

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 20139 of 2017**

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HIGH COURT OF GUJARAT

Versus

CHANDRAVADAN DHRUV &amp; 1 other(s)

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Appearance:

MS TRUSHA K PATEL for the Petitioner(s) No. 1

NONE for the Respondent(s) No. 1

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CORAM: **HONOURABLE MR. JUSTICE BIREN VAISHNAV**

Date : 05/01/2023

**ORAL ORDER**

1. Ms. Trusha Patel, learned advocate appears for the petitioner - High Court of Gujarat on its administrative side. Though served none appears for the respondent no.

1.

2. Challenge in this petition is to the order dated 11.08.2017 passed by respondent no. 2 in an appeal filed by the respondent no.1.

3. Facts in brief would indicate that the respondent no. 1 filed an application under the Right to Information Act

(‘RTI Act’ for short) on 14.06.2016 seeking certain information as set out in the application which are reproduced hereinbelow:

“

(1) Furnish copy of warrant available with the High Court Registry issued by the Office of the President of India about appointment of Ms. Sugnaben Bhatt as Additional Judge in the Gujarat High Court.

(2) Furnish copy of the document available with the High Court Registry regarding the duty, which Ms. Sugnaben Bhatt used to discharge as Judge, prior to her appointment as Additional Judge in the Gujarat High Court.

(3) Duration of Ms. Sugna Bhatt as Additional Judge in Gujarat High Court.

(4) As per the order dated 20/10/1994 of the Government of India, Ms. Sugna Bhatt, Additional Judge of Gujarat High court was transferred to Kerala High Court. Furnish copy of the document containing request and/or reasons made by her for not joining at the said place.

(5) Furnish copy of the Resolution/Circular/Order containing the date from which Ms. Sugna Bhatt was suspended as Additional Judge of Gujarat High Court.

(6) Provide information regarding the Salary and allowances paid to her for performing her duty as Additional Judge, Gujarat High Court.

(7) Furnish copy of the warrant/letter dated 25/09/1995 of the President of India regarding cancellation of charge of Ms. Sugna Bhatt as

Additional Judge.

(8) Copies of the correspondence done for relieving Ms. Sugna Bhatt from the charge of Additional Judge pursuant to the letter of the Hon'ble President of India.

(9) Provide name and address of the office/Court where she served as Judge after she was relieved from her duty/charge as Additional Judge of Gujarat High Court."

3.1 Pursuant to the application so made, the Public Information Officer, Gujarat High Court, Sola addressed a letter dated 05.08.2016 replying to the respondent point-wise indicating that as regards point no. 1 no information can be provided in light of Section 8(1)(e) of the RTI Act. With regard to point no. 4, the Public Information Officer opined that no information was available on record. In respect of point no. 6 which was with regard to information regarding pay and allowances of Ms. Justice S.K. Bhatt for discharging duties as an Additional Judge, High Court of Gujarat, the Information Officer invoked the provisions of Section 8(1)(j) of the RTI Act stating that it was personal information which had no relationship with any public activity.

3.2 Aggrieved by the order of the Public Information Officer, the respondent preferred an appeal before the appellate authority. By a judgement and order dated 03.09.2016, the appellate authority dismissed the appeal reiterating the findings of the Public Information Officer with regard to not being able to provide information with regard to point no. 1 i.e. to furnish copy of warrant dated 25.09.1995 issued by His Excellency the President regarding appointing Ms. Justice Sugnaben Bhatt as Additional Judge in the High Court of Gujarat and essentially point no. 6 regarding disclosure of salary, pay and allowances paid to her.

3.3 The respondent no. 1 filed a second appeal before the Gujarat Information Commission bearing Appeal No. 5868 of 2016 in respect of these three points and the Information Commission by the impugned order agreed with the orders of the authorities below except the reply regarding point no. 6 i.e. for providing information

regarding pay and allowance of Ms. S.K. Bhatt. The Commission opined that such information should be given under Section 4(1)(b)(x) of the RTI Act.

4. Ms. Trusha Patel, learned advocate appearing for the petitioner submitted that the order of the original authority and the appellate authority insofar as the information was provided for or refusal was on account of no evidence was not challenged by the respondent no. 1 before the second appellate authority nor being aggrieved by the other point on which information was refused has the respondent approached this court. As far as information directed to be provided with regard to pay and allowances received by Ms. S.K. Bhatt she would submit that Section 4(1)(b)(x) of the RTI Act deals with monthly remuneration received by each of its officers and employees. As far as officers and employees are concerned a proactive declaration with regard to the officers and employees of the High Court is made as is evident from Annexure E pertaining to salary of the



Registrar General and the staff thereunder. Pay and allowances of the Judges of the High Court cannot be branded as of one being of the officers and employees and therefore a direction of the Commission is misconceived.

4.1 In support of her submissions, Ms. Patel would rely upon the decision of the Apex Court in the case of **Girish Ramchandra Deshpande vs. Central Information Commissioner and Others rendered in Special Leave Petition (Civil) No. 27734 of 2012** and submit that even when admittedly the case fell within the parameters of Section 4 of the RTI Act, the information sought for with regard to details of salary in respect of one employee which was refused by the Information Commission as is evident from the order of the Commission quoted in para 4 of the judgement of the Apex Court, relying on clause (j) of Section 8(1) of the RTI Act where only copies of the posting orders were directed to be supplied and which was a subject matter of challenge by the applicant

seeking information, the Apex Court held that such information was exempted from being disclosed. She also relied on paras 58 & 59 of the judgement rendered by the Apex Court in the case of **Central Public Information Officer, Supreme Court of India vs. Subhash Chandra Agarwal [(2020) 5 SCC 481]**.

5. Section 4(1)(b)(x) of the RTI Act reads as under:

“4(1)(b)(x) the monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations;”

5.1 Apparently, the position of a Judge of the High Court is a constitutional post which could fall within the parameters of Section 4(1)(b)(x) of the RTI Act which deals with monthly remuneration of officers and employees. The finding of the Commission therefore that the Information Officer needed to be supplied is patently bad.

5.2 Even in the case of **Girish Ramchandra Deshpande** (supra) the Apex Court after reproducing the order of the Central Information Commission which was even otherwise a case where salary details of an employee is sought for confirmed the order of the Commission refusing application in light of Section 8(1) (e) & 8(1)(j) of the RTI Act. Paras 4 and 10 to 13 read as under:

“4. Aggrieved by the said order, the petitioner approached the CIC. The CIC passed the order on 18.6.2009, the operative portion of the order reads as under:

“The question for consideration is whether the aforesaid information sought by the Appellant can be treated as ‘personal information’ as defined in clause (j) of [Section 8\(1\)](#) of the RTI Act. It may be pertinent to mention that this issue came up before the Full Bench of the Commission in Appeal No.CIC/AT/A/2008/000628 ([Milap Choraria v. Central Board of Direct Taxes](#)) and the Commission vide its decision dated 15.6.2009 held that “the Income Tax return have been rightly held to be personal information exempted from disclosure under clause (j) of [Section](#)



8(1) of the RTI Act by the CPIO and the Appellate Authority, and the appellant herein has not been able to establish that a larger public interest would be served by disclosure of this information. This logic would hold good as far as the ITRs of Shri Lute are concerned. I would like to further observe that the information which has been denied to the appellant essentially falls in two parts - (i) relating to the personal matters pertaining to his services career; and (ii) Shri Lute's assets & liabilities, movable and immovable properties and other financial aspects. I have no hesitation in holding that this information also qualifies to be the 'personal information' as defined in clause (j) of Section 8(1) of the RTI Act and the appellant has not been able to convince the Commission that disclosure thereof is in larger public interest."

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10. This Court in [Central Board of Secondary Education and another v. Aditya Bandopadhyay and others](#) (2011) 8 SCC 497 while dealing with the right of examinees to inspect evaluated answer books in connection with the examination conducted by the CBSE Board had an occasion to consider in detail the aims and object of the RTI Act as well as the reasons for the introduction of the exemption clause in the RTI Act, hence, it is unnecessary, for the purpose of this case to further examine the

meaning and contents of [Section 8](#) as a whole.

11. We are, however, in this case primarily concerned with the scope and interpretation to clauses (e), (g) and (j) of [Section 8\(1\)](#) of the RTI Act which are extracted herein below:

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

(e) information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;

(g) information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;

(j) 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.”

12. The petitioner herein sought for copies of all memos, show cause notices and censure/punishment awarded to the third respondent from his employer and also details viz. movable and immovable properties and also the details of his investments, lending and borrowing from Banks and other financial institutions. Further, he has also sought for the details of gifts stated to have accepted by the third respondent, his family members and friends and relatives at the marriage of his son. The information mostly sought for finds a place in the income tax returns of the third respondent. The question that has come up for consideration is whether the above-mentioned information sought for qualifies to be "personal information" as defined in clause (j) of [Section 8\(1\)](#) of the RTI Act.

13. We are in agreement with the CIC and the courts below that the details called for by the petitioner i.e. copies of all memos issued to the third respondent, show cause notices and orders of censure/punishment etc. are qualified to be personal information as defined in clause (j) of [Section 8\(1\)](#) of the RTI Act. The performance of an employee/officer in an organization is primarily a matter between the employee and the employer and normally those aspects are governed by the service rules which fall under the expression "personal information", the disclosure of which has no relationship to any public activity or public

interest. On the other hand, the disclosure of which would cause unwarranted invasion of privacy of that individual. Of course, in a given case, if the Central Public Information Officer or the State Public Information Officer of the Appellate Authority is satisfied that the larger public interest justifies the disclosure of such information, appropriate orders could be passed but the petitioner cannot claim those details as a matter of right.”

5.3 Even in the case of **Subhash Chandra Agarwal** (supra), the Apex Court has held on similar lines.

“58. Reference can also be made to Aditya Bandopadhyay (supra), as discussed earlier in paragraph 32, where this Court has held that while a fiduciary could not withhold information from the beneficiary in whose benefit he holds such information, he/she 37 (2013) 14 SCC 794 owed a duty to the beneficiary to not disclose the same to anyone else. This exposition of the Court equally reconciles the right to know with the rights to privacy under clause (j) to [Section 8\(1\)](#) of the RTI Act.

59. Reading of the aforesaid judicial precedents, in our opinion, would indicate that personal records, including name, address, physical, mental and psychological status, marks obtained, grades and answer sheets, are

all treated as personal information. Similarly, professional records, including qualification, performance, evaluation reports, ACRs, disciplinary proceedings, etc. are all personal information. Medical records, treatment, choice of medicine, list of hospitals and doctors visited, findings recorded, including that of the family members, information relating to assets, liabilities, income tax returns, details of investments, lending and borrowing, etc. are personal information. Such personal information is entitled to protection from unwarranted invasion of privacy and conditional access is available when stipulation of larger public interest is satisfied. This list is indicative and not exhaustive.”

6. In view of the above, the order impugned in the present petition is quashed and set aside to the extent it directs the petitioner to provide the information sought by respondent no. 1 relating to salary and allowances paid to Ms. Justice S.K. Bhatt as additional judge of the High Court of Gujarat. Petition is accordingly allowed.

**(BIREN VAISHNAV, J)**

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