

Uma Engineering Company Vs. Chief Technical Examiner (Ce), Irrigation Wing and anr.

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Court : Andhra Pradesh

Decided On : Jan-20-2004

Reported in : 2004(1)ALD620; II(2004)BC364

Judge : V.V.S. Rao, J.

Acts : [Freedom of Information Act, 2002](#) - Sections 8

Appeal No. : WP No. 11780 of 2003

Appellant : Uma Engineering Company

Respondent : Chief Technical Examiner (Ce), Irrigation Wing and anr.

Advocate for Def. : Government Pleader for ;P.V. Sanjay Kumar, Adv.

Advocate for Pet/Ap. : M.S. Tirumala Rani, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

V.V.S. Rao, J.

1. The petitioner, M/s Uma Engineering Company is the partnership firm. The said firm filed this petition invoking the jurisdiction of this Court under Article 226 of Constitution of India, praying this Court to issue a writ of mandamus, to call the records relating to the agreement Nos. 8 and 9/94-95, of the Superintending Engineer, Irrigation Circle, Kurnool and direct the respondents to furnish the authorised order copies of the note file of (i) Government Memo No. 53710/TBP2/92, (ii) Government Memo No. 3323/TBP2/97 and (iii) Government Memo No. 55921/TBP2/95 passed by then Hon'ble Minister for Irrigation, Government of Andhra Pradesh.

2. The events leading to filing the writ petition, in brief are as follows. The Superintending Engineer (for short 'S.E.') invited tenders for the work of lining of the Tungabadra Project Low Level Canal. The petitioner submitted tender quoting Rs. 84,00 per 10 cum instead of 840.00 per 10 cum. It is alleged that as per Government Memo.No. 136/C60/80-1, dated 19.2.1980, the correction of bona fide mistakes in the tenders is permissible. The petitioner therefore approached the Superintending Engineer on 18.4.1994 stating that bona fide mistake occurred in the tender in that, instead of quoting Rs. 840.00 per 10 cum, the petitioner inadvertently quoted Rs. 84.00 per 10 cum. He also made a similar request to correct tender schedule, to the Chief Engineer, Major Irrigation on 29.4.1994. According to the petitioner, the S.E., recommended for correction, to the Chief Engineer for approval of tender.

3. As the petitioner's tender was accepted vide agreement Nos. 8 and 9/94-95 hoping that the recommendation of the S.E., (recommendations vide letter dated 15.9.1994) would be approved, the petitioner completed the work under protest. During the progress of the work, the petitioner sought extra payment for water lead charges from the Executive Engineer of T.P.Division, Adoni for transporting water as there were severe drought conditions prevailing at the work site. The petitioner allegedly transported water from a distance of 5.4 kms. incurring considerable expenditure. His request was considered by the Executive Engineer as well as S.E., who recommended to Chief Engineer for payment of water lead charges. The Chief Engineer also approved the recommendations made by the S.E.

4. The petitioner approached the Secretary to the Government in Irrigation and Command Area Development Department on 4.1.1995. He also made request to the Hon'ble Minister for correction of the mistake on 11.10.1995 followed by reminders. Petitioner alleges that the Hon'ble Minister recommended for correction and the Government of Andhra Pradesh accepted the recommendations and passed orders to correct bona fide mistakes crept in the tender schedule and also ordered for payment of water lead charges. According to the petitioner, these orders were passed in the file itself which were approved by the Department of Finance and Planning as well. The petitioner allegedly made representations to the respondents namely, the Chief Technical Examiner, Irrigation, A.P. Secretariat and the Deputy Secretary (Technical) in the same wing, in vain. The petitioner further alleges that the Government passed orders vide Government Memorandum Nos. 53710/TBP2/92 and 3323/TBP2/97 and Government Memo No. 55921/TBP2/95 ordering the correction of bona fide mistake and sanctioning water lead charges. The copies of the Orders were not given to the petitioner in spite of petitioner making number of representations to Secretariat. Therefore, the present writ petition is filed.

5. At the stage of preliminary hearing itself, the respondents have filed counter-affidavit through the 2nd respondent. In the counter-affidavit, it is stated as follows; The petitioner made a representation on 11.10.1995 for payment of water lead charges for the works executed by him to the lining of Kurnool Branch Canal and for rectification of alleged bona fide mistake regarding quoting of rates for 10 cum in stead of 1 cum in the tenders relating to the works of modernization of Tungabhadra Low Level Canal and Kurnool Branch Canal. The representation of the petitioner was rejected by the Government twice vide letter No. 53710/TBP.2/95-4 dated 29.4.1997 and letter No. 21660/TBP.2/2000, dated 5.7.2000 on the ground that the bids were evaluated based on the rates quoted and the works entrusted at the said rates which cannot be altered subsequently. It is further stated that the note file is not a public document and being the internal record of the Department, cannot be supplied to the public on request and that writ petition is not maintainable.

6. During the course of the proceedings, the copies of the letters of the Government dated 29.4.1997 and 5.7.2000 were also handed over to the learned Counsel for the petitioner Ms. M.S. Tirumala Rani. Notwithstanding the same, the learned Counsel for the petitioner submits that the petitioner has a fundamental right to freedom of information under Article 19(1)(a) and 19(1)(g) of the Constitution of India. She also relies on the [Freedom of Information Act, 2002](#) (Central Act No. 5 of 2003, hereinafter called as 'the Act'). She placed reliance on the decision of the Supreme Court in *Banamali Das v. Rajendra Chandra*, : [1976]1SCR212 , to contend that the recommendations made by the Minister is a public document and therefore, the petitioner is entitled for the same. The learned Government Pleader for Irrigation Sri P. V. Sanjay Kumar, relies on Section 8 of the Act and submits that the note file is not a public document in respect of which the petitioner can enforce right to freedom of information.

7. The writ petition is filed in effect, seeking a direction to the respondents to furnish the copies of the letters/memo bearing No. 53710/TBP2/95-4 (wrongly mentioned in the prayer as 53710/TBP.2/92) and Memo No. 55921/TBP2/95. It is stated by the learned Government Pleader that there is no such document bearing No. 55921/TBP.2/95 and that the two letters mentioned in paragraph three of the counter-affidavit have already been sent to the petitioner as well as handed over to the learned Counsel for the petitioner. Be that as it is, the learned Counsel for the petitioner seeks a direction to furnish the note orders allegedly passed by the Hon'ble Minister in concerned file. According to the learned Counsel, the Hon'ble Minister who represents the Government passed orders accepting the request of the petitioner and therefore, petitioner is entitled for the certified copies of the note file to enforce the right before the appropriate legal forum.

8. The right to receive 'information' is human right. Article 19 of Universal Declaration of Human Rights, 1948 (UDHR) adopted by United Nations Organisation on 10.12.1948 recognized such right. It is to the effect that, 'everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.' Needless, to mention that any democracy without the participation of all the citizens would be ineffective. To

enable all citizens to actively participate in democratic governance, they should be made available information: information regarding the Governmental activities, information about the people whom they elect as representatives, information about the bureaucrats and information about the benefits which are conferred on the citizens in various walks of life. In two recent Judgments, namely; *Union of India and Anr. v. Association for Democratic Reforms* , : [2002]3SCR696 , and *People's Union for Civil Liberties (PUCL) and Anr. v. Union of India and Anr.* , : [2003]2SCR1136 , Supreme Court considered scope and importance of freedom of information. I need to refer the observations made by the Hon'ble Sri Justice P. Venkatarama Reddi in his separate opinion (partly dissenting with the majority views), as summarized in the head note 'G' which is as under:

Freedom of speech and expression, just as equality clause and the guarantee of life and liberty has been very broadly construed by the Supreme Court right from the 1950s. It has been variously described as a 'basic human right', 'a natural right' and the like. It embraces within its scope the freedom of propagation and interchange of ideas, dissemination of information which would help formation of one's opinion and viewpoint and debates on matters of public concern. The importance which our Constitution-makers wanted to attach to this freedom is evident from the fact that reasonable restrictions on that right could be placed by law only on the limited grounds specified in Article 19(2), not to speak of inherent limitations of the right. In due course of time, several species of rights unenumerated in Article 19(1)(a) have branched off from the genus of the article through the process of interpretation by the Apex Court. One such right is the 'right to information'. The right of the citizens to obtain information on matters relating to public acts flows from the fundamental right enshrined in Article 19(1)(a).'

9. The right to information in 'Indian Polity of Written Constitutional Governance by Rule of Law', plays a dynamic role. Equitable, fair and transparent and justice ridden and justice driven administration in governance pre supposes that the persons be made aware of the Laws, the rules, regulations and administrative guidelines by which their affairs will be governed. Unless and until these statutory and non-statutory instruments are made known, the right to information would be a mirage and belief would not be able to enforce their Constitutional, statutory and

common Law rights effectively. Nevertheless, like all rights, be they in alienable rights like right to life and liberty or other rights, every citizen is entitled to enjoy these rights subject to certain limitations. So to say all rights are not absolute rights. Indeed the right to information or freedom of information flows from Article 19(1)(a) (freedom of speech and expression) and Articles 14 and 21 of the Constitution of India. It is too late in the day for any one to say and for any one to hear that these rights absolute rights. The right to freedom of speech and expression (whose penumbral right is information right), itself is subject to State's reasonable restrictions on the exercise of right to freedom of speech and interests of sovereignty, integrity, security of India, friendly relations with foreign States, public Order, decency or morality. The right to information therefore must also be held subject to certain restrictions.

10. The learned Counsel for the petitioner lays emphasis on the [Freedom of Information Act, 2002](#). It is therefore, necessary to notice salient features of this enactment. In the Chief Ministers' Conference on 'Effective and Responsive Government' held on 24.5.1997 at New Delhi, the conference unanimously recognized the need to enact a Law on right to information. The Government of India appointed a Working Group on Right to Information and Promotion of Open and Transparent Government to examine the feasibility and need for Right to Information Act to meet the needs of open and responsive Governance. The working group in its report in May 1997 recommended for enactment of Freedom of Information Act. The Government of India constituted a group of Ministers which deliberated the draft Bill submitted by the Working Group which is in accordance with Article 19 of the Constitution as well as Article 19 of Universal Declaration of Human Rights. The Parliament passed the Bill enacting the [Freedom of Information Act, 2002](#) on 6.1.2003. As per Sub-section (3) of Section 1 of the Act, it shall come into force on such date as the Central Government may, by notification in the Official Gazette, appointed for enforcement of the Act. Neither the learned Counsel for the petitioner nor the learned Government Pleader have placed before me the notification issued by Government India under Sub-section (3) of Section 1 bringing the 'Act' into force. Be that as it is, I propose to proceed on the ground that the Act has been brought into force.

11. The Act enables all the citizens to have access to information on a statutory basis. Section 3 declares that every citizen shall have right to freedom of information. Under Section 4 obligation is cast upon every public authority to provide information and to maintain all records consistent with its operational requirements, duly catalogued and indexed and publish at such intervals as may be prescribed by the Government or the competent authority. Every public authority for the purpose of the Act is required to appoint one or more officers as Public Information Officers (Section 5). If a person desires to obtain information, he shall have to make a request in writing or through electronic media to the concerned Public Information Officer specifying the particulars of the information sought by him (Section 6). Does the Act provide for a right to freedom and information in absolute terms? Is there any material or information in any form which can be denied.

12. Act imposed restrictions on the freedom of information. These restrictions are three types dealt with respectively by Sections 8, 9 and 16. Section 8 reads as under:

'8. Exemption from disclosure of information--(1) Notwithstanding anything hereinbefore contained, the following information not being information relating to any matter referred to in Sub-section (2), shall be exempted from disclosure, namely:

(a) information, the disclosure of which would prejudicially affect the sovereignty and integrity of India, security of the State, strategic scientific or economic interest of India or conduct of international relations.

(b) Information, the disclosure of which would prejudicially affect public safety and order, detection and investigation of an offence or which may lead to an incitement to commit an offence or prejudicially affect fair trial or adjudication of a pending case;

(c) Information, the disclosure of which would prejudicially affect the conduct of Centre-State relations, including information exchanged in confidence between the Central and State Governments or any of their authorities or agencies;

(d) Cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers;

(e) minutes or records of advice including legal advice, opinions or recommendations made by any officer of a public authority during the decision making process prior to the executive decision or policy formulation;

(f) trade or commercial secrets protected by law or information, the disclosure of which would prejudicially affect the legitimate economic and commercial interests or the competitive position of a public authority; or would cause unfair gain or loss to any person; and

(g) information, the disclosure of which may result in the breach of privileges of Parliament or the Legislature of a State, or contravention of a lawful order of a Court.

(2) Subject to the provisions of Clause (a) of Sub-section (1), any information relating to any occurrence, event or matter which has taken place occurred or happened twenty-five years before the date on which any request is made under Section 6 shall be provided to any person making a request under that section;

Provided that where any question arises as to the date from which the said period of twenty-five years has to be computed, the decision of the Central Government shall be final.'

13. Section 11 imposed restrictions on the public authority in acceding the request of the person for information, if such information is supplied by a third party (i.e., a person other than the person making a request for information and includes a public authority) and when such information is denied, the aggrieved person may file appeal before duly constituted Appellate Authority.

14. The third type of information which can be denied to the general public is provided in Section 16 of the Act which is to the effect that the Act shall not apply the intelligence and security organizations specified in the Schedule like Intelligence Bureau, Research and Analysis Wing of the Cabinet Secretariat, Directorate of Revenue Intelligence etc.

15. A plain reading of Section 8 would show that certain types of information inter alia, the minutes or records of advice including legal advice, opinions or recommendations made by any officer of a public authority during the decision making process prior to the executive decision or policy making is not treated as information shall be exempted of the disclosure. ('Information' as defined by Clause (d) of Section 2).

16. Therefore, the information sought by the petitioner, i.e., alleged note orders issued by the Hon'ble Minister squarely fall within Section 8(e) of the Act and therefore, the petitioner cannot claim or enforce freedom of information under the Act.

17. There is yet another reason to conclude that the petitioner cannot insist on the supply of note orders to him. In the system of administration followed in Indian sub continent (which is credited Lord Macaulay), before any order is passed, the matter is generally considered on various levels i.e., from the level of a Clerk or Assistant, Head Clerk or Superintendent, the Junior Management Cadre Officer, Middle Management Cadre Officer, top Bureaucrats, Hon'ble Ministers, Every one contributes to the decision making process. All the notings made in that file at different levels cannot be called decisions as such. The collectivity of opinion and reasons therefor will ultimately manifest in the form of a decision which is communicated to a person. A person at whose instance a decision was taken, is no doubt entitled to receive and to be communicated a copy of the order containing the decision. Such person, however cannot claim any right from any of the notings in the file. Therefore, office notings in departmental files do not create any rights and such notings cannot be enforced in a Court of Law. This is well settled by decision of Supreme Court in *Puranjit Singh v. Union Territory of Chandigarh*, : AIR 1994 SC2737 , wherein it was held:

For this purpose, he is relying upon certain notings either of the Chief Engineer or the Home Secretary of the Chandigarh Administration. Although it is not known how he came in possession of the said notings, it was improper on his part to produce these notings in the Court proceedings, assuming that he had come in possession of them authorisedly. As a responsible officer he ought to know that

notings in the departmental files did not create any rights in his favour. It is the orders issued by the competent authorities and received by him which alone can create rights in his favour. This is apart from the fact that even those notings did not spell out any order in his favour. In the circumstances, the authorities on which the learned Counsel for the petitioner relied are inapplicable to the facts of the present case.

18. The reliance placed on Freedom of Information Act is therefore is misconceived. The petitioner's request for water lead charges as well as correction of mistake in the tender schedule was not considered and it was rejected by the Government of Andhra Pradesh. The orders of Government were also communicated. In that view of the matter, the petitioner cannot be said to have suffered any prejudice or hardship by non-communication of the note orders of the Hon'ble Minister allegedly in favour of the petitioner.

19. In the result, for the above reasons, writ petition fails and is accordingly dismissed without costs any order as to costs.