

# Cpio, Manager (Crm) Lic Of India vs Rajiv Kumar Khare on 30 August, 2022

**Author: Yashwant Varma**

**Bench: Yashwant Varma**

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 5319/2019

CPIO, MANAGER (CRM) LIC OF INDIA

..... Petiti

Through: Mr. Ashok Panigrahi, Adv.

versus

RAJIV KUMAR KHARE

..... R

Through:

Appearance not given

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+ W.P.(C) 5897/2020

CPIO, LIC OF INDIA

.....

Through:

Mr.Rajesh Mahendru, Adv.

versus

BHARATPURI RAMPURI GOSWAMI

..... Respondent

Through: Mr.Manik Dogra, Amicus Curaie

with Mr.Dhruv Pande, Adv.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

ORDER

% 30.08.2022

1. These two writ petitions which raise identical questions of law are being disposed of, with the consent of parties, by this common judgment. The writ petitions impugn directions framed by the Central Information Commission ["Commission"] which while disposing of an appeal which had fallen for its consideration has proceeded to issue directions commanding the petitioner Insurance Companies to suo moto disclose details of their agents along with their licenses and other particulars on their website in compliance with Section 4(1)(b) of the Right to Information Act, 2005 ["Act"].

2. For the sake of convenience, the Court deems it apposite to advert to the following essential facts which may warrant notice for the purposes of evaluating the challenge which is raised. In W.P.(C) 5897/2020, the respondent had filed an application dated 13 April 2017 seeking the following information:-

- "1. The certified copies of all policies by Arti Goswami.
2. The policy wise commission paid from start of agency till 13.4.2017,
3. How many policies are active.
4. Mode of commission payment by cheque or in saving account.
5. Certified copy of IRDA License,
6. Year wise business by agent
7. Certified copy of the documents filed with policies.
8. In which account payment was made."

3. The Public Information Officer of the petitioner provided the information sought under point nos. 2, 3, 4 and 8. Insofar as information relating to point nos. 1 and 7 is concerned, it took the position that the same would stand exempted from disclosure under Section 8(1)(j) of the Act. The applicant respondent was further informed that the information sought with respect to point no.5 was not available. Point no.6 was not attended to since the query was illegible.

4. Aggrieved by the said decision, the respondent filed a first appeal which met a similar fate with the Appellate Authority noting that no interference was merited. The matter was thereafter taken to the Commission in the second appeal. While dealing with that second appeal, the Commission noted the stand of the respondents that the information which had not been supplied would stand exempted in light of the provisions contained in Clauses (d), (e) and (j) of Section 8(1) of the Act.

5. On a consideration of the aforesaid submissions, the Commission proceeded to observe as follows:-

"The Commission was in receipt of a written submission from the Respondent dated 16.01.2020 wherein the replies of the CPIO/FAA were reiterated. It further submitted that the information sought by the Appellant pertained to "Third Party" which was held by the public authority in its fiduciary capacity as also no larger public interest was involved in disclosure of information."

"The Commission also observed that a voluntary disclosure of all information that ought to be displayed in the public domain should be the rule and members of public who having to seek information should be an exception. An open government, which is the cherished objective of the RTI Act, can be realised only if all public offices comply with proactive disclosure norms. Section 4(2) of the RTI Act mandates every public authority to provide as much information suo motu to the public at regular intervals through various means of communications, including the Internet, so that

the public need not resort to the use of RTI Act."

6. The Commission ultimately passed the following operative directions:-

"Keeping, in view the facts of the case and the submissions made by both the parties, the Commission instructs the Respondent to re-examine the RTI application and provide generic information such as names of the Agents/licenses issued to them, etc. as per the provisions of the RTI Act, 2005, to the Appellant within a period of 15 days from the date of receipt of this order, as agreed. The Commission also directs the Respondent Public Authority to suo moto disclose the Agents details along with their licenses, etc. on their website in compliance with Section 4(1)(b) of the RTI Act, 2005 for the benefit of public at large and to maintain transparency and accountability in the public authority to obviate the necessity of any of the stakeholders to file RTI application to secure the correct information."

7. Learned counsel appearing for the petitioner submitted that they did not stand placed under any obligation to provide or disclose a list of their agents under the provisions of the Act. It was further contended that the disclosure which was sought clearly did not fall within the ambit of Section 4(1)(b) of the Act. In view of the aforesaid, it was contended that there was no corresponding obligation placed upon the petitioner to disclose that information suo moto. It was principally urged that the obligation to provide information suo moto to the public stands restricted to subjects which may fall within Section 4(1)(b) alone.

8. It was additionally argued that prior to passing of the aforesaid direction, the Commission had not placed the petitioners on notice nor were they afforded any opportunity to address submissions on why a suo moto disclosure of agent details would neither be warranted nor flow from the various provisions of the Act. The disclosure of agent details was also resisted on the ground that the petitioner operates in a competitive environment with various other Insurance companies vying amongst each other to augment business. It was submitted that the disclosure of details of agents would have had a detrimental impact on their competitive position and would also have resulted in the disclosure of information which would fall within the scope of the expression "commercial confidence" as employed in Section 8(1)(d). The petitioners contend that the disclosures of agent details would also stand exempted under clause (j) of Section 8(1) as it would clearly amount to the disclosure of personal information, the disclosure of which clearly had no relationship to any public activity or interest.

9. Mr. Dogra, the learned Amicus who has appeared in these proceedings submitted that bearing in mind the admitted position that an agent is neither an officer nor an employee of the petitioners, that information clearly did not form part of the obligations which stand placed upon a public authority under Section 4(1)(b) of the Act. The learned Amicus submitted that the obligation to disclose information suo moto as placed upon a public authority by virtue of Section 4(2) of the Act stands restricted to subjects which may fall within the scope of Section 4(1)(b). Learned Amicus has placed for the consideration of the Court the decision of the Supreme Court in Central Board of Secondary Education v. Aditya Bandopadhyay<sup>1</sup> and more particularly to the following passages of

that decision:-

"59. The effect of the provisions and scheme of the RTI Act is to divide "information" into three categories. They are:

(i) Information which promotes transparency and accountability in the working of every public authority, disclosure of which may also help in containing or discouraging corruption [enumerated in clauses (b) and

(c) of Section 4(1) of the RTI Act].

(ii) Other information held by public authority [that is, all information other than those falling under clauses (b) and (c) of Section 4(1) of the RTI Act].

(iii) Information which is not held by or under the control of any public authority and which cannot be accessed by a public authority under any law for the time being in force.

Information under the third category does not fall within the scope of the RTI Act. Section 3 of the RTI Act gives every citizen, the right to "information" held by or under the control of a public authority, which falls either under the first or second category. In regard to the information falling under the first category, there is also a special responsibility upon the public authorities to suo motu publish and disseminate such information so that they will be easily and readily accessible to the public without any need to access them by having recourse to Section 6 of the RTI Act. There is no such obligation to publish and disseminate the other information which falls under the second category.

61. Some High Courts have held that Section 8 of the RTI Act is in the nature of an exception to Section 3 which empowers the citizens with the right to information, which is a derivative from the freedom of speech; and that, therefore, Section 8 should be construed strictly, literally and narrowly. This may not be the correct approach. The Act seeks to bring about a balance between two conflicting interests, as harmony between them is essential for preserving democracy. One is to bring about transparency and accountability by providing access to information under (2011) 8 SCC 497 the control of public authorities. The other is to ensure that the revelation of information, in actual practice, does not conflict with other public interests which include efficient operation of the Governments, optimum use of limited fiscal resources and preservation of confidentiality of sensitive information. The Preamble to the Act specifically states that the object of the Act is to harmonise these two conflicting interests. While Sections 3 and 4 seek to achieve the first objective, Sections 8, 9, 10 and 11 seek to achieve the second objective. Therefore, when Section 8 exempts certain information from being disclosed, it should not be considered to be a fetter on the right to information, but as an equally important provision protecting other public interests essential for the fulfilment and preservation of democratic ideals.

65. The power under Section 19(8) of the Act, however, does not extend to requiring a public authority to take any steps which are not required or contemplated to secure compliance with the provisions of the Act or to issue directions beyond the provisions of the Act. The power under Section 19(8) of the Act is intended to be used by the Commissions to ensure compliance with the Act, in particular ensure that every public authority maintains its records duly catalogued and indexed in the manner and in the form which facilitates the right to information and ensure that the records are computerised, as required under clause (a) of Section 4(1) of the Act; and to ensure that the information enumerated in clauses (b) and (c) of Section 4(1) of the Act are published and disseminated, and are periodically updated as provided in sub-sections (3) and (4) of Section 4 of the Act. If the "information" enumerated in clause (b) of Section 4(1) of the Act are effectively disseminated (by publications in print and on websites and other effective means), apart from providing transparency and accountability, citizens will be able to access relevant information and avoid unnecessary applications for information under the Act.

67. Indiscriminate and impractical demands or directions under the 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 counterproductive 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, tranquillity 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."

10. Having heard learned counsels, this Court firstly finds that the impugned directives have come to be issued by the Commission while in seisin of a second appeal. While acting as the Appellate Authority under the Act, the Commission would have been well advised to restrict its decision to the issues which essentially arose inter partes and the decision taken by the respondent to not disclose certain information as was sought by the respondent. While discharging an adjudicatory role by virtue of the powers conferred by Sections 18 and 19 of the Act, the Commission must necessarily restrict its orders to the disputes which arise and confer consideration solely upon the question of whether disclosure of information was required in terms of the provisions of the Act and the validity of the stand taken by the public authority in refusing to divulge certain information. Sections 18 and 19 do not confer an overarching power upon the Commission to issue general directions to a public authority and which may even travel beyond the scope of the application for information that may have been made or the provisions of the Act itself.

11. The Court notes that insofar as the merits of the present challenge is concerned, the scope and extent of the various provisions of the Act were lucidly explained by the Supreme Court in Central Board of Secondary Education. While propounding on the three broad categories in which

"information" may be classified, the first category was explained to be that which would relate to information which promotes transparency and accountability in the working of every public authority and which may aid in containing or discouraging corruption. The second category was explained to constitute information other than those falling under clauses (b) and (c) of Section 4(1). The Supreme Court pertinently observed that while a "special responsibility" stands placed upon a public authority to suo moto publish information falling within the first category, there is no such corresponding obligation which stands placed upon that authority insofar as the second category of information is concerned. Central Board of Secondary Education is thus a clear authority for the proposition that the suo moto obligation which stands placed upon a public authority is one which would operate only in respect of subjects enumerated in clauses (b) and (c) of Section 4(1) only. The Supreme Court went on to pertinently observe that the suo moto obligation of public authorities would not extend to the second category of information and which would pertain to information which, though not falling within the ambit of clauses (b) and (c) of Section 4(1) of the Act, may otherwise be in the possession of a public authority. Undisputedly, the details of agents of which disclosure was sought cannot possibly be comprehended as falling within the scope of clauses (b) and (c).

12. The Court further notes that the disclosure of agent details was a subject which was wholly unrelated to the "transparency" and "accountability" obligations of a public authority. The Court further finds merit in the submission that the disclosure of such details would have had the potential to adversely impact the competitive position of the petitioner and therefore the Commission should have weighed these considerations in mind before proceeding to frame the impugned directions.

13. While parting, the Court deems it necessary to observe that the Act does not confer a suo moto or inherent power upon the Commission. The Commission was acting upon an appeal which had come to be laid before it. Its jurisdiction thus stood restricted to the issues which directly arose in that appeal and its powers confined to rendering a decision on the rival claims that stood placed before it. The informant had sought details in respect of a particular agent only. There was thus no occasion or justification for the Commission to have issued the impugned directions. Viewed in that light, this Court is of the firm opinion, that the Commission clearly transgressed the jurisdiction conferred upon it. The Court thus finds itself unable to sustain the orders impugned.

14. Accordingly, and for all the aforesaid reasons, the writ petitions are allowed. The impugned orders dated 03 April 2019 and 29 January 2020 shall quashed and set aside.

YASHWANT VARMA, J.

AUGUST 30, 2022/neha