

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 2678 OF 2020
WITH
INTERIM APPLICATION (L) NO. 4436 OF 2020

Saket S. Gokhale,
S/o. Suhas Gokhale,
502, Viral, Sai Krupa Complex,
Kashimira, Mira Road (E),
Thane- 401107,
Maharashtra.

... Petitioner.

V/s.

The Union of India
Through Secretary,
Ministry of Information and Broadcasting,
Govt. of India, Shastri Bhawan,
Dr.Rajendra Prasad Road,
New Delhi- 110001.

... Respondent.

Mr.Saket Gokhale, Petitioner in person.

Mr.Rui Rodrigues with Mr.D.P.Singh for the Respondent.

**CORAM : NITIN JAMDAR AND
MILIND JADHAV, JJ.**

Date : 5 November 2020

JUDGMENT: (Per Nitin Jamdar, J.)

Rule. Rule made returnable forthwith. Respondents waive service. Taken up for disposal.

2. The Petitioner is a former journalist who now takes up social and public causes. On 27 October 2019, the Petitioner had applied under the Right to Information Act, 2005 to the Ministry of Youth and Sports Affairs, Government of India seeking details regarding a campaign launched by the Government of India. On 27 November 2019, the Ministry of Youth and Sports Affairs transferred the application of the Petitioner to the Ministry of Information and Broadcasting.

3. The Petitioner instituted court proceedings on some sensitive social issues. Petitioner received phone calls and threatening messages on his personal phone. A mob gathered outside his residence chanting slogans. Petitioner noticed that the Ministry of Information and Broadcasting had uploaded the application filed by the Petitioner on its website with his personal details such as address and telephone

number. The website link of the Ministry of Information and Broadcasting being accessed by internet search engines, his personal details became available on the internet. The Petitioner filed this petition on 3 August 2020 for a direction that the Petitioner's personal details be removed from the website of the Ministry of Information and Broadcasting. The petitioner also sought damages for the mental agony.

4. On 3 September 2020, the petition was adjourned to enable the Petitioner to give notice to the Respondent. On 10 September 2020, Respondent- Ministry did not appear in the hearing. One more notice was given to the Respondent. On 25 September 2020 and 8 October 2020, the petition was adjourned at the request of the Respondent. A reply affidavit was filed by Mr. Unmana Sarangi, Deputy Director (EW), Ministry of Information and Broadcasting. It is stated that the Petitioner's personal data was removed from the website from 1 August 2020.

5. The Petitioner responded that though the Petitioner's personal details were stated to be removed on 1 August 2020, the details continued to be on the website till 14 September 2020. He submitted that because his personal details were uploaded by the Respondent- Ministry in the public domain, it was accessed by antisocial elements who threatened him causing harassment and

trauma. Petitioner submits that despite office memorandums the Ministry has uploaded the personal details singling him out because he has taken up various sensitive social causes.

6. During the hearing on 15 October 2020, the learned Counsel appearing for the Ministry had accepted that the Department of Personnel and Training had issued a memorandum on 7 October 2016, specifying that the personal details of the applicants under Right to Information Act should not be put up on the website. He stated that however, this memorandum did not reach the Ministry of Information and Broadcasting, and with its knowledge, corrective action was taken. He had submitted that it is not that only petitioner's details were put up on the website. However, from the reply, we found no details as to when the memorandums came to the knowledge of the Ministry. Secondly, no particulars were given whether in all the applications filed the personal details of all the applicants were put up on the website. Recoding this, we had acceded to the request of the Ministry to file an additional affidavit. An additional affidavit is filed by Mr. Sarangi Deputy Director dated 27 October 2020.

7. The Right to Information Act, 2005 was brought in force in June 2005. Section 6 governs the procedure for applying under for information under the Act. A person, who desires to obtain any information under the Act has to make a request in writing or through

electronic means with prescribed fees to the designated authority. The application has to specify the information sought for. Section 6(2) specifies that an applicant requesting information shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him.

8. In the case of *Mr. Avishek Goenka v. Mr. Ashish Kumar Roy*¹, one Mr. Goenka claiming to be an activist in the field of Right to Information, had approached the Calcutta High Court with the contention that the authority should not insist upon the detailed address of the applicant under the Act of 2005 as and when an application is made under the said Act. He had apprehended that those persons having vested interest to conceal the information asked for by the activist, would cause a threat to the activist and there had been past incidents of unnatural deaths of the activists in the field, presumably by the interested. The Division Bench considered section 6(2) of the Act of 2005 and held that it would be the duty of the authority to hide such details and particularly from their website so that people at large would not know of the details. On 20 November 2013, the Court passed the order accordingly, and the Secretary, Ministry of Personnel was directed to circulate the copy of the order to all concerned so the authority can take measure to hide personal details of the activists to avoid any harassment by the persons having vested interests.

1 W.P.No.33290(W) of 2013 decided by Calcutta High Court on 20 November 2013

9. Thereafter office memorandums were issued by the Ministry of Personnel, Government of India on 21 October 2014, 23 March 2016 and 7 October 2016. The office memorandum dated 7 October 2016 is relevant, which reads thus:

“OFFICE MEMORANDUM

Subject:- Uploading of RTI replies on the respective websites of Ministries / Departments

Attention is invited to para 1.4.1. of the enclosed guidelines referred to in this Deptt.'s O.M. No.1/6/2011-IR dated 15.04.2013, for implementation of suo-motu disclosure under Section 4 of the RTI Act, 2005, which states as follows:

“All Public Authorities shall proactively disclose RTI applications and appeals received and their responses, on the websites maintained by Public Authorities with search facility based on keywords, RTI applications and appeals received and their responses relating to the personal information of an individual may not be disclosed, as they do not serve any public interest.”

2. Further vide O.M. No.1/1/2013-IR dated 21.10.2014 on the issue of uploading of RTI replies on the respective websites of Ministries / Departments, DoPT had requested that:

"RTI applications and appeals received and their responses relating to the personal information of an individual may not be disclosed, if they do not

serve any public interest”.

3. Now, keeping in view the directions dated 20.11.2013 of Hon'ble High Court of Kolkata in Writ Petition No.33290/2013 in the case of Mr. Avishek Goenka Vs Union of India regarding personal details of RTI applicants, it is clarified that while proactively disclosing RTI applications and appeals received and responses thereto, on their website, the personal details of RTI applicant/appellant should not be disclosed as they do not serve any public interest. It is further clarified that the personal details would include name, designation, address, email id and telephone no. including mobile no. of the applicant."

The above memorandum, thus, refers to the order passed by the Calcutta High Court and directs that personal details of RTI applicants such as name, designation, address, email-id and telephone/mobile number should not be disclosed. This office memorandum was sent to all the public authorities. The legal position is thus clear that personal details of the applicant under the Act of 2005 should not be uploaded on the website.

10. The learned Counsel for the Ministry, taking us through the replies filed, submitted that it is not the case that the Petitioner has been singled out, as the Ministry has uploaded 4,474 applications with personal details. To the specific query whether personal details of all 4,474 applicants were displayed on the website, the learned Counsel

for the Respondent confirmed that it was so and the applications with all personal details were uploaded. The learned Counsel submitted that the earlier office memorandum directed that the application be put up on the website in a pro-active manner. He, however, did not dispute that post 7 October 2016, under the office memorandum issued, personal details should not be disclosed on the website, but he states that the Ministry was not aware of the Office Memorandum. To our specific query as to when the Respondent- Ministry learnt of the memorandum, he submitted that it was sometime in July or August 2020. The learned Counsel pointed out the letter dated 31 July 2020 whereby the Ministry of Information and Broadcasting informed the Senior Technical Director, National Informatics Centre, Ministry of Information and Broadcasting to remove the personal details of the applicants. The learned Counsel further submitted there was an error on the part of the Respondent- Ministry and there is no malice or motive to put up the personal details of the Petitioner alone to harass him.

11. From the two replies filed and responses by the Counsel for the Ministry to our specific questions, following factual position emerges. Despite office memorandum dated 7 October 2016, till 1 August 2020, 4,474 applications filed under the RTI Act with personal details of the applicants were uploaded on the website of the Respondent- Ministry. From this statement by the Ministry, it may

not be that the petitioner is singled out, but the reason why it so makes the matter more serious. The Respondents cannot seek dismissal of the writ petition contending that the petitioner is not the only victim of an irregularity, more particularly when the breach is regarding an enactment which is an essential component of a working democracy.

12. The decision of the Calcutta High Court mandating that personal details be not placed in public domain was rendered in the year 2013. Therefore, the contention that the mandate came in operation from 7 October 2016 is not correct. Be that as it may, we have proceeded based on the Respondents case that the 7 October 2016 Memorandum directs that the personal details of the Applicants under the Act not to be disclosed in the public domain.

13. Respondent-Ministry contends that it was not aware of the Official Memorandum dated 7 October 2016 and when it became aware, it took suitable action. This response is vague. There is no such general concept of awareness of a government department. Either the government department receives an official communication, or it was not received. The stand that Respondent Ministry was not aware of the Memorandums is not specific. Despite two affidavits, no details are placed on record by the Respondent- Ministry regarding these official communications. There is no specific stand that as per inward register,

physical or electronic, there is no entry of the communication received from the Ministry of Personnel. The routine administrative functioning of a government department is carried out by the government servants working in these departments. Generally, there are departments and persons in charge of receiving and forwarding communications. We presume that in the Respondent Ministry also there would be a post or department in charge of forwarding the applications and information for uploading it to the website through the National Informatics Centre. The Calcutta High Court on 20 November 2013 had directed that the Secretary, Ministry of Personnel should circulate the copy of its order to all concerned. The office memorandum dated 7 October 2016 issued by the Ministry of Personnel contains a footnote that it is circulated to all departments. These being official acts, deemed to have been carried out.

14. As the statement of objects and reasons of the Act indicates it was enacted to set up a practical regime of right to promote transparency and accountability in the working of every public authority. Citizen actions and transparency are vital for the functioning of the democracy, to contain corruption and to hold Governments and their instrumentalities accountable to the governed, The Act also balances competing goals and interest. It is acknowledged that revelation of information in actual practice may conflict with efficient operations of the Governments, limited financial resources and need

for confidentiality of sensitive information. Right to Information Act is, therefore, a unique and vital piece of legislation.

15. The Calcutta High Court in the case *Mr. Avishek Goenka* referred to the need to protect the applicants applying under the Act. Court also cautioned of the intimidatory tactics of unscrupulous elements against such applicants. Based on this Court order, Office Memorandums were issued directing removal of personal details. Uploading the personal details of the applicants is thus not only unnecessary, but it may also make some of the applicants vulnerable to unscrupulous elements.

16. The issue also travels beyond the individual breach of the privacy of the applicant and potential likelihood of a risk. It is the impact on future applicants. Informed citizenry and transparency of information are vital for the functioning of democracy. Noticing that personal details of other applicants are put up in the public domain, some of those who want to seek information for the larger good may be deterred for the fear of being targeted. This could defeat the object of the Act. If such a large scale breaches in the field of Right to Information are not taken seriously, the right itself will be trivialized. Suitable action must be taken, and also seen to be taken, to underscore the importance of the Act of 2005.

17. After arguments were concluded on 29 October 2020 and the petition was directed to be placed on Board on 5 November 2020 for passing orders, an affidavit of the Respondent sworn by Mr. Sarangi on 4 November 2020 is filed. This affidavit states that action is taken against the concerned and such things will not be repeated. Notices issued by Mr. Sarangi calling for explanation are annexed. Earlier two affidavits did not contain any such averments. Three notices are dated 3 November 2020. We are not satisfied with this affidavit, more particularly with the timing and the manner it is furnished. Despite the office memorandum dated 7 October 2016, for four years, 4,474 applications with personal details of the applicants were uploaded on the website of the Ministry of Information and Broadcasting. Looking at the magnitude of the lapse, it cannot be treated as just a routine internal matter. We therefore intend to place the responsibility of ensuring that necessary enquiry is conducted and that too in time bound manner upon the highest official in the Ministry, the Secretary. Needless to state that if the enquiry will result in punitive action against the guilty government servants it would follow the applicable Rules and Regulations.

18. As regards the Petitioner's claim for damages for rupees fifty lakhs is concerned, we have to be mindful that this relief is sought in writ jurisdiction. It is not the position of law that in a writ

jurisdiction, moment the court concludes that a right is breached, damages must follow as of course without any further enquiry. Courts grant damages in public law more in the cases of the poor and downtrodden who may not have the means to enforce their rights in private law. The law of damages requires various parameters to be evaluated. Grant of damages require factual adjudication such as to the quantum. The petitioner has a remedy of approaching a civil court. This claim is left open to be agitated in the appropriate civil forum. However, the Respondents should pay the expenses incurred by the petitioner in filing and prosecuting this petition. Considering the facts and circumstances, we quantify the expenses at Rs.25000/- (Twenty Five thousand only). This expenses will be without prejudice to the rights of the Petitioner to claim appropriate damages in the civil court.

19. The Writ Petition is disposed of with these directions:

- a) The papers of this Petition along with a copy of the replies filed by the Respondent and the copy of this order be placed before the Secretary, Ministry of Information and Broadcasting, Government of India, within two weeks from today;
- b) Responsibility is placed on the Secretary, Ministry of Information and Broadcasting, Government of India, to ensure that a suitable enquiry is held in the issues highlighted

in this judgment regarding the uploading of the personal details of the applicants contrary to the concerned Office Memorandum;

- c) After a due enquiry, suitable disciplinary action will be taken as per the governing rules and regulations;
- d) Action under Clauses (b) and (c) will be completed within three months, that is by first week of February 2021, from the date the order is placed before the Secretary as per clause (a);
- e) The report be submitted to the Registry of this court by the Secretary, under his signature of completing the action taken as per clause (c) within two weeks thereafter, that is by third week of February 2021;
- f) If no report is submitted to this Court within the time stipulated, liberty to the Petitioner to move an application in this petition. This liberty is irrespective of the action that the Court may take under its powers for non-compliance;
- g) The Respondent will deposit the cost of the petition quantified at Rs. 25000/- (Twenty Five thousand only) in the Registry of this court within three weeks from today, which petitioner will be entitled to withdraw.

20. Rule is made absolute in the above terms. Writ Petition is disposed of.

21. In view of disposal of writ petition, interim application is also disposed of.

21. This order will be digitally signed by the Personal Assistant/Private Secretary of this Court. All concerned to act on production by fax or email of a digitally signed copy of this order.

(MILIND JADHAV, J.)

(NITIN JAMDAR, J.)