



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 01.03.2023

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

WP.Nos.24131 & 24132 of 2009
and M.P.No.1 of 2009

K.Chiranjeevi

... Petitioner in both WPs

Vs

- 1.Union of India,
Represented by its Secretary,
Ministry of Personnel, Public Grievances and Pensions,
North Block, New Delhi.
- 2.The Additional Commissioner of Income Tax,
Media Range, Chennai,
Office of the Additional Commissioner of Income Tax,
Media Range, Room No.310, III Floor,
Aayakar Bhawan New Block,
121, Mahatma Gandhi Road, Chennai-600 034.
- 3.The Deputy Commissioner of Income Tax (CPIO),
Media Circle I,
Office of the Deputy Commissioner of Income Tax,
Media Circle I, Room No.311, III Floor,
Aayakar Bhawan New Block,
121, Mahatma Gandhi Road, Chennai-600 034.
- 4.Shri.Gone Prakash Rao, Ex.M.L.A.,
Former Chairman,
Andhra Pradesh State Road Transport Corporation,



W.P.Nos.24131 & 24132 of 2009

No.235, New MLA's Quarters,
Basheer Bagh, Hyderabad,
Andhra Pradesh.

... Respondents in both WPs

PRAYER in WP.No.24131 of 2009: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the Second Respondent culminating in the impugned proceedings C.No.33/08-09 dated 03.04.2009 and quash the same.

PRAYER in WP.No.24132 of 2009: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Declaration, declaring the provisions of Section 19(6) of the Right to Information Act, 2005 (Act No.22 of 2005) as ultra vires the Constitution of India since it violates Articles 14 and 21 of the Constitution of India by being arbitrary and violating proper standards and norms of fair procedure in the matter of dealing with First Appeals pertaining to disclosure of third party information.

(In both WPs)

For Petitioner : Mr.G.Anbumani

For Respondents : Mr.R.S.Balaji (for R1 to R3)
Senior Standing Counsel

R4- Notice returned (left)

COMMON ORDER

Learned counsel for the petitioner seeks permission to withdraw W.P.No.24132 of 2009 stating that the prayer therein is not pursued by the



W.P.Nos.24131 & 24132 of 2009

petitioner. He has also made an endorsement to that effect recording which,

W.P.No.24132 of 2009 is dismissed as withdrawn.

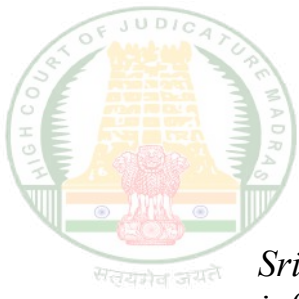
2. This order thus disposes W.P.No.24131 of 2009, wherein, the challenge is to an order dated 03.04.2009, passed by the second respondent, the Additional Commissioner of Income Tax, Media Range, Chennai/R2.

3. The petitioner is a noted film artist. He had, in the year 2008, started a regional political party, by name, Praja Rajyam. R4, upon whom several attempts were made to serve notice of this Writ Petition, albeit unsuccessful, is stated to be the political opponent of the petitioner. R4 had filed an application under the Right to Information Act, 2004 (in short 'RTI Act') before the Deputy Commissioner of Income Tax (CPIO), Media Circle I/R3 (in short 'CPIO') seeking the following information in relation to the petitioner.

'01.Sri Chiranjeevi (Telugu Cine Actor) has started his film career from 1972 to 2008 (30 years) and acted in 148 films. Since which year Sri Chiranjeevi has started filing Income Tax Assessment. Since then in how many films he has acted and what is the remuneration he has taken for each film and filed the income tax returns accordingly.

02.Whether any Receipts have been furnished for authentication towards the remuneration taken for each film acted by Sri Chiranjeevi Furnish such information.

03.Whether the Producers who have paid the remuneration to Sri Chiranjeevi, have also filed the same returns as has been filed by



W.P.Nos.24131 & 24132 of 2009

Sri Chiranjeevi, with Income Tax Department. If so furnish the information.'

WEB COPY

4. The premise upon which the information was sought, as the representation dated 12.01.2009 revealed, is that the petitioner had charged a remuneration of Rs.1,500/- for his first film *Punaadirallu* in 1978 and media reports indicated that in the film proximate to the representation filed, being *Shanker Dada Zindabad*, his remuneration has increased manifold to Rs.8.00 crores. Thus, and bearing in mind public interest, R4 had sought the information as aforesaid.

5. The scheme of RTI Act required a third party in respect of whom information was sought to be put to notice in terms of Section 11 thereof and accordingly, a notice had been issued to the petitioner on 13.01.2009 enclosing a copy of the application and calling for objections, if any, from him. On 21.01.2009, the petitioner responded putting forth his objections to the request for information on the ground that the information related to personal and confidential matters.

6. The petitioner submitted that the details of the income tax returns that were sought, in respect of the years 1972 to 2008, the remuneration of each film as well as reconciliation of the disclosures in the petitioner's income tax returns, vis-à-vis the returns of the Producers who had effected payments to the



petitioner, fell far outside the scope and ambit of the RTI Act. The provisions of Section 8 relating to exemption from disclosure were cited, specifically clauses (d), (g) and (j), reading as follows:

“8. Exemption from disclosure of information – (1).....

(d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information”

“(g) information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes.”

(j) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information officer or the Appellate Authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information.

7. On the basis of this exchange of communication, an order appears to have been passed by R3 accepting the stand of the petitioner and rejecting the request for information by R4.

8. At this stage, there arises some ambiguity in respect of the procedure adopted by the parties. R4 has moved R2 by way of redressal on 19.02.2009. A



copy of the aforesaid representation/appeal is placed at page 26 of the compilation accompanying the writ affidavit. An inward seal has been affixed by the office of R3 covering one portion of the representation, and almost obliterating the words '*1st APPEAL*' on the top of the page. Admittedly, a copy of this appeal was sent to the petitioner for his comments.

9. It is unclear as to whether R2 has proceeded with the matter on the ground that this is a representation or whether it is an appeal, since there are conflicting references to this document, both in the correspondence exchanged qua the parties and in the counter. In some place, the reference is to '*an application seeking information*' whereas in the impugned order, the officer informs the parties that it is an order subject to appeal to the Central Information Commissioner in terms of Section 19(3) of the RTI Act.

10. Prior to addressing the merits of the challenge itself, one point that assumes importance is in the context of the procedure that has been followed. The scheme of the RTI Act provides for the consideration of a request for information in terms of Section 7 thereof by the Central/State Public Information Officer (in short, CPIO/SPIO). Thereafter, Section 19(1) deals with an appeal against the decision of the Central/State PIO to an officer who is senior in rank. The proviso to Section 19(1) states that the officer may admit



the appeal after the statutory limitation of 30 days, if satisfied that the delay was justifiable.

11. Section 19(2) provides for an appeal to be filed by a third party who is aggrieved by an order by the CPIO/SPIO, again within 30 days. Section 19(3) provides for a second appeal against the decision under sub-Section (1) with the Central/State Information Commission (CIC/SIC). Again, the proviso providing for admission of the belated appeal, if the reasons set forth warrant such admission. Notably, Section 19(3) provides for a second appeal against the decision under Section 19(1) and does not refer to a decision taken in an appeal under Section 19(2).

12. Be that as it may, learned counsel for the petitioner would confirm that in practice, appeals are entertained by the CIC/SIC against both orders passed under Section 19(1) and 19(2).

13. Yet another anomaly emanates from a comparison of the provisions of Section 19(1) to 19(4) as regards the procedure to be followed by the appellate authorities. While Section 19(4) provides for a reasonable opportunity to be afforded to the third party by the CIC/SIC, Section 19(3) which deals with second appeal does not say that the third party, or for that matter even the CPIO/SPIO be heard, in dealing with the appeal.



14. It transpires that no rules have been specifically provided as regards the procedure relating to appeals under Sections 19(1), 19(2) and 19(3). The Right to Information Rules, 2012 also do not provide any clarity in regard to the procedure for disposal of first appeal. This calls for suitable action/clarification to be provided, by the authorities.

15. Now I advert to the merits of the matter. R2 has, admittedly, forwarded a copy of the appeal/representation dated 19.02.2009 to the petitioner for his comments and the petitioner has, vide communication dated 20.03.2009, reiterated the objections that were raised by him at the first instance before R3 on 21.01.2009.

16. Inter alia, the petitioner has also brought to the notice of R2 the fact that the earlier, similar request by R4 had been turned down. Thus it is clear that the petitioner was proceeding on the understanding that the communication dated 19.02.2009 was a fresh representation and had been unaware of the position that it was an appeal.

17. That apart, R4 also refers to representations dated 13.01.2009 and 02.02.2009 in respect of which there are no records available, either the representations themselves or on the fate of the same. Incidentally, though the



appeal was sent to the petitioner by R2, the response by the petitioner is addressed to R3 with a copy marked to R2.

18. Admittedly, no hearing has been afforded to the petitioner and this, in my considered view, would be sufficient to vitiate the impugned order. That apart, in counter, the preliminary objection raised by R2 and R3 touches upon the availability of a statutory remedy of second appeal before CIC. However, I do not, at this distance of time, propose to either remit the matter or to relegate the petitioner to appeal, seeing as this Writ Petition has been pending since 2009.

19. While the information sought before the original authority spanned three decades, R4, has in the appeal/representation, restricted the period to 10 years. The authority is of the opinion that since the information sought for relates to a person in public life, a politician intending to contest elections as reported widely in the press, the information sought must be disclosed.

20. The operative portion of the impugned order at paragraphs 10 and 11, reads thus:

10. The objections submitted by the third party and the Chief Public Information Officer have been considered in detail. Neither the information furnished by the third party to the Income Tax Department in fulfilling its statutory liability of filing return of income nor the information gathered from the third party or



WEB COPY



W.P.Nos.24131 & 24132 of 2009

other sources during the course of scrutiny assessment falls under the purview of either Section 8 (1) (d) or 8(1)(e) or 8(1)(g) or 8(1)(J). None of the information is that of commercial confidence, trade secret or intellectual property the disclosure of which would hurt the competitive position of the third party. This information is not held by the Income Tax Department in a fiduciary capacity.

11. This information by no stretch of imagination would endanger the life or physical safety of any person; it would not identify the source of information or assistance given in confidence for law enforcement or security purposes. This information does relate to personal information but the disclosure has relationship to public activity and public interest, in the light of the third party having started a political party named "Prajarajyam". Fair election contemplates disclosure by the candidate of his past including the assets held by him so as to enable the voter to make a proper choice according to his thinking and opinion. Since the third party has started a political party now and is planning to contest elections, as is reported widely in the Press, the information sought for is to be disclosed in public interest and such larger public interest of informing the voter justifies the disclosure of such information. I have carefully considered the application of the applicant, the objections of the third party as also the Chief Public Information Officer and hereby hold that the information sought by the applicant does not fall within the purview of Sec 8 (1)(d) or 8(1) (e) or 8(1)(g) or 8(1)(1). The Chief Public Information Officer is directed to furnish the information available in the possession of his office in the case of the third party as sought by the applicant, with the exception of the information pertaining to whether the producers who have paid the remuneration to Sri Chiranjeevi have also filed the same returns as has been filed by Sri Chiranjeevi with Income Tax Department as this does not fall within the definition of Sec 2 (f) of the RTI Act, 2005. The CIC in M/s.Anumeha, C/o. Association For Democratic Reforms (169 TAXMANN 492, 189 of 2008, Taexpert) dated 29.4.2008 has directed that Income-tax returns of political parties filed with public authorities and assessment orders be disclosed while PAN shall not be disclosed.



WEB COPY

This decision is in favour of the appellant mentioned in the decision cited supra permitting disclosure of information pertaining to third party

21. The conclusion, in sum and substance, is that:

i) information sought for is not of the nature of commercial confidence, trade secret or intellectual property, the disclosure of which would hurt the competitive position of the petitioner;

ii) the information is not held by the Income Tax Department in a fiduciary capacity;

iii) the disclosure of information would not endanger the life or physical safety of the person;

iv) the petitioner has, admittedly, started a political party and fair election dictates full disclosure by the candidate, including of his past and assets held, so as to enable the voter to make a proper choice. Hence the conclusion that such information does not fall within the purview of Section 8(1)(d), (e), (g) or (j) of the RTI Act, as contended by the petitioner.

v) reliance is placed on a decision of the CIC in the case of *Anumeha, C/0 Association for Democratic Reforms* (169 Taxmann 492 dated 29.04.2008).

22. Having heard the submissions of Mr.G.Anbumani, learned counsel for the petitioner and Mr.R.S.Balaji, learned counsel for the respondents, I am



of the considered view that impugned order dated 03.04.2009 has not decided the legal issues in proper perspective.

23. Quite apart from the fact that opportunity of hearing has not been afforded to the petitioner, the conclusion of the authority on merits is, in my view, incorrect. The authority has directed furnishing of personal information such as income disclosed in the tax returns on the basis that the petitioner was a person in public life. She has also directed the furnishing of a reconciliation of the petitioner's income with the Producer's income which, in my view, goes far beyond what the Act envisages.

24. The provisions of Section 8 exempt certain categories of information from the ambit of disclosure. Income of an individual touching upon information of commercial confidence, trade secret or intellectual property falls within the ambit of clause 8(d) of Section 8 of the Act. The income tax returns and assessment orders of an individual would contain information relating to not just the quantum of income but also the nature and character of the income disclosed and reveal information in relation to the mode and method of carrying on business constituting information falling within the ambit of trade secret and intellectual property. Such information may be revealed only upon the



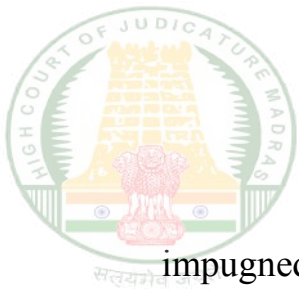
competent authority recording satisfaction that public interests warrants such disclosure.

WEB COPY

25. In the present case, the petitioner has been in public life, as a politician, between the period 2009 and 2018. Additional affidavit dated 27.02.2023, a copy of which has been served upon the respondents, clarifies that the petitioner is, as on date, not active in politics and does not propose to return to the political arena. The contents of paragraph 5 thereof reveal that the petitioner was elected as a Member of Legislative Assembly (MLA) of Tirupati in 2009.

26. He continued as an MLA till 2012 after his party merged with the political party with which R4 was associated. In April 2012, he was elected as a Member of Parliament (MP) from Andhra Pradesh and was appointed thereafter as Minister of State for Culture and Tourism from October 2012, which post he served till May 2014. His term as MP concluded in 2018 and with that, he claims to have quit the political scenario and returned to his home turf of cinema.

27. There is nothing contained in the impugned order to justify the conclusion that disclosure of the income tax returns and assessment orders of the individual would serve public interest. In fact, the direction in the



W.P.Nos.24131 & 24132 of 2009

impugned order proceeds on the basis that what is sought are the income tax returns of the political party. However, that is not the information that was sought for by R4, who had specifically requested private information relating to income tax returns of the petitioner who is an individual. Thus, even on this score and seeing as there is a difference between what was sought and what was ultimately ordered, the impugned order would stand vitiated.

28. Undoubtedly, public interest would override the exemption granted in protection of private interest under Section 8. However, the authority must justify the circumstances in which such an exclusion would apply and in the present case, no such justification has been provided except to state that the petitioner, proposed to start a political party as reported widely in the news, and thus, such disclosure was necessary, in public interest. The authority relies upon the decision of the CIC in *Anumeha* to the effect that income tax returns filed before public authorities and assessment orders passed in the case of political parties must be disclosed.

29. Inter alia, some decisions are referred to in the order in the case of *Anumeha*, for the proposition that income tax returns and details concerning assessments cannot be furnished except if warranted by purposes of public purpose. This is despite the position that such information has been provided by



them to public authorities in fulfilment of statutory obligations. The decisions

WEB COPY
are:

(i) *P.R.Gokul Vs. Commissioner of Income Tax, Kottayam*, (Decision No.110/IC(A)/2006-F.No.CIC/MA/A/2006/00274 dated 13th July, 2006)

(ii) *Smt.Shobha R.Arora Vs. Commissioner of Income Tax, Mumbai* (Decision No.119/IC(A)/2006 – F.No.CIC/MA/A/2006/00220 dated 14th July, 2006)

(iii) *Prashant A.Shah Vs. Commissioner of Income Tax, Ahmedabad* (F.No.CIC/AT/A/2007/01374 dated 3rd April, 2008)

(iv) *Rasik Lal S.Wardia Vs. Department of Income Tax* (F.No.CIC/AT/A/2007/01439 dated 9th May, 2008)

(v) *T.Seturaman Vs. Commissioner of Income Tax, Tirucherapalli* (F.No.CIC/AT/A/2007/00336 dated 15th June, 2007)

(vi) *Ms.Neeru Bajaj Vs. Commissioner of Income Tax, Lucknow* (F.No.CIC/AT/A2006/00644 dated 21st February, 2007)

30.In the case of *Anumeha*, the information sought related to a political party and it is in that context that the Information Commissioner took the view that income tax returns and assessment orders pertaining to political parties must be made available.

31.The Central Information Commission (in short 'CIC') in the case of *Shir Milap Choraria V. Central Board of Direct Taxes* (Appeal No.CIC/AT/2008/00628 dated 15.06.2009), was concerned with the request for disclosure of income tax returns and financials of a third party, and at paragraph 12, the Bench considers several earlier instances where an identical



issue had been decided adverse to the information seeker on the premise that such information constituted private information which would be protected under the provisions of Section 8 of the RTI Act. At paragraph 13, the Bench states thus:

.

'13. It is important to mention that, in the cases cited above, the Appellant had sought access to Income Tax Returns and Assessment Orders etc. of the third party on the plea of serving larger public interest by way of exposing alleged tax evasions etc. The present case is slightly different inasmuch as the appellant has taken the plea that he wants to have access to the ITRs of his daughter-in-law Smt. Sushmita Karnawat, with a view to proving his innocence in a criminal case instituted against him and his family. However, the question remains whether disclosure of this information is likely to be in larger public interest.

14. There is no doubt that the information sought by the appellant is third party information. Therefore, the procedure provided in section 11 of the RTI Act is required to be followed in such a matter. In fact, the CPIO had issued notice to Smt. Sushmita Karnawat and sought her objections in the matter. She had strongly opposed disclosure of information. In this view of the matter, the CPIO had refused to disclose information on the ground that such disclosure would not be in larger public interest. The Appellant, however, has pleaded that Smt. Sushmita Karnawat has lodged a false FIR at the Police Station against him, and his entire family and as the FIR is a public document, therefore, the information sought by him falls in public domain. In this context, it would be pertinent to extract proviso appended to section 11 of the Act:-



WEB COPY



W.P.Nos.24131 & 24132 of 2009

"Provided that, except in the case of trade or commercial secrets, protected by law, disclosure may be allowed if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party"

The real test in this case is whether disclosure outweighs in importance any possible harm or injury to the interests of Smt. Sushmita Karnawat. In this context, the submission of Shri A.K. Sinha, CIT, CBDT, assumes significance. Shri Sinha has pleaded that disclosing this information would set a dangerous precedent and open up pandora's box. It is also his submission that it is open to the appellant to move the appropriate Court and obtain orders for the production of Smt. Karnawat's IT Returns before it, which the Income Tax Department is duty-bound to do and then, to decide whether to disclose them or not. The appellant has not taken recourse to this direct course of action for reasons best known to him. Shri Sinha's further submission is that if this information is disclosed, the same may be used to the detriment of Smt. Karnawat by the Appellant or his son and this aspect cannot be totally overlooked in a matter of marital discord.

15. From the above discussion, it would appear that the Income Tax Returns have been rightly held to be 'personal information' exempted from disclosure under clause (j) of section 8(1) of RTI Act by the CPIO and the Appellate Authority; and the appellant herein has not been able to establish that a larger public interest would be served by disclosure of this information. The plea of the appellant that the FIR lodged against him and the members of his family is a public document and, therefore, the information sought by him to defend himself in a criminal case falls in public domain, is misconceived. As mentioned in the proceeding para, above the appellant is not without remedy to protect himself from any act of alleged malicious prosecution. Hence, the decision of Appellate Authority is upheld. Appeal fails.

Dismissed.



32. The decision as above is subsequent to the decision in the case of *Anumeha*. That apart, what R4 has sought for is not information relating to a political party, but that of the petitioner, an individual. The Bombay High Court, in the case of *Shailesh Gandhi V. Central Information Commission* (2015(5) Mh.L.J 291) considered a similar case. One Shailesh Gandhi had sought information relating to the income tax returns and balance sheets of an individual, viz., Shri Ajit A. Pawar, former Deputy Chief Minister of State of Maharashtra.

33. The request for information had been turned down by the statutory authorities, as against which, the information seeker had moved the Bombay High Court. The conclusion of the authorities was confirmed by the High Court and at paragraph 15, it is stated thus:

'15 Hence what flows from the Judgments of the Apex Court is that the Income Tax Returns constitute personal information and are exempted from disclosure under Section 8(1)(j) and that the said personal information can only be divulged if the CPIO or the State Public Information Officer reaches a conclusion that it would be in the larger public interest to reveal such information. In the instant case, the reason set forth in the first application filed by the petitioner before the Public Information Officer hardly makes out a case for the information to be disclosed on the ground of public interest. Insofar as the ground made out in the Appeal filed before the First Appellate Authority is concerned, the petitioner has sought to make a general statement which does not specifically relate to the respondent No.3. The Petitioner has also sought to justify the information sought on the ground that the Income Tax



W.P.Nos.24131 & 24132 of 2009

WEB COPY

authorities do not check the Income Tax Returns of those who are elected with their declared affidavits filed at the time of standing for elections. The said ground also does not make out any case of there being any public interest involved in the disclosure of the information sought by the petitioner by way of the Income Tax Returns of the respondent No.3 for the preceding three years. The petitioner is in fact seeking the information by questioning the manner in which the Income Tax Department functions. Since the petitioner is seeking information relating to the respondent No.3 the petitioner was required to demonstrate as to how the disclosure of the information relating to the respondent No.3 would serve public interest. As indicated above, the petitioner has made a general and sweeping statement which can hardly be said to satisfy the test of disclosure being made in public interest.'

Though SLP was filed by the appellant before the Hon'ble Supreme Court, the same was dismissed as withdrawn by order dated 24.08.2015.

34. In light of the detailed discussion as above, the impugned order is set aside and W.P.No.25131 of 2009 allowed. No costs. Connected Miscellaneous Petitions are closed.

01.03.2023

Sl
Index : Yes
Speaking Order
Neutral citation: Yes

To

1. Union of India,
Represented by its Secretary,
Ministry of Personnel, Public Grievances and Pensions,
North Block, New Delhi.



W.P.Nos.24131 & 24132 of 2009

2. The Additional Commissioner of Income Tax,
Media Range, Chennai,
Office of the Additional Commissioner of Income Tax,
Media Range, Room No.310, III Floor,
Aayakar Bhawan New Block,
121, Mahatma Gandhi Road, Chennai-600 034.

3. The Deputy Commissioner of Income Tax (CPIO),
Media Circle I,
Office of the Deputy Commissioner of Income Tax,
Media Circle I, Room No.311, III Floor,
Aayakar Bhawan New Block,
121, Mahatma Gandhi Road, Chennai-600 034.



WEB COPY



W.P.Nos.24131 & 24132 of 2009

DR.ANITA SUMANTH, J.

sl

WP.Nos.24131 & 24132 of 2009
and M.P.No.1 of 2009

01.03.2023