a)(iv) to secure compliance with Section 4(1)(a) of the Act. Section 4(1)(a) of the Act reads as under:-

> **"4. Obligations of public authorities.**—(1) Every public authority shall—
>
> (a) maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information under this Act and ensure that all records that are appropriate to be computerised are, within a reasonable time and subject to availability of resources, computerised and connected through a network all over the country on different systems so that access to such records is facilitated;"

19. A plain reading of the above provision indicates that it relates only to maintenance of records and is not concerned with placing information in the public domain. The information that is required to be placed in public domain is specified under Section 4(1)(b) of the Act and CIC would have no power to give directions for placing of additional information that is not specified under Section 4(1)(b). Thus, the impugned order, to the extent that it requires the information regarding the period for which the judgments are pending after being reserved, to be placed in public domain, cannot be sustained.

20. The petitioner referred to the decision in case of ***Mani Ram Sharma*** *(supra)* whereby the CIC had held that CPIO was not obliged to provide information regarding number of cases awaiting issuance of notice for removal of defects and removal of defects (separately) as the same were not maintained by the petitioner. It was contended that the CIC was bound to pass a similar order in this case or refer the question to a larger bench. It is difficult to accept this contention as in this case, the CIC – undoubtedly, having regard to the nature of information sought - came to a conclusion that the information should be made available to general public and, therefore, directed that such information should be compiled. Thus, the decision of the CIC in ***Mani Ram Sharma*** *(supra)* has no application in the given facts of this case. In that case, the CIC had not found it necessary to give directions for maintenance of records to ensure that information sought in that case be made available to public. It is not necessary that in each case, a direction be issued for maintenance records in a manner to facilitate access to all kinds of information. There may be innumerable records and vast data that may be stored in varying forms and media; it is neither necessary not feasible that the manner in which records are to be maintained be changed to accommodate ready access to all information. However, in cases where certain information is of importance and relevant to public interest, the CIC can issue orders for compliance under Section 4(1)(a) of the Act. The fact that such orders were not issued by the CIC in ***Mani Ram Sharma*** *(supra)* would not preclude the CIC from issuing the directions for maintenance of records for ready access of information.

21. The petitioner's contention that the directions of the CIC violates Article 145 of the Constitution of India is also without merit. Article 145 of the Constitution of India empowers the Supreme Court to make rules as to practice and procedure of the said court. The impugned order does not in any manner seek to alter, add or amend any practice or procedure of the court; the impugned order is limited to ensure that records are arranged and maintained in a manner so as to facilitate access to certain information.

22. I find no infirmity with the impugned order in so far as it directs that the records may be maintained in a manner so that the information regarding the period for which the judgments are pending after being reserved, is available with the petitioner in future.

23. Accordingly, the petition is partly allowed to the aforesaid extent. The pending application stands disposed of. The parties are left to bear their own costs.

VIBHU BAKHRU, J

DECEMBER 04, 2014
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