

OFFICE OF THE REGISTRAR GENERAL, GAUHATI HIGH COURT,
MAHATMA GANDHI ROAD, PANBAZAR, GUWAHATI.

RTI APPEAL NO. – I.D. NO. 03/2019

APPELLANT	: - Shri Joydeep Bhattacharjee, Narengi, Guwahati, Assam – 781171.
RESPONDENT	: - REGISTRAR (JUDICIAL) – Cum-PIO, GAUHATI HIGH COURT
DATE OF APPEAL	: - 27/03/2019
DATE OF HEARING	: - 20/05/2019
DATE OF ORDER	: - 27/05/2019

Factual Background:-

1. Being aggrieved by the response received from the Respondent in the Form 'B' or 'C' within thirty days of submission of Form 'A', appellant- Shri Joydeep Bhattacharjee, Narengi, Guwahati has preferred this appeal, which is docketed vide Regd. ID No. 06/19.

2. Before a discussion is directed towards the issues in question, a brief reference to the background of this appeal would be advantageous.

3. The Registry has received one RTI application forwarded by the SPIO-Cum-Joint L.R. & Joint Secretary to the Govt. of Assam, Judicial Department, vide his letter No. JDJ 207/2017-ESTT-JUDI-Judicial/33 dated 12/10/2018 in respect of the appellant (PUC). The application was docketed as **ID. No. 219/2018 dated 02/11/2018**, seeking below mentioned information :-

- a. *Copy of full details of Hon'ble Late Justice Nishitendu Choudhury's recommended, in the format given in **Anexure I** comprising of **Anexure – I (i) & (ii) as per para-12 of Memorandum showing the procedure (in para-12) for appointment of Additional Judge.***
- b. *Copy of full details of Hon'ble Late Justice Nishitendu Choudhury recommended, in the format given in Annexure I comprising of Annexure – I (i) & (ii) as per para-12 of Memorandum showing the procedure (in para-12) for appointment of Judge from Additional Judge.*



- c. ***The copy of recommendation of the Hon'ble Chief Justice of Gauhati High Court & His colleagues and the recommendation of the then Hon'ble Chief Minister & Governor of Assam for appointment of the Additional Judge and Judge in respect of Hon'ble Late Justice Nishitendu Chaudhury.***

4. As the information sought for by the applicant pertains to Hon'ble Judges, the RTI Cell, vide office note dated 19/11/2012, requested the O/o of the Registrar-cum-Principal Secretary to Hon'ble the Chief Justice, to provide the required information enabling the RTI Cell to send reply to the applicant.

5. The Registrar-cum-Principal Secretary to Hon'ble the Chief Justice, vide his detailed note dated 22/11/2018, addressed to the Registrar General and the Registrar (Judicial), informed that the information sought for in query (a) and (b) of the RTI application contain among other things the personal data submitted by Late Justice Nishitendu Chaudhury, such as educational qualifications, total income and income tax paid for years together, family particulars etc. Therefore, those are third party information and Hon'ble High Court is only the custodian of that information.

6. Thereafter, the PIO, vide his letter **No. HC.XXXV.04/2018/08/RTI dated 19/01/2019**, replied to the applicant as under:

"Reply to query No.4 (a) and (b): The information sought for is the personal information and data being supplied by third party. The Gauhati High Court is only the custodian of these personal information. For providing the third party information, this PIO is required to comply with the provisions of Section 11 of the RTI Act, 2005. Since the said third party is no longer alive, it is impossible to serve the notice under Section 11 of the Act to the third party, hence the information sought for could not be provided.

Reply to query No.4 (c) : As regards first part of your query, recommendation of the Hon'ble Chief Justice (the recommendation of the Collegium) was based on keeping into view amongst others, the information as furnished by Late Justice Nishitendu Chaudhury in 'Annexure-I' referred in query No. 4(a) and 4(b) of your application. Since the contents of said Annexure-I could not be disclosed without complying with the third party notice under Section 11 of the RTI Act, the information sought for in this query also could not be provided.

Regarding second part of the query, the recommendation of the Hon'ble Chief Minister of Assam and His Excellency the Governor of Assam, the information is not held by this PIO. The said information are privileged communication and are communicated directly to the Department of Justice by the concerned Authorities."

7. Being dissatisfied with the reply sent by the PIO, the applicant has filed the present appeal.

Ground Of Appeal:-

8. The appellant has cited as many as five grounds for preferring this appeal which are briefly stated below:-

- (i) That, the PIO, Gauhati High Court has refused to furnish the information as sought for in query No. 4(a) & (b) on the context that 'information' sought for is the personal information and data being supplied by third party and since the third part is no longer alive, it is not possible to serve notice u/s 11 of RTI Act to the third party and hence the information could not be provided.
- (ii) That, it is fact that the information provided by third party i.e. by Shri Nishitendu Chaudhury to the Collegium to get Judicial appointment as Addl. Judge i.e. for a government job wherein payment is made from Taxes paid by 'we, the people of the citizen of India. And therefore, he humbly submitted and also believed that the information provided by third party i.e. by Shri Nishitendu Chaudhury for his appointment as addl. Judge was false and fabricated and was within the knowledge of Collegium. It is further submitted that the third party- Shri Nishitendu Chaudhury was under trial by the disciplinary committee of the Bar Council of India in Revision Case No. 43/2009 for corruption and violation of Advocates Act 1961, wherein, notices were issued. Various complaints were filed in the North Eastern Bar Council before the appointment of Shri Nishitendu Chaudhury as Addl. Judge/Judge along with writ Petition bearing No. WP (C) No. 1326/2009, filed in the Hon'ble Gauhati High Court for registering case against him and for consequence directions etc. He believe that there was/is a high judicial corruption and conspiracy within a nexus of some judges and the information involves a larger public interest and though the information relates to personal information which has strong relationship to larger public activity/interest regarding his appointment as Judges who was after appointment, entrusted upon delivering justice to larger public. Moreover, RTI Judgment in Section 11 does not give a third party an unrestrained veto to refuse disclosing information, when it is under public domain.

It is also crystal clear from the second part of the reply of the PIO that appointment of Judges are based on the recommendation of



information as furnished by Late Justice Nishitendu Chaudhury in 'Annexure-I' which reveals that the information furnished before the Collegiums may not be correct and may be false.

- (iii) That the PIO, Gauhati High Court, failed to provide the details of the section under which the information sought does not fall within the definition of "information" as per RTI Act, and denied to furnish the information.
- (iv) That, the PIO, Gauhati High Court, Guwahati failed to inform the name & address of the Appellate authority for the RTI Appeal. He filed an appeal to the Chief Secretary of Assam on 04.12.2018.
- (v) That, the PIO, Gauhati High Court, Guwahati failed to note that the information sought for, has strong relationship to public activity/interest regarding appointment of Judges in Assam and is not a restricted document. The documents are in the form of Annexure, Declaration, Form, orders/letters, passed/issued by the Judiciary.

Submission:-

9. While admitting the appeal, the date for hearing was fixed on 14.05.2019, and the appellant was duly notified about the date, vide letter No. HC.XXXV-06/2019/127/RTI dtd. 03.05.2018. Accordingly, the appellant turned up and has highlighted following points:-

- (i) That, no reasonable cause can be there for not providing the information under RTI, Act 2005. The ground assigned by the PIO in rejecting his prayer is not justified in law and not at all tenable.
- (ii) That, the information sought for are required for larger public interest, and section 11 has not conferred unfettered power to the PIO to withhold information while larger public interest is involved.
- (iii) Therefore, the appellant has requested to grant following relieves:- i) Please instruct the PIO, Gauhati High Court, Guwahati, Assam to give all/part of the information forthwith. ii) Recommend to the Information Commission for Suitable compensation to the appellant for harassment to get the information under RTI Act 2005 and a penalty should Levied on the PIO u/s 20 (10) of the Act 22 of 2005, for not providing the information as mandated in the law.

Decision and reasons thereof:-

10. I have gone through the appeal and the documents enclosed therewith carefully. Also I have gone through the record carefully. It appears that the learned PIO has withheld the required information citing the bar of section 11 of the RTI Act and that the third party has expired. To appreciate the issue in a better way let the provision of section 11 of the Act be discussed.

'11. (1) Where a Central Public Information Officer or the State Public Information Officer, as the case may be, intends to disclose any information or record, or part thereof on a request made under this Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within five days from the receipt of the request, give a written notice to such third party of the request and of the fact that the Central Public Information Officer or State Public Information Officer, as the case may be, intends to disclose the information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party shall be kept in view while taking a decision about disclosure of information:

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

(2) Where a notice is served by the Central Public Information Officer or State Public Information Officer, as the case may be, under sub-section (1) to a third party in respect of any information or record or part thereof, the third party shall, within ten days from the date of receipt of such notice, be given the opportunity to make representation against the proposed disclosure.

(3) Notwithstanding anything contained in Section 7, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within forty days after receipt of the request under section 6, if the third party has been given an opportunity to make representation under sub-section (2), make a decision as to whether or not to disclose the information or record or part thereof and give in writing the notice of his decision to the third party.

(4) A notice given under sub-section (3) shall include a statement that the third party to whom the notice is given is entitled to prefer an appeal under section 19 against the decision.'

11. Thus proviso (1) to sub section 11 shows that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure out weighs in importance any possible harm or injury to the interests of such third party. The PIO has to keep these in mind and denial of information can only be on the basis

of exemption under Section 8 (1) of the RTI Act. Now let it be seen what section 8 of the RTI Act stated:-

"8. Exemption from disclosure of information -- (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,-

(a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;

(b) information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;

(c) information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;

(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;

(e) information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;

(f) information received in confidence from foreign Government;

(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;

(h) information which would impede the process of investigation or apprehension or prosecution of offenders;

(i) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers: Provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of



which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over:

Provided further that those matters which come under the exemptions specified in this section shall not be disclosed;

(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:

Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.

(2) Notwithstanding anything in the Official Secrets Act, 1923 (19 of 1923) nor any of the exemptions permissible in accordance with sub-section (1), a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests.

(3) Subject to the provisions of clauses (a), (c) and (i) of sub-section (1), any information relating to any occurrence, event or matter which has taken place, occurred or happened twenty years before the date on which any request is made under section 6 shall be provided to any person making a request under that section:

Provided that where any question arises as to the date from which the said period of twenty years has to be computed, the decision of the Central Government shall be final, subject to the usual appeals provided for in this Act."

12. In the case in hand the Id. PIO has denied the information on the ground that the same belongs to the third party and the third party has already expired. It is well settled that submission of third party shall be kept in view while taking a decision about disclosure of information. Of course, Section 11 does not give a third party an unrestrained veto to refuse disclosing information. It only gives the third party an opportunity to voice its

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objections to disclosing information. Reference in this context may be made to a decision of CIC in **Appeal No. CIC/WB/A/2010/000712/SG (Appellant: Chayan Ghosh Chowdhry Lucknow-226016 Vs. Respondent: Vijay PIO & Dy. Registrar Central Information Commission.**

13. But, at the same time it has also be kept in mind that which of the two conflicting rights(i.e. right to information and right to withhold) has to be given primacy depends upon larger public interest. This is the test which has to be applied. The reasonable and proper manner of interpreting S. 11(1) is to keep in mind the test stipulated by the proviso to S. 11. Further, S. 11 ensures that the principles of natural justice are complied with and also prescribes a fairly strict time schedule to ensure that the proceedings are not delayed. Reference in this context may be referred to decision of Delhi High Court in **Arvind Kejriwal v. Central Public Information Officer, (2011) 4 UPLJ 59 (Del) (DB).**

14. Here in this case the principle of natural justice could not be complied with as because the third party has expired. Besides, the appellant has also failed to establish larger public interest here in this case. Although he contended that larger public interest is involved in the matter as after appointment of Advocate Nishitendu Chaudhary as Judge of the High Court he was paid from the taxes paid by 'we, the citizen of India. But, from this mere statement the factum of public interest cannot be said to be established by the appellant.


15. Moreover, it appears that the Hon'ble High Court is custodian of the documents so requested by the appellant. It holds the documents in trust for the Advocates (beneficiaries) whose names were recommended by the collegiums. Thus, there exists a fiduciary relationship. The fiduciary is expected to act in confidence and for the benefit and advantage of the beneficiary, and use good faith and fairness in dealing with the beneficiary or the things belonging to the beneficiary. If the beneficiary has entrusted anything to the fiduciary, to hold the thing in trust or to execute certain acts in regard to or with reference to the entrusted thing, the fiduciary has to act in confidence and expected not to disclose the thing or information to any third party. **Reference in this context can be made to a decision of Hon'ble Supreme Court of India in Centrlal Board Of Sec. Education & ... vs. Aditya Bandopadhyay & Ors on 9 August, 2011 CIVIL APPEAL NO. 6454 OF 2011 [Arising out of SLP [C] No.7526/2009].** This being the position the document requested to provide by the appellant comes under exception 8(1)(e) of the RTI Act.

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16. In **Thalappalam Service coop. Bank Ltd. v. State of Kerala, (2013) 16 SCC 82**, Hon'ble Supreme Court has held that in respect of third-party information, public authority can divulge such information to an applicant under RTI Act, if the following circumstances are met: firstly, if the information asked for is not barred by Ss. 8(1)(a) to 8(1)(j), RTI Act and secondly, if the public authority is satisfied that the larger public interest justifies the disclosure of such information, that too, for reasons to be recorded in writing.

17. Here in this case the appellant has failed to withstand the above mentioned test. The information so asked for is barred under section 8(1)(e) of the RTI Act and the appellant failed to show larger public interest. This being the position the appeal so preferred by the appellant is found to be bereft of merit.

18. In the result, the appeal is found to be bereft of merit, and accordingly the same stands dismissed. Let this order be communicated to the appellant as well as the PIO, Gauhati High Court.


Registrar General
-cum-
Appellate Authority

27-05-19