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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 5646/2008

Date of decision: 10th November, 2009

ANITA J. GURSAHANI & ANR Petitioners
Through Ms. Girija Krishan Varma, Advocate.

versus

CHIEF INFORMATION COMMISSIONER Respondent
Through Mr. S.K. Dubey, Advocate for respondent
No.4.
Mr. Rohit Kumar Yadav & Mr. Prashant Neal,
Advocates for respondent Nos. 2 and 3.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in the Digest ?

ORDER

1. The petitioners herein have been convicted under Prevention of Corruption Act, 1988 and their appeal against conviction is pending before the Bombay High Court.
2. The petitioners herein had also filed an application under the Right to Information Act, 2005 seeking the following information:-

“In view of the reasons mentioned at para (3)(i)(a-d) hereinabove, the applicants want the inspection, records, documents, notings, extracts & photocopies u/s 2(f) (i) & (j) of the Act for the information sought & inter connected documents/issues below i.e.

- a) Letter dt. 20.04.1994 of CBI-ACB, Bombay, bearing

Ref.no.3/58(A)/91/AC-Bom., Addressed to Mr. D.G. Jugran (IPS), Div. Vig. Air India Building, Nariman Point, Bombay-21, a copy endorsed to CMD, CCI, Air-India Building, Nariman Point Bombay.

- b) Letter dt. 05.10.1995 bearing Ref. No.3/58(A)/91 Bombay addressed by SP-CBI/ACB, Bombay to CMD, CCI Ltd, Air India Bldg., Nariman Point, Bom.
- c) Letter dt. 04.01.1995 bearing Ref. No. 3/58(A)/91/Bom/C-17 addressed by SP-CBI/ACB, Bombay to CMD, CCI Ltd, Bombay.
- d) Letter dt. 25.01.1996 bearing Ref. No. CCI/VIG/RECT/684 Vol.II/95-96/941/12609 addressed to SP-CBI/ACB, Tanna House, N.P. Road, Bombay-39 issued by Mr. R.K. Kedia, the then G.M., CCI, Bombay, in response to above three letters of SP-CBI/ACB, Bom.”

3. The said application was filed before the CPIO of the Cotton Corporation of India Limited, the employer of petitioner No. 1. The information was denied and the two petitioners filed second appeal before the Central Information Commission. The appeal was disposed of vide order dated 26th September, 2007 observing that the CPIO had already furnished one of the four documents which had originated from his office, but with regard to other documents which have originated from Central Bureau of Investigation the procedure prescribed under Section 11(1) of the Right to Information Act, 2005 should be followed. The Central information Commission observed and directed:-

“7. The CPIO of the CBI is directed to examine the request of the appellants for disclosure of information asked for, as there is no on-going investigation in the matter. The claim of exemption u/s 8(1)(h) of the Act, may not be justified, as the matter has already been disposed of by the Court.

8. The appellants are free to approach the Commission again if they are not satisfied with the compliance of the above decision by the CPIOs of the CBI and the respondent.”

4. It was held that the Central Bureau of Investigation is a public authority. Liberty was granted to the petitioners herein to approach the Commission again if they are not satisfied with the decision of CPIO of the CBI and the respondent.

5. The petitioner was not satisfied with the steps taken by the CPIO and then filed another petition dated 5th October, 2007 before the Central Information Commission. CBI filed response to the said application placing reliance under Sections 8(1)(h) and 8(1)(j) of the Right to Information Act, 2005 and informed the petitioners that the information cannot be furnished in view of the said exemption clauses.

6. The Central Information Commission by the impugned order dated 1st April, 2008 records that the CPIO of Cotton Corporation of India Limited had stated that the information asked for and not furnished relates to CBI and cannot be furnished because CBI has not given concurrence for disclosure of the said information. The Central Information Commission thereafter passed the following order:-

“ Decision:

5. The information sought for relate to the CBI's investigation. The CBI is a public authority. The appellant is advised to directly approach the CBI for disclosure of information which is due to the CBI. The appellant is advised accordingly and the appeal is thus disposed of.”

7. As noticed above, the CBI has already contended that the information sought for by the petitioners cannot be provided as it falls under Sections 8(1)(h) and 8(1)(j) of the Act. The Central Information Commission was required to consider and examine the stand of the CBI whether or not the said exemption provisions apply to the facts of the present case. The impugned order passed by the Central Information Commission dated 1st April, 2008 does not deal with the said contentions. The matter is accordingly remanded back to the Central Information Commission to adjudicate and decide the stand of the CBI that the

information sought for cannot be furnished and supplied in view of Sections 8(1)(h) and 8(1)(j) of the Act.

8. The parties will appear before the Registrar, Central information Commission on 1st December, 2009, when further date for hearing will be fixed.

9. It is clarified that this Court has not expressed any opinion whether or not information can be furnished under the Act and the contentions of the parties.

The writ petition is disposed of. No costs.

SANJIV KHANNA, J.

NOVEMBER 10, 2009
VKR