

CBI Not Liable To Furnish Information Under RTI Act, Exempted U/S 24: Kerala High Court

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

S. MANIKUMAR; CJ., SHAJI P. CHALY, J.

W.A. No. 1431 of 2022; 31st October 2022

S. RAJEEV KUMAR versus DIRECTOR, CENTRAL BUREAU OF INVESTIGATION

Judgment dated 29.07.2022 in WP(C) 16803/2021 of High Court of Kerala

Appellant / Petitioner: by Advs. P.A. Augustian, M.A. Baby;

Respondents / Respondents: by Adv Manu S., DSG of India

J U D G M E N T

SHAJI P. CHALY, J.

The appeal is preferred by the petitioner in W.P.(C) No. 16803 of 2021 challenging the judgment of the learned single Judge dated 29.07.2022, whereby the writ petition was dismissed declining the following reliefs sought for in the writ petition:

1. Issue a writ of mandamus or any other appropriate writ, order or direction to call for the records leading to Exhibits P5, P7 and P11 orders and set aside the same.
2. Issue a writ of mandamus or any other appropriate writ, order or direction and direct the first respondent to furnish the information as requested vide Ext.P2.
2. Brief material facts for the disposal of the writ appeal areas follows:

Subject issue in the writ petition relates to the dismissal of an application under the Right to Information Act, 2005 ('Act, 2005' for short) and confirmation of the same by the appellate authorities. The appellant retired as Assistant Commissioner of Central Excise and Customs on 31.05.2017 after 37 years of service. According to the appellant, his retirement benefits are withheld on the basis of a case booked by the third respondent alleging that while clearing certain sundry goods baggage of NRI Labourers, proper assessment was not done by him for monetary benefits, while he was working in the unaccompanied Baggage section, Air Cargo, Trivandrum on 12.07.2012.

3. Anyhow, it is admitted that a case registered by the third respondent is pending before the Special Judge (SPE/CBI), Thiruvananthapuram as C.C. No. 2 of 2015. Appellant is arrayed as an accused in the said case. It is also pointed out that CrI.M.C. No. 2345 of 2021 filed challenging an order in the said proceedings is also pending consideration before a learned single Judge of this Court.

4. The case projected by the appellant is that even though allegations are made against all customs officers working in Airport; after investigation, an officer under the third respondent, with ulterior/corrupt motives, manipulated the statements under Section 161 of Cr.P.C of three passengers as prosecution version and Department version. Therefore, it is submitted that based on such manipulated version, managed exemption from prosecution for two Inspectors. That apart, it is submitted that the appellant had made Exhibit P1 complaint before the Director, CBI for an enquiry against the Investigating Officer and the Director CBI ordered for enquiry and it was completed and a report was submitted.

5. The case projected by the appellant in the above background is that even though he requested for a copy of the enquiry report, as the same is a crucial document having direct impact to prove his innocence, the same was not issued to him. Thereupon, appellant submitted an application under the Act, 2005 for securing a copy of the enquiry report; however it was declined as per Exhibit P5 order dated 18.07.2018 by the Information Officer CBI New Delhi; and even though appeals were filed before the appellate authorities under the Act, 2005, the same were

declined as per Exhibits P7 and P11 orders. It is, thus, basically challenging Exhibits P5 and P7 and P11 orders, the writ petition was filed.

6. The learned single Judge, after taking into account the contentions advanced by the appellant and the provisions of the Act, 2005 as well as the other circumstances under law, the writ petition was dismissed. Being aggrieved, instant appeal is preferred.

7. The paramount contention advanced by the appellant is that no reasons are assigned for the rejection of the application by the primary authority. It is also contended that in order to defend the case or to make appropriate contentions in the Crl. M.C pending before this Court, a copy of the enquiry report is a vital requirement. That apart, it is contended that in order to prove the allegations as unsustainable at the pre-trial stage itself, the appellant had sought for copies of the final orders in the complaint lodged by him against the Investigating Officer under the third respondent. However, the same was declined as per Exhibit P5 order stating that the details of the enquiry cannot be shared.

8. It is also contended that the first appellate authority as well as the Second appellate authority, as per Exhibit P7 and P11 orders dated 05.09.2018 and 20.10.2020, respectively, have denied the information without assigning any reason at all, and therefore the orders passed by the authorities under the Act, 2005 are wrong in law and being so, the writ court ought to have interfered with the same and issued necessary directions as are sought for by the appellant.

9. On the other hand, the learned Deputy Solicitor General appearing for the respondents submitted that the information sought by the appellant comes under one of the exempted categories provided under Section 8 of the Act, 2005, and the respondents are privileged to withhold information by virtue of the protection granted under Section 24 of the Act, 2005. It is also pointed out that even though a contention is advanced by the appellant that the enquiry report is required in order to seek discharge at the initial stage of the proceedings before the CBI Court, the appellant is not entitled to seek any such relief relying upon a third party document.

10. We have heard the learned counsel for the appellant, Sri. Baby M.A and the learned Deputy Solicitor General of India Sri. S. Manu, and perused the pleadings and materials on record.

11. The sole question to be considered is whether any interference is required to the judgment of the learned single Judge.

12. It is true, in Exhibit P5 order passed by the primary authority under the Act, 2005, the sole reason shown is that the details of the enquiry report cannot be shared. However, it was informed that the enquiry was closed with the approval of the competent authority i.e., the Director, CBI on 22.09.2016. In fact, the primary order was affirmed by the first and second appellate authorities, but true, no reasons are shown in the said orders.

13. The paramount contention advanced by the respondents before the writ court was that the Central Bureau of Investigation has been notified under Section 24 of the Act, 2005, and therefore, the appellant is not entitled to secure a copy of the enquiry report, especially in view of the notification No. GSR442(E) dated 09.06.2011 issued under Section 24(4) of the Act, 2005, which reads thus:

“24. Act not to apply in certain organisations.—(1) Nothing contained in this Act shall apply to the intelligence and security organisations specified in the Second Schedule, being organisations established by the Central Government or any information furnished by such organisations to that Government:

Provided that the information pertaining to the allegations of corruption and human rights violations shall not be excluded under this sub-section:

Provided further that in the case of information sought for is in respect of allegations of violation of human rights, the information shall only be provided after the approval of the Central Information Commission, and notwithstanding anything contained in section 7, such information shall be provided within forty-five days from the date of the receipt of request.

(2) The Central Government may, by notification in the Official Gazette, amend the Schedule by including therein any other intelligence or security organisation established by that Government or omitting therefrom any organisation already specified therein and on the publication of such notification, such organisation shall be deemed to be included in or, as the case may be, omitted from the Schedule.

(3) Every notification issued under sub-section (2) shall be laid before each House of Parliament.

(4) Nothing contained in this Act shall apply to such intelligence and security organisation being organisations established by the State Government, as that Government may, from time to time, by notification in the Official Gazette, specify:

Provided that the information pertaining to the allegations of corruption and human rights violations shall not be excluded under this sub-section.

Provided further that in the case of information sought for is in respect of allegations of violation of human rights, the information shall only be provided after the approval of the State Information Commission and, notwithstanding anything contained in section 7, such information shall be provided within forty-five days from the date of the receipt of request.

(5) Every notification issued under sub-section (4) shall be laid before the State Legislature.”

14. Exhibit R1(b) notification issued by the Government dated 09.06.2011 makes it clear that in exercise of the powers conferred by sub-Section 2 of Section 24 of the Act, 2005, the Central Bureau of Investigation, National Investigation Agency and the National Intelligence Grid are included in the second schedule to the Act, 2005. Therefore, it can be seen that once CBI is included in the second schedule in contemplation of Section 24 of the Act, 2005, the said organization is not liable to furnish any information.

15. So also, according to the learned Deputy Solicitor General, the information sought for would come under Sections 8(1)(h) and (j) of the Act, 2005 and therefore, the Central Bureau of Investigation is not liable to provide any information as is sought for by the appellant. As per Section 8(i)(b) of the Act, 2005, any information which would impede the process of investigation or apprehension or prosecution of offenders is exempted from disclosure. So also, as per Section 8(1)(j) of Act, 2005, there shall be no obligation to give information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual, unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information. It is equally important to note that, the appellant, in fact, is seeking third-party information only for his purpose, which is not permitted as per the above-deliberated provision.

16. In that view of the matter, even assuming that no reasons are assigned, relying upon the provisions of law in the impugned orders, the authorities were justified in declining information. Considering the contentions advanced by the appellant in the aforesaid legal background, we are of the undoubted and definite opinion that no interference is required to the judgment of the learned single Judge, there being no jurisdictional error or other legal infirmities in exercising the discretion by the learned single Judge under Article 226 of the Constitution of India.

Needless to say, writ appeal fails and accordingly, it is dismissed.