

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

W.P. No. 39549 of 2022

ORDER:

Heard learned counsel for the petitioner and learned Government Pleader for General Administration.

2. This Writ Petition is filed to issue a Writ, Order or direction, more particularly a Writ of Mandamus declaring the order passed by the 2nd respondent vide letter No.1425/V&E/D1/RTI/2022, dated 12.10.2022 in rejecting the request of the petitioner to furnish the copy of the vigilance report No.86 (1764/V&E/D1/2020) and 863/V&E/D1/2022, dated 19.07.2022 by invoking Section 8(1)(h) of RTI Act, 2005, though the report was submitted after completing the investigation and the investigation was not in process, as illegal, arbitrary, abuse of process of law and is a clear case of violation of principles of natural justice and contrary to rules and the provisions of Right to Information Act, 2005 and set aside the order passed by the 2nd respondent vide letter No.1425/V&E/D1/RTI/2022, dated 12.10.2022 by further directing the 2nd respondent to furnish copy of the vigilance

report No.86 (1764/V&E/D1/2020) and 863/V&E/D1/2022, dated 19.07.2022 submitted by the 3rd respondent to the Government.

3. The case of the petitioner, in brief, is as follows:

a) The mother of the petitioner AllaSatyamma was absolute owner, pattedar and possessor of the land to an extent of Ac.0.17 gts in Survey No.631/AA and to an extent of Ac.0.16 gts in Survey No.631/E, situated at Mother Village Sivar, Jagtial Mandal and District, within the limits of Jagtial Municipality. These lands are inherited by the petitioner's mother through her mother-in-law SmtAllaDvamma by way of registered Will Deed. After demise of AllaDevamma on 19.08.1999, the mother of the petitioner became absolute owner of the above said lands and all the revenue records including 1-B proceedings clearly shows about the onwership and possession of the lands. The mother of the petitioner died on 14.12.2018. After the death of AllaSatyamma, the petitioner, petitioner's father and petitioner's siblings have become the absolute owners and possessors of the land.

b) Vide registration deed no. 660 dated 31.01.2019 the land has been partitioned among the family of the petitioners. Taking advantage of the fact that, the petitioner and the petitioner's family members live outside Jagital town, land grabbers had hatched a plan to grab the land belonging to the petitioner and petitioner's family members by making a false application for mutation.

c) The revenue department without giving petitioner's any notice or an opportunity, mutated the land situated in 631/E in favour of the land grabbers even though the mutation application submitted was for land situated in 631/A. The Municipal, Gram Panchayat and Revenue Authorities without verifying the ownership and title of the parties supported the land grabbers.

d) Petitioner submitted a compliant to the 3rd respondent on 22.10.2020 narrating all the above mentioned documents and requested to take necessary action against the persons responsible. Based on the complaint of the petitioner, Regional Vigilance and Enforcement authorities have conducted the investigation and have submitted the report to

the 3rd respondent. Even though 2 years have elapsed from the date of the filing of the complaint by the petitioner, no action had been taken by the 3rd respondent.

e) Vigilance Department along with the enquiry report have forwarded the recommendations to the Principal Secretaries of the concerned department excluding the Municipal and Electrical Departments but no action was initiated against the officers.

f) Petitioner made an representation vide Right to Information Act, 2005 application on 30.09.2022 and 01.10.2022 to the 2nd respondent, requesting to furnish the vigilance report no. 86 (1764/V&E/D1/2020) and 863/V&E/D1/2022 dated 19.07.2022. But the application of the petitioner was rejected by the 2nd respondent under section 8(1)(h) of the Right to Information Act, 2005 stating that the report submitted was preliminary and not final reports.

g) Once the investigation report had been submitted by Vigilance and Enforcement Department, those investigation reports are conclusive reports and hence they cannot be

treated as preliminary reports and hence, the 2nd respondent cannot deny/reject the Right to Information application of the petitioner under section 8(1)(h) of the Right to Information Act, 2005. Hence this writ petition is filed challenging the impugned order passed by the 2nd respondent.

4. Respondents filed counter, in brief, is as follows:

a) Upon the application of the petitioner dated 22.10.2020 to respondent no. 3 requesting a detailed enquiry on the alleged irregularities by Revenue, Registration, Municipal, Bank and Electricity officials with regard to patta land situated in Sy.No.631/A (0.17gts) & 631/E (0.16gts) Mothe village, Jagityal District, Vide Memo No. 1764/V&E/D1/2020 respondent no. 3 ordered Vigilance and Enforcement Department, Karimnagar to conduct a detailed enquiry. Accordingly, Vigilance and Enforcement Department, Karimnagar conducted detailed enquiry and submitted a Vigilance report to respondent no. 3 vide Lr.No.RVEO/KNR/C-71/2020 dated 23.06.2020.

b) Respondent no. 3 had sent the vigilance report no. 86 (C.NO.1764/V&E) and 863/V&E/D1/2022 dated 19.07.2022 to

the Special Chief Secretaries to Government, Revenue & Revenue (Stamps and Registration) Department and the action taken report on the vigilance report is awaited from the government department and as such the report of Vigilance and Enforcement Department is not conclusive and is deemed to be preliminary.

c) The Right to Information application of the petitioner had been rejected keeping in mind the same by the respondents under section 8(1)(h) of Right to Information Act, 2005 so as to prevent any possible impediment to the further course of action taken/to be taken by the government.

d) P.I.O & Asst. Secretary to government G.A. (V&E) Dept., through reply vide Lr.No.1425/V&E/D1/RTI/2022 dated 12.10.2022 informed the petitioner that the complaint submitted by the petitioner has been forwarded to concerned departments for taking necessary action, the writ petition is devoid of merits and is liable to be dismissed.

PERUSED THE RECORD :

5. The relevant portion of the order impugned vide Letter No.1425/V&E/D1/RTI/2022 dated 12.10.2022 of the Public Information Officer and Asst. Secretary to Government – G.A. (V & E) Department read as under:

"In response to your application under RTI Act, received vide reference 2nd cited, it is informed that, the complaint petition vide reference 1st cited submitted by you was processed by this department and sent to the Revenue Department, Revenue (Stamps & Registration) Dept., Panchayat Raj & Rural Development Department, and Agriculture & Co-operation Department, Telangana State, Hyderabad with V&E recommendations for taking necessary action.

It is also to inform that the reports of V&E Dept., are preliminary in nature and not final reports. The departments concerned are to take decision on the recommendations of V&E Dept., Hence furnishing of copy of report is rejected u/s 8(1)(h) of RTI Act.

The receipt of the letter may be acknowledged."

6. The counter affidavit filed by the respondents, in particular, paras 10 and 12 read as under:

"10. It is submitted that the application dated 01-10-2022 is rejected by our office showing the reason that the same is fall under the ambit of 8(1)(h) of RTI Act and further gave a reason stating that the said report is preliminary in nature and not final since, the government or the departments are concerned have to take decisions to initiate action on the recommendation made by the V&E Department., is not in public interest and hence the authority decided to withhold the information u/s 8(1)(h) of the RTI Act, 2005 so as to prevent any possible impediment to the further

course of action taken/to be taken by the government."

12. In the recent times the Hon'ble Supreme Court in Writ Petition (Civil) No.1126 of 2022 in Saurav Das versus Union of India & others categorically stated that even U/S 173 of Cr.P.C. if charge sheet is filed the said document is not a public document and observing so the petition was dismissed & further observed that these do not fall under 4(1)(b) of RTI Act. Henceforth, it can be inferred in the instant case the report which is sought by the petitioner squarely fall under preliminary report. Even otherwise if it is to be construed or charge sheet/final report even those circumstances to does not favor the petitioner as specified and as interpreted in the above decision of Hon'ble Apex Court. Hence, the contention or relief is beyond RTI Act and other contentions raised by us in our counter.

7. The specific case of the petitioner is that the petitioner's application under RTI Act on 30.09.2022 / 01.10.2022 to the 2nd Respondent requesting to furnish the Vigilance Report No.86 (1764/V&E/D1/2020) and 863/V&E/D1/2022, dated 19.07.2022 had been rejected by the 2nd Respondent by letter dated 12.10.2022 on the ground that the reports of V & E Department sought for by the Petitioner under Right to Information Act are preliminary in nature and not final reports.

8. The Counsel for the Petitioner places reliance on the judgment dated 05.02.2021 of the Delhi High Court

in Amit Kumar Srivastava Vs. Central Information Commission and submits that the writ petition has to be allowed as prayed for as per the principle of law laid down in the said judgment and in particular, Paras 12, 13, 16, 17 and 18 of the said judgment are relied upon and they read as under:

"12. I may see how Section 8(1)(h) of the RTI Act has been interpreted by this court. A Division Bench of this Court in Director of Income Tax (Investigation) and Ors. vs. Bhagat Singh & Ors. MANU/DE/9178/2007 held as follows:

"8. Information sought for by the respondent No. 1 relates to fate of his complaint made in September, 2003, action taken thereon after recording of statement of Ms. Saroj Nirmal and whether Ms. Saroj Nirmal has any other source of income, other than teaching in a private school. This information can be supplied as necessary investigation on these aspects has been undertaken during last four years by the Director of Income Tax (Investigation). In fact proceedings before the said Director have drawn to a close and the matter is now with the ITO i.e. the Assessing Officer. Under Section 8(1)(h) information can be withheld if it would impede investigation, apprehension or prosecution of offenders. It is for the appellant to show how and why investigation will be impeded by disclosing information to the appellant. General statements are not enough. Apprehension should be based on some ground or reason. Information has been sought for by the complainant and not the assessed. Nature of information is not such which interferes with the investigation or helps the assessed. Information

may help the respondent No. 1 from absolving himself in the criminal trial. It appears that the appellant has held back information and delaying the proceedings for which the respondent No. 1 felt aggrieved and filed the aforesaid writ petition in this Court. We also find no reason as to why the aforesaid information should not be supplied to the respondent No. 1. In the grounds of appeal, it is stated that the appellant is ready and willing to disclose all the records once the same is summoned by the criminal court where proceedings under Section 498A of the Indian Penal Code are pending. If that is the stand of the appellant, we find no reason as to why the aforesaid information cannot be furnished at this stage as the investigation process is not going to be hampered in any manner and particularly in view of the fact that such information is being furnished only after the investigation process is complete as far as Director of Income Tax (Investigation) is concerned. It has not been explained in what manner and how information asked for and directed will hamper the assessment proceedings."

13. In Union of India vs. Manjit Singh Bah, 2018 SCC Online Del 10394, a Coordinate Bench of court held as follows:-

"22. The next question to be examined is whether the denial of information sought for by the respondent is justified in terms of Section 8(1)(h) of the RTI Act. Section 8(1)(h) of the RTI Act is set out below for ready reference:

"8. Exemption from disclosure of information. - Notwithstanding anything contained in the 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;"

23. A plain reading of the aforesaid provision indicates that in order to deny information under Clause (h) of Section 8(1) of the RTI Act, it must be established that the information sought is one which would impede the process of investigation or apprehension or prosecution of the offenders. In the facts of the present case, a charge sheet has already been filed and, therefore, the investigation stage is now over. Thus, in order for the petitioner to claim exemption from disclosure under Clause

(h) of Section 8(1)(h) of the RTI Act, it would be essential for the petitioner to indicate as to how such information would impede the investigation or apprehension or prosecution of the offender. In *Director of Income Tax (Investigation) v. Bhagat Singh (supra)*, a Division Bench of this Court had observed as under: --

"Under Section 8(1)(h) information can be withheld if it would impede investigation, apprehension or prosecution of offenders. It is for the appellant to show how and why investigation will be impeded by disclosing information to the appellant. General statements are not enough. Apprehension should be based on some ground or reason."

16. What follows from the legal position is that where a public authority takes recourse to Section 8 (1) (h) of the RTI Act to withhold information, the burden is on the public authority to show that in what manner disclosure of such information could impede the investigation. The word 'impede' would mean anything that would hamper or interfere with the investigation or prosecution of the offender.

17. A perusal of the impugned order passed by the CIC shows that it relies upon the other orders passed by the Coordinate Benches of the CIC. It notes that in criminal law, an investigation is completed with the filing of the

charge sheet in an appropriate court by an investigating agency but in cases of vigilance related inquiries and disciplinary matters, the word 'investigation' used in Section 8 (1)(h) of the Act should be construed rather broadly and should include all enquiries, verification of records, and assessments. In all such cases, the enquiry or the investigation should be taken as completed only after the competent authority makes a prima facie determination about presence or absence of guilt on receipt of the investigation/enquiry report from the investigating/enquiry officer. Based on the said position, the impugned order has accepted the plea of the respondent and disallowed the information under Section 8 (1) (h) of the RTI Act

18. As noted above, the legal position as settled by this court is that cogent reasons have to be given by the public authority as to how and why the investigation or prosecution will get impaired or hampered by giving the information in question. In the impugned order, there is no attempt made whatsoever to show as to how giving the information sought for would hamper the investigation and the on-going disciplinary proceedings. The impugned order concludes that a charge sheet has been filed in the criminal case by the CBI but in the disciplinary proceedings the matter is still pending. Based on this fact simplicitor the impugned order accepts the plea of the respondent and holds that the Section 8 (1) (h) is attracted and the respondents are justified in not giving information to the petitioner. No reasons are spelt out as to how the investigation or prosecution will be hampered."

9. The learned Counsel for the Respondent, on the other hand, places reliance on two judgments and

submits that the petitioner is not entitled to any relief as prayed for. The said two judgments are:

I. Order dated 13.01.2017 of the Central Information Commission in Appeal No.CIC/VS/A/2015/001556-BJ and reliance in particular is placed on the last paragraphs of the said order which read as under :

"The Commission observes that a full bench of this Commission in its order dated 28/11/2014 in File No.CIC/SM/A/2012/001020 - AK Agrawal V/S SEBI and RIL, had held as under:

"14. This Commission in its decision dated 10.7.2007 in Appeal No. CIC/AT/A/2007/0007, 10 & 11 (Shankar Sharma & Others Vs DGIT) observed that the term 'investigation' used in section 8(1)(h) of the Act should be interpreted broadly and liberally and that no investigation could be said to be complete unless it has reached a point where the final decision on the basis of that decision is taken. This Commission in CIC/AT/A/2007/007/00234 K.S.Prasad us SEBI, observed that as soon as an investigation or an enquiry by a subordinate Enquiry Officer in Civil and Administrative matters comes to an end and, the investigation report is submitted to a higher authority, it cannot be said to be the end of investigation. which can be truly said to be concluded only with the decision by the competent authority." This Commission in CIC/DS/A/2013/000138/MP-Narender Bansal us Oriental Insurance Co. Ltd, has held that the investigation in the matter was complete but

further action was under process, and hence it attracted section 8(1)(h) of the Act"

Furthermore, the appellant could not establish the larger public interest in disclosure of information which outweighs the harm to the protected interests."

II Order dated 20.01.2023 passed in Writ Petition (Civil) No.1126/2022 in Sourav Das Vs. Union of India & Others, and reliance is placed in particular to Paras 4.4 and para 4.5 of the judgment, which reads as under:

"4.4 As per Section 173(5) Cr.P.C. when any report is filed in respect of the case to which Section 170 Cr.P.C. applies, the police officer shall forward to the Magistrate along with the report all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation.

4.5 Therefore, on conjoint reading of Section 173 Cr.P.C. and Section 207 Cr.P.C. the Investigating Agency is required to furnish the copies of the report along with the relevant documents to be relied upon by the prosecution to the accused and to none others. **Therefore, if the relief as prayed in the present petition is allowed and all the chargesheets and relevant documents produced along with the chargesheets are put on the public domain or on the websites of the State Governments it will be contrary to the Scheme of the Criminal Procedure Code and it may as such violate the rights of the accused as well as the victim and/or even the investigating agency.** Putting the FIR on the website cannot be equated with putting the chargesheets along with the relevant documents on the public domain and on the websites of the State Governments.

DISCUSSION & CONCLUSION :

12. A bare perusal of the order impugned letter No.1425/V and E/D1/RTI/2022, dated 12.10.2022 of the 2nd Respondent herein clearly indicates that no cogent reasons are assigned in rejecting the request of the Petitioner made vide Petitioner's application dated 01.10.2022 except stating that the reports of the V & E Department are preliminary in nature and not final reports. In the present case admittedly the request of the petitioner is rejected under Section 8(1)(h) of the RTI Act, 2005. Under Section 8(1)(h) information can be withheld if it would impede the process of investigation, or apprehension or prosecution of offenders. This Court opines that it is the bounden duty of the 2nd respondent herein to indicate cogent reasons to show that in what manner disclosure of information sought for could impede the investigation.

13. This Court opines that denial of any information available to the 2nd Respondent herein, may in fact impede the course of justice. The exclusion under Section 8(1)(h) of the RTI Act, 2005 has to be read in

conjunction with Article 19(2) of the Constitution of India and such denial must be reasonable and in the interest of public order. This Court opines that the order impugned of the 2nd Respondent vide letter No.1425/V&E/D1/RTI/2022, dated 12.10.2022 does not even indicate as to how Section 8(1)(h) of RTI Act is attracted and how the Respondents are justified in not giving information to the Petitioner.

14. This Court opines that the judgments relied upon by the Counsel for the Respondent have no relevance to the facts of the present case at this stage and the principle laid down in the judgment of the Delhi High Court relied upon by the Counsel for the Petitioner dated 05.02.2021 in WP (C) No.3701 of 2018 in Amit Kumar Srivastava Vs. Central Information Commission, squarely applies to the present case.

15. Taking into consideration the above referred facts and circumstances and the law laid down by the High Court of Delhi at New Delhi dated 05.01.2021 in Amit Kumar Srivastava Vs. Central Information Commission

(extracted above), the writ petition is allowed setting aside the order impugned dated 12.10.2022 vide Letter No.1425/V&E/D1/RTI/2022, of the 2nd Respondent and the matter is remanded back to the 2nd Respondent for consideration afresh in terms of the noted legal position as observed at paras 15 to 18 of the aforesaid judgment (extracted above). The 2nd Respondent shall reconsider the application of the Petitioner dated 30.09.2022/01.10.2022 and pass appropriate reasoned orders, in accordance to law relating to furnishing of the copy of the Vigilance report No.86 (1764/V&E/D1/2020) and 863/V&E/D1/2022, dated 19.07.2022, and communicate the same to the petitioner, within a period of 3 weeks from the date of receipt of copy of the order. However, there shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

MRS JUSTICE SUREPALLI NANDA

Dated: 10.03.2023

Note: L.R.Copy to be marked

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