Research Paper

Volume : 4 | Issue : 5 | May 2015 • ISSN No 2277 - 8179

Legal Interpretations of Section 8 (1) (H) Of the Rti Act

Law

KEYWORDS :

Dr. Madhu Sudan Dash

Reader, P.G. Department of Law, Utkal University, Vani Vihar, Bhubaneswar-751004, Odisha.

ABSTRACT

The Right to Information Act intends to provide an effective framework for effectuating the right of information recognised under Article 19 of the Constitution of India. As contemplated by the Act, every citizen has right to information. At the same time, the Act provides certain exemptions from disclosure in accordance with Sections 8 and 9. More specifically, under Section 8(1)(h) of the RTI Act, any information which would impede the process of investigation or apprehension or prosecution of offender, such disclosure is barred. If any information, which is being sought, can be had from the competent court trying the case, the said court can alone decide how the information is to be dispensed.

'Information' is like a 'Candle' which showers light to remove one's darkness i.e. ignorance. In fact, information is energy which kindles one's thought culminating in expression based on thinking capacity. Right to information is the basic right for good governance, because right to access information from the government department is fundamental to democracy. Even the right to information has not been clearly spelt out in the Constitution of India, it is to be inferred in Articles 14, 19(1)(a) and 21 supported by the judicial decisions and every person has a right to access to information, the status of fundamental right under Article 19 of the Constitution of India as dictated by the Supreme Court of India in *State of U.P.* v. *Raj Narain.* Right to Information Act, 2005 is a legislation that recognises the legal rights of citizens seeking information from public authorities. As a matter of fact, Right to Information Act is a means and not an end for equity, activism, public participation and orderly good governance in larger interest and better functioning of the system.

According to the RTI Act, information may be exempted from disclosure in accordance with Sections 8 and 9 only and no other exemptions can be pleaded while rejecting a demand for disclosure. It is clearly laid down in the RTI Act that the onus to prove that a denial of a request for information was justified shall be on the PIO who denied the request. Therefore, while denying a request for information under the RTI Act, the PIO must have logical reasons for doing so. But, disclosure of any information which would impede the process of investigation or apprehension or prosecution of offender, such disclosure is barred under Section 8(1)(h) of the RTI Act. Impede in the context of Section 8(1)(h) will mean anything which would hamper and interfere with procedure followed in the investigation and have the effect to hold back the progress of investigation, apprehension of offenders or prosecution of offenders. However, the impediment, if alleged, must be genuine and not make belief and a camouflage to deny information. To claim exemption under the said Sub-section it has to be ascertained in each case whether the claim by the public authority has any reasonable basis. Onus under Section 19(5) of the RTI Act is on the public authority.

A bare reading of the above clause would indicate that any information which tends to impede the process of investigation or apprehension or 'prosecution of offenders' is not to be disclosed under this Act. The word 'prosecution', as occurring in section 8 (1) (h), means and implies initiation and continuation of criminal proceedings in the competent court. Termination of proceedings in the trial court cannot mean end of proceedings when this very issue has been agitated before a higher judicial forum either by the State or by the accused.

Whether disclosure of requested information would impede the process of ongoing prosecution is the subject matter of discussion. It may be mentioned here that the Code of Criminal Procedure, 1973 contains extensive provisions for the conduct of investigation and prosecution. The Code provides for fair trial, in conformity with the principles of natural justice. No trial can be conducted without offering fair opportunity to the accused to defend himself. So, the Code provides for supply of copies of documents to the accused relied upon by the prosecution. Section 313 of the Code entitles him to explain or clarify the evidence proved against him at the trial. It may be added that, as per this Code, a copy of the sanction for prosecution is also required to be supplied to the appellant well before the commencement of trial. Hence, in the premises, the request of the appellant for a copy of the file in which the sanction for prosecution was processed in difficult to appreciate.

Contradictory View

The Right to Information Act says to have over-riding effect. Section 22 of the Right to Information Act expressly provides that the provisions of the RTI Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923(19 of 1923), and any other law for the time being in force or in any instrument having effect by virtue of any law other than the RTI Act. Therefore, as far as disclosure of information is concerned, if there is any provision in the Code of Criminal Procedure which is inconsistent with the provisions of the RTI Act, it would undoubtedly be over-ruled by the RTI Act.

The RTI Act makes no exception to this provision of overruling effect and therefore the question of non- disclosure of information in accordance with Criminal Procedure Code, 1973 does not arise. The Parliament does not provide for a specific over-riding clause in all laws but it has done so in the form of Section 22 in the RTI Act, which would be rendered completely redundant if provisions contained in previously enacted laws were to be relied on to claim exemption from disclosure of information. Insertion of a non- obstante clause in Section 22 of the RTI Act was a conscious choice of the Parliament to safeguard the citizens' fundamental right to information. Hence, it is imperative that Section 22 of the RTI Act is applied and not rendered ineffective.

In this regard, it would be relevant to mentioned here as held by the Delhi High Court in *Union of India v. Central Information Commissioner & Anr. that "Whenever there is a conflict between the provisions of the RTI Act and another enactment already in force on the date the RTI Act was enacted, the provisions of the RTI Act will prevail.....Once an applicant seeks information as defined in Section 2(f) of the RTI Act, the same cannot be denied to the information seeker except on any of the grounds mentioned in Section 8 and 9 of the RTI Act. The Public Information Officer or the appellate authorities cannot add and introduce new reasons or grounds for rejecting furnishing of information."*

Considering the above it is to be examined whether disclosure of the information sought by the Appellant would impede the

process of prosecution as contemplated under Section 8(1)(h) of the RTI Act. If Parliament wanted to exempt all information relating to investigation or apprehension or prosecution, it would not have imposed the condition that disclosure should 'impede' the investigation or prosecution. In this regard, it has been held in Bhagat Singh v. CIC that "Access to information, under Section 3 of the Act, is the rule and exemptions under Section 8 are the exceptions. Section 8 being a restriction on this fundamental right, must therefore is to be strictly construed.....Under Section 8, exemption from releasing information is granted if it would impede the process of investigation or the prosecution of the offenders. It is apparent that the mere existence of an investigation process cannot be a ground for refusal of the information;....."

It is clear from the above decision that the PIO, who is denying information under Section 8(1) (h) of the RTI Act, must show satisfactory reasons as to why disclosure of such information would impede the process of investigation or apprehension or prosecution of offenders. The opinion of the PIO must be based on some material supported by any evidence and cannot be a mere apprehension.

At this juncture, it is pertinent to mention that the Supreme Court of India in *Director of Education v. Pushpendra Kumar & Ors.* held that "an exception cannot subsume the main provision to which it is an exception and thereby nullify the main provision by taking away completely the right conferred by the main provision". The principle that an exception to the main provision must be strictly construed was also applied by a five Judge Bench in *Nathi Devi v. Radha Devi Gupta.*

Under Section 3 of the RTI Act, it has been provided that all citizens shall have the right to information. However, this information can be denied on the basis of Sections 8 and 9 of the RTI Act only. Since Section 8 and 9 of the RTI Act are in the nature of an exception, they cannot be interpreted in a manner which would subsume the main provision i.e. Section 3. In line with the above judicial approach, Sections 8 and 9 of the RTI Act must be construed in a manner which would not render the right conferred to citizens under the RTI Act as completely redundant, or constrict it in a manner not stipulated in the Act.

It is now important to understand that the word "prosecution of offenders" and "process of investigation" have to be understood in the context of "impede". It is inconceivable to comprehend that after "investigation", the discretion of the trial court can be impeded by disclosure of information. The Division Bench of the CIC in *Ms. Anita J. Gursahani vs. Cotton Corporation of India* has elaborated that "the information, which is being sought, can be had from the competent court trying the case. Any discretion exercised under RTI Act would amount to impeding the process of investigation or apprehension or prosecution of offenders. The appellate authority and the CPIO, CBI has correctly taken the stand that the information is exempt from disclosure under Section 8(1) (h) of RTI Act, 2005."

In *C. Seetharamaiah vs. Commissioner of Customs & Central Excise* it is held that the material sought by the appellant is undoubtedly related to an ongoing court proceeding and hence it can be rightly said to be under the control of Trial Court, who alone can decide how the information is to be dispensed. The information, which is sought for, is in our opinion would impede the prosecution of offender and, therefore, the respondents are justified in invoking clause 8(1)(h) of the right to information Act and claim exemption from furnishing information.

In *S.M.Lamba Vs. S.C.Gupta and another* Delhi High Court has held "This court would like to observe that under the Code of Criminal Procedure, 1973 once the stage of an order framing charges have been crossed, it would be open to the accused to make an appropriate application before the learned trial court to summon the above documents in accordance with the law." It is thus settled that the only channel available to the Appellant for seeking the desired information is to request the Competent Court, and the discretion to whether or not allow such a request shall solely vest in that Court. This is also because if otherwise held, it would amount to an encroachment upon the powers of Judiciary.

Conclusion: - To conclude it may be stated that the investigation is complete does not mean that the information which forms part of the Investigation process will be outside the purview of Section 8(1)(h), because the same Section also bars the disclosure of that information as it can impede the prosecution of offenders at the same time. Hence, the context of "impede" is attached to both "investigation" as well as "prosecution of offenders" under the RTI Act.