

Gujarat High Court

{1}

IN THE HIGH COURT OF GUJARAT

Spl. Civil Appln. Nos. 16073 and 17067 of 2007

Decided On: 16.08.2007

Reliance Industries Ltd.

Vs.

Gujarat State Information Commission and Ors.

(AIR2007Guj203, (2008)2GLR1559)

Hon'ble
[D.N. Patel](#), J.

Judges:

Case Note:

Right to Information - Legality of - Sections 7(7), 11(1), 19(3) of Right to Information Act and Rule 6(4) (v) of Right to Information Rules, 2005 - Whether third party was entitled to get, written notice, of request of applicant who was seeking information so as to allow/permit third party to treat information as confidential, if so far not treated as confidential entitled to oppose disclosure of such and whether third party was entitled to get an opportunity of personal hearing before disclosure of information relating to or supplied by third party and was treated as confidential by under Section 11(1) read with Section 7(7) of Act - Held, right to prefer an appeal had been given to third party under Section 19 of Act - Information would be ordered to supply whereas in other case, it can be denied - It was practically impossible, for appellate forum, even if third party succeed in first appeal or second appeal or in writ petition, to order to return the wrongly disclosed information - Like smell, it would spread over from one hand to another hand, information could reach to different hands without any restriction - There was no restriction, after getting information and It was a right vested in a third party to get notice in writing of decision of Officer with a statement therein, that a third party was entitle to prefer an appeal - Third party had a right to prefer First Appeal against order passed by Information Officer - Third party had a right to prefer Second Appeal under Section 19(3) of Act - Third party had a right of personal hearing before Appellate Authority as well as Second Appellate Authority as per Rule 6(4) (v) of Rules as well as under Section 19(4) of Act - Rights of third party had been violated by Respondent - No notice was given to third party, nor even was heard before imparting information by Respondent - Impugned orders were non-speaking orders hence deserved to be quashed and set aside - On reasons and judicial pronouncements order passed by Respondent No. 1 to memo of petition as well as order of other date passed by Respondent No. 2 as well as communication on another date issued by Respondent No. 4 quashed and set aside - Original applicant /R was directed not to make use of said information for any purpose whatsoever - Respondent No. 1/ State Information Commission was restrained from proceeding further with application preferred

by original applicant under Section 18 of Act - Respondent Nos. 1 to 6 directed not to entertain any applications preferred at instance of original applicant under provisions of Act, for imparting or disclosing information to original applicant, without following due procedure under Act

Issues :

(I) Whether the third party is entitled to get, written notice, of request of applicant (who is seeking information), so as:

(i) to allow/permit the third party to treat the information (relating to or supplied by the third party) as confidential, if so far not treated as confidential; and

(ii) to oppose the disclosure of such information i.e. information relating to or supplied by the third party and has been treated as confidential by the third party under Section 11(1) to be read with Section 7(7) of the Act 2005.

(II) Whether the third party is entitled to get an opportunity of personal hearing before disclosure of information relating to or supplied by the third party and has been treated as confidential by the third party under Section 11(1) to be read with Section 7(7) of the Act, 2005.

(III) Whether Public Information Officer should pass speaking order when he discloses information relating to or supplied by the third party and has been treated as confidential by the third party?

(IV) What satisfaction must be arrived at prior to the information relating to or supplied by third party and has been treated as confidential by that third party is disclosed?

(V) As right of first appeal as well as second appeal is given to third party under Sections 19(2) and 19(3), Whether upon request by third party, Public Information Officer should stay his order, giving information about third party at least, till appeal period is over, as like air or smell, information once disclosed, it will spread over, without there being further restrictions, and even if third party succeeds in first appeal/second appeal, it cannot be gathered back or cannot be ordered to be returned.

Facts of the case:

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)

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

It also appears from the facts of the case that never any of the authorities have given any notice nor the petitioner was heard before supplying the information relating to the petitioner. It is averred by the petitioner that there is business/commercial rivalry by the original applicant-Rasiklal Mardia with the petitioner-company.

4. A reply was given by Public Information Officer, on 30th May, 2007 that the information asked by the original applicant was not pertaining to the petitioner and, therefore, there is no need to give an opportunity of being heard to the petitioner.

Rights of third party:

There are certain rights conferred by the Act, 2005 to the third party, prior to disclosure of information. Likewise, there are also certain rights, which are vested in the third party, after an order of disclosure of the information 'relating to or supplied by the third party and has been treated as confidential by that third party'. As per Section 2(n) of the Act, 2005, the present petitioner is a third party. Looking to the provisions of the Act, 2005, especially Section 7(7), 8(d) and 8(j) read with Section 11 as well as under Section 19 of the Act, 2005, third party has certain rights, in relation to disclosure of information relating to third party or supplied by third party:

Pre-decisional Rights:

(i) As per Section 11 of the Act, 2005, third party should be given a written notice if Public Information Officer intends to disclose or supply, the information 'relating to or supplied by the third party';

(ii) The said notice ought to be given by the Public Information Officer as to which information is asked by the applicant about the third party. Thus, nature of information asked by the applicant has to be revealed in the said notice;

(iii) Third party has right to treat the said information as confidential, looking to the several factors, viz. nature of business of the third party, nature of commercial transactions, looking to the nature of correspondence with other various Institutes, looking to the nature of reports supplied by the third party or supplied by some other Institutions about the third party, etc. Third party can treat the information as confidential at any stage, prior to grant or disclosure of information to the original applicant, by Public Information Officer;

(iv) Third party ought to be invited to make a submission in writing or orally by Public Information Officer;

(v) It is a right vested in the third party that such submission shall be kept in view, while taking a decision by Public Information Officer about disclosure of information (as per Section 11(1) of the Act, 2005) or third party has right that the Public Information Officer shall take into consideration the representation made by a third party under Section 11 (as per Section 7(7) of the Act, 2005);

(vi) Third party has a right of personal hearing to be given by Public Information Officer. Looking to Section 8(d) and 8(j) and proviso to Section 11(1), disclosure of information may be allowed, (i) if public interest in disclosure, outweighs, harm or injury to the protected interest of third party, or (ii) if larger public interest warrants the disclosure of such information. This will be a complex decision by Public Information Officer as it will have direct nexus with some of the important rights of third party. It may harm the competitive position of third party or it may tantamounts to unwarranted invasion, upon right of privacy;

Therefore also, in my opinion, personal hearing ought to be afforded to the third party.

(vii) Third party has a right to get speaking order. If order is not a speaking order then, the Appellate Authority cannot read the mind of the Public Information Officer. Right to prefer an appeal has been given to the third party under Section 19 of the Act, 2005. Reasons of the order, is the soul of the order, without which order has no life- Otherwise also, non-speaking order leads to arbitrariness. In case of Mr. A information will be ordered to supply whereas in other case, it can be denied. Arbitrariness and equality are sworn enemies of each other.' Where arbitrariness is present, equality is absent and where, equality is present, arbitrariness is absent.

{ 2 }

IN THE HIGH COURT OF GUJARAT

Spl. Civ. Appln. No. 16770 of 2007

Decided On: 31.08.2007

Appellants: Gokalbhai Nanabhai Patel

Vs.

Respondent: Chief Information Commissioner and Ors.

(AIR2008Guj2, (2008)1GLR560)

Hon'ble
[D.N. Patel](#), J.

Judges:

Case

Note:

Right to Information - Removal of Encroachment- Sections 6 and 19(2), (3) and (4) of Right to Information Act, 2005 - Present writ petition filed against order removal of encroachment passed by Chief Information Commissioner while hearing Second Appeal in which, order of demolition had been passed by Chief Information Commissioner -Held, impugned order passed without any power, jurisdiction and authority vested in Chief Information Commissioner under Act - Respondent No. 5 preferred an application to get information under Section 6 of Act, to Public Information Officer - Being dissatisfied with answer of Public Information Officer First Appeal was preferred under Section 19(2) of Act, before Taluka Development Officer and had also given such reply that had promoted Respondent No. 5 to prefer Second Appeal under Section 19(3) of Act - Looking to provisions of Act and order of removal of encroachment passed by Chief Information Commissioner was absolutely illegal and de hors provisions of Act - At most, information may be supplied or might be denied, but, further order of removal of encroachment could not be passed by Chief Information Commissioner .

{ 3 }

AIR2008Guj37

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

Special Civil Application No. 23103 of 2007

Decided On: 03.10.2007

Appellants: The High Court of Gujarat by and through B.J. Dhandha
Vs.

Respondent: State Chief Information Commissioner and Anr.

(AIR2008Guj37)

Hon'ble
[D.N. Patel](#), J.

Judges:

Case

Note:

Right to Information - Supply of - Sections 6 and 12 of Right to Information Act, 2005 - Present petition filed against order whereby directed to supply information to Respondent no 2 - Held, it appeared that Respondent no 2 had applied for getting information under Section 6 of Act - Information which was sought for pertaining to Vigilance inquiry conducted by District Court - This information was pertaining to third party and without giving opportunity of being heard to third party, no information can be supplied to Respondent no 2 - No such procedure had been followed as laid down under Section 11 of Act - Information sought for by Respondent no 2 was pertaining to third party - Therefore public interest must outweigh private and individual interest - Therefore impugned order set aside

{ 4 }

IN THE HIGH COURT OF GUJARAT

Spl. Civil Appln. Nos. 9723 and 9724 of 2008

Decided On: 02.09.2008

Appellants: State of Gujarat and Anr.

Vs.

Respondent: Pandya Vipulkumar Dineshchandra and Anr.

(AIR2009Guj12, 2008GLH(3)2450)

Hon'ble
[Jayant Patel](#), J.

Judges:

Case

Note:

Right to Information - Revocation of transfer order - Whether Chief Information commissioner, after recording conclusion that information was to be provided, and certain informations were wrong, could exercise power for directing transferring authority to revoke the transfer order or not? - Held, Chief Information Commissioner had no power to adjudicate rights of the parties based on the information, may be for the transfer order passed by Government authority or otherwise - Direction to revoke transfer order, could be said as wholly without jurisdiction, and also ultra virus to the power of the Chief Information Commissioner - Impugned order passed by Chief Information Commissioner quashed and set aside.

{ 5 }

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

Special Civil Application No. 7617 of 2010

Decided On: 03.09.2010

Appellants: Chief Officer

Vs.

Respondent: Chief Information Commissioner and 2 Ors.

Hon'ble

H.K. Rathod, J.

Judges:

Case

Note:

Right to Information — Legality of order imposing penalty — Sections 7(1), 7(9), 19, 20 and 20(1) of Right to Information Act, 2005; Section 45(2) and 45(D) of Gujarat Municipalities Act — Petition challenging order of penalty passed by Respondent No. 1 in Appeal preferred by Respondent No. 3 — Held, burden to prove that Public Information Officer has acted reasonable and diligently was to be proved upon by Public Information Officer — Petitioner was having two designations as a Public Officer; one as Chief Officer of Municipality and another as Public Information Officer under RI Act — It was his duty to protect or preserve interest of Municipality from unnecessary expenses — It was necessary to consider by Respondent No. 1 that within 30 days from date of application a General Resolution was passed by General Body of Municipality cancelling name of Respondent No. 3 from list of BPL Card holder on 29th April 2008 — Thus, Petitioner had not acted unreasonably with Respondent No. 3 — Respondent No. 1 has also not applied his mind whether amount of penalty of Rs. 15,000/- imposed upon Petitioner can be considered to be a reasonable — Reasonable efforts have been made by Petitioner to see that relevant documents may be made available to Respondent No. 3 without unnecessary expenses caused to a public body — Hence, impugned order quashed and set aside — Respondent No. 1 directed to decide while remanding back matter afresh after considering reasonable explanation/defence of Petitioner — Petition allowed.

Ratio

Decidendi:

"The burden to prove that Public Information Officer has acted reasonable and diligently was to be proved upon by Public Information Officer."

Fact:

The petitioner submitted that respondent No. 3 is not a genuine BPL Card Holder. For that, spot inquiry was carried out by petitioner through one Gulabkha Pathan, Peon of Talaja Municipality who has made statement before Chief Officer that after spot inquiry, at the place of respondent No. 3, who is having a residential property in Bhavani Street in name of Usmanbhai Sipai which has been registered property card of Talaja Nagar Palika being 4/2/6. Respondent No. 3 having rented premises in Wav Chowk Area of landlord Bhanushankar Pandya which is running in name of Chauhan Pan Center where business of Pan-bidi as well as Cold Drink are carried out by respondent No. 3 having a good business and also having fan and freeze in the said rented premises. The residential property also well furnished having all facilities which occupied by respondent No. 3. This report is submitted by Gulabkha Pathan on 15th April 2008. The application was made by respondent No. 3 before petitioner on 4th April 2008. Thereafter, Chief Officer has given answer to respondent No. 3 on 15th

April 2008 that information which has been called for by respondent No. 3 whose wife is an elected Member of Municipality and keeping in mind financial interest of Municipality, expenses of xerox would come to Rs. 28,000/-, therefore, such expenses are not in interest of Municipality, therefore, it can be inspected by respondent No. 3 and after inspection, whatever relevant material will be supplied by Chief Officer to respondent No. 3. Therefore, learned advocate Mr. Sanchela submitted that Chief Officer has not denied information to respondent No. 3, but, looking to bulky record which having unnecessary financial cost to be bear by public body, way which is find out to less in burden to Municipality, but, respondent No. 3 being a husband of elected member of municipality approached appellate authority, District Collector, Bhavnagar and all details have been produced on record with a fact that no response is given by respondent No. 3 though two letters dated 15th April 2008 and 30th April 2008 communicated to respondent No. 3. However, only on the ground that within limitation, information is not supplied by petitioner and looking to BPL Rationing Card of respondent No. 3, he is entitled for such documents/information free of cost under provisions of Right to Information Act. Therefore, it was directed to petitioner to supply all the information to respondent No. 3 within a period of seven days by order dated 27th May 2008. Against which, appeal was preferred to respondent No. 1 under Section [19](#) of Right to Information Act with prayer to impose penalty to petitioner.

12. Therefore, according to my opinion, a technical approach of respondent No. 1 - Commissioner ignoring reasonable efforts made and explanation given by petitioner which are found from record and without considering relevant Section [20](#) of Right to Information Act and without coming to correct conclusion that information/document has been denied by petitioner to respondent No. 3 without any reasonable cause or mala fide or not ? Respondent No. 1 - Commissioner has also not applied his mind whether amount of penalty of Rs. 15,000/- imposed upon petitioner can be considered to be a reasonable in light of this defence and reasonable efforts made by petitioner and subsequent event where Mamlatdar, Talaja has cancelled his BPL Card by order dated 29th April 2010. So, it is not a case of adamant approach of petitioner with respondent No. 3. In result, order passed by respondent No. 1 - Commissioner dated 20th May 2010 is hereby quashed and set aside while remanding back matter .