

IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 08.10.2018

+ **W.P.(C) 2025/2014 & CM No 4213/2014**

PUBLIC INFORMATION OFFICER ...Petitioner

Versus

V. CHAUDHARY ...Respondent

Advocates who appeared in this case:

For the Petitioner :Mr Ramesh Singh, Standing Counsel,
GNCTD with Ms Nidhi Raman and Mr
Chirayu Jain.

For the Respondent :Mr Manoj Kumar Sahu.

CORAM

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner (PIO) has filed the present petition under Article 226 of the Constitution of India impugning the order dated 20.01.2014 (hereafter 'the impugned order') passed by the Central Information Commission (hereafter 'CIC').

2. By the impugned order, the CIC allowed the second appeal preferred by the respondent under Section 19(3) of the Right to Information Act, 2005 (hereafter 'RTI Act') by directing the petitioner to enable inspection of the relevant files by the respondent and to provide the photocopies of the relevant documents pertaining to the information, as requested in the respondent's RTI application dated

27.08.2012.

3. The petitioner claims that the impugned order is contrary to the view expressed by the CIC in an order passed on 05.07.2013 in respect of an appeal arising from another RTI application dated 26.11.2011.

Factual Background

4. On 26.11.2011, the respondent filed an application with the Commissioner of Police, Delhi seeking information in respect of intimations/complaints sent by Delhi police to the Municipal Corporation of Delhi from 01.01.2011 to 26.11.2011 regarding unauthorized fresh construction of buildings. The said application dated 26.11.2011 is set out below:-

“To
The Commissioner of police,
Delhi Police Headquarter, New Delhi

Dated:- 26.11.11

Subject:- Reg. seeking information under RTI Act, 2005.

1. P.S. wise status of the property against which complaints sent to the MCD from 01.01.2011 to 26.11.11.
2. What was the subject matter of complaints?
3. Provide name and rank of the police officials who sent the complaints in question to MCD as well as the name of the MCD employees who deal these complaints.
4. Intimate the complaint were subject matter and status of complaints filed with Delhi Police from 01.01.2011 to 26.11.11.
5. Information be provided ward wise and area wise in

Hindi...”

5. The CPIO responded by denying the information in respect to query at serial no.1 – that is, information regarding status of the properties in respect of which complaints were sent to MCD – on the ground that the said information pertained to third parties under Section 11 of the RTI Act.

6. The respondent filed an appeal under Section 19(1) of the RTI Act before the First Appellate Authority (FAA) against denial of information by the CPIO. The FAA disposed of the said appeal directing the CPIO to consider the points mentioned in the appeal and to provide the relevant information/documents to the respondent.

7. Thereafter, the CPIO considered the points mentioned in the appeal and furnished the point-wise reply to the respondent. However, the CPIO denied the information in respect of query at point no.1 under Section 11 of the RTI Act.

8. Thereafter, the respondent preferred a second appeal under Section 19(3) of the RTI Act before the CIC. On 05.07.2013, the CIC denied the information in respect of query no.1 on the ground that the said information relates to third parties information under Section 11(1) of the RTI Act. The CIC further held that such kind of information with respect to details of unauthorized construction is with the MCD and directed the CPIO, Delhi Police to transfer the RTI application to the CPIO of MCD. The operative part of the CIC’s order dated 05.07.2013 is set out below:-

“9. On consideration of the submissions of the parties and on perusal of records, the Commission observes that the actual holder of information in the present case with regard to alleged unauthorized constructions is MCD because it is the MCD (in this case), which would eventually decide on whether a particular construction of building is authorized or not. The Police, as explained above, have only prima facie information. The authentic information in this regard would be available with the MCD in the present case.”

9. The respondent filed a second application dated 27.08.2012 with the Commissioner of Police seeking information with respect to intimations/complaints sent by Delhi police to the Municipal Corporation of Delhi from 01.01.2010 to 25.08.2012 regarding unauthorized fresh construction of buildings. The application dated 27.08.2012 is set out below:-

“To
The Commissioner of police,
Delhi Police Headquarter, New Delhi

Dated:- 27.08.2012

Subject:- Reg. seeking information under RTI Act, 2005.

A P.S. wise status of the property against which complaints sent to the MCD from 01.01.2010 to 25.08.12 and upto date. Provide name and rank of the police officials who sent the complaints to MCD i.e. North, South & New Delhi Nagar Nigam with regard to unauthorized construction and also provide the details/status of unauthorized Reharry Pattary unauthorized work.

B As to whether the Delhi Police inform the concern department regarding unauthorized construction and take money from them and allow the unauthorized construction? Please give all details.

C Information be provided ward wise and area wise in

Hindi.....”

10. On 27.09.2012, the CPIO replied to the aforesaid application dated 27.08.2012 and supplied the information to the extent of the number of complaints sent to MCD regarding unauthorized construction from 01.01.2010 to 25.08.2012. The rest of the information, as sought by the respondent, was denied by the CPIO on the ground that the said information pertains to third parties under Section 11 of RTI Act. The relevant extract of the letter dated 27.09.2012 is set out below:-

S.No	Answer
A & B	Regarding construction/unauthorized construction from 01.01.2010 to 25.08.2012, a total number of 5313 forms have been sent to concerned Department. Rest of the information cannot be provided to the applicant as per section 11 of RTI Act 2005.
C	The reply is being given in Hindi Language. Rest of the information cannot be provided to him as the applicant has not furnished the specific time period for which he require the information.

11. The respondent filed an appeal before the FAA. By an order dated 20.11.2012, the FAA rejected the aforesaid appeal and upheld the decision of the CPIO.

12. Aggrieved by the decision of the FAA, the respondent filed a second appeal under Section 19(3) of the RTI Act before the CIC. The CIC allowed the second appeal and passed the impugned order

directing the petitioner to enable inspection of the relevant files and provide photocopies of the relevant documents within a period of thirty days:-

“8. The respondent is directed to enable inspection of the relevant files by the appellant and provide photocopies of the pertinent documents to the appellant within 30 days of this order.”

Submissions

13. Mr Ramesh Singh, the learned counsel appearing for the petitioner has assailed the impugned order on the ground that the impugned order is contradictory to the order dated 05.07.2013 passed by the CIC. He states that the respondent filed two applications dated 26.11.2011 and 27.08.2012, respectively, seeking information with respect to unauthorized construction. Whereas in the application dated 26.11.2011 he sought information regarding the period 01.01.2011 to 26.11.2011, the application dated 27.08.2012 was in respect of information for the period 01.01.2010 to 25.08.2012.

14. He also submits that in the order passed on 05.07.2013, the CIC was satisfied that the information could not be given to the respondent, whereas in the impugned order, the CIC took a contradictory view and directed the petitioner to provide inspection of the relevant files to the respondent and further provided him with the photocopies of the relevant documents. He also submitted that the people gather this kind of information from the police department for the purpose of extortion.

15. He further contended that the Police Department does not send any complaint to the land owning agency i.e. MCD, it only sends an intimation regarding construction which appears unauthorized. The Delhi Police reports such matters to the land owning agency on the basis of a *prima facie* view to provide assistance to the land owning agency in removal/stoppage of unauthorized construction.

Reasons and Conclusion

16. Undoubtedly, the impugned order is inconsistent with the earlier order dated 05.07.2013 passed by the CIC. However, that does not necessarily mean that the impugned order is erroneous.

17. The controversy, essentially, relates to whether the respondent is entitled to inspect the copy of the forms sent by the police authorities to the concerned Municipal Corporation.

18. It has been explained that the said forms merely provide intimation that the construction being carried out is, *prima facie*, unauthorized. It is for the concerned Municipal Corporation to, thereafter, take appropriate action in respect of such unauthorized construction. In this view, the CIC in its order dated 05.07.2013 held that the information regarding unauthorized construction would only be available with the Municipal Corporation of Delhi (MCD). However, the petitioner had sought information regarding the properties against which information was sent by the police authorities to MCD. Thus, even though the information regarding alleged unauthorized construction may be available with the concerned MCD,

the query as to the information sent by the police authorities would still be justified as, admittedly, be available with the police authorities.

19. In terms of the RTI Act, all information as available with the public authority is required to be provided to the citizen unless it is exempt from disclosure under Section 8 of the RTI Act or otherwise pertains to the organizations that are excluded from the purview of the RTI Act. Thus, the question whether authentic information is available with another public authority is not a ground to deny the information as sought from a public authority. In this case, the petitioner had sought the status of the properties against which complaints had been sent to MCD. It was his suggestion (although couched as a query) that even though police authorities inform MCD regarding unauthorized construction, they do not take steps to stop the same by accepting illegal gratification.

20. The petitioner had duly informed the respondent that a total number of 5313 forms had been sent to the concerned Municipal Corporation. However, the balance information was denied on the ground that it cannot be provided under Section 11 of the Act.

21. It is apparent from the above that the petitioner did have the information as sought by the respondent. However, the same was denied to the respondent by referring Section 11 of the RTI Act. A plain reading of Section 11 of the RTI Act indicates that the same does not proscribe furnishing of information. In terms of Section 11(1) of the RTI Act, in cases where the public information officers (PIOs)

intend to disclose the information, which relates to or has been supplied by a third party and has been treated as confidential by a third party, it would be necessary for the concerned PIO to give a written notice to the third party. The concerned third party has a right to make a submission either in writing or orally and the concerned PIO is required to keep the same in view while taking a decision regarding disclosure of such information. Thus, Section 11 of the RTI Act cannot be read as a provision proscribing disclosure of information; it is a provision to enable disclosure of third party information subject to certain safeguards. In this view, the decision of the CPIO denying the information by referring Section 11 of the RTI Act is wholly unsustainable.

22. The contention of the petitioner that the information as sought by the respondent was third party information, is also unpersuasive. The information as sought by the respondent pertains to unauthorized construction noticed by the police authorities, and in respect of which information had been forwarded to the concerned Municipal Corporation. Such information has neither been provided by any third party nor has been treated as confidential. Undisputedly, the information may relate to third parties inasmuch as it relates to the property of those third parties. However, the information as to unauthorized construction observed by the police authorities cannot be construed as one, which is to be kept confidential in terms of Section 11 of the RTI Act. Subject information that is sought by the respondent is gathered by the police authorities in discharge of their

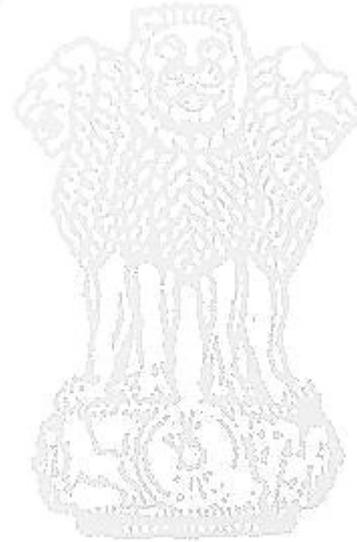
functions and this Court finds no infirmity with the decision of the CIC in directing that the same be provided to the respondent.

23. The petition is unmerited and is, accordingly, dismissed. The pending application stands disposed of.

VIBHU BAKHRU, J

OCTOBER 08, 2018
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HIGH COURT OF DELHI



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