

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 14733 of 2020

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE BIREN VAISHNAV

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

NIMISH MAHENDRA KAPADIA

Versus

THE DY. SECRETARY, GUJARAT INFORMATION COMMISSION

Appearance:

MR R N KAPADIA(11245) for the Petitioner(s) No. 1

MS JAHNVI N KAPADIA(10987) for the Petitioner(s) No. 1

NISARG S SHAH(8886) for the Petitioner(s) No. 1

MR.ROHAN SHAH, AGP for the Respondent(s) No. 3

MR SHIVANG M SHAH(5916) for the Respondent(s) No. 1

NOTICE SERVED for the Respondent(s) No. 2

CORAM: HONOURABLE MR. JUSTICE BIREN VAISHNAV

Date : 13/02/2023

ORAL JUDGMENT

1. Heard Mr.Nisarg Shah learned advocate for

Mr.R.N.Kapadia learned advocate for the petitioner, Mr.Shivang Shah learned advocate for respondent nos.1 and 2 and Mr.Rohan Shah learned advocate for respondent no.3.

2. This petition under Article 226 of the Constitution of India, initially was filed against the order dated 10.09.2020 in Second Appeal No.340 of 2020 passed by the respondent no.1. By the aforesaid order, the Gujarat Information Commission had in context of the information sought by the petitioner remanded the proceedings to the First Appellate Authority to decide the matter afresh. Pending the petition, on remand, the Deputy Collector (PIO) has rejected the application for providing information sought for by the petitioner.

3. The petitioner is a practicing advocate in this

Court and therefore the orders impugned in this petition have to be seen in light of this fact in particular. In context of proceedings before this Court in Special Civil Application No.7605 of 2010, where, the petitioner herein was the counsel for the petitioner therein, as it appears from the papers on record, the petition was allowed by a coordinate bench of this Court by a judgement and order dated 23.06.2016. Aggrieved by this order, the State went in appeal and filed Letters Patent Appeal before this Court. Apparently, there was a delay in filing the appeal and therefore a Civil Application for condonation of delay was filed by the State.

4. The petitioner, an advocate for the respondent in the appeal, approached the Public Information Officer/Collector, Athwalines, Surat, together with a status report of the Letters Patent Appeal

and the application for condonation of delay filed in this Court. In the application under the Right to Information Act, the petitioner asked for details of the correspondence with the parties to the appeal i.e. the office of the Mamlatdar, the legal department and the Revenue Department had entered into with the Government Pleader's office and that instructions that were passed on in context of the Civil Application for condonation of delay and the Letters Patent Appeal. The Principal Information Officer, Collector, District:Surat, by an order dated 08.09.2019, opined that the details shall be produced before the Court. It was also pointed out that one of the applicants viz. Pravin K. Gajjar, a party to the appeal had already sought information earlier which was rejected on 06.02.2018.

5. Aggrieved by the order, the petitioner herein had filed a First Appeal before the Appellate Authority. The Appellate Authority too by an order dated 17.12.2019, opined that since the parties were arrayed against each-other in the Court proceedings, no further information need to be provided. The petitioner then approached the Second Appellate Authority i.e. G.I.C.. Initially the impugned order under challenge was that of remand. Pending the petition, as is now part of the amended petition, challenge is also to the order of the PIO on remand invoking Section 8(1)(B) of the RTI Act whereof the application was rejected.

6. Mr.Nisarg Shah learned counsel for the petitioner would submit that the impugned communication is bad inasmuch as;

(I) The petitioner was entitled to seek details of the correspondences between the parties so as to know the reasons why there was delay in filing the appeal before this Court.

(II) Inviting the Court's attention to the provisions of Section 18A, he would submit that certainly it was not a case where information or such disclosure would endanger the sovereignty and integrity of the State or any of the contingencies arising under Section 8(1)(a) of the Act.

(III) Mr. Shah would further submit that the application that was sought for ought to have been given to the petitioner as none of the contingencies arising under Section 8 of the RTI Act were existing. The correspondence between the parties would in fact reveal the reasons why

the State had gone in appeal before this Court and supply of such information would have facilitated the petitioner from arguing the case before this Court in the appeal filed by the State.

7. Mr. Shivang Shah and Mr. Rohan Shah learned counsels appearing for the Commission and the State would submit that essentially, a wrong provision through oversight was mentioned by the authority on remand and what in fact was invoked was clause (e) of section 8(1) of the RTI Act which exempted the authorities to disclose information available to a person in his fiduciary relationship. Even the Civil Application for condonation of delay was though granted, the Letters Patent Appeal of the State has now been dismissed on merits by judgment and order dated 24.11.2021.

8. Mr. Nisarg Shah learned counsel for the petitioner would submit that the information would support the petitioner as the State contemplates challenging the order before the Supreme Court.

9. Considering the submissions made by the learned counsel for the petitioner as stated out in the earlier part of this order, a glaring fact that needs to be observed is that this is not a fit case where an ordinary litigant litigating in Court is seeking information under the provisions of the Right to Information Act. An advocate, practicing at the bar of this Court seeks information in a case which he contests for the respondents who are appellants before the Court in an appeal against the order of a single judge where the present petitioner advocate has succeeded on behalf of the petitioner and is a

respondent in the appeal. He represents the party respondent in the State appeal.

10. The request made by the petitioner therefore has to be viewed in that context. Reading the application under the RTI Act would indicate that as an advocate appearing for the party respondent in proceedings before this Court, the petitioner has asked for details of the correspondence that the advocate for the government entered into between the various offices before filing an appeal and/or application for condonation of delay.

11. Without getting into the motive of the learned counsel-the petitioner himself, it can be safely inferred that it was open for the petitioner as an advocate to contest the application filed before this Court on merits and not use the

provisions of the RTI Act for reasons to support his professional pursuit before this Court where he would appear as an advocate. This is particularly when reading of the orders impugned indicate that an earlier application was made by one of the parties to the litigation, which was rejected by the information authorities.

12. The judicial proceedings before this Court in the Civil Application for condonation of delay were at large and could have been contested by the petitioner herein in his professional capacity as a lawyer and the attempt to seek details under the Right to Information Act of the correspondence between the Government Pleader's office and the State was essentially an attempt to subvert the judicial proceedings which could have been contested on merits by the counsel, the

petitioner himself.

13. Even otherwise, as rightly pointed out by Mr. Shivang Shah learned counsel appearing for the Information Commission by relying on a decision of the Delhi High Court in case of ***Union of India v. R.K.Jain*** rendered in Letters Patent Appeal No.168 of 2015 and C.M. No.5470 of 2015, considering the provisions of Section 8(1)(e) of the Right to Information Act and the provisions of Section 126 of the Evidence Act, it is clear that communications between the office of the Government Pleader and the State in respect to judicial proceedings were professional communications as defined under Section 126 of the Evidence Act and therefore would squarely fall within the exemption under Section 8(1)(e) of the Right to Information Act. Paras 22 to 24 of this decision read as under:

“22. Reference in this context may be had to Section 126 of the Evidence Act which reads as follows:-

126. Professional communications.—No barrister, attorney, pleader or vakil shall at any time be permitted, unless with his client’s express consent, to disclose any communication made to him in the course and for the purpose of his employment as such barrister, pleader, attorney or vakil, by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course and for the purpose of such employment:

Provided that nothing in this section shall protect from disclosure—

(1) Any such communication made in furtherance of any 1[illegal] purpose; 2[illegal] purpose;”

(2) Any fact observed by any barrister, pleader, attorney or vakil, in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment. It is immaterial whether the attention of such barrister, 2[pleader], attorney or vakil was or was not directed to such fact by or on behalf of his client. Explanation.—The obligation stated in this section continues after the employment has

ceased.

23. In a catena of judgments, the Supreme Court has reiterated that a lawyer acts in a fiduciary capacity with his client. Reference maybe had to the judgment of the Supreme Court in the case of Central Board of Secondary Education & Anr. vs. Aditya Bandopadhyay & Ors., (2011) 8 SCC 497. That was a case where the petitioner in the writ petition had made an application for inspection and re-evaluation of the answer book. While dealing with the contention of the CBSE that the examining body holds the evaluated answer books in a fiduciary relationship, the Supreme Court held as follows:-

41. In a philosophical and very wide sense, examining bodies can be said to act in a fiduciary capacity, with reference to students who participate in an examination, as a government does while governing its citizens or as the present generation does with reference to the future generation while preserving the environment. But the words 'information available to a person in his fiduciary relationship' are used in Section 8(1)(e) of RTI Act in its normal and well recognized sense, that is to refer to persons who act in a fiduciary capacity, with reference to a specific beneficiary or beneficiaries who are to be expected to be protected or benefited by the actions of the fiduciary - a trustee with reference to the beneficiary of the trust, a guardian with reference to a minor/physically/infirm/mentally

challenged, a parent with reference to a child, a lawyer or a chartered accountant with reference to a client, a doctor or nurse with reference to a patient, an agent with reference to a principal, a partner with reference to another partner, a director of a company with reference to a share-holder, an executor with reference to a legatee, a receiver with reference to the parties to a lis, an employer with reference to the confidential information relating to the employee, and an employee with reference to business dealings/transaction of the employer. We do not find that kind of fiduciary relationship between the examining body and the examinee, with reference to the evaluated answer-books, that come into the custody of the examining body.

24. *Similarly in the case of Kokkanda B. Poondacha & Ors. vs. K.D.Ganapathi & Anr., (2011) 12 SCC 600 the Supreme Court held as follows:-*

12. At this stage, we may also advert to the nature of relationship between a lawyer and his client, which is solely founded on trust and confidence. A lawyer cannot pass on the confidential information to anyone else. This is so because he is a fiduciary of his client, who reposes trust and confidence in the lawyer. Therefore, he has a duty to fulfil all his obligations towards his client with care and act in good faith. Since the client entrusts the whole

obligation of handling legal proceedings to an advocate, he has to act according to the principles of uberrima fides, i.e., the utmost good faith, integrity, fairness and loyalty.”

14. For the aforesaid reasons, the petition is dismissed.

ANKIT SHAH

(BIREN VAISHNAV, J)