

Supreme Court of India

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Supreme Court of India

Chief Information Commr.& Anr vs State Of Manipur & Anr on 12 December, 2011

Author: Ganguly

Bench: G.S. Singhvi, Sudhansu Jyoti Mukhopadhaya

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.10787-10788 OF 2011

(Arising out of S.L.P(C) No.32768-32769/2010) Chief Information Commr. and Another ...Appellant(s) - Versus -

State of Manipur and Another ...Respondent(s) J U D G M E N T

GANGULY, J.

1. Leave granted.

2. These appeals have been filed by the Chief Information Commissioner, Manipur and one Mr. Wahangbam Joykumar impugning the judgment dated 29th July 2010 passed by the High Court in Writ Appeal Nos. 11 and 12 of 2008 in connection with two Writ Petition No.733 of 2007 and Writ Petition 1

No. 478 of 2007. The material facts giving rise to the controversy in this case can be summarized as follows:

3. Appellant No.2 filed an application dated 9th February, 2007 under Section 6 of the Right to Information Act ("Act") for obtaining information from the State Information Officer relating to magisterial enquiries initiated by the Govt. of Manipur from 1980-2006. As the application under Section 6 received no response, appellant No. 2 filed a complaint under Section 18 of the Act before the State Chief Information Commissioner, who by an order dated 30th May, 2007 directed respondent No. 2 to furnish the information within 15 days. The said direction was challenged by the State by filing a Writ Petition.

4. The second complaint dated 19th May, 2007 was filed by the appellant No. 2 on 19th May, 2007 for obtaining similar information for the period between 1980 - March 2007. As no response was 2

received this time also, appellant No. 2 again filed a complaint under Section 18 and the same was disposed of by an order dated 14th August, 2007 directing disclosure of the information

sought for within 15 days. That order was also challenged by way of a Writ Petition by the respondents.

5. Both the Writ Petitions were heard together and were dismissed by a common order dated 16th November, 2007 by learned Single Judge of the High Court by inter alia upholding the order of the Commissioner. The Writ Appeal came to be filed against both the judgments and were disposed of by the impugned order dated 29th July 2010. By the impugned order, the High Court held that under Section 18 of the Act the Commissioner has no power to direct the respondent to furnish the information and further held that such a power has already been conferred under Section 19(8) of the Act on the basis of an exercise under Section 19 only. The Division Bench further came to hold that the direction to furnish information is without 3

jurisdiction and directed the Commissioner to dispose of the complaints in accordance with law.

6. Before dealing with controversy in this case, let us consider the object and purpose of the Act and the evolving mosaic of jurisprudential thinking which virtually led to its enactment in 2005.

7. As its preamble shows the Act was enacted to promote transparency and accountability in the working of every public authority in order to strengthen the core constitutional values of a democratic republic. It is clear that the Parliament enacted the said Act keeping in mind the rights of an informed citizenry in which transparency of information is vital in curbing corruption and making the Government and its instrumentalities accountable. The Act is meant to harmonise the conflicting interests of Government to preserve the confidentiality of sensitive information with the right of citizens to know the functioning of the governmental process in such a 4

way as to preserve the paramountcy of the democratic ideal.

8. The preamble would obviously show that the Act is based on the concept of an open society.

9. On the emerging concept of an 'open Government', about more than three decades ago, the Constitution Bench of this Court in [The State of Uttar Pradesh v. Raj Narain & others](#) - AIR 1975 SC 865 speaking through Justice Mathew held:

"...The people of this country have a right to know every public act, everything, that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing. The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security. ... To cover with veil of secrecy, the common routine business, is not in the interest of the public. Such secrecy can seldom be legitimately desired."

(para 74, page 884)

10. Another Constitution Bench in *S.P.Gupta & Ors. v. President of India and Ors.* (AIR 1982 SC 149) relying on the ratio in *Raj Narain* (supra) held: "...The concept of an open government is the direct emanation from the right to know which seems to be implicit in the right of free speech and expression guaranteed under Article 19(1)(a). Therefore, disclosure of information in regard to the functioning of Government must be the rule and secrecy an exception justified only where the strictest requirement of public interest so demands. The approach of the court must be to attenuate the area of secrecy as much as possible consistently with the requirement of public interest, bearing in mind all the time that disclosure also serves an important aspect of public interest..." (para 66, page 234)

11. It is, therefore, clear from the ratio in the above decisions of the Constitution Bench of this Court that the right to information, which is basically founded on the right to know, is an intrinsic part of the fundamental right to free speech and expression guaranteed under Article 19(1)(a) of the Constitution. The said Act was, 6

thus, enacted to consolidate the fundamental right of free speech.

12. In *Secretary, Ministry of Information & Broadcasting, Govt. of India and Ors. v. Cricket Association of Bengal and Ors.* - (1995) 2 SCC 161, this Court also held that right to acquire information and to disseminate it is an intrinsic component of freedom of speech and expression. (See para 43 page 213 of the report).

13. Again in *Reliance Petrochemicals Ltd. v. Proprietors of Indian Express Newspapers Bombay Pvt. Ltd. & others* - (1988) 4 SCC 592 this Court recognised that the Right to Information is a fundamental right under Article 21 of the Constitution.

14. This Court speaking through Justice Sabyasachi Mukharji, as His Lordship then was, held:

"...We must remember that the people at large have a right to know in order to be able to take part in a participatory development in 7

the industrial life and democracy. Right to know is a basic right which citizens of a free country aspire in the broader horizon of the right to live in this age in our land under Article 21 of our Constitution. That right has reached new dimensions and urgency. That right puts greater responsibility upon those who take upon themselves the responsibility to inform." (para 34, page 613 of the report)

15. In *People's Union for Civil Liberties and Anr. v. Union of India and Ors.* - (2004) 2 SCC 476 this Court reiterated, relying on the aforesaid judgments, that right to information is a facet of the right to freedom of "speech and expression" as contained in Article 19(1)(a) of the Constitution of India and also held that right to information is definitely a fundamental right. In coming to this conclusion, this Court traced the origin of the said right from the Universal Declaration of Human Rights, 1948 and also Article 19 of the International Covenant on Civil and Political Rights, which was ratified by India in 1978. This Court also found a

similar enunciation of principle in the Declaration of European Convention for the Protection of Human Rights 8

(1950) and found that the spirit of the Universal Declaration of 1948 is echoed in Article 19(1) (a) of the Constitution. (See paras 45, 46 & 47 at page 495 of the report)

16. The exercise of judicial discretion in favour of free speech is not only peculiar to our jurisprudence, the same is a part of the jurisprudence in all the countries which are governed by rule of law with an independent judiciary. In this connection, if we may quote what Lord Acton said in one of his speeches: "Everything secret degenerates, even the administration of justice; nothing is safe that does not show how it can bear discussion and publicity"

17. It is, therefore, clear that a society which adopts openness as a value of overarching significance not only permits its citizens a wide range of freedom of expression, it also goes 9

further in actually opening up the deliberative process of the Government itself to the sunlight of public scrutiny.

18. Justice Frankfurter also opined:

"The ultimate foundation of a free society is the binding tie of cohesive sentiment. Such a sentiment is fostered by all those agencies of the mind and spirit which may serve to gather up the traditions of a people, transmit them from generation to generation, and thereby create that continuity of a treasured common life which constitutes a civilization. "We live by symbols." The flag is the symbol of our national unity, transcending all internal differences, however large, within the framework of the Constitution."

19. Actually the concept of active liberty, which is structured on free speech, means sharing of a nation's sovereign authority among its people. Sovereignty involves the legitimacy of a governmental action. And a sharing of sovereign authority suggests intimate correlation between the functioning of the Government and common man's knowledge of such functioning.

(Active Liberty by Stephen Breyer - page 15) 10

20. However, while considering the width and sweep of this right as well as its fundamental importance in a democratic republic, this Court is also conscious that such a right is subject to reasonable restrictions under Article 19(2) of the Constitution.

21. Thus note of caution has been sounded by this Court in Dinesh Trivedi, M.P. & Others v. Union of India & others - (1997) 4 SCC 306 where it has been held as follows:

"...Sunlight is the best disinfectant. But it is equally important to be alive to the dangers that lie ahead. It is important to realize that undue popular pressure brought to bear on decision makers in Government can have frightening side-effects. If every action taken by the

political or executive functionary is transformed into a public controversy and made subject to an enquiry to soothe popular sentiments, it will undoubtedly have a chilling effect on the independence of the decision maker who may find it safer not to take any decision. It will paralyse the entire system and bring it to a grinding halt. So we have two conflicting situations almost enigmatic and we think the answer is to maintain a fine balance which would serve public interest."

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(para 19, page 314)

22. The Act has six Chapters and two Schedules. Right to Information has been defined under Section 2(j) of the Act to mean as follows:

"(j) "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; (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;"

23. Right to Information has also been statutorily recognised under Section 3 of the Act as follows: "3. Right to information.- Subject to the provisions of this Act, all citizens shall have the right to information."

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24. Section 6 in this connection is very crucial. Under Section 6 a person, who desires to obtain any information under this Act, shall make a request in writing or through electronic means in English or Hindi or in the official language of the area in which the application is being made, accompanying such fee as may be prescribed. Such request may be made to the Central Public Information Officer or State Public Information Officer, as the case may be, or to the Central Assistant Public Information Officer or State Assistant Public Information Officer. In making the said request the applicant is not required to give any reason for obtaining the information or any other personal details excepting those which are necessary for contacting him.

25. It is quite interesting to note that even though under Section 3 of the Act right of all citizens, to receive information, is statutorily recognised but Section 6 gives the said right to any person. 13

Therefore, Section 6, in a sense, is wider in its ambit than Section 3.

26. After such a request for information is made, the primary obligation of consideration of the request is of the Public Information Officer as provided under Section 7. Such request has to be

disposed of as expeditiously as possible. In any case within 30 days from the date of receipt of the request either the information shall be provided or the same may be rejected for any of the reasons provided under Sections 8 and 9. The proviso to Section 7 makes it clear that when it concerns the life or liberty of a person, the information shall be provided within forty-eight hours of the receipt of the request. Sub-section (2) of Section 7 makes it clear that if the Central Public Information Officer or the State Public Information Officer, as the case may be, fails to give the information, specified in sub-section (1), within a period of 30 days it shall be deemed that such request has been rejected. Sub-section 14

(3) of Section 7 provides for payment of further fees representing the cost of information to be paid by the person concerned. There are various sub-sections in Section 7 with which we are not concerned. However, Sub-section (8) of Section 7 is important in connection with the present case. Sub-section (8) of Section 7 provides:

“(8) Where a request has been rejected under sub-section (1), the Central Public Information Officer or State Public Information Officer, as the case may be shall communicate to the person making the request,-

(i) The reasons for such rejection;

(ii) the period within which an appeal against such rejection may be preferred; and

(iii) the particulars of the appellate authority.

27. Sections 8 and 9 enumerate the grounds of exemption from disclosure of information and also grounds for rejection of request in respect of some items of information respectively. Section 11 deals with third party information with which we are not concerned in this case.

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28. The question which falls for decision in this case is the jurisdiction, if any, of the Information Commissioner under Section 18 in directing disclosure of information. In the impugned judgment of the Division Bench, the High Court held that the Chief Information Commissioner acted beyond his jurisdiction by passing the impugned decision dated 30th May, 2007 and 14th August, 2007. The Division Bench also held that under Section 18 of the Act the State Information Commissioner is not empowered to pass a direction to the State Information Officer for furnishing the information sought for by the complainant.

29. If we look at Section 18 of the Act it appears that the powers under Section 18 have been categorized under clauses (a) to (f) of Section 18(1). Under clauses (a) to (f) of Section 18(1) of the Act the Central Information Commission or the State Information Commission, as the case may be, may receive and inquire into complaint of any person who has been refused access to any 16

information requested under this Act [Section 18(1)(b)] or has been given incomplete, misleading or false information under the Act [Section 18(1)(e)] or has not been given a

response to a request for information or access to information within time limits specified under the Act [Section 18(1)(c). We are not concerned with provision of Section 18(1)(a) or 18(1)(d) of the Act. Here we are concerned with the residuary provision under Section 18(1)(f) of the Act. Under Section 18(3) of the Act the Central Information Commission or State Information Commission, as the case may be, while inquiring into any matter in this Section has the same powers as are vested in a civil court while trying a suit in respect of certain matters specified in Section 18(3)(a) to (f). Under Section 18(4) which is a non-obstante clause, the Central Information Commission or the State Information Commission, as the case may be, may examine any record to which the Act applies and which is under the control of the public authority and such records cannot be

withheld from it on any ground.

30. It has been contended before us by the respondent that under Section 18 of the Act the Central Information Commission or the State Information Commission has no power to provide access to the information which has been requested for by any person but which has been denied to him. The only order which can be passed by the Central Information Commission or the State Information Commission, as the case may be, under Section 18 is an order of penalty provided under Section 20. However, before such order is passed the Commissioner must be satisfied that the conduct of the Information Officer was not bona fide.

31. We uphold the said contention and do not find any error in the impugned judgment of the High court whereby it has been held that the Commissioner while entertaining a complaint under Section 18 of the said Act has no jurisdiction to pass an order providing for access to the information.

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32. In the facts of the case, the appellant after having applied for information under Section 6 and then not having received any reply thereto, it must be deemed that he has been refused the information. The said situation is covered by Section 7 of the Act. The remedy for such a person who has been refused the information is provided under Section 19 of the Act. A reading of Section 19(1) of the Act makes it clear. Section 19(1) of the Act is set out below:-

"19. Appeal. - (1) Any person who, does not receive a decision within the time specified in sub-section (1) or clause (a) of sub-section (3) of section 7, or is aggrieved by a decision of the Central Public Information Officer or the State Public Information Officer, as the case may be, may within thirty days from the expiry of such period or from the receipt of such a decision prefer an appeal to such officer who is senior in rank to the Central Public Information Officer or the State Public Information Officer as the case may be, in each public authority:

Provided that such officer may admit the appeal after the expiry of the period of thirty days if he or she is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time." 19

33. A second appeal is also provided under sub-section (3) of Section 19. Section 19(3) is also set out below:-

“(3) A second appeal against the decision under sub-section (1) shall lie within ninety days from the date on which the decision should have been made or was actually received, with the Central Information Commission or the State Information Commission:

Provided that the Central Information Commission or the State Information Commission, as the case may be, may admit the appeal after the expiry of the period of ninety days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.”

34. Section 19(4) deals with procedure relating to information of a third party. Sections 19(5) and 19(6) are procedural in nature. Under Section 19(8) the power of the Information Commission has been specifically mentioned. Those powers are as follows:-

“(19(8). In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to,--

(a) require the public authority to take any such steps as may be necessary to secure 20 compliance with the provisions of this Act, including--

(i) by providing access to information, if so requested, in a particular form;

(ii) by appointing a Central Public Information Officer or State Public Information Officer, as the case may be;

(iii) by publishing certain information or categories of information;

(iv) by making necessary changes to its practices in relation to the maintenance, management and destruction of records;

(v) by enhancing the provision of training on the right to information for its officials; (vi) by providing it with an annual report in compliance with clause (b) of sub-section (1) of section 4;

(b) require the public authority to compensate the complainant for any loss or other detriment suffered;

(c) impose any of the penalties provided under this Act;

(d) reject the application.”

35. The procedure for hearing the appeals have been framed in exercise of power under clauses (e) and (f) of sub-section (2) of Section 27 of the Act. They are called the Central Information Commission (Appeal Procedure) Rules, 2005. The procedure of 21

deciding the appeals is laid down in Rule 5 of the said Rules. Therefore, the procedure contemplated under Section 18 and Section 19 of the said Act is substantially different. The nature of the power under Section 18 is supervisory in character whereas the procedure under Section 19 is an appellate procedure and a person who is aggrieved by refusal in receiving the information which he has sought for can only seek redress in the manner provided in the statute, namely, by following the procedure under Section 19. This Court is, therefore, of the opinion that Section 7 read with Section 19 provides a complete statutory mechanism to a person who is aggrieved by refusal to receive information. Such person has to get the information by following the aforesaid statutory provisions. The contention of the appellant that information can be accessed through Section 18 is contrary to the express provision of Section 19 of the Act. It is well known when a procedure is laid down statutorily and there is no challenge to the 22

said statutory procedure the Court should not, in the name of interpretation, lay down a procedure which is contrary to the express statutory provision. It is a time honoured principle as early as from the decision in *Taylor v. Taylor* [(1876) 1 Ch. D. 426] that where statute provides for something to be done in a particular manner it can be done in that manner alone and all other modes of performance are necessarily forbidden. This principle has been followed by the Judicial Committee of the Privy Council in *Nazir Ahmad v. Emperor* [AIR 1936 PC 253 (1)] and also by this Court in [Deep Chand v. State of Rajasthan](#) - [AIR 1961 SC 1527, (para 9)] and also in [State of U.P. v. Singhara Singh](#) reported in AIR 1964 SC 358 (para 8).

36. This Court accepts the argument of the appellant that any other construction would render the provision of Section 19(8) of the Act totally redundant. It is one of the well known canons of interpretation that no statute should be 23

interpreted in such a manner as to render a part of it redundant or surplusage.

37. We are of the view that Sections 18 and 19 of the Act serve two different purposes and lay down two different procedures and they provide two different remedies. One cannot be a substitute for the other.

38. It may be that sometime in statute words are used by way of abundant caution. The same is not the position here. Here a completely different procedure has been enacted under Section 19. If the interpretation advanced by the learned counsel for the respondent is accepted in that case Section 19 will become unworkable and especially Section 19(8) will be rendered a surplusage. Such an interpretation is totally opposed to the fundamental canons of construction. Reference in this connection may be made to the decision of this Court in *Aswini Kumar Ghose and another v. Arabinda Bose and another* - AIR 1952 SC 369. At 24

page 377 of the report Chief Justice Patanjali Sastri had laid down:

“It is not a sound principle of construction to brush aside words in a statute as being inapposite surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the statute”;

39. Same was the opinion of Justice Jagannadhadas in Rao Shiv Bahadur Singh and another v. State of U.P. - AIR 1953 SC 394 at page 397:

"It is incumbent on the court to avoid a construction, if reasonably permissible on the language, which would render a part of the statute devoid of any meaning or application".

40. Justice Das Gupta in J.K. Cotton Spinning & Weaving Mills Co. Ltd. v. State of Uttar Pradesh and others - AIR 1961 SC 1170 at page 1174 virtually reiterated the same principles in the following words:

"the courts always presume that the Legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect".

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41. It is well-known that the legislature does not waste words or say anything in vain or for no purpose. Thus a construction which leads to redundancy of a portion of the statute cannot be accepted in the absence of compelling reasons. In the instant case there is no compelling reason to accept the construction put forward by the respondents.

42. Apart from that the procedure under Section 19 of the Act, when compared to Section 18, has several safeguards for protecting the interest of the person who has been refused the information he has sought. Section 19(5), in this connection, may be referred to. Section 19(5) puts the onus to justify the denial of request on the information officer. Therefore, it is for the officer to justify the denial. There is no such safeguard in Section 18. Apart from that the procedure under Section 19 is a time bound one but no limit is 26

prescribed under Section 18. So out of the two procedures, between Section 18 and Section 19, the one under Section 19 is more beneficial to a person who has been denied access to information.

43. There is another aspect also. The procedure under Section 19 is an appellate procedure. A right of appeal is always a creature of statute. A right of appeal is a right of entering a superior forum for invoking its aid and interposition to correct errors of the inferior forum. It is a very valuable right. Therefore, when the statute confers such a right of appeal that must be exercised by a person who is aggrieved by reason of refusal to be furnished with the information. In that view of the matter this Court does not find any error in the impugned judgment of the Division Bench. In the penultimate paragraph the Division Bench has directed the Information Commissioner, Manipur to dispose of the complaints of the respondent no.2 in accordance with law as expeditiously as possible.

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44. This Court, therefore, directs the appellants to file appeals under Section 19 of the Act in respect of two requests by them for obtaining information vide applications dated 9.2.2007

and 19.5.2007 within a period of four weeks from today. If such an appeal is filed following the statutory procedure by the appellants, the same should be considered on merits by the appellate authority without insisting on the period of limitation.

45. However, one aspect is still required to be clarified. This Court makes it clear that the notification dated 15.10.2005 which has been brought on record by the learned counsel for the respondent vide I.A. No.1 of 2011 has been perused by the Court. By virtue of the said notification issued under Section 24 of the Act, the Government of Manipur has notified the exemption of certain organizations of the State Government from the purview of the said Act. This Court makes it clear 28

that those notifications cannot apply retrospectively. Apart from that the same exemption does not cover allegations of corruption and human right violations. The right of the respondents to get the information in question must be decided on the basis of the law as it stood on the date when the request was made. Such right cannot be defeated on the basis of a notification if issued subsequently to time when the controversy about the right to get information is pending before the Court. Section 24 of the Act does not have any retrospective operation. Therefore, no notification issued in exercise of the power under Section 24 can be given retrospective effect and especially so in view of the object and purpose of the Act which has an inherent human right content.

46. The appeals which the respondents have been given liberty to file, if filed within the time specified, will be decided in accordance with Section 19 of the Act and as early as possible, 29

preferably within three months of their filing. With these directions both the appeals are disposed of.

47. There will be no order as to costs.J.

(ASOK KUMAR GANGULY)

.....J.

New Delhi (GYAN SUDHA MISRA) December 12, 2011