

HIGH COURT OF DELHI**Bench: Justice Subramonium Prasad****Date of Decision: 24th May, 2024**

IN THE MATTER OF:

W.P.(C) 2789/2022

BINOD AGARWAL ...Petitioner**VERSUS****THE CPIO AND ORS. ...Respondents****Legislation:**

Section 8(1)(j) of the Right to Information Act, 2005

Subject: Writ Petition challenging the refusal of the Central Information Commission (CIC) to disclose attendance records of consultants and officers above a certain pay grade in the SEEPZ-SEZ.

Headnotes:

Territorial Jurisdiction – Writ Petition – RTI Act – Section 8(1)(j) – Forum Conveniens – Petitioner challenged the CIC’s order refusing disclosure of attendance records under the RTI Act. The court highlighted the principle of forum conveniens, noting that the SEEPZ-SEZ and concerned authorities were located in Mumbai, thus the High Court of Bombay was the appropriate forum. Petition dismissed on grounds of lack of territorial jurisdiction and lack of merit. [Paras 4-6]

Right to Information – Exemption from Disclosure – Personal Information – RTI request for attendance records deemed personal information. Section 8(1)(j) exempts disclosure of personal information unless justified by larger public interest. The CPIO correctly invoked Section 11 to seek consent from consultants, some of whom objected to disclosure. CIC upheld the CPIO’s decision, finding no overriding public interest. [Paras 7-11]

Personal Information – Definition and Scope – Court referred to Supreme Court rulings in Subhash Chandra Agarwal and Girish Ramchandra Deshpande, defining personal information broadly to include professional records and performance evaluations. Such information is protected from

unwarranted invasion of privacy unless public interest demands disclosure.
[Paras 8-10]

Motivation Behind RTI Request – Judicial notice taken of petitioner’s status as a disgruntled employee, suggesting RTI application aimed at settling personal scores rather than genuine public interest. [Para 12]

Decision – Petition dismissed for lack of territorial jurisdiction and absence of public interest in disclosure of requested information. [Paras 6, 11, 13]

Referred Cases:

- Sterling Agro Industries Ltd. V. Union of India & Ors., 2011 SCC OnLine Del 3162
- CPIO, Supreme Court of India v. Subhash Chandra Agarwal, (2020) 5 SCC 481
- Girish Ramchandra Deshpande v. Central Information Commissioner & Ors., 2013 (1) SCC 212
- Alchemist Ltd. V. State Bank of Sikkim, (2007) 136 Comp Cas 665
- Ambica Industries v. CCE, (2007) 213 ELT 323
- Union of India v. Adani Exports Ltd., (2002) 1 SCC 567

Representing Advocates:

Binod Agarwal, Petitioner in-person

Mr. Kirtiman Singh, CGSC with Ms. Vidhi Jain, Advocate for UoI

JUDGMENT

1. Aggrieved by the Order dated 19.01.2022 passed by the Central Information Commission (CIC) upholding the stand taken by the CPIO refusing to grant information as sought by the Petitioner in his application for providing attendance records of all Consultants from 01.09.2018 to 20.06.2019 and the attendance records of all officers grade pay above 6600/- from 01.09.2018 to 20.06.2019 in the Santacruz Electronic Export Processing Zone-Special Economic Zone (hereinafter referred to as the ‘SEEPZ-SEZ’), the Petitioner has approached this Court with the following prayers:-

“i. This Hon’ble Court may be pleased to set aside the impugned order dated 19.01.2022 passed by the Hon’ble CIC as it is ab initio

void and direct CPIO to comply Hon'ble Appellant Authority's Order dated 18.03.2020 and provide the information.

- ii.* That this Hon'ble Court be pleased to Impose exorbitant Penalty on CPIO u/s 20(1) of the RTI Act for for not compiling the order of Appellant Authority and Recommend Disciplinary action against CPIO u/s 20(2) of the RTI Act for not following the order of superior officer.
- iii.* Provide compensation to the Petitioner by Respondent for the acts of its official to the tune of Rupees Fifty Thousand for the delay in supplying the information, as Appellant Authority's order was in force from 18.03.2020 till it was set aside on 19.01.2022 thus violating Petitioner fundamental right and also the mental agony and anguish caused to him.
- iv.* Such other and further reliefs as may be deem fit in the facts and circumstances of the present case;
- v.* Cost of this application may be provided”

2. The facts in brief leading to this writ petition are as under:-

i. Material on record indicates that the Petitioner filed the instant RTI application before the CPIO of Respondent No.1 seeking the following information:-

“Brief facts:- attendance record of all consultant and officers above grade pay 6600/- borne in SEEPZ.

1. Please provide attendance record of all consultant from 01 Sep 18 to 20 Jun 19.

2. Please provide attendance record of all officers grade pay above 6600/- from 01 Sep 18 to 20 Jun 19.”

ii. The CPIO of Respondent No.1 filed a reply to the application dated 07.02.2020. The reply in tabulated form reads as under:-

Sr. No.	Information sought	Reply
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1	Provide attendance record of all Consultants from 01st September 2018 to 20th June 2019.	<p>Please refer this office Notice dated 10/01/2020 issued to the Consultants for their concurrence, as to whether the information desired by you provided or not. Accordingly, three Consultants denied to provide the information to you (copies are enclosed). Rest of the three Consultants, one Consultant agreed to provide attendance record and other two does not reply.</p> <p>However, as per the said Notice, the attendance records of the Consultants either who agreed or who don't reply are enclosed herewith.</p>
2	Provide the attendance record of all officers Grade Pay above 6600/- from 1st September, 2018 to 20th June, 2019.	As per 7th CPC, there is no grade pay system is in existence after 1st January, 2016, hence sought information cannot be provided.

- iii. The Petitioner, aggrieved by the order of the CPIO filed an appeal before the First Appellate Authority. The Appellate Authority in its order dated 18.03.2020 held that the Notice under Section 11(1) of the RTI Act, 2005 was sent to the Consultants for their consent is in accordance with the Act as Consultants are hired purely on contractual basis and are not Government Employees. On the aspect of Attendance records of Officers of grade pay above 6600/-, the First Appellate Authority in its order stated that as per 7th CPC, Grade Pay Rs. 6600/- has been placed at Pay Level-11 and the Appellate Authority directed the CPIO to provide the attendance record of Officers above Pay Level-11 to the Petitioner herein.
- iv. Feeling aggrieved and dissatisfied with the non-compliance of the First Appellate Authority's order, the Petitioner moved the CIC by filing Second Appeal. The CIC held that the CPIO had appropriately denied the information

as the information sought for is personal information, and therefore, the information is exempted from disclosure under Section 8(1)(j) of the RTI Act. The Petitioner has approached this Court by filing the instant writ petition.

3. Heard the parties and perused the material on record.
4. To begin with, this Court is of the opinion that the writ petition can be disposed of on the ground of territorial jurisdiction because SEEPZ-SEZ is situated in Mumbai, the CPIO is in Mumbai, the First Appellate Authority is in Mumbai and only the CIC, whose order is under challenge in the present writ petition is in Delhi.
5. A five-Judge Bench of this Court in Sterling Agro Industries Ltd. v. Union of India & Ors., **2011 SCC OnLine Del 3162**, held that merely because the order under challenge had been passed by the appellate authority located within the territorial jurisdiction of this Court, the same could not be a sufficient enough for conferment of jurisdiction. The relevant portion of the said judgment is extracted hereinbelow:-

“34. The principle of forum conveniens in its ambit and sweep encapsulates the concept that a cause of action arising within the jurisdiction of the court would not itself constitute to be the determining factor compelling the court to entertain the matter. While exercising jurisdiction under articles 226 and 227 of the Constitution of India, the court cannot be totally oblivious of the concept of forum conveniens. The Full Bench in New India Assurance Co. Ltd. v. Union of India, AIR 2010 Delhi 43 ; (2011) 166 Comp Cas 87 (Delhi), has not kept in view the concept of forum conveniens and has expressed the view that if the appellate authority who has passed the order is situated in Delhi, then the Delhi High Court should be treated as the forum conveniens. We are unable to subscribe to the said view.

35. In view of the aforesaid analysis, we are inclined to modify the findings and conclusions of the Full Bench in New India Assurance Co. Ltd. v. Union of India, AIR 2010 Delhi 43 ; [2011] 166 C-C 87 (Delhi) and proceed to state our conclusions in seriatim as follows:

(a) The finding recorded by the Full Bench that the sole cause of action emerges at the place or location where the Tribunal/appellate authority/revisional authority is situate and the said High Court (i.e., Delhi High Court) cannot decline to entertain the writ petition as that would amount to failure of the duty of the court cannot be accepted inasmuch as such a finding is totally based on the situs of the Tribunal/appellate authority/revisional authority totally ignoring the concept of forum conveniens.

(b) Even if a minuscule part of cause of action arises within the jurisdiction of this court, a writ petition would be maintainable before this court, however, the cause of action has to be understood as per

the ratio laid down in the case of *Alchemist Ltd. v. State Bank of Sikkim* (2007) 136 C-C 665 ; (2007) 11 SCC 335.

(c) An order of the appellate authority constitutes a part of cause of action to make the writ petition maintainable in the High Court within whose jurisdiction the appellate authority is situated. Yet, the same may not be the singular factor to compel the High Court to decide the matter on merits. The High Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of *forum conveniens*.

(d) The conclusion that where the appellate or revisional authority is located constitutes the place of *forum conveniens* as stated in absolute terms by the Full Bench is not correct as it will vary from case to case and depend upon the *lis in question*.

(e) The finding that the court may refuse to exercise jurisdiction under article 226 if only the jurisdiction is invoked in a *mala fide* manner is too restricted/constricted as the exercise of the power under article 226 being discretionary cannot be limited or restricted to the ground of *mala fide* alone.

(f) While entertaining a writ petition, the doctrine of *forum conveniens* and the nature of cause of action are required to be scrutinised by the High Court depending upon the factual matrix of each case in view of what has been stated in *Ambica Industries v. CCE* (2007) 213 ELT 323 ; [2009] 20 VST 1 (SC) and *Union of India v. Adani Exports Ltd.* (2002) 1 SCC 567.

(g) The conclusion of the earlier decision of the Full Bench in *New India Assurance Co. Ltd. v. Union of India*, AIR 2010 Delhi 43 ; (2011) 166 C-C 87 (Delhi) (page 115) : "... that since the original order merges into the appellate order, the place where the appellate authority is located is also *forum conveniens*" is not correct.

(h) Any decision of this court contrary to the conclusions enumerated hereinabove stands overruled."

6. In view of the above, this Court is of the opinion that the Petitioner ought to have approached the High Court of Bombay for redressal of his grievances since that was the *forum conveniens* as the office of SEEPZ-SEZ is situated in Mumbai. However, in order to assuage its conscience to see as to whether the Petitioner should be relegated to High Court of Bombay or not, this Court has also examined the matter on merits.

7. Section 8(1)(j) of the RTI Act exempts disclosure of information which is personal in nature from the operation of the RTI Act. Section 8(1)(j) of the RTI Act reads as under:-

"8(1)(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:

Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.”

8. What is ‘personal information’ has been succinctly laid down by the Apex Court in CPIO, Supreme Court of India v. Subhash Chandra Agarwal (2020) 5 SCC 481. The relevant portion of the said judgment read as under:-

“58. Clause (j) to sub-section (1) of Section 8 of the RTI Act specifically refers to invasion of the right to privacy of an individual and excludes from disclosure information that would cause unwarranted invasion of privacy of such individual, unless the disclosure would satisfy the larger public interest test. This clause also draws a distinction in its treatment of personal information, whereby disclosure of such information is exempted if such information has no relation to public activity or interest. We would like to, however, clarify that in their treatment of this exemption, this Court has treated the word “information” which if disclosed would lead to invasion of privacy to mean personal information, as distinct from public information. This aspect has been dealt with in the succeeding paragraphs.

70. Reading of the aforesaid judicial precedents, in our opinion, would indicate that personal records, including name, address, physical, mental and psychological status, marks obtained, grades and answer sheets, are all treated as personal information. Similarly, professional records, including qualification, performance, evaluation reports, ACRs, disciplinary proceedings, etc. are all personal information. Medical records, treatment, choice of medicine, list of hospitals and doctors visited, findings recorded, including that of the family members, information relating to assets, liabilities, income tax returns, details of investments, lending and borrowing, etc. are personal information. Such personal information is entitled to protection from unwarranted invasion of privacy and conditional access is available when stipulation of larger public interest is satisfied.

This list is indicative and not exhaustive.”

9. The said judgment places reliance on the judgment passed by the Apex Court in Girish Ramchandra Deshpande v. Central Information Commissioner & Ors., 2013 (1) SCC 212. The relevant portion of the said judgment reads as under:-

“12. We are in agreement with the CIC and the courts below that the details called for by the petitioner i.e. copies of all memos issued to the third respondent, show-cause notices and orders of censure/punishment, etc. are qualified to be personal information as defined in clause (j) of Section 8(1) of the RTI Act. The performance

of an employee/officer in an organisation is primarily a matter between the employee and the employer and normally those aspects are governed by the service rules which fall under the expression “personal information”, the disclosure of which has no relationship to any public activity or public interest. On the other hand, the disclosure of which would cause unwarranted invasion of privacy of that individual. Of course, in a given case, if the Central Public Information Officer or the State Public Information Officer or the appellate authority is satisfied that the larger public interest justifies the disclosure of such information, appropriate orders could be passed but the petitioner cannot claim those details as a matter of right.

13. The details disclosed by a person in his income tax returns are “personal information” which stand exempted from disclosure under clause (j) of Section 8(1) of the RTI Act, unless involves a larger public interest and the Central Public Information Officer or the State Public Information Officer or the appellate authority is satisfied that the larger public interest justifies the disclosure of such information.”

10. In the present case, the Petitioner is seeking the attendance records of Consultants of SEEPZ-SEZ, Mumbai, which is personal information as they are not employees of SEEPZ-SEZ, Mumbai. The procedure adopted by the CPIO in invoking Section 11 of the RTI Act cannot be found fault with. For such of Consultants who have either consented or those who did not reply, the information has been provided. Only for three Consultants, who have objected for sharing of their information has not been supplied. The Petitioner has been unable to demonstrate the overarching public purpose which will be served by supplying the information which is being sought. The other information as sought by the Petitioner has been supplied.

11. In the absence of any public interest, the CPIO of a public authority has no obligation to divulge such information. This Court is not inclined to interfere with the order of the CIC even on merits.

12. This Court can take judicial notice of the fact that the Petitioner is a disgruntled employee of the SEEPZ-SEZ and it seems that RTI application has been filed by the Petitioner to settle personal scores.

13. With these observations, the writ petition is dismissed along with pending application(s), if any.

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