THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 19.12.2014

+ W.P.(C) 1842/2012 & CM No. 4033/2012

THE REGISTRAR, SUPREME COURT OF INDIA ..... Petitioner

versus

SUBHASH CHANDRA AGARWAL AND ORS. ..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Sidharth Luthra, Sr. Advocate with
Ms Maneesha Dhir, Mr K. P. S. Kohli,
Mr Satyam Thareja and Ms Neha Singhj.

For the Respondents : Mr Pranav Sachdeva for Mr Prashant Bhushan.

CORAM:-
HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner impugns an order dated 01.02.2012 (hereafter the impugned order') passed by Central Information Commission (hereafter 'CIC') *inter alia* directing that records of reimbursement of medical bills of judges of the Supreme Court (whether serving or retired) be maintained separately for each judge so as to ensure that the summary of such expenses for each judge are available separately. The Central Public Information Officer of Supreme Court (hereafter 'CPIO') was directed to place the impugned order before the competent authority so as to ensure compliance of the same.

2. Briefly stated, the relevant facts of the case are that on 25.10.2010, respondent no.1 - Subhash Chandra Agarwal filed an application under the

Right to Information Act, 2005 (hereafter the 'Act') with the Central Public Information Officer, Department of Justice, Government of India, *inter alia*, seeking the following information:-

> "5. Details of medical-facilities availed by individual judges (including of their family-members) of Supreme Court in last three years mentioning also expenses on private treatment in India or abroad. Honourable Delhi High Court has recently ruled (probably on 11.10.2010) that "The information on the expenditure of the government money in an official capacity cannot be termed as personal information."). I do not want information on nature of diseases but only detailed information about expenses on medical-facilities on judges and their families at public-expenses."

3. The application on the above said point was transferred to CPIO under Section 6(3) of the Act. By an order dated 02.02.2011, CPIO rejected the said application on the ground that the information as sought for by the respondent is personal information and is exempted from disclosure under Section 8(1)(j) of the Act and in view of the decision of the Supreme Court in ***Central Public Information Officer, SCI & Anr. v. Subhash Chandra Agarwal*: Civil Appeal No.10044/2010, decided on 26.11.2010**, there is a stay on the disclosure of the information relating to the judges. The respondent preferred an appeal (No.47/2011) before the First Appellate Authority (hereafter 'FAA') challenging the order dated 02.02.2011. By an order dated 07.03.2011, FAA dismissed the appeal.

4. The respondent, thereafter, preferred an appeal before the CIC challenging order of the FAA dated 07.03.2011. By an order dated 03.08.2011, the CIC directed CPIO to provide *"the total amount of medical expenses of individual judges reimbursed by the Supreme Court during the*

last three years, both in India and abroad, wherever applicable. The CIC also directed CPIO to bring the order to the notice of the competent authority in the Supreme Court for ensuring that arrangements are made in future for maintaining such information.

5. By an order dated 30.08.2011, CPIO provided the total amount reimbursed on medical treatment from the budget grant for three years in respect of Judges (sitting & retired) and employees of the Supreme Court. CPIO also informed that the judge-wise information was not maintained as the same was not required to be maintained. Dissatisfied with the reply of CPIO, the respondent filed an appeal before the CIC for compliance of order dated 03.08.2011 passed by the CIC. The said appeal was disposed of by the impugned order.

6. The learned senior counsel for the petitioner contended:-

6.1 That the information that can be disclosed or can be directed to be disclosed under the Act is the information which exists and is held by the public authorities in material form and no directions can be issued by the authorities under the Act to the public authorities to create, hold and maintain the information in any other manner. The Act does not cast any obligation on any public authority to collate such non-available information for the purpose of furnishing it to an RTI Applicant. Reliance was placed on ***CBSE v. Aditya Bandopadhyay*: (2011) 8 SCC 497**.

6.2 That the powers under sub-section (8)(a)(iv) of Section 19 of the Act cannot be stretched for creation of new record and the words 'maintenance and management' under the said provision relates to the records which are

available and cannot be interpreted in a manner to include creation of information.

6.3 That the impugned order impinges upon the power entrusted upon the Supreme Court under Article 145 of the Constitution of India to make suitable rules for regulating the practice and procedure of the Supreme Court by directing the authority to maintain the records in a particular manner. He submitted that the impugned order has the effect of directing amendment of the rules framed under Article 145 of the Constitution of India.

6.4 That the CIC in the case of in case of ***Shri Mani Ram Sharma v. The Public Information Officer*****: C1C/SM/A/2011/000101-AD, decided on 18.07.2011** had held that if the required information was not maintained in the manner as asked for, the CPIO could not be asked to compile the data. It was submitted that a bench cannot overrule the decision of a co-ordinate bench.

7. The learned counsel for the respondent contended:-

7.1 That the information which exists and is held by the public authority but is not being compiled or kept in a manner in which it is accessible in a transparent manner then a direction can be given to the public authorities to maintain and provide the information in a particular manner so as to achieve the object and purpose behind the Act.

7.2 That the validity of sub-section (8)(a)(iv) of Section 19 of the Act has not been challenged and the CIC as a guardian of the Act would ensure

the proper implementation of the Act and can pass a direction to achieve the object of the Act.

7.3 That the information regarding the functioning of public institutions is a fundamental right enshrined under Article 19 of the Constitution of India. Reliance was placed on ***State of U.P. v. Raj Narain*: AIR 1975 SC 865, *Union of India v. Association for Democratic Reforms*: AIR 2002 SC 2112** and ***PUCL v. Union of India*: (2003) 4 SCC 399**.

7.4 That the information needs to be disseminated to the public to ensure transparency and avoid misuse or abuse of authority. Reliance was placed on ***S.P. Gupta v. President of India & Ors.*: AIR 1982 SC 149.**

7.5 That the rules made under Article 145 of the Constitution of India are subject to any law being made by Parliament and Act is a law made by Parliament that is binding on all public authorities including the executive, legislatures and the judiciary.

8. At the outset, it is relevant to note that the information sought by the respondent is with regard to expenses incurred on medical facilities of Judges (retired as well as serving). Concededly, information relating to the medical records would be personal information which is exempt from disclosure under Section 8(1)(j) of the Act. The medical bills would indicate the treatment and/or medicines required by individuals and this would clearly be an invasion of the privacy.

9. Apparently, the CIC has passed the impugned order in exercise of powers under Section 19(8)(a)(iv) of the Act, as explained by the Supreme

Court in ***Aditya Bandhopadhyay*** *(supra)*. The power under Section 19(8)(a)(iv) of the Act is to ensure compliance with Section 4(1)(a) of the Act. Section 4(1)(a) of the Act reads as under:-

> "**4. Obligations of public authorities.-**(1) Every public authority shall -
> (a) maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information under this Act and ensure that all records that are appropriate to be computerised are, within a reasonable time and subject to availability of resources, computerised and connected through a network all over the country on different systems so that access to such records is facilitated;"

10. It is apparent from the above that directions for maintenance of records can be issued only to facilitate the right to information under the Act. Since the medical records are excluded from the purview of the Act by virtue of the *non obstante* clause contained in the opening words of Section 8(1) of the Act, the question of issuing any directions under Section 19(8)(a)(iv) of the Act to facilitate access to such information does not arise.

11. The impugned order indicates that the CIC proceeded on the basis that "…*the citizens can always seek the copies of the medical bills of individual judges and find out the same information. Therefore, it is better that the public authority should maintain such records in a manner that it should be possible to find out the details of expenditure in each individual case. Or else, the CPIO would be constrained to make photocopies of all such bills and provide to the information seeker, an exercise both more cumbersome and expensive."* Clearly, this assumption is erroneous as medical records are not liable to be disclosed unless it is shown that the

same is in larger public interest. In the present case, the CIC has completely overlooked this aspect of the matter.

12. Further, the extent of medical reimbursement to an individual is also, in one sense, personal information as it would disclose the extent of medical services availed by an individual. Thus, unless a larger public interest is shown to be served, there is no necessity for providing such information. Thus, clearly, a direction for maintaining records in a manner so as to provide such information is not warranted.

13. I had pointedly asked the learned counsel for the respondent if there was any larger public interest that was being pursued and he fairly did not answer in the affirmative.

14. The information sought by the respondent is financial and indisputably, the same would be available in the financial records. The contention that the petitioner does not have such information is erroneous, as each item of expenditure or reimbursement would be maintained in the financial records and in a given circumstance, where larger public interest was involved, the petitioner could be called upon to provide the same.

15. The basic financial data can be accessed to generate innumerable reports depending on the exigencies and requirements of an organization. A direction by the CIC to maintain such records to generate reports, merely because an individual information seeker has sought such information, is not warranted as the same would multiply with each information seeker seeking information in different form. A direction to maintain records in a

particular manner must be occasioned by considerations of public interest, which is admittedly absent in this case.

16. Since the impugned order is limited to directing maintenance of records in a particular manner, it is not necessary to examine other contentions.

17. Accordingly, the petition is allowed and the impugned order is set aside. Pending application stands disposed of.

VIBHU BAKHRU, J

DECEMBER 19, 2014
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