

IN THE HIGH COURT OF DELHI AT NEW DELHI

LPA 1377/2007

17.12.2007

Date of decision : 17th December, 2007

17.12.2007

DIRECTOR OF INCOME TAX (INVESTIGATION)

AND ANOTHER Appellant

Through Ms.Sonia Mathur with

Mr.Pankaj Prasad, Advocates

versus

BHAGAT SINGH and ANR Respondents

Through nemo

CORAM:

HON?BLE THE CHIEF JUSTICE

HON?BLE MR. JUSTICE SANJIV KHANNA

1. Whether reporters of local papers be allowed

to see the judgment ? Yes

2. To be referred to the Reporter or not ? Yes

3. Whether the judgment should be reported in the Digest ? Y

DR. MUKUNDAKAM SHARMA, CJ (oral)

CM No.17356/2007 (exemption)

Allowed, subject to just exceptions.

LPA No.1377/2007 and CM No.17355/2007 (stay)

1. This appeal is directed against the order dated 3rd December, 2007 whereby the

learned Single Judge has allowed the writ petition with a direction to the

Income Tax Department to supply the information sought by the respondent No.1

herein.

2. The writ petition was filed by the respondent No.1 herein praying for quashing

of the order of the Central Information Commission with a direction that the

information sought by the respondents under the Right to Information Act, 2005

should be supplied immediately.

3.The respondent No.1 herein was married in 2000 to Smt.Saroj Nirmal, who in

November, 2000 filed a criminal complaint alleging that she had spent / paid as

dowry an amount of Rs.ten lacs. Alleging that the aforesaid claims are false,

the respondent No.1, in order to enable him to defend the criminal prosecution,

approached the Income Tax Department with a Tax Evasion Petition (TEP) dated

24th September, 2003. However, the Department summoned the wife of the

respondent No.1 to present her case before them. The respondent No.1 made

repeated requests to the Director of Income Tax Department (Investigation) to

ascertain and know the status of the hearing and TEP proceedings.

4.Having failed in his endeavour, the respondent No.1 moved an application under

the Right to Information Act in November, 2005 praying for the following information:

((i)Fate of Petitioner's complaint (tax evasion petition) dated 24.09.2003.

(ii)What is the other source of income of petitioner's wife Smt.Saroj Nirmal than from teaching as a primary teacher in a private school?

(iii)What action the Department had taken against Smt.Saroj Nirmal after issuing

a notice u/s 131 of the Income Tax Act, 1961, pursuant to the said Tax Evasion

Petition.?

5.The aforesaid application filed by the respondent No.1 herein was rejected by

the Public Information Officer designated under the Act by the Income Tax

Department as against which an appeal was filed before the Appellate Authority,

which too rejected the request to have access to the aforesaid information. As

against the said order of the Appellate Authority, the respondent No.1 filed a

second appeal on 1st March, 2006 before the Central Information Commission

praying for setting aside the orders of the respondents No.2 and 3 in the writ

petition. The Central Information Commission by an order dated 8th May, 2006

allowed the second appeal and set aside the rejection of information. It was

held by the Central Information Commission that as the investigation on TEP has

been conducted by Director of Income Tax (Investigation), the relevant report is

the outcome of public action and, therefore, the same is required to be

disclosed. However, it was directed that the report should be disclosed only

after the entire process of investigation and tax recovery, if any, is completed. The appellant / Department has accepted the aforesaid order of the CIC and, therefore, the said order of the CIC has become final and binding.

However, the Department has not disclosed all the information in terms of the

aforesaid order on the plea that notices under Section 148 of the Income Tax

Act, 1961 have been issued but no final assessment orders have been passed. It

is also stated that only after recovery of taxes, if any, details could be furnished.

6.The learned Single Judge considered the pleas raised and thereafter it was

held that no reason has come out as to why the aforesaid information should not

be supplied to the respondent No.1 even at this stage. The learned Single Judge

also held that no reason has been given as to why and how the investigation

process could be said to be hampered if the aforesaid information is furnished

and any prejudice being caused or suffered by the Department. These findings

are challenged in this appeal on which we have heard learned counsel for the

appellant.

7. On going through the records, we find that there is a categorical order of the

Central Information Commission directing that the aforesaid information should

be disclosed after the entire process of investigation and tax recovery, if any,

is complete in every respect. The contention and defence based upon Section

8(1)(i) was rejected. The said direction and findings rejecting the plea under

Section 8(1)(i) to disclose information has not been challenged by the

appellant. The only question is of the stage and whether information should be

furnished at this stage. There is no co-relation between the information

required and recovery of taxes, if any. Recovery of taxes has nothing to do

with investigation on TEP.

8. Information sought for by the respondent No. 1 relates to fate of his complaint made in September,

2003, action taken thereon after recording of statement of Ms. Saroj Nirmal and whether Ms. Saroj

Nirmal has any other source of income, other than teaching in a private school. This information can be

supplied as necessary investigation on these aspects has been undertaken during last four years by the

Director of IT (Investigation). In fact proceedings before the said Director have drawn to a close and

the matter is now with the ITO i.e. the AO. Under s. 8(1)(h) information can be withheld if it would

impede investigation, apprehension or prosecution of offenders. It is for the appellant to show how and

why investigation will be impeded by disclosing information to the appellant. General statements are

not enough. Apprehension should be based on some ground or reason. Information has been sought for

by the complainant and not the assessee. Nature of information is not such which interferes with the

investigation or helps the assessee. Information may help the respondent No. 1 from absolving himself

in the criminal trial. It appears that the appellant has held back information and delaying the

proceedings for which the respondent No. 1 felt aggrieved and filed the aforesaid writ petition in this

Court. We also find no reason as to why the aforesaid information should not be supplied to the

respondent No. 1. In the grounds of appeal, it is stated that the appellant is ready and willing to disclose

all the records once the same are summoned by the criminal Court where proceedings under s. 498A of

the Indian Penal Code are pending. If that is the stand of the appellant, we find no reason as to why the

aforesaid information cannot be furnished at this stage as the investigation process is not going to be

hampered in any manner and particularly in view of the fact that such information is being furnished

only after the investigation process is complete as far as Director of IT (Investigation) is concerned. It

has not been explained in what manner and how information asked for and directed will hamper the

assessment proceedings.

9. Therefore, no prejudice would be caused in any manner to the Department even if the said

information is disclosed. We find no merit in this appeal, which accordingly stands dismissed. All

other applications stand consequently disposed of in terms of the aforesaid order.

10. Since the time for furnishing the information is expiring during the course of the day, we extend

time for furnishing of the information by one week, during which the information shall be furnished in

terms of the order of the learned Single Judge.

11. Copy of the order be given Dasti to the counsel appearing for the appellant.