

Union of India Vs. Pramod Kumar Jain

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Court : Delhi

Decided On : Nov-19-2013

Judge : V. K. Jain

Appellant : Union of India

Respondent : Pramod Kumar Jain

Advocate for Def. : Mr. Arun Jaitley

Advocate for Pet/Ap. : Mr. Sanjeev Kumar Dubey, Mr. Rajmangal Kumar

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % + Date of Decision:

19. 11.2013 WP(C) No.14069 of 2009 UNION OF INDIA Through: Petitioner Mr. Sanjeev Kumar Dubey & Mr. Rajmangal Kumar, Advs. Versus PRAMOD KUMAR JAIN Through: + Respondent Nemo. WP(C) No.14084 of 2009 UNION OF INDIA Through: Petitioner Mr. Sanjeev Kumar Dubey & Mr. Rajmangal Kumar, Advs. Versus RAJESH KUMAR TYAGI Through: Nemo. CORAM: HON'BLE MR. JUSTICE V.K.JAIN Respondent JUDGEMENT V.K.JAIN, J.

(Oral) Both the above-referred petitions involve interpretation of Section 8 (1) (i) of the Right to Information Act, 2005, which reads as under:

8. Exemption from disclosure of information. - (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,- . (i) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers: Provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over Provided further that those matters which come under the exemptions specified in this section shall not be disclosed;

2. In the present petitions, the respondents before this Court by way of separate applications sought the following information from the CPIO of the Department of Personnel & Training:

(a) Copies of DPC proceeding and nothings of DPC proceedings from the stage of DPC held on 28 th March, 2007, approval by ACC and up to the stage of issue of panel bringing out the cause of omission of certain names including mine from the approved panel in respect of promotion of Additional Chief Engineer to the grade of Chief Engineer in MES of the Ministry of Defence against the vacancies for the year 2007-08 for which approved panel for promotion has been issued by E-in-Cs branch vide letter No.B/41021/DPC/CE/2007-08/E1 (DCP-1) dated 27 Jun 2007. (b) Why the main panel is only for 07 (Seven) officers where as the vacancies existed was 10 (Ten) at the time of holding DPC on 28th March 2007. (c) Out of the 07 officers included in the main panel, only 3 officers are retiring during the year 2007-08 then why the extended panel is for 05 officers.

3. The aforesaid information was declined by the CPIO on the ground that the information sought by them formed part of Cabinet papers including record of deliberations of Secretaries and other officers which was exempt under Section 8 (1) (i) of the Act. Being aggrieved from the denial of the information, the respondents preferred separate appeals before the first appellate authority, which inter alia held as under:

It is observed that Section 8 (1) (j) of the RTI Act clearly lays down that Cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers are exempted from disclosure. There is no obligation on the part

of the CPIO go give above mentioned information. There is, however, a provision, under the section 8 (1) (i) which lays down that the Decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decision were taken shall be made public after the decision has been taken, and the matter is complete, or over. Obviously, Cabinet Papers have a wider meaning in the Act. It includes all the papers pertaining to deliberations of the various Committees of the Cabinet, apart from including the papers pertaining to Records of deliberations of the Council of Ministers, records of deliberations of the Secretaries and Records of deliberations of other officers. Decisions of the council of Ministers and material on the basis of which the decisions were taken are a just a sub-set of the larger set of documents encompassed under the larger term Cabinet Papers. Out of these type of documents only one set of documents is mandated to be made public after the decision has been taken, and the matter is complete, or over.

The use of the terms Shall be made public in the Act obviously makes it a duty for the Public Authorities to make public the decisions of the Council of Ministers and material on the basis of which the decisions were taken.

Naturally, there should be no occasion or need for any info-seeker to ask for this class of information, as these are mandated, in any case, to be made public. But this stipulation (making them mandatorily public) is attracted, specifically, only in cases of Decisions of Council of Ministers and, definitely, not in respect of any other class of Cabinet Papers.

The papers (pertaining to Shri P. K. Jains request) being held by the DOPTs CPIO Shri Ravindra Kumar, Under Secretary are, essentially, the papers pertaining to the deliberations of the Appointments Committee of the Cabinet pertaining to promotion to the post of Chief Engineer in MES, and hence, they fall under the definition of Cabinet Papers. They cannot be treated as materials for decision of council of Ministers The papers (pertaining to Shri P. K. Jains request) being held by the DOPTs CPIO Shri Ravindra Kumar, Under Secretary are, essentially, the papers pertaining to the deliberations of the Appointments Committee of the Cabinet pertaining to promotion to the post of Chief Engineer in MES, and hence, they fall under the definition of Cabinet Papers. They cannot be treated as

materials for decision of council of Ministers (As envisaged and understood under proviso to Section 8 (1) (i) of the RTI Act 2005). As already brought out earlier, as far as Cabinet papers are concerned, it is a separate class of papers, distinct from material on the basis of which decision of Council of Ministers are taken and cannot be made public even after the decisions have been taken and the matter is complete or over. This is because of the simple reason that the enabling proviso under section 8 talks only about the decisions of the Council of Ministers. Hence, the proviso, under section 8 (1) (i), cannot travel beyond the legislative intent as reflected in the main Section 8 (1) (i) and the proviso cannot be read to enable disclosure of all class of the Cabinet Papers.

4. Being aggrieved from the order of the First Appellate Authority, the respondent preferred a second appeal before the Central Information Commission, which vide impugned order dated 3.2.2009, relying upon its earlier order in Appeal No.CIC/WB/A/2008/00081 dated 23.10.2008 P.D. Khandelwal Vs. Do PT, directed disclosure of the desired information to the respondent. Being aggrieved from the order of the Commission, the petitioner-Union of India is before this Court.

5. Section 8 (1) (i) came up for consideration by this Court in WP (C) No.16907/2006 titled Union of India Vs. Sweety Kothari & connected matters decided on 30.11.2009. In the said case, the following information was sought by the applicant:

(a) Copies of the advertisements calling for applications for selection of ITAT members in Calendar Years 2002 and 2003. (b) Recommendation of Interview/Selection Board regarding selection of the said members. (c) Names of the person finally selected as ITAT members in the above-mentioned Calendar Years.

The information sought for at serial Nos.(a) & (c) was supplied but the information sought for at serial No.(b) was denied. The contention of the petitioner that since final selection was approved by ACC, Section 8 (1) (i) of the Act was attracted was, however, rejected by the Commission, which directed the disclosure of the aforesaid information to the applicant. Rejecting the writ petition, this Court held that the recommendations made by the Interview/Selection Board being one of the

material before the Appointment Committee of the Cabinet (ACC), the said information are not protected under Article 74 (2) of the Constitution of India which grants absolute immunity from disclosure of the advice tendered by the Ministers and the reasons thereof and after appointments had been made even if Section 8 (1) (i) of the Act applies, the first proviso comes into operation. During the course of judgment, the Court interpreting clause (i) of sub-section (1) of Section 8 of the Act inter alia observed as under:

20. The said sub-clause protects Cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers. The first proviso however stipulates that the prohibition in respect of the decision of the Council of Ministers, the reasons thereof and the material on the basis of which decisions were taken shall be made public after the decision is taken and the matter is complete or over. Thus, a limited prohibition for a specified time is granted. Prohibition is not for an unlimited duration or infinite period but lasts till a decision is taken by the Council of Ministers and the matter is complete or over.

21. The main clause to Section 8(1)(i) uses the term Cabinet Papers which include records or deliberations, but the first proviso refers to the decision of the Council of Ministers, reasons thereof and the material on the basis of which the decisions were taken. The term Council of Ministers is wider than and includes Cabinet Ministers. It is not possible to accept the contention of Mr. A.S. Chandhok, learned Addl. Solicitor General that cabinet papers are excluded from the operation of the first proviso..

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23. Views expressed by authorities/persons which precede the formation of advice tendered or merely because these views are referred to in the advice which is ultimately tendered by the Council of Ministers, do not necessarily become part of the advice protected against disclosure under Article 74(2) of the Constitution of India. Accordingly, the material on which the reasons of the Council of Ministers are based and the advice is given do not form part of the advice.

24. .When Article 74(2) of the Constitution applies and bars disclosure, information cannot be furnished. RTI Act cannot and does not have the ability and mandate to negate the constitutional protection under Article 74(2). The said Article refers to inquiry by courts but will equally apply to CIC.

. . W.P.(C) No.14069 of 2009 & 14084 of 2009 . .

26. . As held above, the first proviso removes the ban on disclosure of the material on the basis of which decisions were taken by the Council of Ministers, after the decision has been taken and the matter is complete or over..

6. It would be seen from a conjoint reading of the main Clause (i) and the first proviso to the said Clause, that though there is a prohibition against disclosure of Cabinet papers, which would include record of deliberations of the Council of Ministers, Secretaries and other officers, such prohibition as far as RTI Act is concerned, is not for all times to come and has a limited duration till the Council of Ministers takes a decision in a matter and the matter is complete or over in all respects. Considering the context in which the words the matter is complete or over have been used it appears to me that once the decision taken by the Council of Ministers has been given effect, by implementing the same, the prohibition contained in Clause (i) is lifted and the decision taken by the Council of Ministers, the reasons on which the decision is based as also the material on the basis of which the said decision was taken can be accessed under the Right to Information Act. Mr. Dubey, the learned counsel for the petitioner-Union of India has drawn my attention to the fact that the expression used in the main Clause is cabinet papers whereas the first proviso refers only to the decision of the Council of Ministers, the reasons thereof and the material on which such decisions are based. The Cabinet comprises of the Prime Minister and the Cabinet Ministers whereas the Council of Ministers comprises not only the Prime Minister and the Cabinet Ministers, but also the Ministers of State and the Deputy Ministers. Therefore, the Council of Ministers is a larger body as compared to the Cabinet. Hence, once the decision taken by the Council of Ministers/Cabinet has been implemented, the decision taken by the said Council/Cabinet as well as the reason for such decision and the material on the basis of which the decision was taken cannot be withheld by the

concerned CPIO.

7. Mr. Dubey points out that in Clause (i), Cabinet papers include record of deliberations not only of the Council of Ministers but also of the Secretaries and other officers but the proviso does not apply to the deliberations of the Secretaries and other officers, meaning thereby that even after a decision has been implemented, the deliberations of the Secretaries and other officers cannot be disclosed. A careful perusal of the proviso would show that not only the decisions of the Council of Ministers and the reasons on which the said decisions are based but also the material on the basis of which the decisions are taken by the Council of Ministers are also required to be disclosed, once the decision has been implemented. Therefore, in case the deliberations of the Secretaries and/or other officers constitute the material which formed the basis for the decision of the Council of Ministers, the said deliberations of the Secretaries and/or other officers also cannot be withheld.

8. Mr. Dubey also draws my attention to Article 74 (2) of the Constitution of India which provides that the question whether any, and if so what, advice was tendered by Ministers to the President shall not be inquired into in any Court and submits that in view of the said prohibition, the decision taken by the Cabinet Committee on Appointments (ACC), the same being advice tendered to the President, cannot be directed to be disclosed. The question which arises for consideration from the submission made by Mr. Dubey is as to whether the decision taken by the Cabinet Committee on Appointments (ACC) on promotion of Additional Chief Engineers to the grade of Chief Engineers in MES of the Ministry of Defence amounts to advice tendered by Ministers to the President within the meaning of Article 74 of the Constitution or not. A similar issue came up for consideration before a Division Bench of this Court in Waris Rashid Kidwai Vs. Union of India & Ors. (1998) ILR Delhi 589. The petitioner in that case filed a petition challenging the mode and manner of appointment to the post of the Chairman and Managing Director of Minerals & Metals Trading Corporation (MMTC). The procedure for filling up the said post was that the Public Enterprises Selection Board (PESB) used to lay down job descriptions, qualifications and experience for eligible candidates, shortlist candidates out of the eligible officers, hold interviews, make a panel of

candidates selected as suitable for the posts and forward the same to the concerned Ministry for processing the case for approval of Appointments Committee of the Cabinet (ACC). The concerned Ministry would then process the case and forward the proposal to the Establishment Officer, Ministry of Personnel, Public Grievances and Pension who was the Secretary of the ACC for obtaining and conveying the ACC decision on the proposal. The ACC comprises the Prime Minister, the Home Minister and the Minister Incharge of the concerned Ministry. The Secretary, ACC would submit the proposal to the Home Minister and the Prime Minister through the Cabinet Secretary and the decision was finally approved/taken at the level of the Prime Minister and conveyed to the Ministry concerned by the Secretary, ACC. Mr. Arun Jaitley, counsel for the respondent contended before this Court that it cannot enquire into the respective opinion which the Members of the ACC may have expressed while considering cases of such appointments. In this regard, he contended that the decision of ACC was in the nature of advice tendered by the Council of Ministers to the President and, therefore, the Court cannot enquire the question as to what advice was tendered. He also contended that ACC was constituted to conduct business of the Government as stipulated by Article 77 and its business was deemed to be a decision of the Council of Ministers and was in the nature of aid and advice to the President. Rejecting the contention, this Court *inter alia* held as under:

20. .It has, however, to be borne in mind that what is debarred to be enquired into is the aid and advise and not the material on which the advise is tendered by the Council of Ministers. That material cannot be said to be part of the advise and it is thus outside the exclusionary rule enacted in Article 74(2) of the Constitution (See: *S.P. Gupta & others Vs. Union of India & Ors*, and *R.K. Jain Vs. Union of India & others*,). Further, such an appointment does not call for any aid and advise to the President as contemplated by Article 74(1). It is only an appointment in the name of the President which is altogether a different matter. Such appointments cannot be said to be based on the advise of the Council of Ministers to the President and thus these appointments cannot be said to be protected under Article 74(2)..

In view of the pronouncement of the Division Bench, there is no escape from the conclusion that the decision of the ACC in the matter of promotion of a

Government servant does not constitute advice of the Ministers to the President within the meaning of Article 74 of the Constitution and, therefore, cannot be withheld if it is otherwise accessible under the provisions of the Right to Information Act.

9. For the reasons stated hereinabove, the writ petition is disposed of with a direction that the petitioner shall disclose the approval by ACC to the respondents in terms of the prayer made in the application submitted by them to the CPIO. The information to be made available to the respondents shall also include the reasons for the decision taken by the ACC. The material on the basis of which the said decision was taken, however, need not be disclosed, if it was not sought by the respondents. If, however, they seek such material, it cannot be withheld, after a decision taken by the Council of Ministers is implemented. It is, however, made clear that a Cabinet decision, wherever such decision constitutes advice of Ministers to the President in terms of Article 74 of the Constitution, cannot be accessed under the provisions of the Right to Information Act. The writ petitions stand disposed of accordingly. November 19, 2013 bñesh V.K. JAIN, J.

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