

N.D.O.H.: 10.04.2024

IN THE HIGH COURT OF DELHI AT NEW DELHI
(CIVIL APPELLATE JURISDICTION)
L.P.A. No 186 OF 2024

IN THE MATTER OF:

GIRISH MITTAL

...Appellant

Versus

CPIO/DY. COMMISSIONER OF INCOME TAX
HQ EXEMPTION, NEW DELHI

...Respondent

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Dated: **03.07.2024**

New Delhi

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SHORT WRITTEN SUBMISSIONS
ON BEHALF OF THE APPELLANT

1. Brief facts of the instant case are annexed as **ANNEXURE A**. It may be noted that within a span of single day (27.03.2020), PM CARES Fund was registered as a Public Charitable Trust, it moved an application before Income Tax Department seeking tax exemption under Section 80-G of the Income Tax Act, 1961, and on the very same day, the said exemption was granted to it.

2. Vide the impugned order, the CIC directed the Respondent to disclose copies of all the documents submitted by PM Cares Fund along with its application seeking Section 80-G exemption, as well as copies of the file notings of the income tax department granting such approval. Against the said order, the Respondent filed the present writ petition.

3. The entire case of the Writ Petitioner (Income Tax Dept) before the Hon'ble Single Judge was based on three grounds: -

- i. That information sought would be hit by Section 8(1)(j) of RTI Act as it is personal information of PM Cares Fund, which has a right to privacy.
- ii. That information sought can be revealed only under Section 138(2) of Income Tax Act, and not under RTI Act.
- iii. That PM Cares had not been heard before the disclosure of information was ordered.

4. Impugned judgment: - The impugned judgment did not adjudicate the aforesaid 1st issue regarding Section 8(1)(j) as to whether or not PM Cares Fund has right to privacy, and erroneously decided the 2nd issue in favour of Writ Petitioner / Respondent herein. As regards the last observation of the Ld. Single Judge that PM Cares Fund had not been heard before the disclosure of information was ordered, it is submitted that the Appellant has no objection for the said entity to be heard and has, therefore, moved an impleadment application to implead PM Cares Fund.

Appellant's submissions:

5. RTI Act of 2005 is a landmark law enacted by the Parliament of India to bring in a pro-transparency era in the country by effectuating the fundamental right of the citizens under Article 19 of the Constitution of India to seek information from public authorities. It is

submitted that the impugned judgment has the effect of making the entire RTI Act redundant by giving the public authorities means to bypass the RTI Act by directing the applicants to seek information under other statutes.

6. The core issue involved in the present case was: - *“Whether members of the public have a right to know about PM Cares Fund by seeking information related to it from the government or whether the government can withhold disclosure of such information on the ground that any such disclosure will breach the privacy of PM Cares Fund?”*

7. **Error in the impugned judgment:** There is a factual error in Para 22 of the impugned judgment [**@Pg.72**] wherein it has been erroneously observed and held that **both** the Income Tax Act, 1961 as well as RTI Act, 2005 contain non-obstante clauses, and on that erroneous premise the Hon’ble Single Judge held that the non obstante clause of Section 138(2) of Income Tax Act, 1961 would prevail over the non obstante clause [Section 22] of the RTI Act, 2005.

8. However, the fact is that unlike Section 22 of the RTI Act, there is **no** such non obstante clause in Income Tax Act & Section 138(2) thereof. [Grounds M-N **@Pg.28-30**] It is submitted that there is a clear non-obstante clause (Section 22) in the later law viz. RTI Act, 2005 (a special law in the field of disclosure of information), and therefore, the provisions of RTI Act, 2005 will prevail over those of Section 138(2) of Income Tax Act, 1961 in so far as disclosure of information is concerned. Section 22 of RTI Act, 2005 is quoted herein-below for instant reference: -

“Section 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, 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.”

Detailed submissions on this issue are there in **ANNEXURE B** attached.

9. In **Supreme Court of India v. Subhash Chandra Agarwal, (2020) 5 SCC 481**, a Constitution bench of the Hon’ble Supreme Court was pleased to emphasize the importance of Section 22 of the RTI Act, 2005 as follows: -

“22. When information is accessible by a public authority, that is held or under its control, then the information must be furnished to the information seeker under the RTI Act even if there are conditions or prohibitions under another statute already in force or under the Official Secrets Act, 1923 that restricts or prohibits access to information by the public. In view of the non obstante clause in Section 22 [Section 22 of the RTI Act reads: “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.”] of the RTI Act, any prohibition or condition which prevents a citizen from having access to

information would not apply. Restriction on the right of citizens is erased." [emphasis supplied]

10. In *RBI v. Jayantilal N. Mistry*, (2016) 3 SCC 525, despite heavy reliance placed by RBI on various special statutes to stall disclosure of banks' inspection reports, the Hon'ble Supreme Court was pleased to reject RBI's submissions, and directed disclosure of inspection reports of banks under RTI Act, 2005.

11. In *CBSE v. Aditya Bandopadhyay*, (2011) 8 SCC 497 and *Chief Information Commr. v. State of Manipur*, (2011) 15 SCC 1 also, the Hon'ble Supreme Court noted the importance of Section 22 of the RTI Act.

A person can choose whether to seek information under RTI Act or Income Tax Act:

10. It is submitted that allowing a person to seek information under RTI Act will not have the effect of rendering Section 138 of IT otiose. A person can always choose the statute under which he wants to seek information from the Income Tax department i.e. whether under RTI Act or under Income Tax Act. The Appellant is placing reliance on *ICSI v. Paras Jain*, (2019) 16 SCC 790, in which the Hon'ble Supreme Court was pleased to hold as follows: -

*"12. Be that as it may, Guideline 3 of the appellant does not take away from Rule 4, the Right to Information (Regulation of Fee and Cost) Rules, 2005 which also entitles the candidates to seek inspection and certified copies of their answer scripts. **In our opinion, the existence of these two avenues is not mutually exclusive and it is up to the candidate to choose either of the routes.** Thus, if a candidate seeks information under the provisions of the Right to Information Act, then payment has to be sought under the Rules therein, however, if the information is sought under the guidelines of the appellant, then the appellant is at liberty to charge the candidates as per its guidelines."* [emphasis supplied]

12. **Privacy argument:** The reasons as to why the information sought would not be hit by Section 8(1)(j) of RTI Act [viz. exemption provision on the ground of 'privacy'] are given in detail in **ANNEXURE C**. It is submitted that unlike individual human beings, juridical entities – especially "*public charitable trusts*" - have no right to privacy.

13. Even if for the sake of argument it is accepted that Section 8(1)(j) would apply, then also the overwhelming public interest in transparency in PM CARES Fund (which is run on donations of millions of Indians including lakhs of public servants) would override that exemption in view of Section 8(2) of the RTI Act. It may be noted that similar information has been provided by income tax department of other trusts. It may be noted that the FAA rightly noted in its order that PM Cares Fund is a body owned, controlled and established by Government of India [**@Pg.82**].



Dated: **03.07.2024**

PRANAV SACHDEVA
(Counsel for the Appellant)

Brief facts: -

- PM Cares Fund registered as a Public Charitable Trust on 27.03.2020. [**@Pg.76**]
- On the very same day i.e., 27.03.2020, it moved an application before Income Tax Department seeking tax exemption under Section 80-G of the Income Tax Act, 1961, and on the very same day, the exemption was granted. [**@Pg.74**]
- The Appellant filed an RTI Application, dated 31.05.2020 [**@Pg.79**], *inter-alia*, seeking:
[Information (a) & (b)]: Copies of all the documents submitted by PM Cares Fund along with its application seeking Section 80-G exemption. Plus, also sought the file notings of the income tax department granting such approval.
- CPIO's order, dated 15.06.2020: The Respondent (CPIO of Income Tax Department) rejected Appellant's RTI application. [**@Pg.80**]
- First Appellate Authority's order, dated 19.08.2020: On the Appellant's first appeal [**@Pg.81**], the FAA upheld the CPIO's order of non-disclosure. It also observed that **PM Cares Fund is a body owned, controlled and established by Government of India.** [**@Pg.82**]
- CIC's order, dated 27.04.2022: On the Appellant's second appeal [**@Pg.85**], the CIC, vide order dated 27.04.2022: [**Pg.86@Pg.89**]
 - i. Rejected disclosure of information sought under (c) and (d).
 - ii. Directed disclosure of information sought under (a) and (b).
- The Respondent herein challenged the CIC's order directing disclosure of information pertaining to PM Cares Fund by filing *W.P.(C) 10193 / 2022*. [**@Pg.90**] Vide the impugned judgment, dated 22.01.2024, the Hon'ble Single Judge allowed the writ petition and set aside the CIC's direction to disclose information pertaining to PM Cares Fund under the RTI Act. [**@Pg.51-73**]



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Error in the impugned judgment which led to the finding that Section 138(2) of Income Tax Act would prevail over RTI Act: -

- a. In Para 21 of the impugned judgment [**@Pg.72**], it has been erroneously observed and held that **both** the Income Tax Act as well as RTI Act contain non-obstante clauses and, on that premise, held that the non obstante clause of Section 138(2) of Income Tax Act, 1961 would prevail over the non obstante clause [Section 22] of the RTI Act, 2005.
 - b. However, the fact is that unlike Section 22 of the RTI Act, there is **no** such non obstante clause in Income Tax Act & Section 138(2) thereof. [Grounds M-N **@Pg.28-30**]
 - c. There is presence of a clear non-obstante clause in the later law viz. RTI Act, 2005 (a special law in the field of disclosure of information). It is, thus, submitted that in such a scenario, the provisions of RTI Act will clearly prevail over those of Income Tax Act with regard to disclosure of information, especially when application seeking information is moved under the RTI Act and not under Income Tax Act.
1. It is further submitted that Section 138(1)(b) of the Income Tax Act makes the decision of Principal Chief Commissioner / Chief Commissioner final and immune to any challenge in any court of law. However, under RTI Act any decision of the CPIO not to disclose the requisite information is subject to 1st appeal [Section 19(1)] before appellate authority as well as 2nd appeal [Section 19(3)] before Central Information Commission / State Information Commission (which are neutral independent bodies). As a result of the impugned judgment public authorities will be able to easily escape the scrutiny of independent bodies (CIC / SIC) in the matter of non-disclosure of information to citizens, seriously impinging upon their fundamental right guaranteed under Article 19(1)(a).
2. Further, under the Income Tax Act, 1961 does not provide **(i)** any appellate machinery **(ii)** any penal provisions for failure to provide information as per law; **(iii)** any provisions to ensure maximum disclosure and minimum exemptions, consistent with the constitutional provisions. Whereas, the RTI Act, 2005 provides for all these provisions apart from many other salutary provisions too in order to effectuate the fundamental right to information of citizens of India. [Grounds F-H **@Pg.24-26**]

3. In so far as the issue of right of an individual to seek information from a public authority is concerned, RTI Act is a '*special Act*'. There may be other legislations which may be special Acts on different subject matters (e.g., Income Tax Act on the subject matter of income tax) that may provide a provision for limited disclosure of information by prescribing a different procedure and authorities to decide the issue of disclosure. However, whenever there is a conflict between the said other legislations and the RTI Act, then RTI Act ought to prevail by virtue of Section 22 thereof. That's the precise legislative intent of Parliament behind enacting RTI Act and Section 22 thereof because the Parliament was very well conscious of other legislations which also had some provisions regarding disclosure of information and which used to be insufficient for serving and effectuating the fundamental right of citizens to seek information as enshrined in Article 19(1)(a) of the Constitution. All protected interests and information that ought not be disclosed is already exempt under Section 8 of the RTI Act which is exhaustive in nature.

4. It is further submitted that the impugned judgment's reliance on the Hon'ble Supreme Court's judgment of *Chief Information Commr. v. High Court of Gujarat*, (2020) 4 SCC 702 [**@Pg.68**] is unsustainable. This is because: -

- i. The said judgment was dealing with judiciary, which is an independent organ of the State and cannot be equated with executive agencies and authorities.
- ii. It was held in Para 35 of the said judgment that RTI Act will prevail over a special enactment when there is an '*inconsistency*' between the two legislations.
- iii. It was also held that there was *no inconsistency* between the Gujarat High Court Rules and RTI Act, and therefore, overriding effect of RTI Act won't apply.
- iv. However, in Para 12 **@Pg.59** the impugned judgment has itself held that "*there is an inconsistency between the provisions of the RTI Act and the IT Act.*"
- v. Thus, clearly, the impugned judgment has erred in law in holding that Income Tax Act will prevail over RTI Act in the matter of disclosure of information.



Information sought would not be hit by Section 8(1)(j) of RTI Act as PM CARES Fund does not have any right to privacy: -

1. It is submitted that the nature of PM Cares Fund is such that there is absolutely no reason whatsoever for which any information regarding it could not be sought from a public authority under RTI Act, 2005. Its Ex-officio trustee is the Hon'ble Prime Minister of India, and Hon'ble Minister of Defence, Minister of Home Affairs and Minister of Finance, Government of India are its ex-officio Trustees. The Head Office of the Fund is Prime Minister's Office, South Block, New Delhi. It is submitted that there is an overwhelming public interest in members of public getting information about PM Cares Fund. [Grounds C & D @Pg.23-24]

2. It is submitted that the information sought by Appellant did not amount to personal information of PM Cares Fund, and public charitable trusts like PM Cares Fund do not have any right to privacy. It is submitted that in a detailed full bench CIC judgment, dated 05.01.2018 in **Begum Pasha Bee v. CPIO, Income Tax [Appeal No. CIC/BS/A/2016/001091-BJ-Final]**, after relying on this Hon'ble Court's decision in **Naresh Kumar Trehan vs. Rakesh Kumar Gupta & Ors. [2015] 216 DLT 156**, directed disclosure of information of a trust under RTI Act. [Ground W @Pg.36-38]

3. Further, fundamental right to privacy is available only to natural persons / individuals, and not to juridical entities like corporations / trusts. Reliance is placed, *inter alia*, on Paras 42, 46 - 48, 50, 103, 108 - 119, 127, 130 - 131, 136, 142 - 144, 148 - 149, 152 - 154, 234, 250, 260, 264, 297 - 299, 317 - 319, 322 - 323 of **K.S. Puttaswamy (Privacy-9J.) v. Union of India, (2017) 10 SCC 1**. [Ground X @Pg.38-42] Section 8(1)(j) of the RTI Act is a legislative recognition of the Constitutional right to privacy. *A priori*, Section 8(1)(j) is also available only to individuals and not to trusts.

4. Notwithstanding the broad question as to whether or not juridical entities have any right to privacy, it is submitted that in so far as "public *charitable trusts*" are concerned, they clearly do not have any sort of right to privacy as the same has been established for charitable purposes to serve the public only. Further, a "*public charitable trust*" like PM Cares Fund, which got Section 80-G certificate with lightning speed in a span of single day precisely because of its composition and objectives, can certainly not claim any sort of right to privacy to forestall disclosure of any information about it.

5. It is submitted that there is clear “*inconsistency*” between Section 138(1)(b) of Income Tax Act and provisions of the RTI Act, and therefore, RTI Act will prevail over Income Tax Act because of Section 22 of the RTI Act [quoted @Pg.43-44]: -

- Under Section 138(1)(b) there is an implied presumption that any information relating to any assessee is a “*personal information*”, and therefore, the public interest test is directly applied, giving sweeping power to the concerned authority to decide whether public interest will be served or not in the disclosure of such personal information.
- **However**, when exemption from disclosure of a particular piece of information is claimed under Section 8(1)(j), the CPIO will first have to objectively decide, on case-to-case basis, based on the nature of information sought for, whether the information sought even relates to personal information or not and whether its disclosure has any relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual.

6. Further, one of the informations sought by the Appellant herein was the copies of file noting granting Section 80-G exemption approval to PM Cares Fund by the Income Tax Department. It is submitted that file notings are very well liable to be disclosed under RTI Act. In this regard, the Appellant is placing reliance on Section 2(f) of the RTI Act in which there is an express reference to “*opinions*” and “*advices*”, and also, the definition of “*record*” in Section 2(i)(a) of the RTI Act includes a “*file*”. The Appellant also relies on ***Union of India v. Col. V.K. Shad, 2012 SCC OnLine Del 5710 : (2012) 194 DLT 586***; and ***Paras Nath Singh v. Union of India, 2018 SCC OnLine Del 7252***].



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