

Delhi High Court

Delhi High Court

% Date Of Decision: 18.07.2013 vs Kishanlal Mittal on 18 July, 2013

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of Decision: 18.07.2013 + W.P.(C) 1388/2012

RESERVE BANK OF INDIA Petitioner Through: Mr Rajiv Nayar, Senior Advocate with Mr
Kuleep S. Parihar and Mr H.S. Parihar, Advs.

versus

KISHANLAL MITTAL Respondent Through: Mr Pranav Sachdeva, Adv.

And

+ W.P.(C) 1763/2012

STATE BANK OF INDIA & ANR Petitioner Through: Mr Neeraj Kishan Kaul, Sr. Adv with Mr Rajiv
Kapur, Adv.

versus

KISHAN LAL MITTAL Respondent Through: Mr Pranav Sachdeva, Adv.

CORAM:

HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J. (ORAL)

W.P.(C) 1388/2012

The respondent before this Court vide application dated 24.08.2013, inter

alia, sought the following information from the CPIO of the petitioner Reserve

Bank of India:-

WP(C) Nos.1388/12 & 1763/12 Page 1 of 13 "(f) Kindly provide details of minutes of meeting of RBI Board
for 2 years and minutes of meeting of

committees of directors."

The CPIO filed his reply dated 23.09.2011, inter alia, responded as under:-

"2. Having carefully examined your request for

minutes of the RBI Board and its Committees for the last two years, we would like to state that the papers sought by you contain various information. As you have not identified the information required by you with reference to the subject matter, or otherwise, we regret our inability to comply with your requests. In case you need any specific information contained in the said papers, it is open to you to make a fresh application for the information required by you. We request you to identify the information required with reference to the subject matter or otherwise, which would facilitate the supply of the information required.

3. We also advise our inability to furnish the papers you have asked for the last two years as they are

voluminous, spread over several files and concern various departments of RBI. The task of screening and compiling them would be extremely labourious and time consuming. As this would disproportionately divert our resources, we are not under obligation to provide them by virtue of the provision contained under Section 7(9) of the RTI Act, 2005."

2. Being aggrieved from the order passed by the CPIO, the respondent

approached the First Appellate Authority. Vide order dated 25.10.2011, the First

Appellate Authority, inter alia, held as under.

WP(C) Nos.1388/12 & 1763/12 Page 2 of 13 "My observations: In his query at Point No. (f) of the original application the appellant had requested to provide details of the minutes of the meetings of RBI Board for the last two years and minutes of the meeting of the Committees of Directors and also copies of all correspondence with file notings on suo moto disclosure, as directed by CIC/SM/A/2010/000148. The CPIO,

Secretary's Department had vide her reply dated

September 23, 2011 stated that as regards file noting on disclosure mandated by CIC, the CPIO of the RIA

Division Will be sending a direct reply to the appellant. In response to the said request, CPIO, HRMD vide his reply dated September 23, 2011 intimated the appellant that the policy in that regard approved by the Committee of the Central Board on April 27, 2011 is available on the website of the Reserved Bank and further provided a copy of the internal process note sheet. I do not find any infirmity in the reply given by the CPIOs. As regards minutes of RBI Board meetings and minutes of the

meetings of the Committees of Directors for the last two years, I observe that CPIO vide her letter dated

September 23, 2011 expressed her inability to comply with the request as the papers sought by the appellant contained various information spread over several files and concern various departments of RBI and the task of screening and compiling them would be extremely

laborious and time consuming. The CPIO held that this would disproportionately divert the resources of the Reserved Bank and as such they are not under obligation to provide the requested information by virtue of the provisions contained under Section 7(9) of the Act. The CPIO, Secretary's Department, however, stated that in case the appellant needs any specific information he may make a fresh request for the same after identifying the information required with reference to the subject matter

WP(C) Nos.1388/12 & 1763/12 Page 3 of 13 which would facilitate the CPIO to supply the

information required.

Also, the appellant has contended that CPIO could have provided information without screening or granted access to the appellant to screen the information from various files because information has also been asked to be provided by CIC in another case. The records before me indicate that the appellant has sought voluminous

information which covers several subject matters which are inextricably intertwined. It is possible that some of the material cannot be disclosed on account of the exemptions contained in Section 8. Further, I also observe that the queries of the appellant are open ended and appear to be a fishing and roving nature. I, therefore, cannot attribute any fault in the decision of the CPIO asking to specify the information sought. As regards the appellant's contention that the CIC has already directed disclosure of the information sought in one of the decisions, I observe that the CIC had in its decision CIC/SM/A/2010/000148 dated October 28, 2010

conceding that the information sought is voluminous, directed to provide information for the preceding three months after deleting all references which are exempt. That order does not support the present request of the appellant."

3. Being aggrieved from the order passed by the First Appellate Authority, the

respondent approached the Central Information Commission by way of an appeal

under Section 19 of the Right to Information Act and vide order dated 09.02.2012,

the said Commission, inter alia, directed as under:-

WP(C) Nos.1388/12 & 1763/12 Page 4 of 13 "The PIO will provide the minutes of the board meetings of the RTI for the last two years on a CB to the appellant. If any of the details are exempt under Section 8(1) of the RTI Act they may be severed as per the provisions of Section 10 of the RTI Act. The Commission also directs RBI to disclose minutes of its meetings on its website as per the requirements of Section -4 of the RTI Act. RBI may sever any information that is exempt as per the provisions under Section 10 of the RTI Act. The RBI will display minutes of its board meetings by 01 April, 2012 of all board meetings held thereafter."

4. It would be seen from the response sent by CPIO that he had given two

grounds for declining the minutes of the RBI Board and its Committees. The first

ground given by the CPIO was that the respondent had not identified the

information required by him with reference to the subject matter. He was

accordingly asked to specify the information required by him and was given liberty

to apply fresh for such specified information. The second reason given by the

CPIO for declining the information was that the papers which the respondent was

seeking were voluminous, spread over several files, concerned various departments

of RBI and the task of screening and compiling them would be extremely

labourious and time, consuming thereby disproportionately diverting their

resources. The CPIO, therefore, claimed benefit of Section 7(9) of the Right to

Information Act, 2005.

WP(C) Nos.1388/12 & 1763/12 Page 5 of 13 The First Appellate Authority not only upheld the order passed by the CPIO,

but also felt that there was a possibility that some of the material could be such which could not be disclosed on account of exemptions contained in Section 8 of the Act. He was also of the view that the queries of the petitioner were open ended and in the nature of a fishing and roving inquiry. However, none of the grounds given by CPIO and the First Appellate Authority for refusing the information sought by the respondent were discussed and commented upon by the Commission.

This was not the view of the Commission that the respondent could not have been asked by the CPIO to identify any particular information, and was required to supply the whole of the information sought by him, unless it was except under Section 8(1) of the Right to Information Act, 2005. The Commission did not expressly reject the contention of the CPIO that the record sought by the respondent being quite voluminous, compiling and providing said information would disproportionately diverge their resources towards screening, collection and compilation of the said information.

5. It appears from the order passed by the Commission that copy of the order passed by the First Appellate Authority was not annexed to the appeal. If that is so, the Commission, considering that it was hearing an appeal against the order passed by the First Appellate Authority, should, in the first instance, have asked the respondent to file the copy of the said order or should have called for the file of the

First Appellate Authority and examined the order itself before passing the WP(C) Nos.1388/12 & 1763/12 Page 6 of 13 impugned order. This is yet another legal infirmity in the order passed by the Commission.

W.P.(C) 1763/2012

6. The respondent, vide application dated 31.05.2010, inter alia sought the

following information from the petitioner State Bank of India:-

"Kindly provide details of minutes of meetings of board of directors of SBI from April, 2008 onwards."

The CPIO of the petitioner-Bank, however, declined to provide the aforesaid information, on the ground that the said information was exempt from disclosure under Section 8(1)(d) of the RTI Act, 2005. Being aggrieved from the order of the CPIO, the respondent preferred an appeal before the First Appellate Authority expressing a grievance that the CPIO had refused to provide information, without explaining how Section 8(1)(d) was attracted to his case. He also took the plea that information sought by him was required to be displayed on the website of the bank in terms of Section 4 of the Act. The First Appellate Authority, however, rejected the appeal holding that the information sought was of commercial confidence, disclosure of which could harm the competitive position of the bank and no larger public interest had been shown by the respondent/applicant which would warrant disclosure of the said information.

WP(C) Nos.1388/12 & 1763/12 Page 7 of 13 Being aggrieved from the order passed by the First Appellate Authority, the

respondent preferred an appeal before the Central Information Commission under Section 19 of the Act. The Commission vide impugned order dated 09.02.2012 passed the following order with respect to the aforesaid information:-

"Query(f): The PIO will provide the minutes of the board meetings of the RTI for the last two years on a CD to the appellant. If any of the details are exempt under Section 8(1) of the RTI Act they may be severed as per the provisions of Section 10 of the RTI Act. The Commission also directs RBI to disclose minutes of its meetings on its website as per the requirements of Section 4 of the RTI Act. RBI may sever any information that is exempt as per the provisions under Section 10 of the RTI Act. The RBI will display minutes of its board meetings by 01 April, 2012 of all board meetings held thereafter."

7. It would thus be seen that the Commission did not at all deal with the view taken by the CPIO and the First Appellate Authority that the information sought by the respondent was exempt under Section 8 (1)(d) of the Act which exempts that information including commercial confidence, trade secrets or intellectual property,

the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information. The Commission did not opine that the minutes of the board meetings for the last two years would not contain any information in the nature of commercial confidence, trade secret or intellectual property of the

petitioner-bank, the disclosure of which could harm the competitive position of a WP(C) Nos.1388/12 & 1763/12 Page 8 of 13 third party. The Commission also did not take the view that larger public interest

warranted disclosure of the information sought by the respondent. In fact,

probably, the Commission could not even have recorded such a finding without examining the minutes of the board meetings held in the last two years.

It is true that the Commission directed exclusion of the information which was exempt under Section 8(1)(d) of the Act, but, that, in my view, was not a correct approach to deal with the matter. By doing so, the Commission left the whole thing to the discretion of the petitioner to decide as to which information would be exempt from disclosure and which information would not attract the exemption provisions contained in the Act. The correct approach, in my view, would have been to call upon the petitioner-bank to satisfy the Commission as to how and to what extent the information sought by the petitioner, included matters of commercial confidence, trade secret or intellectual property of the petitioner the disclosure of which would harm the competitive position of a third party and then take a view in the matter. For this purpose, the Commission could also have examined such part of the information which the petitioner claimed to be exempt under Section 8(1)(d) of the Act, without disclosing the same to the respondent. Of course, if the Commission was of the view that larger public interest warranted disclosure of the information, it could have directed such disclosure even if the information was in the nature of commercial confidence, trade secret or intellectual

property of the petitioner, but, to leave it to the petitioner to decide as to which WP(C) Nos.1388/12 & 1763/12 Page 9 of 13 information was exempt from disclosure and which could be disclosed to the

applicant is likely to result in further litigation since the applicant may not be

satisfied with the decision of the petitioner-bank in this regard and may be

constrained to again knock at the door of the Commission.

8. The Commission, while deciding appeals of this nature, also needs to keep in

mind the following view taken by the Apex Court in Central Board of Secondary

Education and Anr vs. Aditya Bandopadhyay and Ors. (2011) 8 SCC 497:

"Indiscriminate and impractical demands or directions under RTI Act for disclosure of all and sundry

information (unrelated to transparency and accountability in the functioning of public authorities and eradication of corruption) would be counter-productive as it will adversely affect the efficiency of the administration and result in the executive getting bogged down with the non-productive work of collecting and furnishing information. The Act should not be allowed to be misused or abused, to become a tool to obstruct the national development and integration, or to destroy the peace, tranquility and harmony among its citizens. Nor should it be converted into a tool of oppression or intimidation of honest officials striving to do their duty. The nation does not want a scenario where 75% of the staff of public

authorities spends 75% of their time in collecting and furnishing information to applicants instead of

discharging their regular duties. The threat of penalties under the RTI Act and the pressure of the authorities under the RTI Act should not lead to employees of a public authorities prioritising 'information furnishing', at the cost of their normal and regular duties."

WP(C) Nos.1388/12 & 1763/12 Page 10 of 13

9. When the order passed by the First Appellate Authority is challenged before

the Commission, it is required to deal, at least briefly with the reasons given by the

First Appellate Authority in support of its decision. As observed by Supreme Court

in Union of India vs. Mohan Lal Capoor and others, AIR 1974 SC 87, "reasons

are the links between the material on which certain conclusions are based and the

actual conclusions. In my view, it is not open to the Commission to pass an order

which contains only directions, without giving reasons for setting aside the order

passed by the First Appellate Authority. Such an order by the Second Appellate

Authority, when it sets aside the order of the First Appellate Authority, in my view,

is not envisaged, since in the event of the order being challenged before a Writ

Court the said Court would not be in a position to know what were the reasons which impelled the Commission to set aside the order passed by the First Appellate Authority. The order of the Commission must necessarily disclose at least brief reasons for disagreeing the view taken by the First Appellate Authority, and setting aside the order.

10. In *M/s. Woolcombers of India Ltd. vs. Woolcombers Workers Union* and another, AIR 1973 SC 2758, Supreme Court, while considering an award under Section 11 of the Industrial Disputes Act, insisting upon the need of giving reasons in support of the conclusions in the award observed that the very requirement of giving reason is to prevent unfairness or arbitrariness in reaching conclusions. It

WP(C) Nos.1388/12 & 1763/12 Page 11 of 13 was further observed that that a just but unreasoned conclusion does not appear to

be just to those who read the same. Reasoned and just conclusion on the other hand will also have the appearance of justice. The Apex Court emphasized that since the awards are subject to Article 136 jurisdiction of the Apex Court, it would be difficult for the Court, in the absence of reasons, to ascertain whether the decision was right or wrong.

In *Siemens Engineering and Manufacturing Co. of India Ltd. vs. The Union of India* and another, AIR 1976 SC 1785, the Apex Court again emphasized that every quasi- judicial order must be supported by reasons, the rule needs to be observed in its proper spirit and a mere pretence of compliance would not satisfy the required law.

In *Charan Singh vs. Healing Touch Hospital and others*, AIR 2000 SC

3138, a Three-Judge Bench of the Apex Court, dealing with a grievance under Consumer Protection Act, held that the authorities under the Act exercise quasi-judicial powers for redressal of consumer disputes and it is, therefore, imperative that such a body should arrive at conclusions based on reasons. The Court observed

that the requirement of recording reasons being too obvious to be reiterated needed no emphasizing.

11. For the reasons stated hereinabove the impugned orders dated 09.02.2012

and 28.06.2011 passed by the Central Information Commission are aside and both

WP(C) Nos.1388/12 & 1763/12 Page 12 of 13 the matters are remitted back to the said Commission to pass fresh orders to the

extent the matter relates to the information extracted in this order.

The parties shall appear before the Commission on 05.08.2013. The

Commission shall pass fresh orders, after hearing the parties, within two months

thereafter.

V.K. JAIN, J

JULY 18, 2013

bg

WP(C) Nos.1388/12 & 1763/12 Page 13 of 13