

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 10.03.2015

+ **W.P.(C) 1041/2013**

SUBHASH CHANDRA AGRAWAL Petitioner

versus

**OFFICE OF THE ATTORNEY GENERAL
OF INDIA**

..... Respondent

AND

+ **W.P.(C) 1665/2013**

R.K. JAIN Petitioner

versus

**OFFICE OF THE ATTORNEY GENERAL
OF INDIA**

..... Respondent

Advocates who appeared in this case:

For the Petitioners : Mr Pranav Sachdeva and Mr Syed Musaib
in W.P.(C) 1041/2013.

Mr Rajveer Singh and Mr J.K. Mittal in
W.P.(C) 1665/2013.

For the Respondents : Mr Jasmeet Singh, CGSC with Ms Kritika
Mehra for UOI in W.P.(C) 1041/2013.

Mr Vikram Jetly, CGSC for UOI in
W.P.(C) 1665/2013.

CORAM:-

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The point in issue in these petitions, is whether the Office of Attorney General of India is a 'public authority' within the meaning of section 2(h) of the Right to Information Act, 2005 (hereafter the 'RTI Act')?

2. The petitioners impugn an order dated 10.12.2012 (hereinafter referred to as the 'impugned order') passed by the Central Information Commission (hereafter 'the CIC') holding that the office of Attorney General of India (hereinafter referred to as the 'AGI') is not a Public Authority under Section 2(h) of the RTI Act. The petitioner in W.P.(C) No.1665/2013 has also challenged a letter dated 29.01.2013 issued by the office of AGI refusing the information sought for by the petitioner.

3. Briefly stated, the relevant facts leading to the present petitions are as follows:-

3.1 Shri R.K. Jain, the petitioner in W.P.(C) No.1665/2013 filed an application dated 07.01.2013 with the office of AGI, seeking information under the RTI Act. In response to the said application, the Office of AGI returned the petitioner's application under the cover of its letter dated 29.01.2013, stating that as per the full Bench decision of the CIC, the AGI is not a "public authority". Shri R.K. Jain has, therefore, challenged the impugned order dated 10.12.2012 and also prayed that a direction be issued to the respondent to provide the information as sought for by him.

3.2 Subhash Chandra Agrawal, the petitioner in W.P.(C) No.1041/2013 filed an application dated 15.11.2011, addressed to the CPIO office of the AGI, seeking certain information under the RTI Act. It is asserted that the said office of the AGI declined to accept the said application; the speed post envelope containing the said application was returned with the remark "There is no CPIO in AG's Office". Aggrieved by the same, the petitioner filed a complaint under Section 18 of the RTI Act, with the CIC, on 02.12.2012. The petitioner also requested that a direction be issued to the

Office of the AGI to respond to the petitioner's application dated 15.11.2011.

4. By the impugned order dated 10.12.2012, the CIC rejected the complaint filed by the petitioner in W.P.(C) No.1041/2013 by holding that AGI was not a "Public Authority" within the meaning of Section 2(h) of the Act. The CIC was of the opinion that the AGI was only a person and could not be considered as an "authority" and, therefore, fell outside the sweep of Section 2(h) of the RTI Act.

5. The CIC referred to the following passage from the decision of the Supreme Court in *Som Prakash Rekhi v. Union of India and Anr.*: (1981) 1 SCC 449 to conclude that AGI was not an authority:-

"27. Control by Government of the corporation is writ large in the Act and in the factum of being a Government company. Moreover, here, Section 7 gives to the Government company mentioned in it a statutory recognition, a legislative sanction and status above a mere Government company. If the entity is no more than a company under the Company law or society under the law relating to registered societies or cooperative societies you cannot call it an authority. A ration shop run by a cooperative store financed by government is not an authority, being a mere merchant, not a sharer of State power. 'Authority' in law belong to the province of power: 'Authority (in Administrative Law) is a body having jurisdiction in certain matters of a public nature.' Therefore, the 'ability conferred upon a person by the law to alter, by his own will directed to that end, the rights, duties; liabilities or other legal relations, either of himself or of other persons' must be present ab extra to make a person an 'authority'. When the person is an 'agent or instrument of the functions of the State' the power is public. So the search here must be to see whether the Act vests authority, as agent or instrument of the State, to affect the legal relations of oneself or others."

6. The petitioners assail the decision of the CIC and contend that the office of the AGI is established by virtue of Article 76 of the Constitution of India and, therefore, AGI would be answerable to the people of India. It was further contended that the right to information is a fundamental right under Article 19(1)(a) of the Constitution of India and, therefore, the RTI Act must be interpreted in furtherance of the said fundamental right.

7. The petitioners further referred to the decision of the Supreme Court in **B.P.Singhal v. Union of India**: (2010) 6 SCC 331 to contend that the AGI holds a public office. It was further contended that apart from acting as a lawyer for the Government of India, the AGI also has certain other privileges and functions; under Article 88 of the Constitution of India, the AGI has the right to take part in the proceedings of the Parliament. The AGI also performs certain statutory duties under the Contempt of Courts Act, 1971.

8. The respondent disputes the contentions urged by the petitioners. It is submitted on behalf of the respondent that the AGI is a standalone counsel of the Government of India and is in a *sui generis* position under the Constitution of India. It is contended that the functions performed by AGI neither alter the rights of any person nor bind the Government of India; therefore, the AGI could not be construed as an “authority”. The learned counsel for the respondent referred to the decision of the Supreme Court in **Sukhdev Singh v. Bhagatram**: (1975) 1 SCC 421 in support of his contention that the term “authority” refers to the power to alter the ‘relations’ or rights of others. And, none of the functions of AGI belong to the realm of authority. He also referred to Rule 5 of the Law Officer

(Conditions of Services) Rules, 1987 (hereafter 'the said Rules') which provides for the duties of a Law Officer. He submitted that none of the duties to be performed by the AGI could render the AGI as an 'authority'.

9. The learned counsel for respondent also emphasized that the AGI does not have the necessary infrastructure to support the applicability of the RTI Act inasmuch as, the AGI is a single person office and, therefore, would have to act as a CPIO as well as the Appellate Authority. Since the same is not feasible, the AGI cannot be held as 'Public Authority'.

10. Section 2(h) of the RTI Act defines "Public Authority" and reads as under:-

- "(h) "public authority" means any authority or body or institution of self-government established or constituted,—
- (a) by or under the Constitution;
 - (b) by any other law made by Parliament;
 - (c) by any other law made by State Legislature;
 - (d) by notification issued or order made by the appropriate Government, and includes any—
 - (i) body owned, controlled or substantially financed;
 - (ii) non-Government Organisation substantially financed, directly or indirectly by funds provided by the appropriate Government;"

11. Article 76 of the Constitution of India provides for the appointment of the Attorney General for India and reads as under:-

"76. Attorney-General for India.—(1) The President shall appoint a person who is qualified to be appointed a Judge of the Supreme Court to be Attorney-General for India.

(2) It shall be the duty of the Attorney-General to give advice to the Government of India upon such legal matters, and to perform such other duties of a legal character, as may from

time to time be referred or assigned to him by the President, and to discharge the functions conferred on him by or under this Constitution or any other law for the time being in force.

(3) In the performance of his duties the Attorney-General shall have right of audience in all courts in the territory of India.

(4) The Attorney-General shall hold office during the pleasure of the President, and shall receive such remuneration as the President may determine.”

12. In view of the aforesaid, it cannot be disputed that the office of Attorney General for India is established under the Constitution of India. The conditions of service of the AGI are governed under the said Rules which have been framed in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India. By virtue of Rule 2(d) of the said Rules, the expression ‘Law Officer’ includes the AGI. Rule 5 of the said Rules provides for the duties of a Law Officer and reads as under:-

- “5. Duties - It shall be the duty of a Law Officer –
- (a) to give advice to the Government of India upon such legal matters, and to perform such other duties of a legal character, as may from time to time, be referred or assigned to him by the Government of India.
 - (b) to appear, whenever required, in the Supreme Court or in any High Court on behalf of the Government of India in cases (including suits, writ petitions, appeal and other proceedings) in which the Government of India is concerned as a party or is otherwise interested;
 - (c) to represent the Government of India in any reference made by the President to the Supreme Court under Article 143 of the Constitution; and

- (d) to discharge such other functions as are conferred on a Law Officer by or under the Constitution or any other Law for the time being in force.”

13. Rule 6 of the said Rules provides for the entitlement of leave and Rule 7 of the said Rules prescribes the remuneration, fee and allowances payable to the Law Officers. By virtue of Rule 7(2)(d) of the said Rules, the AGI is also entitled for sumptuary allowance in addition to other fees and allowances. Rule 9 of the said Rules provides for the perquisites that a Law Officer is entitled to and reads as under:-

“9. Perquisites — (1) The services of personal staff, office accommodation and telephones at the office and residence of a Law Officer shall be provided by the Government of India free of cost.

Provided that a Law Officer shall be liable to make payment for the telephone Bills, other than the telephone calls for official purposes, made from his residential telephone, if they exceed such number of telephone calls or such charges for telephone calls in respect of the residential telephone as the Government of India may, from time to time, determine in this regard;

“Explanation — For the purpose of this rule " Personal staff means: -

- (i) in the case of Attorney General and Solicitor General - a Principal Private Secretary in the appropriate grade, a stenographer and a jamadar;
- (ii) in the case of Additional Solicitor General - a Private Secretary in the appropriate grade, a stenographer and a jamadar”.

(2) A Law Officer would be provided by the Government of India suitable residential accommodation on payment of usual rent fixed by the Government from time to time.”

14. By virtue of Rule 8 of the said Rules, certain restrictions are placed on a Law Officer and the said Rule reads as under:-

“8. Restrictions- (1) A Law Officer shall not -

- (a) hold briefs in any court for any party except the Government of India or the Government of a State or any University, Government School or College, local authority, Public Service Commission, Port Trust, Port Commissioners, Government aided or Government managed hospitals, a Government company as defined in Section 617 of the Companies Act, 1956 (1 of 1956), any Corporation owned or controlled by the State, any body or institution in which the Government has a preponderating interest;
- (b) advise any party against the Government of India or a Public Sector Undertaking, or in cases in which he is likely to be called upon to advise, or appear for, the Government of India or a Public Sector Undertaking;
- (c) defend an accused person in a criminal prosecution, without the permission of the Government of India; or
- (d) accept appointment to any office in any company or corporation without the permission of the Government of India;
- (e) advise any Ministry or Department of Government of India or any statutory organization or any Public Sector Undertaking unless the proposal or a reference in this regard is received through the Ministry of Law and Justice, Department of Legal Affairs.”

(2). Where a Law Officer appears or does other work on behalf of bodies of Union of India such as the Election Commission, the Union Public Service Commission etc. he shall only be entitled to fees on the scales mentioned in clauses (c) of sub-rule (1) of rule 7.”

15. Article 88 of the Constitution of India expressly provides that “*every Minister and the Attorney-General of India shall have the right to speak in, and otherwise to take part in the proceedings of, either House, any joint sitting of the Houses, and any committee of Parliament of which he may be named a member, but shall not by virtue of this article be entitled to vote.*”

16. In addition to acting as legal advisor and performing duties of a legal character that may be assigned, the AGI is also obliged to discharge the functions as may be conferred under any law for the time being in force.

17. By virtue of Section 15 of the Contempt of Courts Act, 1972, the Supreme Court may take an action for criminal contempt on a motion made by the AGI or the Solicitor General. Thus, the AGI also has the right to move a motion in case of a criminal contempt, before the Supreme Court.

18. The AGI is also an *ex officio* member of the Bar Council of India and is also considered as a leader of the Bar.

19. It is apparent from the above that the role of the AGI is not limited to merely acting as a lawyer for the Government of India as is contended by the respondent; the AGI is a constitutional functionary and is also obliged to discharge the functions under the Constitution as well as under any other law.

20. Although, it cannot be disputed that AGI is a constitutional functionary, the point in issue is whether he can be termed as an “authority”. The respondent has relied heavily on the decisions of the Supreme Court in *Sukhdev Singh* (*supra*) and *Som Prakash Rekhi* (*supra*) to contend that the AGI cannot be considered as an authority since the office of Attorney General of India does not have the power *to alter, by his*

own will directed to that end, the rights, duties; liabilities or other legal relations, either of himself or of other.

21. I am unable to accept the aforesaid contention, for the reason that the term “authority” as used in the opening sentence of Section 2(h) of the Act cannot be interpreted in a restrictive sense. The expression “authority” would also include all persons or bodies that have been conferred a power to perform the functions entrusted to them. Merely because the bulk of the duties of the AGI are advisory, the same would not render the office of the AGI any less authoritative than other constitutional functionaries. There are various bodies, which are entrusted with ‘staff functions’ (i.e. which are advisory in nature) as distinct from ‘line functions’. The expression “authority” as used in Section 2(h) cannot be read as a term to exclude bodies or entities which are, essentially, performing advisory functions.

22. In my view, the expression “authority” as used in Section 2(h) of the Act would encompass any office that is conferred with any statutory or constitutional power. The office of the AGI is an office established under the Constitution of India; the incumbent appointed to that office discharges functions as provided under the Constitution. Article 76(2) of the Constitution expressly provides that the AGI would perform the duties of a legal character and also discharge the functions conferred on him under the Constitution or any other law in force. Indisputably, the appointee to that office is, by virtue the constitution, vested with the authority to discharge those functions.

23. A Coordinate Bench of this Court in ***IFCI Limited v. Ravinder Balwani***: (175) 2010 DLT 84 had expressly held that “Given the fact that

there is a specific definition of what constitutes a ‘public authority’ for the purposes of the RTI Act, there is no warrant for incorporating the tests evolved by the Supreme Court in Pradeep Kumar Biswas for the purposes of Article 12 of the Constitution is likely to be a ‘public authority’ under the RTI Act, the converse need not be necessarily true. Given the purpose and object of the RTI Act the only consideration is whether the body in question answers the description of a ‘public authority’ under Section 2(h) of the RTI Act. There is no need to turn to the Constitution for this purpose, particularly when there is a specific statutory provision for that purpose.”

24. I respectfully concur with the aforesaid view that reference to the definition of an authority under Article 12 of the Constitution is not necessary in determining the scope of Section 2(h) of the RTI Act. The expression “authority” as used under Section 2(h) of the RTI Act, also necessarily takes colour from the context of the said Act. An office that is established under the Constitution of India would clearly fall within the definition of Section 2(h) of the RTI Act. Even in common parlance, the AGI has always been understood as a constitutional authority.

25. The decisions of the Supreme Court in ***Sukhdev Singh*** (*supra*) and ***Som Prakash Rekhi*** (*supra*) are rendered under Article 12 of the Constitution of India and it may not be apposite to apply them for interpreting Section 2(h) of the RTI Act. The question before the Supreme Court in ***Sukhdev Singh*** (*supra*) was whether certain statutory corporations should be considered as “State” under Article 12 of the Constitution of India. In ***Som Prakash Rekhi*** (*supra*), the Supreme Court was concerned with the issue whether The Bharat Petroleum Corporation Ltd., a

Government Company, was “State” under the constitution. The Supreme Court held that certain corporation/ companies could be considered as ‘other authorities’ under Article 12 of the Constitution as they acted as instrumentality of the State. One of the reasons that persuaded the Supreme Court to take this view was the functions that were performed by the Corporations in question. In *Sukhdev Singh (supra)*, the Supreme Court observed that “a public authority is a body which has public or statutory duties to perform and which performs those duties and carries out its transaction for the benefit of the public and not for private profit”.

26. In *Som Prakash Rekhi (supra)*, the Supreme Court referred to law lexicon or British India (1940) by P. Ramanatha Aiyar and noted that ‘authority’ is a body having jurisdiction in certain matters of public nature.

27. It is apparent from the above that the public nature of the activities being carried on by the statutory corporations and the Government companies, in question persuaded the Courts to hold them as ‘other authorities’ under Article 12 of the Constitution of India. It is not disputed that the functions of the AGI are also in the nature of public functions. The AGI performs the functions as are required by virtue of Article 76(2) of the Constitution of India. In *B.P. Singhal (supra)*, a Constitution Bench of the Supreme Court held the office of the AGI to be a public office. In this view also, the office of the AGI should be a public authority within the meaning of Section 2(h) of the RTI Act.

28. It was contended that the nature of information or advice rendered by the AGI was not amenable to disclosure under the RTI Act for several reasons; first of all, it was contended that the said information is privileged.

Secondly, it was emphasized that advice is rendered on files which are subsequently returned. Thus, the information may not be available for disclosure under the RTI Act. In this regard, it cannot be disputed that if information sought for falls within the exceptions as listed in Section 8 of the Act, there would be no obligation to disclose the same. This aspect has not been examined by the CIC nor urged before me and, therefore, I do not propose to address the same.

29. It has been contended that there would be a practical difficulty as the office of the Attorney General is only a skeletal office which only consists of the appointee and the appointee's personal staff. In my view, this cannot be considered as a reason for excluding the applicability of the Act on a public authority.

30. In view of the aforesaid, the impugned order is set aside and the matter is remanded to the CIC to consider the other contentions urged by the petitioners before the CIC. Since the only reason indicated for denying the information to Shri R.K. Jain was the CIC's impugned order, the AGI is directed to reconsider the application filed by Shri R.K. Jain.

31. The petitions are, accordingly, disposed of.

VIBHU BAKHRU, J

MARCH 10, 2015
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