

(2012) 03 DEL CK 0459

Delhi High Court

Case No: LPA 190 of 2012

Ashok Kumar Goel

APPELLANT

Vs

Public Information Officer Vat
Ward No. 64 and Another

RESPONDENT

Date of Decision: March 7, 2012

Acts Referred:

- Delhi Value Added Tax Act, 2004 - Section 98, 98(2), 98(3)
- Right to Information Act, 2005 - Section 8(1)

Citation: (2012) 188 DLT 597

Hon'ble Judges: Rajiv Sahai Endlaw, J; A.K. Sikri, J

Bench: Division Bench

Advocate: L.B. Rai, for the Appellant; H.C. Bhatia, for R-1, for the Respondent

Final Decision: Dismissed

Judgement

A.K. Sikri, Acting Chief Justice

1. The appellant herein appears to be a stubborn litigant who is bent upon harassing respondent No. 2, who happens to be none other than the brother of the appellant. The respondent No. 2's firm is registered under the Value Added Tax and is filing returns of its sales etc. with the Sales Tax Commissioner, New Delhi. The appellant wanted certain information from the Sales Tax Commissioner in relation to respondent No. 2 firm and therefore he moved application under the provisions of Right to Information Act, 2005 asking for the following information:

1. Month wise various type of Sale and Purchase to match with Gross Sale and Purchase of Trading Account (Photocopy of all Sales and Purchase Bills).
2. Party wise (name and Addresses) and item wise Sale and Purchase to match with Trading Accounts.

3. Month wise Input VAT and Out-put VAT on Purchases and Sales and details of Tax Payable and Deposited in Banks.
4. Annual Bank Statement with Parties Name.
5. Statement of all Sundry Debtors and Creditors with details of Sales / Purchases and Payments made and Received during the year.
6. Detail of Opening and Closing Stocks.
7. Copy of DVAT 30 and 31.
8. Trading, Profit and Loss Account.
9. Balance-Sheets.
10. Photocopies of C Form / ST-35 Form / ST-1 Form / E-1 Form issued on the Purchase from Sales Tax and D Form from Government Department during the year.
11. Photocopy of Assessment order of Sales Tax Cases, Year wise and if any recovery and proof of Recovery amount Deposits.
12. Photocopy of Scrutiny cases of Income Tax Deptt. and if any recovery still Stands, when and how its amount deposited.
13. Name and Addresses of all Partners in Previous Years and Current Years and firm's Registration No. and date with its address.

2. The CPIO refused to divulge the aforesaid information invoking the provisions of Section 8(1)(d) of the RTI Act. The appellant approached the Appellate Authority which also rejected the application. Undeterred, the appellant approached the next authority viz. Central Information Commission (CIC) challenging the orders of CPIO and Appellate Authority. To the dismay of the appellant, it met the same fate as the CIC also was of the opinion that the information could not have been divulged to the appellant inasmuch as no public interest was involved or could be shown / established by the appellant. The CIC, in the process, made scathing observations stating that this case depicts how a weapon designed to ease problems of the citizen is at times being misused and totally abused in the hands of people like the appellant to settle personal scores. It was further observed that the public authority providing information to such warring siblings is also in its own way permeating creation of bad blood and recommended that way be found to resolve and avoid such revengeful and negative atmosphere and unhealthy competition.

3. Even these scathing observations of CIC did not deter the appellant to challenge the aforesaid order by preferring writ petition. In the writ petition, the learned Single Judge took the same view and dismissed the said writ petition vide impugned order dated 25.01.2012 by imposing cost of Rs. 25,000/-.

4. It appears that the appellant by his conduct is proving that the observations made by the CIC and as noticed above are factually correct which is proved by the fact that even the order of the learned Single Judge and imposition of cost of Rs. 25,000/- has not diminished the revengeful attitude of the appellant who has chosen to file the present appeal challenging that order.

5. We have already reproduced the nature of information which the appellant seeks. It is essentially related to the returns filed by the respondent No. 2's firm with the Sales Tax Commissioner and on the basis of which the respondent No. 2's firm has been paying the VAT. Section 98 of the Delhi Value Added Tax Act, 2004 makes such returns confidential and specifically stipulates that all particulars contained in any statement made, return furnished or accounts or documents produced in accordance with this Act, or in any record of evidence given in the course of any proceedings under this Act, other than proceedings before a criminal Court shall be treated as confidential and notwithstanding anything contained in the Indian Evidence Act, 1872, no court shall, save as aforesaid, be entitled to require any servant of the Government to produce before it any such statement, return, account, document or record or any part thereof, or to give evidence before it in respect thereof. Thus this provision protects and insulates the persons filing such returns and even the Court is not entitled to summon the records except when the proceedings are before a Criminal Court or what is saved under Sub-Section (3) of Section 98 of the Act. Not only this, Sub-Section (2) Section 98 of the Act provides for punishment with imprisonment upon the government servant who discloses such information.

6. Provisions of Section 8(1)(d) of the RTI Act are to be interpreted, in the present context, keeping in view the provisions of Section 98 of the Act. Provisions of Section 8(1)(d) reads as under:

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

(a)

(b)

(c)

(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."

7. It is not in dispute that the information in the form of returns filed by the respondent No. 2's firm is in the nature of commercial confidence which is clearly inferable from Section 98 of the Act. Such information can be given only if larger public interest warrants the disclosure of this information. All the authorities below

including the learned Single Judge has held and rightly so that no public interest is at all involved in seeking of this information by the appellant from the Sales Tax Commissioner. What to talk of public interest, the finding is that the information is sought with oblique motive to settle personal scores.

8. The learned counsel for the appellant has relied upon the judgment of Jharkhand High Court in the case of [State of Jharkhand and Another Vs. Navin Kumar Singh and Another](#), and particularly paras 26 and 27 thereof to contend that once the information comes on the public records, the people in general have the right to know that information. However, we observe that the principle laid down in the aforesaid judgment is read totally out of context. It was a case relating to award of tender and the information was sought in respect of documents of various bidders of tender notice. It is trite law that insofar as evaluation of tenders and award of work in connection with public works is involved, the competent authority is to do its exercise in a reasonable and non-arbitrary manner. Such a procedure has to be transparent. This is also based on the principle that the public largesse are not to be distributed by the Government functionaries at their whims and fancies and all have equal right to be considered and all eligible persons have to be considered for award of public works. Thus the method of evaluation of tender has to be transparent. In a particular case, if it is found that the exercise done was not in accordance with the tender conditions or was arbitrary, the same can be set aside / quashed. It is in this light, that the right to know the basis of tender documents, the eligibility of a tenderer or the manner in which bid is decided comes within the domain of larger public interest. The judgment aforesaid therefore will have no application to the facts of the present case.

9. The learned counsel for the appellant then referred to the earlier orders passed by the CIC and on the basis of which it was argued that such information was supplied / ordered to be supplied by the CIC on earlier occasion. Most probably these orders pertain to tender documents or some other kind of information sought. Even if in some particular case information of this nature was directed to be given, a wrong order does not become a precedent or has to be followed. When we examine the present case on the threshold of the aforesaid provisions of Delhi Value Added Tax Act, 2004 as well as RTI Act, we are convinced that the information is duly protected under the provisions of Section 8(1)(d) of the RTI Act and it was rightly not supplied by the CPIO to the appellant herein.

10. We therefore are of the opinion that the present appeal is nothing but misuse of the process of law and we dismiss the same with costs of Rs. 50,000/-. We authorize respondent No. 1 to recover cost of Rs. 25,000/- imposed by the learned Single Judge as well as the cost of Rs. 50,000/- imposed by us from the appellant.