

Amresh Sharma vs.director General, Border Security Force

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Court : Delhi

Decided On : Mar-19-2019

Appellant : Amresh Sharma

Respondent : Director General, Border Security Force

Advocate for Def. : Mr. Akshay Makhija, Ms. Kriti Awasthi

Advocate for Pet/Ap. : Ms. Warisa Farasat, Ms. Rudrakshi Deo

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Date of decision:

19. h March, 2019 % + W.P.(C) 5951/2014 AMRESH SHARMA

... Petitioner

Through: Ms. Warisa Farasat and Ms. Rudrakshi Deo, Advs. versus DIRECTOR GENERAL, BORDER SECURITY FORCE Respondent Through: Mr. Akshay Makhija, CGSC with Ms. Kriti Awasthi, Adv. CORAM: HON'BLE MR. JUSTICE V. KAMESWAR RAO V. KAMESWAR RAO, J.

(ORAL) 1. The challenge in this writ petition is to an order dated January 06, 2014 passed by the Central Information Commission (CIC, in short) whereby the CIC has allowed the appeal filed by the petitioner herein partially inasmuch as it has directed the CPIO of the respondent Organization to provide the documents at point No.(i), (ii) and (vi) to the petitioner herein and denied the documents at point

No.(iii), (iv) and (v) on the ground that the same attracts Section 8(1)(j) of the RTI Act, 2005. W.P.(C) No.5951/2014 Page 1 of 10 2. Suffice it to state that the information, which was sought by the petitioner from the CPIO of the respondent Organization were the following:-

"(i) Complaint lodged by Mrs. Amresh Sharma; (ii) Charge-sheet against Mr. Kailash Chand, D.I.G. (Udaipur); (iii) Statements of all the P.W. (prosecution witnesses) examined by the G.S.F.C.; (iv) Statements of all the D.W. (defence witnesses) examined by the G.S.F.C. (v) All the exhibits produced in the G.S.F.C.; (vi) Judgment by G.S.F.C.

3. There is no dispute that the respondent had complied with the directions of the CIC with regard to documents at (i), (ii) and (vi) above. The only issue which needs to be considered is, whether the rejection of the information sought by the petitioner with regard to documents at point (iii), (iv) and (v) above, on the ground that the same attracts Section 8(1)(j) of the RTI Act, 2005, is justified.

4. The case of the petitioner is that she is a widowed lady whose husband expired in a road accident, leaving behind four young children. Taking advantage of her state, her brother-in-law, W.P.(C) No.5951/2014 Page 2 of 10 who was already married, conducted a sham second marriage with her. He not only left her without any maintenance and forced her to conduct multiple abortions, but also transferred various properties inherited by her from her late husband to his own name. Her brother-in-law namely Kailash Chand was also a D.I.G. in the Border Security Force and such a second marriage was a civil offence under Section 46 of the Border Security Force Act.

5. The petitioner filed a complaint with the BSF on June 18, 2009 alleging that Kailash Chand had deceitfully induced her to have conjugal relations with him by making her believe that they were lawfully married and that he had improperly acquired and disposed of immovable properties belonging to her and to others. A trial was held by the General Security Force Court (for short G.S.F.C.) established under Section 64 of the Border Security Force Act, 1968 (BSF Act). Two separate charge sheets were framed by the G.S.F.C. The first charge sheet was issued under Section 46 of the BSF Act, which is sexual intercourse caused by a man

deceitfully inducing a belief of lawful marriage punishable under Section 493 of the Indian Penal Code. The second charge sheet was under Section 40 of the BSF Act, that is an act W.P.(C) No.5951/2014 Page 3 of 10 prejudicial to good order and discipline of the force. It appears that the G.S.F.C. has acquitted Kailash Chand of the charge of illegal acquisition of property, which according to the petitioner ought to have been inherited by the petitioner and her children. The petitioner being not satisfied with the decision of the G.S.F.C., had on March 06, 2013 filed an application under RTI Act, 2005 before the Public Information Officer demanding certified copies of the aforesaid six documents. On March 20, 2013, the PIO has rejected the application on the ground that the Border Security Force is a security organization listed in the second schedule of the RTI Act in terms of Section 24 of the RTI Act and has been given exemption from application of the provisions of the Act.

6. On April 10, 2013 petitioner filed a first appeal under Section 19(1) of the RTI Act pointing out that the information sought was not excluded from Section 24 of the RTI Act as it related to information pertaining to allegations of corruption and human right violations. On April 29, 2013, the First Appellate Authority of the BSF dismissed the appeal on the ground that the case of the petitioner is not covered by the exception, holding that the information sought is not related to human right violations or W.P.(C) No.5951/2014 Page 4 of 10 allegations of corruption. On June 14, 2013, petitioner filed a Second Appeal before the CIC, which resulted in the impugned order of the CIC, a narration of which has already been given above.

7. It is the submission of the learned counsel for the petitioner that the ground on which the CIC has rejected the three documents at point Nos.(iii), (iv) an (v) above on the ground that the said documents attract Section 8(1)(j) of the RTI Act, 2005 is totally untenable. According to her, the information sought by the petitioner was with regard to G.S.F.C. conducted by the BSF on the compliant made by the petitioner herein and the complainant is interested in the outcome of the G.S.F.C. and the same cannot be said to be personal information relatable to Kailash Chand. In fact, these are the proceedings, which have been conducted by the BSF on the basis of the complaint of the petitioner against Kailash Chand as such

amenable to the petitioner. So, it cannot be said to be a material concerning third party. That apart, it is her submission that when the respondents have given to the three documents like complaint of the petitioner; the charge sheet against Kailash Chand and the judgment of the G.S.F.C., there is no reason to deny the documents at point (iii), (iv) and (v), which are also related to the W.P.(C) No.5951/2014 Page 5 of 10 proceedings before the G.S.F.C., to the petitioner. She has relied upon two judgments in support of her contention. The same are; (i) CPIO, Supreme Court of India v. Subhash Chandra Agarwal and Anr. 162 (2009) DLT135 (ii) D.P. Maheshwari v. Central Bureau of Investigation decided on January 18, 2018.

8. On the other hand, learned counsel for the respondent would rely on Section 129 of the BSF Act to contend that a person tried by the Security Force Court is entitled to the copies of the proceedings only on demand and not as a matter of right. That apart, it is her submission that it is the case of the petitioner that the petitioner has demanded the information to seek appropriate remedy against the conclusion of the G.S.F.C acquitting Kailash Chand of one charge. If that be so, it is her submission that the Civil Court is within its right to summon any record and such rights are unfettered and petitioner by resorting to the RTI Act, is pursuing a wrong remedy. She also justifies the invocation of provision of Section 8(1)(j) of the RTI Act as the information sought pertains to Kailash Chand. She would rely upon the judgment in the case of Union of India and Ors. v. Adarsh Sharma W.P.(C) 7453/2011 decided on October 09, 2013. W.P.(C) No.5951/2014 Page 6 of 10 9. Having heard the learned counsel for the parties as noted above, the only issue is whether the CIC is right in rejecting the request of the petitioner with regard to documents at point (iii), (iv) and (v) on the ground that it attracts Section 8(1)(j) of the RTI Act. The answer in this regard has to be in negative. This I say so for the reason that there is no dispute that the G.S.F.C. proceedings have been initiated against Kailash Chand on the complaint made by the petitioner. In fact, during the proceedings I have been informed that the petitioner was also called as a witness. There is also no denial to the fact that those proceedings have been initiated by the BSF under the Act and rules made thereunder. So, the information sought is related to a public activity, as it concerns the conduct of Kailash Chand as an employee of BSF and the same cannot be said to be personal information of

Kailash Chand to be called as an unwarranted intrusion of privacy of Kailash Chand. In other words, Kailash Chand being an employee of the BSF, is governed by the Disciplinary Rules of the BSF and the action has been taken by the BSF against Kailash Chand being its employee. In fact, the nomenclature of the information sought would reveal that the intent behind seeking that information was to ascertain the evidence, which has been adduced by the prosecution witnesses and defence W.P.(C) No.5951/2014 Page 7 of 10 witnesses and also the documents, which have been produced in the G.S.F.C. That apart, the very fact that the judgment of the G.S.F.C. has been given to the petitioner, which surely would have made a reference to all the documents including those sought by the petitioner, cannot be termed to be a third party information, which shall prejudice the privacy of Kailash Chand. I am of the view that the denial of the information in the facts of this case, is totally unwarranted. Also, the respondent having given information with regard to three documents at (i), (ii) and (vi) cannot now take the plea based on Section 24 of the RTI Act, 2005.

10. The learned counsel for the petitioner is justified in relying upon paras 60 and 63 of the judgment in the case of CPIO, Supreme Court of India (supra), wherein the learned Single Judge has concluded as under:-

"60. The petitioners argue that the information sought for is exempt from disclosure by reason of Section 8 (1) (j) of the Act. The argument here is that such class of information - about personal asset declarations has nothing to do with the individual's duties required to be discharged, as a judge, an obvious reference to the first part of Section 8 (1) (j); it is also emphasized that access to such information would result in unwarranted intrusion of privacy. The applicant counters the submission and says that details of whether declarations have W.P.(C) No.5951/2014 Page 8 of 10 been made, to the CJI can hardly be said to be called "private" and that declarations are made by individual judges to the CJI in their capacity as judges. It is submitted that the present proceeding is not concerned with the content of asset declarations. XXXXX XXXXX XXXXX63 There can be no doubt that the Act is premised on disclosure being the norm, and refusal, the exception. As noticed, besides the exemptions, non-disclosure is also mandated in respect of information relating to second schedule institutions.

Though by Section 22, the Act overrides other laws, the opening non-obstante clause in Section 8 ("notwithstanding anything contained in this Act") confers primacy to the exemptions, enacted under Section 8. Clause (j) of Sub-section (1) embodies the exception of information in the possession of the public authority which relates to a third party. Simply put, this exception is that if the information concerns a third party (i.e. a party other than the information seeker and the information provider), unless a public interest in disclosure is shown, information would not be given; information may also be refused on the ground that disclosure may result in unwarranted intrusion of privacy of the individual. Significantly, the enactment makes no distinction between a private individual third party and a public servant or public official third party.

11. Insofar as the judgment of UOI v. Adarsh Sharma (supra) relied upon by the learned counsel for the respondent is concerned, the same is not applicable to the facts herein; as a Coordinate Bench of this Court had, while dealing with an issue wherein information was sought from the Intelligence Bureau, has held that the information of the nature sought cannot be sought as a matter of right. Suffice it to state, the said judgment was peculiar to the facts W.P.(C) No.5951/2014 Page 9 of 10 of that case and as such, is of no help to the learned counsel for the respondent.

12. In view of the discussion above, this Court is of the view that the respondent should be directed to provide the information with regard to the documents at Sl. No.(iii), (iv) and (v) within a period of four weeks from today. The writ petition is disposed of. No costs. MARCH19 2019/ak V. KAMESWAR RAO, J W.P.(C) No.5951/2014 Page 10 of 10