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High Court Of Punjab And Haryana At Chandigarh

Case No: C.W.P. No. 12085 of 2012 (O and M)

Central Bureau of Investigation		APPELLANT
	Vs	
Central Information Commission and another		RESPONDENT

Date of Decision: Sept. 18, 2012

Acts Referred:

- Right to Information Act, 2005 - Section 8(1)(g), 8(1)(h)

Citation: (2012) 4 RCR(Civil) 881 : (2012) 4 RCR(Criminal) 897

Hon'ble Judges: Rajesh Bindal, J

Bench: Single Bench

Advocate: Sumeet Goel, for the Appellant; Hemant Goswami, Advocate for the Respondent No. 2 in person, for the Respondent

Judgement

Rajesh Bindal, J.
Central Bureau of Investigation (for short, "CBI") is before this Court challenging the order dated 2.4.2012, passed by Central Information Commission (for short, "the Commission") directing the petitioner to supply certain information to respondent No. 2. The case pertains to selection of teachers in Union Territory, Chandigarh. Finding that there was large scale bungling in the selection of teachers in Union Territory, Chandigarh, respondent No. 2 filed a complaint with the petitioner along with number of documents in support thereof, which, inter- alia, established that persons, who were lower in merit, had been called for interview leaving the persons higher in merit. Certain candidates, who secured very less marks in the interview, were selected. Finding the information furnished along with the complaint to be sufficient to hold some preliminary enquiry, the matter was enquired into, however, ultimately a report was sent to the Chief Vigilance Officer, Union Territory, Chandigarh recommending certain corrective steps. In the same case, simultaneously on a complaint received by the police, FIR was registered, which was

under investigation. Respondent No. 2 had sought information and documents from the petitioner pertaining to the complaint made by him upto the stage the report was sent to the Chief Vigilance Officer, Union Territory, Chandigarh. Though initially it was directed that the requisite information can be supplied to respondent No. 2, however, later on it was denied taking the plea that a petition bearing C.W.P. No. 17021 of 2009 - Karamjit Singh v. Union of India and others, seeking a direction for handing over investigation in the FIR already registered by Chandigarh Police for the same offence to CBI, was pending in this court.

2. Aggrieved against the action, respondent No. 2 filed appeal. Finally, the Commission accepted the prayer made by him partially and directed the petitioner to supply information as was promised by it at the initial stage when respondent No. 2 had filed the application, including the report sent by the petitioner to the Chief Vigilance Officer, Union Territory, Chandigarh, It is the aforesaid order, which is impugned before this court.

3. Learned counsel for the petitioner submitted that in terms of the directions issued by this court on 30.3.2012 in Karamjit Singh''s case (supra), FIR has been registered by the petitioner on 24.5.2012, pertaining to selection of teachers in Union Territory, Chandigarh. The matter is under investigation and challan is yet to be presented. In terms of Section 8(1)(g) and (h) of the Right to Information Act, 2005 (for short, ''the Act''), respondent No. 2 does not have any right to seek the requisite information, as the same will hamper the investigation.

4. On the other hand, respondent No. 2, who appears in person, submitted that though initially the petitioner enquired into the allegations made in the complaint filed by him finding some substance therein, however, when the FIR has been registered, he has not been shown as the complainant. It is only the FIR registered by Chandigarh Police, which has been taken over by the CBI. The matter, which is subject-matter of FIR registered by Chandigarh Police, is altogether different as compared to the allegations made by respondent No. 2 in his complaint. The same is not under investigation. Under the circumstances, the protection of Section 8(1)(g) and (h) of the Act is not available to the petitioner. He further submitted that the information is required by respondent No. 2 so as to expose the nexus of CBI officers/officials with high-ups involved in the case, which is being denied without any valid reason. Every police officer is bound to take action when a cognizable offence is brought to his notice. In the present case, though in the complaint made by respondent No. 2 accompanied by various documents clearly established a case of unfair means adopted in the selection, but still no action was taken. In fact, respondent No. 2 proposes to initiate action against the guilty officers/officials, who failed to discharge their duty. He further submitted that though initially the Public Information Officer had directed for providing information to respondent No. 2, however, later on, the same was denied. This, in fact, amounted to review of the order. There is no provision under the Act, which enables the authority to review any order. The action is without jurisdiction. He further submitted that even in the present case, no law point has been raised, which requires interference by this court.

5. In response to the contentions raised by respondent No. 2, learned counsel for the petitioner submitted that initially the order was passed directing supply of information to respondent No. 2 as the authorities had nothing to conceal, however, when it came to their notice that a writ petition is pending in this court pertaining to the same issue praying for directions for reference of investigation of the case to CBI, the information was not supplied, as the same could adversely affect investigation of the case. He further submitted that initially CBI was not a party in the writ petition. Still further, the submission was that it is totally misconceived to state that CBI is only investigating the case from the angle, as has been pointed out in the FIR already registered by Chandigarh Police, which has been transferred to it. Rather, the case is under investigation from all possible angles including the illegalities and irregularities pointed out by respondent No. 2 in the complaint made by him.

6. Heard learned counsel for the petitioner and respondent No. 2 in person and perused the paper book.

7. The issue, which is required to be considered by this court, is as to whether the order passed by the Commission directing supply of information to respondent No. 2 can be legally sustained. Challenge has been made by the petitioner on the ground that in terms of the provisions of Section 8(1)(g) and (h) of the Act, respondent No. 2 does not have any right to ask for the information, as the same is exempted. The provisions, as have been referred to by learned counsel for the petitioner, are extracted below :

8. Exemption from disclosure of information. -

(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen, -

(a) to (f) xx xx xx

(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;

(h) information which would impede the process of investigation or apprehension or prosecution of offenders.

8. As the facts of the case suggest, the information, which has been directed to be furnished to respondent No. 2 by the Commission, is the action taken by the petitioner on the complaint made by respondent No. 2 on 13.2.2010 in the famous case known as "Chandigarh Teachers Recruitment Scam". Respondent No. 2 had sought entire information pertaining to the action taken and the material collected in pursuance to his complaint. The same has been directed to be furnished to respondent No. 2 by the Commission in terms of the initial stand of the petitioner itself.

9. From the file produced in court by the petitioner, it is evident that after some enquiry, the matter was directed to be closed with the orders of the highest authority in CBI and a report was sent to the Chief Vigilance Officer, Union Territory, Chandigarh for taking appropriate corrective steps.

10. The writ petition bearing CWP No. 17021 of 2009 was filed in this court as "Public Interest Litigation" seeking a direction to entrust investigation of FIR No. 162 dated 5.9.2009, registered at Police Station, Industrial Area, Chandigarh to CBI. While disposing of the aforesaid writ petition on 30.3.2012, a Division Bench of this court directed, that the investigation in the matter be conducted by CBI Delhi, keeping in view the fact that the manner in which the complaint was dealt with, did not inspire confidence. All records pertaining to the case, which were with CBI Chandigarh and Chandigarh Police were directed to be handed over to CBI Delhi. The strong observations made by this court, while disposing of the writ petition, are extracted below :

We find various aspects of the case disturbing and intriguing.

(1) The C.B.I. had been associated with the matter from the very beginning, yet this fact was not disclosed to the Court till the time the enquiry report reached the Court and intimation received from a third person. This is a fact difficult to digest, since the C.B.I. was a party to the proceedings and its silence, therefore, is deafening to say the least.

(2) The C.B.I. was conscious of the fact that the Chandigarh Police has registered the FIR and the allegations therein pertain to the instances of bribe given by some persons to the officers. The C.B.I. does establish in its report the fact that numerous calls were exchanged between the accused in FIR and the then D.P.I. (S) Samwartak Singh, but it chose not to go deeper into this matter by merely accepting the fact that the allegations of bribe have already been looked into by another investigating agency.

(3) The report further acknowledges that Kamalpreet Kaur had been interrogated by the Investigating Officer and the C.B.I. and she had categorically disclosed the fact that one Jolly had told her on 3.9.2009 at Cafe Coffee Day in Sector 30, Chandigarh that during the course of interview, a question would have been asked to her by one of the interview board members as to what does the abbreviated form of NCERT mean and surprisingly, the said question had been asked to her by one of the interview board members and this was the first question which had been put to her. Verification revealed that the said question was indeed put to Kamalpreet Kaur by Samwartak Singh. This aspect has been ignored and not enquired further.

Substantial number of calls between Jolly, Hardev Singh and Samwartak Singh were established during the course of this enquiry by the C.B.I.

(4) This entire report of the C.B.I. was initially kept away from the Court and disclosed accidentally to it which was sought to be wished away by the C.B.I. as being first verification report and not the final word of the senior officer.

Thus sufficient amount of suspicion has been aroused in the mind of the court indicating a complete cover-up by the C.B.I. and a shoddy investigation conducted by the local police.

11. A perusal of the aforesaid observations clearly shows that the matter under investigation certainly required serious consideration at the level of Chandigarh Police or CBI, but for the reasons best known to them, apparently they lacked in discharge of their duties and the apparent reason therefor can be allegations of involvement of senior officers.

12. As the situation stands today, in terms of the directions issued by this court, FIR has been registered by CBI for investigation into the scam pertaining to recruitment of teachers in Chandigarh. No doubt, the prayer in the writ petition filed before this court was for transfer of investigation in the FIR already registered by Chandigarh Police, but the direction of this court is for handing over entire record pertaining to the case, which was either with Chandigarh Police or the preliminary enquiry conducted by CBI on a complaint filed by respondent No. 2.

13. Though respondent No. 2 sought to raise an apprehension that the grievance raised by him in his complaint may not be enquired into by CBI, hence, this cannot be said to be a matter under investigation and the copies of documents forming part thereof can be supplied to him, as the bar u/s 8(1)(h) of the Act will not be applicable. However, the contention is misconceived, if considered in the light of the directions issued by this court and the stand taken by learned counsel for the petitioner before this court. Once the matter is under investigation, in terms of provisions of Section 8(1)(h) of the Act, the information pertaining thereto cannot be supplied in a query under the Act.

14. It was not disputed at the time of hearing that on enquiry conducted by the petitioner on the complaint of respondent No. 2, a report was sent to Chandigarh Administration pointing out the deficiencies for taking corrective steps. As the same has already been submitted by the petitioner to some other authority, it cannot be treated to be part of the investigation. A copy thereof is directed to be furnished to respondent No. 2 by the petitioner on payment of requisite charges. The writ petition stands disposed of in the manner indicated above.