

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C)(PIL) No.05/2022

Sri Mrigankar Sekhar Dey

----Petitioner(s)

Versus

Union of India and another

-----Respondent(s)

For Petitioner

: Mr. Arvind Sethi, Advocate,
Mr. M. Debnath, Advocate.

For Respondent(s)

: Mr. Biswanath Majumder, CGC.

**HON'BLE THE CHIEF JUSTICE MR. INDRAJIT MAHANTY
HON'BLE MR. JUSTICE S.G. CHATTOPADHYAY**

Order

16/03/2022

(Indrajit Mahanty, C.J.)

1. Present petition is filed in public interest under article 226 of the constitution of India seeking the following reliefs:

(a) This Hon'ble Court may be pleased to quash and set aside Section 11 of the Right to Information Act, 2005 for the same being ultravires of the Article 14 and 21 of the Constitution of India.

(b) This Hon'ble Court may be pleased to direct Respondent no 2 to disclose information that may be sought by the Petitioner regarding the Greens Zoological Rescue and Rehabilitation Kingdome or any such private set-up without alerting/giving notice to such party.

(c) Any other relief that this Hon'ble Court may deem fit and proper.

(d) For the cost of this Petition.

2. It is the case of the Petitioner that native and smuggled wildlife species find their way either in a government or privately owned zoological

park/rescue centre/rehabilitation centre. Petitioner further submits that fauna species that ends up in private set-ups are kept in deplorable conditions and often succumb to untimely death without any proper environment, enclosure, feed and veterinary attention. In this backdrop, the Petitioner further submits that Section 11 of the RTI Act is a restricting provision since it required the private third party to give a consent before the Respondent no 2 can disclose information to the animal right activists and other public-spirited citizens such as the Petitioner about the conditions of the animals in such set-up.

3. To buttress the argument, the Petitioner relies on Articles 48A and 51A of the Constitution of India to highlight recognition of significance of protection of wildlife both as a Directive Principle of State Policy and Fundamental Duty of the citizens. Petitioner, further rightly points out, that every wild animal is a property of Government of India as per Section 39 of the Wildlife Protection Act 1972.
4. Petitioner is challenging the constitutionality and validity of the Section 11 of the RTI Act, 2005.

"11. Third party information. -

(1) Where a Central Public Information Officer or a State Public Information Officer, as the case may be, intends to disclose any information or record, or part thereof on a request made under this Act, which relates to or has been supplied by a third party and has been treated as confidential by that third

12.E.JIY., the Central Public Information Officer or State Public

Information Officer, as the case may be, shall, within five days from the receipt of the request, give a written notice to such third party of the request and of the fact that the

Central Public Information Officer or State Public Information Officer, as the case may be, intends to disclose the information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party shall be kept in view while taking a decision about disclosure of information:

Provided that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party.

(2) Where a notice is served by the Central Public Information Officer or State Public Information Officer, as the case may be, under sub-section (1) to a third party in respect of any information or record or part thereof, the third party shall, within ten days from the date of receipt of such notice, be given the opportunity to make representation against the proposed disclosure.

(3) Notwithstanding anything contained in section 7, the Central Public Information Officer or State Public Information

Officer, as the case may be, shall, within forty

days after receipt of the request under section 6, if the third party has been given an opportunity to make representation under sub-section (2), make a decision as to whether or not to disclose the information or record or part thereof and give in writing the notice of his decision to the third party.

(4) A notice given under sub-section (3) shall include a statement that the third party to whom the notice is given is entitled to prefer an appeal under section 19 against the decision."

It is the categorical submission of the Petitioner that the aspect of information being sought in 'public interest' is not covered in the said provision and further the notice to third party can alert the third party who may eliminate its tracks by destroying evidence. Petitioner has apprehension about ill-treatment of animals in private set-up although there is no material in the Petition to support such apprehension.

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5. Section 11 is applicable when information to be disclosed is 'relating to or supplied by a third party' and has been treated as confidential, by that third party. To know, whether information 'relating to or supplied by the third party' has been treated as confidential by that third party, Public Information Officer has to give notice. Public Information Officer cannot unilaterally decide, on its own, that the information, sought for by the applicant, is confidential or not. Whether information has been treated as confidential, by the third party or not, that can be said only by the third party and upon getting such submission in writing or orally, Public Information Officer has to consider them while taking a

decision about disclosure of information.

6. Where a statute confers a right; which in the instant case is the right of a third party to refuse furnishing of private or confidential information, same cannot be wiped out in a manner except as set out in that statute. In order to outweigh the privacy/confidentiality of a third party; presumptions and baseless allegations alone are not sufficient, and the seeker of information must set out compelling grounds and circumstances rooted in facts to warrant infringement of privacy/confidentiality. Provisions of RTI cannot be read down to make privacy of individuals amenable to fishing inquiry and a fine balance is required to be maintained between public-interest and privacy/confidentiality of private party.

7. We must also point out that there are ample provisions under the Wildlife Protection Act 1972 to enable the government machinery to address the concern of the Petitioner.

8. We find that Section 11 of the RTI Act, 2005 warrants no interference. No information regarding the Greens Zoological Rescue and Rehabilitation Kingdome or any such private set-up can be provided under the RTI act without the consent of such party. Petition is dismissed.

(S.G. CHATTOPADHYAY), J **(INDRAJIT MAHANTY), CJ**

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