

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision:- **24.1.2011**

M/s Hindustan Petroleum Corporation Ltd. ...Petitioner

Versus

The Central Information Commission and others ...Respondents

CORAM: HON'BLE MR.JUSTICE MEHINDER SINGH SULLAR

Present:- Mr.Anil Malhotra, Advocate for the petitioner.

Mehinder Singh Sullar, J. (Oral)

Tersenessly, the facts, which require to be noticed for a limited purpose of deciding the core controversy, involved in the instant writ petition and emanating from the record, are that one Khushi Ram (respondent No.2) moved an application dated 27.1.2009 (Annexure P1) to the Central Public Information Officer (for brevity “the CPIO”), seeking the information mentioned therein and here-in-below, pertaining to one M/s Rajesh Gas Service, an authorized distributor of LPG, invoking the provisions of The Right to Information Act, 2005 (hereinafter to be referred as “the Act”). The CPIO did not supply the complete information, which necessitated him (respondent No.2) to prefer first appeal, which was dismissed as well, by the First Appellate Authority (for short “the FAA”) (respondent No.3), by virtue of order dated 16.3.2009 (Annexure P4)

2. Aggrieved by the action of not supplying the information by the CPIO and FAA, respondent No.2 filed the appeal (Annexure P5) before the Central Information Commission (for brevity “the CIC”), which was partly accepted by way of order dated 23.7.2009 (Annexure P8).

3. The petitioner-Hindustan Petroleum Corporation Ltd. (for short “the petitioner-Corporation”) had earlier challenged the order (Annexure P8), by virtue of Civil Writ Petition No.14163 of 2009, which came to be disposed of by this Court. The order (Annexure P8) was set aside and the matter was referred back

for its re-adjudication by the CIC, after passing a reasoned order, vide order dated 1.9.2010 (Annexure P10).

4. In this manner, the appeal of respondent No.2 was again heard by the CIC, which was accepted, by means of impugned order dated 4.1.2011 (Annexure P13), the operative part of which is as under:-

“Coming to the second issue, namely, whether the list of consumers can be treated as information in the nature of commercial confidence, we think that, in this particular case, it cannot be so considered. In Normal circumstances, the list of clients or consumers of any commercial entity is to be considered as commercial confidence. However, in this case, the consumers happen to be those who are the beneficiaries of subsidized cooking gas being provided by the HPCL. It is disingenuous to argue that the subsidy in the case of the LPG being distributed through the public sector oil companies is not given by the oil companies themselves but by the Central Government through an administered price mechanism. The Respondent had clearly admitted that the price at which gas was being supplied to both the domestic and commercial consumers was fixed by the Central Government and involved some amount of subsidy. Section 4(1) (b)(xiii) of the Right to Information (RTI) Act mandates the public authority to disclose proactively the particulars of the recipients of concessions et cetera. Obviously, this is to ensure that all information regarding any subsidy or concession given by the government is widely known so that any possibility of selecting wrong beneficiaries or diverting scarce and costly resources meant for certain classes of people can be prevented. Thus, when the HPCL, as a public authority, is itself required by law to publish the details of all such recipients, to treat the list of recipients, in this case, the consumers of subsidized cooking gas, as commercial confidence goes totally counter to the letter and spirit of the Right to Information (RTI) Act. Transparency demands that such information is routinely published in the public domain so that no one needs to approach any CPIO for seeking the information. Once such information is placed in the public domain, diversion of scarce cooking gas meant for domestic consumers and provided at a great cost to the nation will become difficult as the public would know about both classes of beneficiaries in advance and highlight any such diversion noticed by them. Keeping this information secret and confidential is not at all in the

public interest nor in tune with the provisions of the Right to Information (RTI) Act. Clearly, the provisions of Section 8(1)(d) cannot be invoked to exempt the disclosure of the list of consumers, both domestic and commercial. The observation of the Respondent that disclosing the names of their customers would adversely affect the commercial interests of the company and could expose it to undesirable competition is not acceptable in the specific context of this case which relates to information regarding subsidy or concession provided to the customers.

In the light of the above, we direct the CPIO to provide to the Appellant within 10 working days from the receipt of this order the entire lists of both the domestic and commercial consumers of this particular distributorship including their name and address.”

5. The petitioner-Corporation still did not feel satisfied and filed the instant writ petition, challenging the impugned order (Annexure P13), invoking the provisions of Article 226 of the Constitution of India. That is how I am seized of the matter.

6. Having heard the learned counsel for the petitioner, having gone through the record and relevant provisions of the Act, with his valuable assistance and after bestowal of thoughts over the entire matter, to my mind, there is no merit in the instant writ petition in this context.

7. However, the main submissions of the learned counsel that the information sought by respondent No.2, pertaining to third party, cannot be supplied to him, in view of exemption of section 8 (1) (d) (e) and (j) of the Act and since the CIC did not have the jurisdiction to supply it, so, the impugned order (Annexure P13) is against the provisions of the Act, are neither tenable nor the observations of this Court in case Rajan Verma v. Union of India, Ministry of Finance, Banking Division, New Delhi and others (2008-1) PLR 253 are at all applicable to the facts of the present case, therein, the firm had taken loan from the bank. Petitioner stood as a guarantor for the repayment of the loan and pledged his commercial property and that of his wife, in favour of the bank. The principal loanee and the guarantor wanted to settle the matter with the bank. The bank

charged interest @ 14.5% per annum instead of 9% per annum. Large scale embezzlement was stated to have been made by the Canara Bank while settling the NPA of different parties and one Tarsem Bawa, Manager of the Bank misappropriated an amount of Rs.3,17,00,000/- by withdrawing the government dues from inter banking transactions. The petitioner therein moved an application to the Chief Manager, Canara Bank, Amritsar for providing information under the RTI Act with regard to the details of settlements made by the bank during the last five years with the different parties of NPA, but the same was not supplied. The information was denied to him by the CIC on the ground that the information sought in respect of details of the customers falls under the exemption category and the information relating to commercial confidence, trade secrets and intellectual property cannot be sought as the same is exempted and barred under section 8 (1) (d) (e) and (j) of the Act. On the peculiar facts and in the circumstances of that case, the information was denied on the ground of commercial confidence and trade secrets. The writ petition filed by the petitioner was disposed of by this Court in the following manner :-

“The petitioner was seeking the details of accounts of other private individuals and concerns and on that account, the same has been rightly declined. Instead of making the payment of the loan amount, for which he is legally bound, the petitioner has resorted to rush the hierarchy of the bank by filing application under the RTI Act in respect of information for which the bank is exempted under Section 8 of the RTI Act. It so seems that the petitioner has misused the provisions of RTI Act.

So, in these circumstances, the writ petition is without any merit and as such, the same stands dismissed.”

8. Possibly, no one can dispute with regard to the aforesaid observations, but, to me, the same would not come to the rescue of the petitioner-Corporation in the instant controversy.

9. As is evident from the record that respondent No.2 has only sought the information by virtue of application (Annexure P1), pertaining to M/s Rajesh

Gas Service, opposite Nand Cinema, Hisar, an authorized distributor of LPG, such as number of consumers, who use domestic LPG cylinders with home-delivery, without home-delivery facilities, for commercial purpose, number of LPG cylinders received from HPCL, LPG Plant, Jind, during the period 1.10.2008 to 31.12.2008 and procedure of booking system for domestic cylinders etc. and nothing else.

10. At the very outset, the basic purpose, aims and objects of the Act, have to be kept into focus, while deciding the present writ petition. It is not a matter of dispute that the Act was enacted in order to ensure transparency in the system, smoother and deep access to information and to provide an effective framework for effecting the right to information, recognized under Article 19 of the Constitution of India.

11. Above being the position on record, now the sole question, that arises for determination in this petition, is as to whether such informations sought by respondent No.2 fall within the exemption clause as contemplated under section 8 (1) (d) (e) and (j) of the Act or not ?

12. Ex facie, the argument of learned counsel for petitioner-Corporation that the information sought is exempted under section 8 of the Act, is not only devoid of merit but misplaced as well.

13. Having regard to the contentions of the learned counsel for the petitioner-Corporation, to me, the indicated informations sought by respondent No.2 do not squarely fall within the ambit of exemption clause as envisaged under section 8 of the Act, as urged on its behalf.

14. As Section 8 (1) of the Act postulates that *notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,---*

(a) xx xx xx xx

(b) xx xx xx xx

(c) xx xx xx xx

(d) *information including commercial confidence, trade secrets or*

intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;

(e) Information available to a person, in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information.

(f) xx xx xx xx

(g) xx xx xx xx

(h) xx xx xx xx

(i) xx xx xx xx

(j) Information which relates to personal information the disclosure of which has not 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.”

15. Sequelly, the word “Information” has been defined under Section 2 (f) to mean any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force and word “Record” includes--(i) any document, manuscript and file; (ii) any microfilm, microfiche and facsimile copy of a document; (iii) any reproduction of image or images embodied in such microfilm (whether enlarged or not); and (iv) any other material produced by a computer or any other device.

16. Likewise, section 2(j) defines, “right to information” means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to--(i) inspection of work, documents, records; (ii) taking notes, extracts, or certified copies of documents or records; (iii)

taking certified samples of material; and (iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device.

17. Similarly, Section 3 of the Act escalates that subject to the provisions of this Act, all citizens shall have the right to information and obligations of public authorities to maintain all its record is listed in Section 4 of the Act. Every person is entitled to information, as per procedure prescribed under Section 6 of the Act and his request will be disposed of by the competent authorities under Section 7 of the Act.

18. In the same sequence, proviso to Section 8 of the Act envisaged that the information, which cannot be denied to the Parliament or the State Legislature, shall not be denied to any person.

19. A co-joint reading of the aforesaid provisions will leave no manner of doubt that every information is not exempted. Only those informations, pertaining to commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, the information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information and 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 authorities are satisfied that the larger public interest justifies the disclosure of such information, are exempted and not otherwise.

20. To my mind, the information sought by respondent No.2 with regard to M/s Rajesh Gas Service, an authorized distributor of LPG, such as number of consumers, who use domestic LPG cylinders with home-delivery, without home-delivery facilities, for commercial purpose number of LPG cylinders received from

HPCL, LPG Plant, Jind, during the period 1.10.2008 to 31.12.2008 and procedure of booking system for domestic cylinders etc. cannot possibly be termed either to be the information of commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party or available to a person in his fiduciary relationship and 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. Moreover, the CIC was satisfied that larger public interest justifies the disclosure of such information. Since the information sought cannot be denied to the Parliament or the State Legislature, so, the same cannot also be denied to respondent No.2, as contemplated in the proviso to section 8 of the Act.

21. In this manner, as the informations sought by respondent No.2 relating to distributor of LPG, do not squarely fall within the ambit of any clause, therefore, the petitioner-Corporation cannot claim the exemption, as envisaged under section 8 (1) (d) (e) and (j) of the Act, as urged on its behalf.

22. Sequel to the next submission of learned counsel that the information relating to a third party cannot be supplied to respondent No.2, without affording it an opportunity of hearing, is again neither tenable nor the observations of Gujarat High Court in cases Reliance Industries Ltd. v. Gujarat State Information Commission & Ors. AIR 2007 Gujarat 203 and Gokalbhai Nanabhai Patel v. Chief Information Commissioner & Ors. AIR 2008 Gujarat 2 are at all applicable to the substance of the present case.

23. In Reliance Industries Ltd.'s case (supra), Rasiklal Mardia filed as many as 55 applications, for getting the following information about the petitioner and its group of companies:-

“2.2 Informations demanded by the original applicant i.e. Rasiklal Mardia (in Special Civil Application No.16073 of 2007), are as under:-

“(1) You have recommended for sales tax exemption as per Government Policy for Reliance Petrochemicals Ltd. and your

department has confirmed that they have complied with terms and conditions of the Govt. as to local employment etc. Please provide complete copy, verification report done to the labourers working there with proof whatever is available with you and whether genuinely local people are employed is verified or not.

(2) Any complaint received by you that they have not complied with the local people and false certificate is issued by your office, If yes, copies of all the correspondence and copy of compliance received by you.

(3) Year-wise inspection done by your Dept. and confirmation that local people are continuously checked, confirmed their eligibility for sales tax exemption benefits and other benefits given to them for putting up the industry.

(4) If they have not complied with the terms and conditions whatever action has been initiated by your Dept. and the recommendations made by your Dept. for action to be taken against the company for not complying with terms and conditions, entire copy of the correspondence and present status.

(5) Several people died during the time of construction of Refinery. Status of that and copy confirming how many people died, action initiated by your Dept. and the present status of the cases and copy of the case papers.” (Emphasis supplied)

Thus, the aforesaid informations were demanded by the original applicant i.e. Rasiklal Mardia.

These informations were pertaining to the petitioner-company and its group companies.”

24. On the peculiar facts and in the circumstances of those cases, it was observed that time-bound schedule given under the Act, will not oust a right of hearing, vested in a third-party before imparting the information, the authorities are required to satisfy about the credentials of the applicant, has to pass a speaking order and the third-party rights have to be protected.

The same view was reiterated by the Gujarat High Court in Gokalbhai Nanabhai Patel's case (supra).

25. Hardly, there is any dispute with regard to the aforesaid observations, but the same are not at all applicable to the facts of the present case, as the word

“Third-Party” has been defined under Section 2(n) of the Act, to mean a person other than the citizen making a request for information and includes a public authority (and not otherwise).

26. What is not disputed here is that the routine/general informations with respect to booking and supply of domestic and commercial LPG cylinders with home delivery and without home delivery facilities and other related information, are already available with M/s Rajesh Gas Service, an authorized distributor of LPG. Moreover, it is obligatory on the part of every public authorities to maintain all its records in the manner depicted under section 4 of the Act. The indicated informations sought are general in nature. Thus, the question of any commercial confidentiality, trade secrets or intellectual property and opportunity of hearing to the distributor did not arise at all. As it cannot possibly be termed to be a third-party, as defined under Section 2 (n) of the Act. To me, if the arguments of the learned counsel for the petitioner-Corporation are accepted as such, then no information is permissible, which would certainly nullify the aims and objects of the Act. Therefore, the contrary arguments of the learned counsel for the petitioner “*stricto sensu*” liable to be and are hereby repelled and impugned order deserves to be and is hereby maintained in the obtaining circumstances of the case.

27. No other legal point, worth consideration, has either been urged or pressed by the learned counsel for the petitioner.

28. In the light of aforesaid reasons, as there is no merit, therefore, the instant writ petition is hereby dismissed as such.

24.1.2011
AS

(MEHINDER SINGH SULLAR)
JUDGE

Whether to be referred to reporter? Yes/No