

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 27th JULY, 2022

IN THE MATTER OF:

+ **LPA 442/2022& CM APPLS.32067/2022, 32068/2022, 32069/2022**

ANJALI BHARDWAJ Appellant

Through: Mr. Prashant Bhushan, Ms.Cheryl
D' Souza, Mr.Lalit Kumar, Advocates

versus

CPIO, SUPREME COURT OF INDIA Respondent

Through:

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The Petitioner seeks to challenge the Order dated 30.03.2022, passed by a single Judge of this Court in Anjali Bhardwaj v. CPIO, Supreme Court of India, W.P.(C) 4129/2022, by which the learned Single Judge dismissed the writ petition which had been filed challenging the Order dated 16.12.2021 passed by the Central Information Commission in a Second Appeal No.CIC/SCOFI/A/2019/642099.

2. The facts, in brief, leading to the present appeal are as follows:-

- i. The Appellant herein preferred an RTI application dated 26.02.2019, seeking the following information from the Central Public Information Officer, Supreme Court of India:-

“1. Please provide a copy of the agenda of the meeting of the Collegium of the Supreme Court held on December 12, 2018.

2. Kindly provide a copy of the decisions taken on the meeting of the Collegium of the Supreme Court held on December 12, 2018.

3. Kindly provide a copy of the resolutions of the Collegium meeting held on December 12, 2018. “

- ii. The said application was rejected *vide* reply letter dated 11.03.2022 stating that the issue of providing information relating to the appointment of Judges of the Supreme Court was the subject matter of judicial proceedings in Civil Appeal No.10044-45/2010, and, therefore, the matter was sub-judice.
- iii. It was further stated that in terms of the Order dated 04.12.2009, passed by the Apex Court in Central Public Information Officer & Anr. v. Subhash Chandra Agrawal, SLP (C) No.328555-56/2009, there was a stay on disclosure of information relating to such matters, and that disclosure of information in this regard would amount to contempt of court.
- iv. The said Order was challenged by the Appellant herein before the First Appellate Authority under the Right to Information Act, 2005 (hereinafter referred to as '*RTI Act*') in Appeal No.75/2019. The said appeal was disposed of *vide* Order dated 23.04.2019.
- v. The First Appellate Authority while dismissing the Appellant's first appeal, placed reliance on a Resolution passed by the Apex Court on 10.01.2019, wherein it was stated that though certain decisions were taken on 12.12.2018, however, the required consultation could not be completed as winter vacation intervened, and as no Resolution had been passed, there was no question of supplying any information.

- vi. The Order passed by the First Appellate Authority was challenged in a Second Appeal which was rejected by the Central Information Commission *vide* Order dated 16.12.2021, upholding the Order of the First Appellate Authority.
- vii. The Appellant thereafter filed a Writ Petition being W.P.(C) 4129/2022 before this Court. The learned Single Judge *vide* Judgment dated 30.03.2022 in W.P.(C) 4129/2022, noticed that the issues which arose for discussion in the Collegium Resolution on 12.12.2018, remained unresolved and no formal Resolution had been drawn up. The very same agenda items were taken up for consideration on 10.01.2019.
- viii. The learned Single Judge held that the Resolution of the Collegium on 10.01.2019 specifically records that although certain decisions were taken, since consultation could not be completed and the winter vacation of the Court intervened, the agenda items of 12.12.2018 had again been deliberated upon by the Collegium on 5-6.01.2019, wherein the proposals were re-evaluated in light of the additional material that had become available, and Resolutions were passed on 10.01.2019. The learned Single Judge, therefore, found no reason to differ from the Orders passed by the three authorities below.
- ix. This order of the learned Single Judge of this Court is under challenge in the instant appeal.

3. Mr. Prashant Bhushan, learned counsel for the Petitioner, places reliance on a Resolution dated 03.10.2017, wherein the Collegium resolved that decisions taken by the Collegium indicating the reasons would be put on

the website of the Supreme Court. The relevant portion of the Resolution dated 03.10.2017 has been reproduced as under:-

" *The Collegium has resolved:*

THAT the decisions henceforth taken by the Collegium indicating the reasons shall be put on the website of the Supreme Court, when the recommendation(s) is/are sent to the Government of India, with regard to the cases relating to initial elevation to the High Court Bench, confirmation as permanent Judge(s) of the High Court, elevation to the post of Chief Justice of High Court, transfer of High Court Chief Justices/ Judges and elevation to the Supreme Court, because on each occasion the material which is considered by the Collegium is different.

The Resolution is passed to ensure transparency and yet maintain confidentiality in the Collegium system."

4. Mr. Bhushan thereafter places reliance on an excerpt from the autobiography of a former Chief Justice of India to contend that certain decisions were taken during the Collegium meeting held on 12.12.2018. He, therefore, contends that the decisions taken in the Collegium meeting held on 12.12.2018 would come within the definition of 'Information' as defined under Section 2(f) of the RTI Act, and that under Section 7(9) of the RTI Act, it is mandated that information shall ordinarily be provided in the form in which it is sought unless it would disproportionately divert the resources of the public authority or would be detrimental to the safety or preservation of the record in question. He states that in the absence of exceptions stipulated under Section 7(9) of the RTI Act, it was the duty of the authorities to provide information under the RTI Act.

5. Mr. Bhushan also places reliance on an article published by a news website Bar & Bench on 23.01.2019 to buttress his argument that certain decisions had been taken on 12.12.2018, and, therefore, on the basis of the Resolution dated 03.10.2017 as well as the underlying principles of the RTI Act, the learned Counsel for the Appellant states that he is entitled to the decision taken on 12.12.2018.

6. Heard Mr. Prashant Bhushan, learned Counsel for the Appellant, and perused the material on record.

7. A perusal of the Resolution dated 03.10.2017 passed by the Collegium indicates that reasons had to be provided on the website of the Supreme Court only in cases of initial elevation to the High Court Bench, confirmation as permanent Judge(s) in the High Court, elevation to the post of Chief Justice of the High Court, transfer of High Court Chief Justices/Judges and elevation to the Supreme Court. However, for all other Collegium Resolutions, reasons were not to be uploaded on the website.

8. A perusal of the Collegium Resolution dated 10.01.2019 indicates that the Collegium of the Apex Court met on 12.12.2018 to consider the names for appointment of Judges to the Supreme Court as well as to consider other proposals of transfer of Chief Justices of the High Courts. However, the required consultation could not be undertaken and completed as winter vacations intervened, and by the time the Courts reopened, the composition of the Collegium had undergone a change.

9. The Resolution dated 10.01.2019 also indicates that subsequent to the reopening of the Court, the newly constituted Collegium deemed it appropriate to consider the matter afresh and proposals were re-evaluated in light of the additional material that had become available. After further deliberations, Resolutions were passed on 10.01.2019. The Resolution dated

03.10.2017 does not indicate that even those decisions that have not been either finalized or crystallized into a Resolution have to be uploaded; only those decisions pertaining to information stipulated in the Resolution dated 03.10.2017 need to be uploaded on the website.

10. Furthermore, the reliance placed by the learned counsel for the Appellant on the news article and the excerpt from the autobiography fails to demonstrate as to whether the decisions allegedly taken were merely verbal or had been crystallised into a written resolution that could at all come under the ambit of 'information' under Section 2(f) of the RTI Act, thereby warranting the access to the same by the Appellant.

11. From a perusal of the material on record, the reasoning of the learned Single Judge with respect to the fact that no resolution was drawn on 12.12.2018 does not require any interference. Resultantly, no interference is required reversing the orders of the authorities below and the Order passed by the learned Single Judge.

12. The appeal is dismissed with the above observations. Pending application(s), if any, stand disposed of.

SATISH CHANDRA SHARMA, C.J.

SUBRAMONIUM PRASAD, J

JULY 27, 2022

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