

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25/06/2007

CORAM:
THE HONOURABLE MR. JUSTICE K.CHANDRU

WRIT PETITION (MD) No.5427 of 2007
and
M.P.(MD) Nos.1, 2 and 3 of 2007

Ms.V.V.Mineral,
registered firm through
its Managing partner,
S.Vaikundarajan,
having place of business at
Keeraikaranthattu,
Tisaiyanvilai - 626657,
Tirunelveli District. .. Petitioner

vs.

1.The Director of Geology & Mining,
Guindy, Chennai - 32
& Appellate Authority under the
Right to Information Act.

2.Public Information Officer
Deputy Director,
Dept. Of Geology & Mining,
Guindy, Chennai - 32.

3.Asst.Public Information Officer
Deputy Director (Mines),
Collectorate, Tirunelveli.

4.D.Dayadevadass

5.Asst.Public Information Officer
Deputy Director (Mines),
Collectorate, Thoothukudi.

6.Asst.Public Information Officer
Deputy Director (Mines),
Collectorate,
Kanyakumari District,
Nagercoil. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India to

issue a Writ of Certiorarified Mandamus calling for the records of the 1st respondent in Rc.No.6051/PMI/2007 and quash the orders passed on 4.6.2007 passed by the 1st respondent and direct the 1st respondent to dispose of the appeal in accordance with law.

!For petitioners :Mr.S.Meenakshi Sundaram

^For respondents 1 to 3,
5 and 6 :Ms. R.Anita,
Addl.Government Pleader

:ORDER

The petitioner is a registered firm involving in quarrying of beach mineral in the coastal areas of Tirunelveli and he has been in the business for several years.

2. The 4th respondent herein invoking the provisions of the Right to Information Act, 2005, [Central Act, 22/2005] (hereinafter called as "RTI Act") sought for certain informations regarding the petitioner's business. The precise information that was sought for from the third respondent was the details regarding the lease granted in favour of M/s. V.V.Mineral and M/s. Beach Mineral Co.Ltd., for the past 10 years and also the transport permits obtained by these two companies during that period.

3. It must be stated here that the documents sought for were Government records i.e. in respect of lease, and the Government is one of the party to these documents. The prospecting of any mineral is not a right of any individual and he only gets a licence from the Government, who is the absolute authority to grant permission for prospecting these minerals. Therefore, when these details were sought for, the third respondent instead of furnishing those documents sought for the opinion of the petitioner as to whether those documents can be furnished to the 4th respondent.

4. The petitioner by a letter dated 3.2.2007 made a counter accusation against the 4th respondent stating that he is a fraud and a criminal and further being a business competitor, these documents need not be furnished to him. The petitioner also relied upon Section 8(1)(d) of the RTI Act stating that there was no obligation to provide to any citizen such a document. But in the said letter, it was stated that they have no objection in granting those documents for the period upto the year 1999-2000.

5. On receipt of the said letter, the third respondent being the Assistant Principal Information Officer (APIO) passed an order dated 30.4.2007 rejecting the request of the 4th respondent by placing reliance upon Section 8(1)(d) of the RTI Act. However, no reason is recorded for denial of the said documents except stating that the writ petitioner had objected to the same.

6. Aggrieved by the same, the fourth respondent filed an appeal to the

first respondent being the appellate authority under the RTI Act. The said appeal was allowed by an order dated 4.6.2007. In that order, it was stated that the appeal petition was scrutinised in terms of the Act and the order passed by the third respondent was not in accordance with the Act. Therefore, the third respondent was directed to furnish the information sought for by the 4th respondent. As against the said order, the present Writ Petition has been filed by the petitioner.

7. Mr. S. Meenakshi Sundaram, learned counsel for the petitioner submitted that the order of the appellate authority is vitiated on three grounds viz., (i) the claim of the petitioner that the document shall not be furnished is based upon the protection given to his client under Section 8(1)(d) of the Act; (ii) if the appellate authority wants to order disclosure, under Section 11(3) r/w 19(4) of the Act, a notice must be given to the third party and therefore, the impugned order suffers from infirmity; (iii) further, the 4th respondent has no right to seek for the documents because he is a business competitor and a person of not good conduct and character.

8. Therefore, in the light of the submissions made by the learned counsel, it is necessary to refer to certain provisions of the said Act. Section 8(1) (d) reads as follows:

"8. Exemption from disclosure of information- (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,-

- (a) .. omitted ..
- (b) .. omitted ..
- (c) .. omitted ..

(d) 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." (Emphasis added)

9. The provisions relating to third party is found in Section 11 which reads as follows:

"11. Third party information- (1) Where a Central Public Information Officer or a State Public Information Officer, as the case may be, intends to disclose any information or record, or part thereof on a request made under this Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the Central Public Information Officer or State Public Information Officer, as the case may be, shall within five days from the receipt of the request, give a written notice to such third party of the request and of the fact that the Central Public Information Officer or State Public Information Officer, as the case may be intends to disclose the information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party shall be kept in view while taking a decision about disclosure of information:

Provided that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party. (Emphasis added)

(2) Where a notice is served by the Central Public information Officer or State Public Information Officer, as the case may be under sub-section (1) to a third party in respect of any information or record or part thereof, the third party shall, within ten days from the date of receipt of such notice, be given the opportunity to make representation against the proposed disclosure.

(3) Notwithstanding anything contained in section 7, the Central Public Information Officer or State Public Information Officer, as the case may be, shall within forty days after receipt of the request under Section 6, if the third party has been given an opportunity to make representation under sub-section 92), make a decision as to whether or not to disclosed the information or record or part thereof and give in writing the notice of his decision to the third party.

(4) A notice given under sub-section (3) shall include a statement that the third party to whom the notice is given is entitled to prefer an appeal under Section 19 against the decision."

10. The provisions regarding appeals are provided under Section 19 of the RTI Act which reads as follows:-

19. Appeal - (1) Any person who, does not receive a decision within the time specified in sub-section (1) or clause (a) of sub-section (3) of Section 7, or is aggrieved by a decision of the Central Public Information Officer or State Public Information Officer, as the case may be, may within thirty days from the expiry of such period or from the receipt of such a decision prefer an appeal to such officer who is senior in rank to the Central Public Information Officer or State Public Information Officer as the case may be, in each public authority:

Provided that such officer may admit the appeal after the expiry of the period of thirty days if he or she is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) Where an appeal is preferred against an order made by a Central Public Information Officer or a State Public information Officer, as the case may be, under Section 11 to disclose third party information, the appeal by the concerned third party shall be made within thirty days from the date of the order.

(3) A second appeal against the decision under sub-section (1) shall lie within ninety days from the date on which the decision should have been made or was actually received, with the Central Information Commission or the State Information Commission:

Provided that the Central Information Commission or the State Information Commission, as the case may be, may admit the appeal after the expiry of the period of ninety days if it satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(4) If the decision of the Central Public Information Officer or State Public Information Officer, as the case may be, against which an appeal is preferred relates to information of a third party, the central Information Commission or State Information Commission, as the case may be shall give a reasonable opportunity of being heard to that third party."

11. Therefore, the principal contention that a right accrues to the petitioner to object may be correct in the context if a document is exclusively submitted by any person to the Government authorities such as property statements, income tax returns etc., but in a case of lease deeds and transport permits which emanate from the statutory authorities and where the petitioner cannot be said to be in exclusive possession, he cannot have a right to object to its being divulged as a third party. The lease deeds pertaining to minerals as well as transport permits are not documents prepared or to be kept by a prospecting mine operator but prospecting a mine or mineral is a privilege conferred by the State to the individuals, who accepts the norms prescribed under Mines and Minerals Act 1957 and the rules framed thereunder.

12. In the present case, when the third respondent as an Information Officer, ordering notice to the petitioner and taking their objection and refusing to furnish the documents sought for by a citizen is clearly beyond the scope of the RTI Act. If the information is available with the State and such information is in exclusive custody of the State, the question of seeking any opinion from the third party on such issues may not arise, especially, when they are public documents. By disclosure of such information, no privilege or business interests of the petitioner are affected. On the other hand, such a disclosure may help any party to act upon those documents and take appropriate steps.

13. Considering the scope of the RTI Act, this Court by a judgment reported in 2007 (3) MLJ 77 (Diamond Jubilee Higher Secondary School, rep. by its Secretary and Correspondent, Erode District v. Union of India, rep. by Secretary, Ministry of Law, Justice and Company Affairs, New Delhi and Others) after referring to certain academic papers presented by distinguished persons, set forth the objects behind the enactment of the Act. Paragraph Nos. 8 and 9, which are relevant, reads as follows:

"8. In a lecture delivered by Dr. Justice AR.LAKSHMANAN, the Retired Judge of the Supreme Court on 19.8.2006 at Chennai, the learned Judge traced the History of Right to Information Act, 2005 in the following words:

"This right traces its origin since 1948 March, when the United Nations convened a conference in Geneva on the subject matter of freedom of information that was attended by 54 countries which ultimately let the General Assembly of United Nations to declare the freedom of information a fundamental human right, and declaration was made on 10.12.1948. In 1960, the Economic and Social Council of the United Nations adopted a Declaration of Freedom of Information. Sweden became the first country in the world to enact a provision for access to official information for its citizens. Many countries later adopted this principle and drafted legislations incorporating the same.... Each individual shall have appropriate access to information concerning the decision making process. Effective access to judicial and administrative proceedings, including redress and remedy should be provided. The Right to Information Act, 2005 is a recognition of such Fundamental Rights making possible the participation of the people in the decision-making process in our democracy. Access to information on laws mandated Government services and Government expenses are fundamental for the people to hold Governments more accountable for

their performance."

9. Recently, Ms. Justice PRABHA SRIDEVAN, in her lecture delivered at the law faculty in the University of Madras on 29.3.2007, highlighted the importance of RTI Act and its necessity to apply in the Non-Governmental Organisations in the following lines:

"Ideally the new Act, Right to Information Act should apply to all the sections of society and not actually to the governmental sector. Non-Governmental Organisations Charitable Trusts or Trade unions should be just as accountable and as transparent as the Government in developing democracy. There should be proactive distribution of information."

14. Therefore, when the impugned order is passed by the first respondent, he clearly reiterated that the order of the third respondent was wrong and the documents sought for is not covered by Section 8(1)(d) of the Act. Even otherwise, as referred to above, Section 8(1)(d) only talks about a commercial confidence, trade secrets, which disclosure will harm competition position of the third party. Further, the Section do not prescribe any total bar and it is for the competent authority to be satisfied with a larger public interest, which warrants the disclosure of such information.

15. This is the unique provision made in the Act contrary to the bar created under the Official Secrets Act and other analogous enactments like Section 21 of the Industrial Disputes Act or Section 34 A(1) of the Banking Companies Act, 1960. When a trade of bank employees challenged the vires of the said section as violative of the fundamental rights guaranteed to the workmen under the constitution which enables them to form an Association under Article 19(1)(a) and which in turn guaranteed the right to seek informations from the employees the Supreme Court replied their plea vide its decision reported in AIR 1962 SC 171 (The State Bank of India Staff union and others v. the National Industrial Tribunal (Bank Disputes) and others).

"(31) From what we have stated earlier as the genesis of the legislation now impugned, it would be apparent that Government had to effect a reconciliation between two conflicting interests: one was the need to preserve and maintain the delicate fabric of the credit structure of the country by strengthening the real as well as the apparent credit-worthiness of banks operating in the country. It was really this principle which is vital to the economic life of the community that has been responsible for the changes that have been made from 1927 onwards as regards the form of balance-sheets and of the Profit & Loss accounts of banking companies as distinguished from other trading and industrial organizations. There was urgent need to protect from disclosure certain of the items of appropriation by banks in order to preserve them as credit institutions. On the other hand, there was the need- an equally urgent need for enabling the workers in these institutions not to be denied a proper wage and other emoluments and proper conditions of service. The question was how far information which in the interests of national economy the banks were entitled to withhold from their shareholders and the general public, was to be made available for determining, the capacity of the banks to pay their employees. It was in these circumstances that the impugned legislation was enacted which while preserving industrial adjudication in respect of disputes

between the banks and their employees, entrusted the duty of determining the surplus reserve which could be taken into account as part of the assets for determining capacity to pay, to the Reserve bank. Thus understood there does not appear to be anything unreasonable in the solution which the impugned legislation has effected."

16. From the above it is clear that when RTI Act was enacted it does not give any full immunity for disclosure of a third party document. But, on the other hand, it gives the authorities under RTI Act to weight the pros and cons of weighing the conflict of interest between private commercial interest and public interest in the disclosure of such information.

17. Therefore, no total immunity can be claimed by any so-called third party. Further, if it is not a matter covered by Section 8(1)(d) of the Act, the question of any denial by the Information Officer does not arise. Therefore, on appeal preferred by the petitioner, the first respondent held that it is not an issue covered by Section 8(1)(d) of the Act. If it is only covered by Section 8(1)(d) of the Act, the question of denial of information by the authority may arise.

18. In any event, as contended by the learned counsel for the petitioner that under Section 11(3) r/w Section 19 of the RTI Act if he has not been given any notice as referred to above, a Second Appeal is provided under Section 19(3) to the State Information Commission. There is no whisper in the affidavit as to why the petitioner had not approached the State Commission as provided under the Act. In fact, the contention made in para 5 of the affidavit, is that there is no other efficacious remedy to the petitioner is contrary to the provisions of the Act. The Commission is a wider body and clothed with all the powers of a Civil Court under Section 18(3) of the RTI Act and therefore, it is misnomer to call it as a non-efficacious remedy.

19. If a person, who seeks for documents, is a business competitor and if any trade secret is sought for, then such document may be denied. But, regarding a public document, if sought for by an individual whatever the motivation of such individual in seeking document has no relevancy as the Central RTI Act had not made any distinction between a citizen and a so-called motivated citizen. Hence, the submission in this regard has to fail.

20. In any event, the entire issue will have to be seen from the object of the Act, which is given in the Preamble to the RTI Act, which is as follows:

" WHEREAS the Constitution of India has established democratic Republic;

AND WHEREAS democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed;

AND WHEREAS revelation of information in actual practice is likely to conflict with other public interests including efficient operations of the Governments, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information;

AND WHEREAS it is necessary to harmonise these conflicting interests while preserving the paramountcy of the democratic ideal;

NOW, THEREFORE, it is expedient to provide for furnishing certain information to citizens who desire to have it."

21. If one has to go by the object on which the said Act has been enacted, the objection raised by the petitioner pales into insignificance and does not warrant this Court to interfere with the impugned order passed by the first respondent. Hence, the Writ Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petitions are also dismissed. If, however, the petitioner chooses to file a Second Appeal to the State Information Commission as provided under Section 19(3), the dismissal of the Writ Petition will not be a bar and as and when such appeal is filed, the Commission may deal with it on merits and in accordance with law.

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