(2016) 02 KL CK 0119

High Court Of Kerala

Case No: Writ Petition (C). No. 29188 of 2011 (W)

M/s. Silky		APPELLANT
	Vs	
State Information Commission		RESPONDENT

Date of Decision: Feb. 22, 2016

Acts Referred:

- Constitution of India, 1950 - Article 226
- Right to Information Act, 2005 - Section 8(1)(d), Section 8(1)(j)

Citation: (2016) 4 KLT 682

Hon'ble Judges: Mr. K. Harilal, J.

Bench: Single Bench

Advocate: Sri. K.R. Avinash (Kunnath), Advocate, for the Petitioner; Sri. M. Ajay, SC, for the Respondent No. 1; Sri. V.K. Rafeeque, Government Pleader, for the Respondent Nos. 2 and 3

Final Decision: Dismissed

Judgement

Mr. K. Harilal, J. - The petitioner, a registered partnership firm engaged in textile business at Calicut, filed this writ petition, challenging the orders passed by the State Information Commissioner, the Appellate Authority under the Right to Information Act (for short, "the Act") directing to release the details of the turnover and tax paid by the petitioner firm, for the years, 2005-06 and 2009-10, which was sought by the 4th respondent.

2. The 4th respondent approached the 3rd respondent seeking disclosure of the turnover details of the petitioner firm for the aforesaid periods. The petitioner received a notice from the State Public Information Officer of the office of the Commercial Tax Deputy Commissioner, the 3rd respondent, calling for objection in disclosing the information sought by the 4th respondent and the petitioner sent Ext.P2 reply, stating his objection. The 3rd respondent rejected the application seeking disclosure. Challenging the order of the 3rd respondent, the 4th respondent filed an appeal before the 2nd respondent; and

the 2nd respondent, by Ext.P3 order, allowed the appeal, reversing the order of the 3rd respondent. Aggrieved by Ext.P3 order, the petitioner filed a second appeal before the State Information Commissioner/1st respondent; and the 1st respondent, by Ext.P5 order, dismissed the second appeal filed by the petitioner on the ground that the monthly returns filed by the petitioner are in the public domain and, therefore, liable to be disclosed to the citizen under the Act. The legality, propriety and correctness of the reason, whereby the 1st respondent dismissed the second appeal filed by the petitioner, are under challenge in this writ petition.

3. Heard the learned counsel for the petitioner and the learned Government Pleader.

4. The short question that arises for consideration is whether the order, directing to disclose the details of the petitioner''s turnover and tax paid for the years, 2005-06 and 09-10, is justifiable under Section 8(1)(d) & (j) of the Act. It is the case of the petitioner that the information sought by the 4th respondent comes under the exemption under Section 8 of the Act. The disclosure of turnover details would harm commercial confidence, trade secrets etc. of the petitioner firm. There is no larger public interest, warranting disclosure of information, in the instant case. Therefore, competitive position of the petitioner''s firm would be badly affected by the disclosure of the information. Thus, disclosure of information as sought by the 4th respondent is exempted under Section 8(d) of the Right to Information Act. The turnover details are personal information of the petitioner''s firm in respect of their business activity and it has no public activity or interest. Therefore, the disclosure would cause unwarranted invasion of privacy of the petitioner''s firm. The 4th respondent did not state any reason other than his personal requirement for the disclosure of such information.

5. Going by Ext.P1, the information sought for under the Act is the turnover during the years, 2005-06 and 2009-10; and the tax paid by the petitioner during those periods. The point to be considered is whether the information sought for as to the details of monthly turnover and tax paid, of an assessee would fall under the exemption under Sections 8(1)(d) and 8(1)(j) of the Act. Sections 8(1)(d) and 8(1)(j) of the Act read as follows;

8(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen, -

(d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;

(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:"

6. In the instant case, what is sought to be revealed is the turnover of a particular period and the tax paid during that period. At the moment, when the monthly return under the VAT Act is filed, the return gets the status of a public information and it comes under the public domain. In my view, the elements constituting any commercial confidence, trade secrets or intellectual property are not implied in the turnover and monthly tax shown in the monthly statement filed by the Assessee/seller to the concerned Sales Tax Authority as per the VAT Act. So, the disclosure of the same to public will not affect the Assessee"s commercial business prospects or cause harm to his competitive position. The turnover in business and tax paid are not personal information, when the same stand submitted before the Authority for scrutiny. Till the submission, those informations may remain in the books of the assessee as personal informations. But after submission, the assessee cannot claim any such right of immunity or privacy. So, where an application, seeking information as to monthly turnover and tax paid, is filed under the Right to Information Act before the Authority, after submission of the same before the Authority by the Assessee, the exemption under Section 8(1)(j) cannot be invoked to reject the said application.

7. The right to information and right to privacy are not absolute rights. So, it is necessary to harmonise these conflicting interests while preserving the paramountcy of democratic ideals. The preamble of the Act itself says that it is an Act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of Public Authorities. Thus, information under the Public Authority alone need be disclosed under the Act and no information so long as it remains in the private person need be disclosed. But, at the moment when it comes under the Public Authority, it shall be deemed to be in the public domain to which the public has the right to access. Here, the information sought for by the 4th respondent is one that remains in the public domain, because, at the moment when the assessee files turnover and pays monthly tax, that comes to the light of public domain. After the submission of return and payment of tax etc., it cannot be treated as confidential matters, as has been held above. In this case, there is no element of personal information.

8. In the instant case, the information sought for are related to the turnover of the textile business and the monthly tax paid by the petitioner, which are the contents of the returns filed every month as per the VAT Act; and such an information does not affect his commercial confidence, in the absence of trade secrets or intellectual property in it. In short, the information sought for by the 4th respondent did not fall under any of the exemptions provided under Sections 8(1)(d) and 8(1)(j) of the Act. In this analysis, the 1st respondent is justified in dismissing the appeal on a finding that the petitioner is not entitled to get protection under Sections 8(1)(d) and 8 (1)(j) of the Act. The writ petition is dismissed accordingly.