

Punjab-Haryana High Court

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Dr.M.S.Malik, Ips (Retd.) vs Central Information Commission ... on 26 March, 2013

CIVIL WRIT PETITION NO.3879 OF 2011 1 IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

CIVIL WRIT PETITION NO.3879 OF 2011

DATE OF DECISION: MARCH 26, 2013

Dr.M.S.Malik, IPS (Retd.)Petitioner Versus

Central Information Commission and othersRespondents CORAM:- HON'BLE MR.JUSTICE
TEJINDER SINGH DHINDSA Present: Mr.Raj Kumar Gupta, Advocate

for the petitioner.

Mr.Sumeet Goel, Advocate for respondents 2 to 4. <><><>

TEJINDER SINGH DHINDSA, J.

Denial of information to the petitioner who had invoked the provisions of Right to Information Act, 2005 (hereinafter to be referred as "the Act") has necessitated the filing of the instant writ petition.

2. The brief factual backdrop is that the petitioner is a retired IPS Officer having held the post of Director General of Police, Haryana. He had submitted an application dated 27.4.2009 under the provisions of the Act to the Director, CBI, New Delhi seeking the following information: CIVIL WRIT PETITION NO.3879 OF 2011 2 (i)Copy of preliminary enquiry No. PECHG. 2005A0002 dated 25.8.2005 on the basis of which the FIR was registered.

(ii)State of all the witnesses recorded during the preliminary enquiry NO.PECHG, 2005A0002 dated 25.8.2005 prior to the registration of criminal case vide FIR No.Chandigarh CBI, ACB, Chandigarh 2006 RCCHG2006A0017 dated 19.6.2006 against Sh.Ravi Azad, IPS, the then SP/GRP/Haryana, Ambala and others.

(iii)Copy of the official case file of CBI containing remarks/ opinions/ observations/ recommendations made by Sh.Vijay Shankar, IPS, the then Director, CBI for including the name of the petitioner in the final report u/s 173 Cr.P.C. and for recommending the prosecution of the petitioner in the Court of CBI in the above noted case originally registered against Sh.Ravi Azad, IPS, the then S.P./GRP, Haryana, Ambala and others."

3. Suffice it to notice that such information had been sought by the petitioner against the backdrop that his name had not figured in FIR No.Chandigarh CBI, ACB, Chandigarh 2006 RCCHG2006A0017 dated 19.6.2006, but his name was added in the case at the last stage i.e. in the final report under Section 173 of the Code of Criminal Procedure submitted by the CBI before the trial Court at Ambala.

4. The afore-noticed application was transferred by CBI, CIVIL WRIT PETITION NO.3879 OF 2011 3 New Delhi to the Central Public Information Officer, CBI, Anti- Corruption Branch, Chandigarh under Section 6(3) of the Act. Vide order dated 16.6.2009, Annexure P3, the Superintendent of Police, CBI, Anti-Corruption Branch, Chandigarh declined to supply the information sought, on the basis that the same may impede the process of prosecution and, accordingly, was stated to be exempted under Section 8(1)(h) of the Act. The petitioner preferred an appeal under Section 19(1) of the Act before the Deputy Inspector General of Police,

CBI, Zonal office, Chandigarh. In terms of order dated 8.7.2009 at Annexure P5, such first appeal was partly accepted in terms of supplying a copy of the preliminary enquiry report sought but rest of the information was declined holding the same to be exempted under Section 8(1)(g) and 8(1)(h) of the Act. The second appeal preferred by the petitioner under Section 19(3) of the Act has been disposed of by the Central Information Commission, New Delhi vide order dated 12.1.2012 thereby upholding the decision of the Deputy Inspector General of Police, CBI, Zonal Office, Chandigarh i.e. the first Appellate Authority.

5. It is towards impugning the orders dated 16.6.2009, Annexure P3, dated 8.7.2009, Annexure P5, passed by the first Appellate Authority and dated 12.1.2011, Annexure P7, passed by the Central Information Commission, New Delhi that the instant writ petition has been filed.

6. Learned counsel for the parties have been heard at length and pleadings on record have been perused.

7. A perusal of the final impugned order dated 12.1.2011 CIVIL WRIT PETITION NO.3879 OF 2011 4 passed by the Central Information Commission, New Delhi would reveal that the Commission has proceeded to dispose of the second appeal preferred by the petitioner on the assumption that it was within its jurisdiction to peruse the file notings of the case recorded at various levels beginning with the Investigating Officer (I.O.) upto the Director, CBI and thereafter to take a view as to whether the decision to add the name of the petitioner as an accused was justified or not. Such question clearly could not have been entered into by the Central Information Commission as no such jurisdiction would vest with it under the provisions of the Act. The functions of the Commission are akin to performing adjudicatory functions of quasi-judicial contents in accordance with the rule of law and the provisions of the Act.

8. The Central Information Commission while being seized of the second appeal preferred by the petitioner was required to examine the validity of the order dated 8.7.2009 passed by the first Appellate Authority i.e. the Deputy Inspector General of Police, CBI, Zonal Office, Chandigarh wherein part of the information sought had been declined claiming exemption under Section 8(1)(g) and 8(1)(h) of the Act. The Commission, accordingly, had to specifically determine and return a finding as to whether the information sought and declined fell under any of the exemptions under Section 8 of the Act. The Commission, on the other hand, has proceeded to examine the case files/information sought and has recorded observations to the effect that the apprehension of the petitioner that his name has been added arbitrarily at the highest level in the CBI is not borne CIVIL WRIT PETITION NO.3879 OF 2011 5 out by a reading and appreciation of such file notings. The commission clearly has exceeded its brief.

9. In the impugned order dated 12.1.2011, the only relevant reasoning recorded is to the following effect: "We fully agree with the contention of the respondents that, if disclosed, these notings could impede the prosecution of the accused persons."

10. The scope of the adjudicatory functions of the Authorities under the Act including the Central Information Commission came up for consideration before the Hon'ble Supreme Court in a recent judgment titled as Namit Sharma v. Union of India, 2012 (4) RCR (Civil) 903. It was clearly held that at the stage of second appeal i.e. the Information Commission (Central/State) performs adjudicatory functions which are specifically oriented and akin to a judicial determinative process. It was further held that the application of mind and passing of reasoned orders are inbuilt into the scheme of the Act.

11. This Court is of the considered view that the impugned order dated 12.1.2011, Annexure P7, passed by the Central Information Commissioner is not a reasoned order and the specific issue of determination as to whether the information sought by the petitioner fell under any of the exemptions under Section 8 of the Act has not even been examined.

12. For the reasons recorded above, the order dated 12.1.2011 passed by the Central Information Commission, Annexure P7, is set aside. The matter is remanded back to the Central Information Commission, New Delhi

for passing of orders CIVIL WRIT PETITION NO.3879 OF 2011 6 afresh after affording opportunity of hearing to the parties concerned and by limiting the scope of adjudication of the second appeal preferred by the petitioner strictly within the jurisdiction conferred by the provisions of the Act. It would be appreciated if such fresh decision is taken expeditiously and, in any case, within a period of six months from the date of conveying of a certified copy of this order.

13. Petition allowed in the aforesaid terms. (TEJINDER SINGH DHINDSA)

MARCH 26, 2013 JUDGE SRM

Note: Whether to be referred to Reporter? Yes/No