

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of Decision: 09.10.2013

+ W.P.(C) 7453/2011

UNION OF INDIA AND ORS Petitioner

Through: Mr Ankur Chhibber, Adv.

versus

ADARSH SHARMA Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J. (ORAL)

The respondent before this Court, vide application dated 10.10.2009 sought the following information from CPIO of the Ministry of Home Affairs with respect to one Dr. Vijay Kumar Vyas:

- “1. Whether DR. VIJAY KUMAR VYAS is alive or dead.
2. Has he left India on 10.10.2009 for overseas?
3. What was his destination?”

Vide subsequent application dated 26.11.2009, the respondent intimated the petitioner that Dr. Vijay Kumar Vyas had left for overseas sometime in September-October, 2009, but he was declared dead on 03.09.2000. The following information was, therefore, sought from the CPIO of MHA:

- “1. DATE OF LAST Departure from INDIA
2. DESTINATION
3. AIRLINES
4. PASSPORT NO.”

Vide yet another application dated 09.12.2008, the respondent provided information such as passport number, date of departure, flight number and destination to which late Dr. Vijay Kumar Vyas had proceeded and sought the information desired earlier.

2. The applications submitted by the respondent were transferred by CPIO of MHA to the Intelligence Bureau. The CPIO of Intelligence Bureau vide communication dated 29.12.2009, informed the respondent that in view of the provisions of Section 24(1) read with the Second Schedule to RTI Act, 2005, the said Bureau is exempt from providing any information. Being aggrieved from the said communication, the respondent preferred an appeal before the Appellate Authority. The appeal having been dismissed by the First Appellate Authority, the respondent approached the Central Information Commission by way of second appeal vide impugned order dated 20.07.2011. The Central Information Commission directed as under:-

“11. Now, withstanding the fact that the Respondent No.2 is an exempt organization under Section 24 (1) of the RTI Act, it is nevertheless the duty of Respondent No.2, as an intelligence and security organization to inquire into the allegations made by the Appellant in this case. Not discharging its duty would tantamount to ‘Nonfeasance’, i.e., the omission of acts which a man was by law bound to do. The following excerpts from the judgement of Division Bench of the Hon’ble Gujarat High Court in **Union of India (UOI) and Ors. Vs. V. Shankaran and Anr.**[2008 (4) GLT 885] is of relevance here:

“25. [...] “Official misconduct” defines in Black’s Law Dictionary (7th Edition) as a public officer’s corrupt violation of assigned duties by malfeasance; misfeasance; or nonfeasance, which is also termed as misconduct in office; misbehaviour in office; malconduct in office; misdemeanour in office; corruption in office and official corruption.”

12. Thus, if the Intelligence Bureau simply refuses to take cognizance of allegations which are clearly based on reasonably sound legal evidence and omits to probe into such allegations when it was lawfully bound to do so, then such nonfeasance clearly amounts to an act of Corruption. If the nonfeasance results in allowing some allegedly dead person named Dr. Vijay Kumar Vyas to escape from being brought to justice in a pending legal proceeding involving him before the Hon’ble High Court of Rajasthan, then it will amount to

corrupt practice on part of Respondent No.2. Thus, unless the Respondent No.2 inquires into the truthfulness of the Appellant's allegations with respect to the status of Dr. Vijay Kumar Vyas, it will clearly appear as if the Respondent No.2 has indulged in corrupt practices.

13. Thus, the facts and circumstances of the present case squarely attract the Proviso (I) to Section 24 (1) of the RTI Act and the information sought by the Appellant clearly relates to such information which pertains to allegation of corruption against the Respondent No.2.

14. In light of the above observations, reasoning and findings, the Commission hereby directs the CPIO of the Respondent NO.2 to provide information to the Appellant as to whether at all Dr. Vijay Kumar Vyas (alleged to be dead) departed from India for Auckland, New Zealand via Flight No.CX708 on 10/10/2009 on Passport No.H-0980681. The information shall be furnished within 20 days of receiving this Order.”

Being aggrieved from the direction given by the Commission, the petitioner is before this Court by way of this writ petition.

3. As regards information sought by the respondent vide application dated 10.10.2009, the desired information could not have been provided by the petitioner in the absence of particulars as to when he left India,

and vide which particular flight. The same would be the position with respect to the information sought vide second application dated 26.11.2009. However, vide application dated 09.12.2009, the respondent gave particulars such as passport number of Dr. Vijay Kumar Vyas, the date of departure from India, flight number as well as the destination for which he was alleged to have left. The Immigration Office at the Airport is a wing of Intelligence Bureau and every person going out of India is required to obtain immigration clearance before, he can board the flight. Therefore, in case Dr. Vijay Kumar Vyas left India on 10.10.2009 for Auckland on flight No. CX708, such an information can be available with the Immigration Office controlled by Intelligence Bureau. However, the difficulty in the matter is Intelligence Bureau is one of the organizations included in the Second Schedule appended to the Right to Information Act and its name appears at Serial No. 1 of the Schedule. Section 24 of the RTI Act to the extent it is relevant reads as under:

“24. Act not to apply to certain organizations. – (1)
Nothing contained in this Act shall apply to the intelligence and security organisations specified in the Second Schedule, being organisations established by the Central Government or any information furnished by such organisations to that Government.

Provided that the information pertaining to the allegations of corruption and human rights violations shall not be excluded under this sub-section.”

Therefore, the provisions of the RTI Act would not apply to the aforesaid organisation except in the matters relating to allegations of corruption and human rights violation.

4. The information sought by the respondent was neither any information related to the allegations of corruption in Intelligence Bureau nor an information related to the human rights violations. The Commission, therefore, was clearly wrong in directing the Intelligence Bureau to provide the said information to the respondent under the provisions of Right to Information Act. Therefore, the order passed by the Central Information Commission being contrary to the provisions of the Act, cannot be sustained and is hereby quashed.

5. However, in my view, if an information of the nature sought by the respondent is easily available with the Intelligence Bureau, the agency would be well-advised in assisting a citizen, by providing such an information, despite the fact that it cannot be accessed as a matter of right under the provisions of Right to Information Act. It appears that there is a litigation going on in Rajasthan High Court between the respondent and Dr. Vijay Kumar Vyas. It also appears that the

respondent has a serious doubt as to whether Dr. Vijay Kumar Vyas, who was reported to have died on 03.09.2009, has actually died or not. The Intelligence Bureau could possibly help in such matters by providing information as to whether Dr. Vyas had actually left India on 10.10.2009 for Auckland on flight No CX708. Therefore, while allowing the writ petition, I direct the Intelligence Bureau to consider the request made by the respondent on administrative side and take an appropriate decision thereon within four weeks from today. It is again made clear that information of this nature cannot be sought as a matter of right and it would be well within the discretion of the Intelligence Bureau whether to supply such information or not. Whether a person aggrieved from refusal to provide such information can approach this Court under Article 226 of the Constitution, is a matter which does not arise for consideration in this petition.

The writ petition stands disposed of. No order as to costs.

V.K. JAIN, J

OCTOBER 09, 2013
BG