

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Civil Writ Petition No.12016 of 2016
Date of Decision: October 5th, 2018

Shakti Singh

...Petitioner

Versus

State Information Commission, Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. S.K. Hooda, Advocate
for the petitioner.

Mr. Ravi Partap, Assistant Advocate General, Haryana.

AUGUSTINE GEORGE MASIH, J.

Challenge in this writ petition is to the order dated 30.11.2015 (Annexure P-3) passed by the First Appellate Authority, Jhajjar, and the order dated 04.04.2016 (Annexure P-6) passed by the Second Appellate Authority, the State Information Commission, Haryana, whereby the appeals preferred by the petitioner have been dismissed.

2. Briefly the facts are that the petitioner had applied for the death certificate of his mother Rukmani in May 2015 to the Sub Registrar, Births and Deaths, Primary Health Centre, Mandothi (Jhajjar), to which a response was received on 19.05.2015 stating that the death certificate of Rukmani, mother of the petitioner, was not available. According to the petitioner, proper information was given to the Primary Health Centre, Mandothi, with regard to the death of the mother of the petitioner and was duly entered by Asha Worker Sumitra in the Primary Health Centre records. Faced with this situation, petitioner submitted an application on 03.08.2015 (Annexure P-1) under the Right to Information Act, 2005 (hereinafter referred to as the RTI Act) to the State Public Information Officer-cum-Deputy Civil Surgeon, Jhajjar, Haryana-respondent No.3 with required fee of ₹50/-, for which a

receipt No.6241 dated 03.08.2015 was issued. The said information when was not supplied within the time prescribed under the RTI Act, petitioner approached the First Appellate Authority namely Civil Surgeon, Jhajjar, Haryana-respondent No.2 by filing an appeal on 17.09.2015 along with the application dated 03.08.2015. Said appeal was disposed of by the First Appellate Authority vide order dated 30.11.2015 (Annexure P-3) by observing that the information as sought by the petitioner has been supplied to him by the S.P.I.O. but no such information was ever supplied. The order of the First Appellate Authority indicates that the Deputy Civil Surgeon, Jhajjar, as well as the petitioner were not present at the time of hearing of the case despite various adjournments but the file was seen by the First Appellate Authority and on the basis of the record had simply passed the said order. Petitioner, therefore, preferred the second appeal before the State Information Commission, Haryana, on 08.12.2015, which was decided vide order dated 04.04.2016 (Annexure P-6) denying the information to the petitioner by observing that the petitioner is not entitled to information under the RTI Act and he should, in the light of the provisions of Section 17 of the Registration of Births and Deaths Act, 1969, seek the death certificate as per the procedure prescribed therein, despite taking into consideration the fact that the RTI Act has an overriding effect. This has led to the filing of the present writ petition.

3. I have heard the counsel for the parties and with their assistance, have gone through the impugned orders.

4. The operative portion of the order dated 04.04.2016 (Annexure P-6) passed by the State Information Commission, Haryana, reads as follows:-

“The Commission observed that as per Section 17 of

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the Births and Deaths Registration Act, 1969, there is a statutory mechanism evolved within the public authority which obliges the public authority to share the same with the citizenry by following the prescribed procedure and upon fulfillment of the prescribed conditions. Hence, it cannot be said that the public authority 'holds; or 'controls' the information which can be accessed by any citizen under the specific Act. There is no exclusivity in such holding or control. In fact, the control vests in the seeker of the information who has only to operate the statutorily prescribed mechanism to access the information. This kind of information does not fall within the meaning of the expression 'Right to Information' as the information in relation to which the 'right to information' is specifically conferred by the RTI Act is that information which is held by or under the control of any public authority. The said legislation being statutory in nature does not get overridden by the RTI Act, 2005. Hence the appellant is at liberty to seek death certificate under the provisions of the Registration of Births and Deaths Act, 1969. The respondent SPIO is advised to respond to the information seekers within the stipulated period as laid down under Section 7(1) of the RTI Act, 2005."

Perusal of the above order would show that the Commission has denied information under the RTI Act to the petitioner on the ground that as per Section 17 of the Registration of Births and Deaths Act, 1969, there being a statutory mechanism evolved and prescribed, the said procedure would have to be followed and the provisions of RTI Act would not be applicable.

5. The RTI Act has been legislated by the Parliament with the intent and purpose of ensuring maximum disclosure with minimum exemptions consistent with the constitutional provisions with effective mechanism for access to information and disclosure by authorities. This is a social welfare legislation and is a special law with a purpose to ensure

smoother and greater access to information. The approach, therefore, has to be beneficial and not restricted and enlarging the principle of transparency, especially in public dealing. There are various statutes providing for restrictions and procedures despite that the Parliament being aware of the same proceeded to enact Section 22 in the RTI Act, which gives the RTI Act an overriding effect over the other statutes and law.

6. The questions which arise for consideration in this case are;

- (i) Whether the provisions of Section 22 of the RTI Act has an overriding effect over the provisions of the other statutes?
- (ii) In case there is no inconsistency between RTI Act and other Act/law and a procedure is prescribed under that Act/law but still a citizen chooses to apply under the RTI Act, can the information be denied on the ground of availability of alternative remedy?

7. Section 22 of RTI Act reads as follows:-

“22. Act to have overriding effect.—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923 (19 of 1923), and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.”

8. According to this Section, the provisions of RTI Act shall have effect notwithstanding there being anything inconsistent thereto contained either in the Official Secrets Act, 1923, or any other law including any instrument having effect by virtue of any law for the time being in force. Meaning thereby, other than this Act, the other statutory provisions which are inconsistent with the RTI Act, would not operate within the campus, ambit and sphere where the RTI Act operates. The provisions of this Act

would, therefore, have precedence and would for all intents and purposes, hold the field, viz-a-viz any inconsistency with any other statute or law or instrument having effect by virtue of any law except for the riders, exceptions and exemptions from disclosure of information provided for under the RTI Act itself such as Sections 8 to 11 etc.

9. Right to information now has been recognised as a fundamental right by various rulings of the Hon'ble Supreme Court. Codification of this right and eventual acknowledgment of this right is the Right to Information Act, 2005, legislated by the Parliament laying down the working mechanism and tools to enforce this right and that too within the time frame as given for ensuring the access to information subject to certain restrictions, protections and riders. The underlying heart and soul of this Act is transparency imbibing in it the spirit of ensuring smoother and greater access to information which would lead to empowering the common man and restoring confidence in the working of every public authority and bringing accountability and reduction of arbitrariness leading to rule of law.

10. Thus, it can be safely said that under the RTI Act, disclosure of information is a norm and refusal an exception. In other words, information cannot be denied under the RTI Act unless exempted from disclosure in accordance with Sections 8, 9 and 11 only. Section 22 as mentioned above leads the way to making the fundamental right to information a reality by enforcing it by simply invoking the provisions of the RTI Act.

11. Now moving on with this foundation to deal with the situation where a method has been prescribed under a statute for obtaining information under a particular statute which may not be inconsistent with the provisions of the RTI Act, can the seeker of such information be deprived of such information on this ground or in other words, the

information as sought under the RTI Act be denied?

12. The reply to this question is that there being no inconsistency under the RTI Act and the provisions of the other statute/law, the option and prerogative is with the citizen to select and choose to exercise his right under such Act/law or the RTI Act. In case the citizen prefers to move an application under the RTI Act, Public Information Officer, on receipt of such request, shall proceed to take a decision thereon and provide information as a norm and any denial of the same must be in accordance with Sections 8, 9 and 11 only. The right to information, thus, cannot be denied under the RTI Act merely because a statutory mechanism is evolved and prescribed under an Act, which is also applicable, obliging a public authority to share the same by following a prescribed procedure subject to fulfillment of prescribed conditions. If it is held otherwise, it would negate and lead to derecognising the fundamental right to information as granted under the RTI Act, which is unacceptable.

13. The answers to the two questions as posed in para 6 above are;

(i) In case of any inconsistency between the provisions of RTI Act and other Act/law, the RTI Act shall prevail.

(ii) In case of an application preferred under the RTI Act where alternative procedure and conditions are prescribed under any other statute/law, the said application cannot be rejected and/or information denied on this ground. Such application shall be dealt with under the provisions of the RTI Act.

14. In the light of the above, the impugned order dated 04.04.2016 (Annexure P-6) passed by the State Information Commission, Haryana, cannot sustain as the Commission has rejected the claim of the petitioner under the RTI Act proceeding upon the wrong assumption that the

Registration of Births and Deaths Act, 1969, being a legislation and statutory in nature, is not overridden by the RTI Act. It may be added here that the information under the RTI Act can only be denied if the same is exempted from disclosure of information under the provisions of RTI Act itself such as Sections 8, 9 and 11 thereof.

15. In view of the above, the present petition is allowed.

16. Order dated 04.04.2016 (Annexure P-6) passed by the State Information Commission, Haryana, is hereby set aside.

17. The case is remanded back to the said Second Appellate Authority for fresh decision as per the provisions of the RTI Act.

18. Parties are directed to appear before the State Information Commission, Haryana, on **14.11.2018**.

19. Copy of this order be sent forthwith to the State Information Commission, Haryana, for information and compliance.

October 5th, 2018
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: Yes