

IN THE HIGH COURT OF DELHI AT NEW DELHI

W. P. (C) 295/2011

Reserved on: 23rd May 2011

Decision on: 3rd June 2011

B S MATHUR

..... Petitioner

Through: Mr. Amit S. Chadha, Senior Advocate with
Mr. Kunal Sinha, Advocate.

versus

PUBLIC INFORMATION OFFICER
OF DELHI HIGH COURT

..... Respondent

Through: Mr. Rajiv Bansal, Advocate.

AND

W. P. (C) 608/2011

B S MATHUR

..... Petitioner

Through: Mr. Amit S. Chadha, Senior Advocate with
Mr. Kunal Sinha, Advocate.

versus

PUBLIC INFORMATION OFFICER
OF DELHI HIGH COURT

..... Respondent

Through: Mr. Rajiv Bansal, Advocate.

CORAM: JUSTICE S. MURALIDHAR

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| 1. Whether Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the judgment should be reported in Digest? | Yes |

JUDGMENT
03.06.2011

1. In Writ Petition (Civil) 295 of 2011, the Petitioner challenges an order dated 6th

September 2010, passed by the Central Information Commission ('CIC') dismissing his appeal against an order dated 28th April 2010 of the Appellate Authority of the High Court of Delhi under the Right to Information Act, 2005 ('RTI Act') declining to furnish the complete information sought by him in RTI Application No. 184 of 2008.

2. In Writ Petition (Civil) 608 of 2011 the Petitioner challenges the same order insofar as it relates to the dismissal of his Appeal Nos. 314 and 315 dated 13th August 2010 in relation to RTI Application Nos. 35 and 36 of 2010.

Factual matrix

3. The Petitioner was a Member of the Delhi Higher Judicial Service. Pursuant to a Resolution dated 26th August 2008 of the Full Court, a Committee of five Judges of the High Court heard the Petitioner on 29th May 2008 and decided that it was desirable to place him under suspension pending disciplinary action. While disposing of his writ petition challenging the order of suspension, the Supreme Court by an order dated 13th August 2008 directed that the inquiry against the Petitioner may be completed within a period of five months. On 3rd November 2008, a memorandum was issued to the Petitioner furnishing him the articles of charges, statement of imputation of misconduct, list of witnesses and documents along with the documents. The Petitioner's statement of defence was considered by the Full Court at a meeting held on 27th November 2008. A learned Judge of the High Court was appointed as the Inquiry Officer.

4. On 19th August 2008, the Petitioner filed an application No. 143 of 2008 under the RTI Act seeking the following information:

- (i) Copy of directions of Committee of Hon'ble Inspecting Judges allowing Registrar (Vig.) to scrutinise personal file of applicant containing intimations supplied under the Conduct Rules.
- (ii) Copy of the report of the Registrar (Vig.) dated 06.02.2008 in compliance of (i) above.
- (iii) Copy of the minutes of the meeting of the committee of the Hon'ble Inspecting Judges dated 14.2.2008.
- (iv) Copy of the minutes of the meeting of the committee of the Hon'ble Inspecting Judges held on 03.04.2008.

- (v) Copy of the minutes of the meeting of the committee of the Hon'ble Inspecting Judges dated 14.05.2008.
- (vi) Copy of the minutes of the meeting of the Administrative Committee held on 19.5.2008.
- (vii) Copies of the comments and/or material supplied/placed before the committee of the Hon'ble Inspecting Judges.
- (viii) Copies of the comments and/or material supplied/placed before the Hon'ble Full Court prior to its meeting dated 26.5.2008.
- (ix) Copies of the Agenda and the minutes of the Hon'ble Full Court held on 26.5.2008.
- (x) Copy of the minutes/decision of the Committee headed by the Hon'ble Chief Justice in connection with the reply of letters dated 20.2.2008, held on 29.5.2008.
- (xi) Subject and date wise list of all the intimations submitted by the applicant to the Hon'ble High Court from time to time since the date of his joining service till date.
- (xii) Copy of the minutes/decision of the Committee of the Hon'ble Inspecting Judges held post intimation dated 1.6.2007 by the applicant.

5. On 16th September 2008, the Public Information Officer ('PIO') of the High Court of Delhi informed the Petitioner that the information sought by him could not be supplied as "the same is exempt under Section 8 (1) (h) of the RTI Act read with Rule 5 (b) of the Delhi High Court (Right to Information) Rules, 2006" (hereinafter 'the Rules').

6. Aggrieved by the above decision, the Petitioner filed Appeal No. 21 of 2008 which was dismissed by the Appellate Authority on 31st October 2008. It was held by the Appellate Authority that the documents referred at serial No. (xi) could be supplied to the Petitioner. However, as far as the remaining information was concerned it was observed that the disciplinary authority was still examining the material for holding inquiry and, therefore, disclosure of any such material at that stage might impede the inquiry.

7. Aggrieved by the above decision, the Petitioner filed Appeal No. 203 of 2009 before the CIC on 16th December 2008.

8. After completion of the inquiry the Inquiry Officer submitted a report on 18th November 2009. With the inquiry being over, on 23rd January 2010 the Petitioner filed another RTI Application No. 35 of 2010 seeking the following information:

- i. Copy of directions of Committee of Hon'ble Inspecting Judges allowing Registrar (Vig.) to scrutinize personal file of applicant containing intimations supplied under the Conduct Rules.
- ii. Copy of report of the Registrar (Vig.) dated 6.2.2008 in compliance of (i) above.
- iii. Copy of the minutes of the meeting of the Committee of the Hon'ble the Inspecting Judges dated 14.2.2008.
- iv. Copy of the minutes of the meeting of the Committee of the Hon'ble Inspecting Judges dated 3.4.2008.
- v. Copy of the minutes of the meeting of the Committee of the Hon'ble Inspecting Judges dated 14.5.2008.
- vi. Copy of the minutes of the Administrative Committee held on 19.5.2008.
- vii. Copies of comments and/or material supplied/placed before the Committee of the Hon'ble Inspecting Judges to its meeting dated 26.5.2008.
- viii. Copies of comments and/or material supplied/placed before the Committee of the Hon'ble Inspecting Judges to its meeting dated 26.5.2008.
- ix. Copy of the agenda and minutes of the Full Court meeting held on 26.05.08.
- x. Copy of the minutes/decision of the Committee headed by the Hon'ble Chief Justice in connection with the reply of letters dated 20.2.2008, held on 29.5.2008.
- xi. Copy of the minutes/decision of the Committee of the Hon'ble Inspecting Judges held post intimation dated 1.6.2007 by the applicant.
- xii. Copy of the decision of the Committee of the Hon'ble Judges headed by Hon'ble Chief Justice on representation/review petition filed by the applicant on 28.6.2008.
- xiii. Copy of the minutes/decision of the meeting of the Committee above (xii) which was communicated to the applicant vide communication No. 1222/DHC/Gaz/V.I.E.2(a)/2008 dated 3.7.2008.

- xiv. Copy of the agenda for Full Court meeting dated 29.9.2008.
- xv. Copy of the minutes of the meeting regarding the decision taken by the Full Court on 29.9.2008 qua applicant.
- xvi. Copies of agenda and the minutes of the Full Court meeting dated 1.9.2008.
- xvii. Copy of the minutes of the Administrative Committee held on 4.9.2008.
- xviii. Copies of the agenda and minutes of the Full Court meeting held on 5.9.2008.

9. The Petitioner also filed Application No. 36 of 2010 in which he sought the following information:

- i. Copy of agenda for the Full Court meeting dated 27.09.2008 with respect to the applicant.
- ii. Copy of the minutes of the Full Court meeting dated 27.09.2008.
- iii. Details of the number and names of the Judges (who) actually participated in the discussion for and against the agenda.
- iv. Details of the number and names of the Judges who participated in the discussion and approved the finalization of Article of Charges subsequently issued against the applicant.
- v. Copy of the minutes of the Full Court meeting dated 27.11.2008.
- vi. Copy of the agenda laid before the Full Court meeting held on 27.11.2008.
- vii. Detail as to how many inquiries have been initiated against the applicant. If more than one, then furnish the detail about the pending inquiry preliminary or otherwise, if any.
- viii. Copy of the agenda and minutes of the Full Court meeting held on 18.08.2009.
- ix. Copy of the agenda and minutes of the Full Court meeting held on 18.11.2009.

- x. Copy of the agenda and minutes of the Full Court meeting held on 15.12.2009.
- xi. Copy of the agenda and minutes of the Full Court meeting held on 15.01.2010.
- xii. Copy of the criteria/policy of the Hon'ble High Court adopted for appointment of District & Sessions Judge and District Judges in the year 2007.
- xiii. Copy of the criteria/policy of the Hon'ble High Court adopted for appointment of District & Sessions Judge and District Judges in the year 2008.
- xiv. Copy of the criteria/policy of the Hon'ble High Court adopted for appointment of District & Sessions Judges and District Judges in the year 2009.

10. By an order dated 16th February 2010 the PIO of the High Court declined the information at serial Nos. (i) to (xiii) of the Application No. 35 of 2010 under Section 8 (1) (h) of the RTI Act read with Rule 5 (b) of the Rules. Part of the information sought at serial Nos. (xiv) to (xviii) was disclosed. By a separate order dated 16th February 2010 passed in Application No. 36 of 2010, the information at serial Nos. (i) to (iii) was declined stating that no Full Court Meeting was held on 27th September 2008. Information at serial No. (vii) was also declined claiming exemption under Section 8 (1) (h) RTI Act. Aggrieved by the PIO's orders dated 16th February 2010 the Petitioner filed Appeal Nos. 16 and 17 of 2010 before the Appellate Authority of the High Court.

11. On 28th April 2010, the Appellate Authority partly allowed Appeal No.16 of 2010 by directing the Full Court Agenda to be supplied to the Petitioner. However, the decision of the PIO declining information at serial No. (vii) of Application No. 36/2010 was upheld. By a separate order on the same date the Appellate Authority dismissed Appeal No. 17 of 2010 by noting that the information sought at serial Nos. (i) to (xiii) in the application 35/2010 was a verbatim reproduction of the information sought at serial Nos. (i) to (xi) of the earlier Application No. 184 of 2008 in respect of which an appeal was pending before the CIC and notice has been issued to the High Court in the said appeal. The representation made by the Petitioner against the Inquiry report was under consideration by the High Court. The Appellate Authority held that the matter was *sub judice* before

the CIC and any decision taken in the appeal might conflict with the decision to be taken by the CIC.

12. Aggrieved by the orders dated 28th April 2010, the Petitioner filed Appeal Nos. 314-15 of 2010 before the CIC. The CIC heard the Petitioner's Appeal Nos. 203 of 2009 and 314-15 of 2010 together.

13. Meanwhile, on 14th July 2010 the Full Court of the High Court accepted the inquiry report dated 18th November 2009 and imposed a penalty of withholding two increments without cumulative effect on the Petitioner. On 11th August 2010, the Full Court decided not to extend the superannuation of the Petitioner beyond 58 years by invoking Rule 26 B of the Delhi Higher Judicial Service Rules, 1971 ('DHJS Rules').

14. On 6th September 2010, the CIC dismissed the Petitioner's three appeals by a common order. The CIC noted that at the hearing on 30th August 2010, the Joint Registrar ('JR') of the High Court submitted that there were two investigations. The second investigation was initiated "even before the closure of the first with wider ramification, which is still under process and regarding which information could not be disclosed under Section 8 (1) (h)". It was stated that "this investigation file is with the Vigilance Division of the Delhi High Court to which even the Registry does not have access." The operative portion of the impugned order dated 6th September 2010 of the CIC reads as under:

"On the question of whether there is an attempt to mislead the Supreme Court this Commission has no authority to opine. Nevertheless, it has now been clarified to appellant Shri Mathur that there were, in fact, two enquiries, one of which stands completed and the other that is still in progress. It is the contention of respondents that disclosing even the nature of the second enquiry will seriously compromise the enquiry itself. Insofar as the appellant's plea that he should have been informed of why he is being penalized, this information had already been provided to him with regard to the enquiry that has been completed on the basis of which report he has, in fact, been penalised. When and if a formal enquiry is initiated in consequence of the second investigation appellant Shri Mathur will be duly informed of the consequences of the investigation. However, before that investigation is complete disclosure of any information would seriously undermine the process. PIO has separately disclosed a paper in confidence to this Commission providing

the subject of the ongoing investigation.

The Commission has already, in our interim decision, ruled on the question of application of exemption under Sec. 8 (1) (h) to departmental investigation. In the hearing, the question of appellant on the number of investigations initiated by the High Court of Delhi stands answered in the hearing. On the remaining issue of whether the case merits application of Sec. 8(1) (h) to the simple question enquiring on the subject of the investigation, to which this Commission is privy, remains to be decided. In the view of the Commission, disclosure of the subject of investigation will “impede” the process of investigation. Delhi High Court in W.P. (C) 7930/2009 held “The word impede therefore does not mean total obstruction and compared to the word obstruction or prevention, the word impede requires hindrance of a lesser degree. It is less injurious than prevention or an absolute obstacle.”

Contextually in Section 8 (1) (h) it will mean anything which would hamper and interfere with procedure followed in the investigation and have the effect to hold back the progress of investigation, apprehension of offenders or prosecution of offenders. However, the impediment, if alleged, must be actual and not make belief and a camouflage to deny information. To claim exemption under the said sub-section it has to be ascertained in each case whether the claim by the public authority has any reasonable basis. In this context the Commission is satisfied that disclosure of the subject will indeed “impede” the process of investigation in view of the peculiar facts and circumstances of this case. The appeals are disposed of accordingly.”

15. While hearing W.P. (C) 608 of 2011 on 1st February 2011 the following order was passed by this Court:

“1. Mr. Chadha states that the information at Serial No. (i) to (xv) & (xvii) in the first application (details of which are at Pages 53 and 54 of the paper book) as well as the information sought in Serial No. (i) to (iii) & (vii) of the second application (details of which are at Page 56 of the paper book) have not been furnished to the Petitioner on the ground that there is a second inquiry pending against the Petitioner.

2. Mr. Bansal, appearing for the Respondent on advance notice, states that a chart showing how much of the above information has already been provided to the Petitioner and how much of it is connected with the second inquiry will be placed on record by the Respondent by way of an affidavit within a period of three weeks. The affidavit will also indicate when the second inquiry commenced.

3. List on 7th March 2011.”

16. An affidavit was filed on behalf of the High Court on 25th March 2011 enclosing a copy of the information sought and to what extent information sought was connected with the second inquiry. Further, in para 5 it was stated as under:

“That it is pertinent to mention here that when the case of the second enquiry was placed before Hon’ble the Chief Justice for directions, His Lordship has been pleased to direct on 03.03.2011 that the enquiry against Shri B.S. Mathur (petitioner) be kept in abeyance.”

17. Mr. Amit S. Chadha, learned Senior Counsel appearing for the Petitioner submitted that once the second inquiry has been kept in abeyance, there was no question of the disclosure of information as sought by the Petitioner “impeding such inquiry”. At the hearing on 21st April 2011 the Court was shown the original file. The Court then observed in its order passed on that date as under:

“3. In light of the above development, it requires to be examined whether the disclosure of the information sought by the Petitioner to the extent not supplied to him yet would “impede the investigation” in terms of Section 8 (1) (h) of the Right to Information Act, 2005. On this specific aspect Mr. Bansal, learned counsel for the Respondent states that the matter will be considered once again and a decision taken within three weeks.”

18. At the hearing on 23rd May 2011 Mr. Rajiv Bansal learned counsel appearing for the Respondent stated that he had been sent a letter dated 21st May 2011 enclosing therewith a note containing the “stand” of the Delhi High Court pursuant to the order dated 21st April 2011. The note states that “the documents in question, the copy of which is sought by Shri B.S. Mathur related to the first enquiry which is already over” and the second inquiry “are so much interconnected that it is difficult to segregate the two to avoid any kind of bearing on the investigation ordered to be kept in abeyance for present.” The next reason is that the CIC had in its impugned order already held that “disclosure of the subject will indeed ‘impede’ the process of investigation in view of the peculiar facts and circumstances.” The third reason is that “it would be desirable to stick to the stand taken in the affidavit” dated 25th March 2011 filed by the Respondent in these proceedings. Fourthly the note states that the Petitioner could be supplied information against serial No. (vii) that the second inquiry “which was at the fact finding stage has been kept in abeyance at present.” As far as the information at serial No. (vii) is concerned, the

Petitioner already knew of it during the hearing of his appeals before the CIC.

19. The question that arises for consideration has already been formulated in the Court's order dated 21st April 2011: Whether the disclosure of the information sought by the Petitioner to the extent not supplied to him yet would "impede the investigation" in terms of Section 8 (1) (h) RTI Act? The scheme of the RTI Act, its objects and reasons indicate that disclosure of information is the rule and non-disclosure the exception. A public authority which seeks to withhold information available with it has to show that the information sought is of the nature specified in Section 8 RTI Act. As regards Section 8 (1) (h) RTI Act, which is the only provision invoked by the Respondent to deny the Petitioner the information sought by him, it will have to be shown by the public authority that the information sought "would impede the process of investigation." The mere reproducing of the wording of the statute would not be sufficient when recourse is had to Section 8 (1) (h) RTI Act. The burden is on the public authority to show in what manner the disclosure of such information would 'impede' the investigation. Even if one went by the interpretation placed by this Court in W.P. (C) No.7930 of 2009 [***Additional Commissioner of Police (Crime) v. CIC***, decision dated 30th November 2009] that the word "impede" would "mean anything which would hamper and interfere with the procedure followed in the investigation and have the effect to hold back the progress of investigation", it has still to be demonstrated by the public authority that the information if disclosed would indeed "hamper" or "interfere" with the investigation, which in this case is the second enquiry.

20. The stand of the Respondent that the documents sought by the Petitioner "are so much interconnected" and would have a "bearing" on the second enquiry does not satisfy the requirement of showing that the information if disclosed would "hamper" or "interfere with" the process of the second inquiry or "hold back" the progress of the second inquiry. Again, the stand in the chart appended to the affidavit dated 25th March 2011 on behalf of the Respondent is only that the information sought is either "intricately connected" or "connected" with the second inquiry or has a "bearing" on the second inquiry. This does not, for the reasons explained, satisfy the requirement of Section 8 (1) (h) RTI Act.

21. Mr. Bansal submitted that this Court could examine the records and determine for itself which of the information would if disclosed impede the second enquiry. This submission is untenable for the simple reason that it is not for this Court to undertake such an exercise. This is for the PIO of the High Court to decide. However, the PIO nowhere states that the disclosure of the information would “hamper” or “interfere with” the process of the second enquiry. There is consequently no need for this Court to form an opinion in that regard.

22. The reliance placed by the Respondent on the conclusion of the CIC in the impugned order that the disclosure of the information would impede the process of investigation “in the peculiar facts and circumstances” begs the question for more than one reason. First, there is a marked change in the circumstances since the impugned order of the CIC. The second enquiry has, by a decision of the Chief Justice of 3rd March 2011, been kept in abeyance which was not the position when the appeals were heard by the CIC. Secondly, it is difficult to appreciate how disclosure of information sought by the Petitioner could hamper the second inquiry when such second inquiry is itself kept in abeyance. The mere pendency of an investigation or inquiry is by itself not a sufficient justification for withholding information. It must be shown that the disclosure of the information sought would “impede” or even on a lesser threshold “hamper” or “interfere with” the investigation. This burden the Respondent has failed to discharge.

23. It was submitted by Mr. Bansal that this Court could direct that if within a certain timeframe the second enquiry is not revived, then the information sought should be disclosed. This submission overlooks the limited scope of the present writ petition arising as it does out of the orders of the CIC under the RTI Act. It is not within the scope of the powers of this Court in the context of the present petition to fix any time limit within which the Respondent should take a decision to recommence the second enquiry which was kept in abeyance by the order dated 3rd March 2011 of the Chief Justice.

24. No grounds have been made out by the Respondent under Section 8 (1) (h) of the RTI Act to justify exemption from disclosure of the information sought by the Petitioner.

25. The writ petitions are accordingly allowed and the impugned order dated 6th

September 2010 of the CIC is hereby set aside. Information to the extent not already provided in relation to the three RTI applications should be provided to the Petitioner by the Respondent within a period of four weeks from today. While providing the information it will be open to the Respondent to apply Section 10 RTI Act where required.

S. MURALIDHAR, J

JUNE 3, 2011

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