* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of Decision: 13.09.2013**

\+ W.P.(C) 3660/2012 & CM 7664/2012 (stay)

UNION OF INDIA

..... Petitioner

Through: Mr. Neeraj Chaudhari, CGSC, Mr. Akshay Chandra and Mr. Ravjyot Singh, Advs.

versus

VISHWAS BHAMBURKAR

..... Respondent

Through: respondent in person

CORAM:
HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J. (ORAL)

The respondent filed an application on 14.5.2011 with the PIO in the Ministry of Tourism, PSW Division, seeking an authenticated photocopy along with the file notings of the Project Report for Development of Ayurvedic Health Resort and Herbal Garden at Vagamon, which was submitted by the Department of Tourism, Government of Kerala in December, 2005 and was bearing file number 426/D(CN) dated 20.02.2006.

2. In his reply, the PIO stated that the said project report had not been received in the Ministry of Tourism. Being dissatisfied with the reply furnished by the PIO,

the respondent preferred an appeal before the First Appellate Authority. The following was the order passed by the First Appellate Authority:

> "The noting initials on the cover page of the Project Report produced by Shri Bhamburkar suggest that the Report was received in MOT. However, since it is only a photocopy, its authenticity cannot be taken for granted. CPIO & Asstt. DG (PSW) is directed to make a thorough search for the said Project Report and records pertaining to its receipt and movement in the Ministry. If the Report is traced, its authenticated copy will be supplied by the CPIO to the applicant. If the Report is not traceable, but records are found which confirm that the Report was received in the MOT, a report may be lodged with Police regarding the missing documents. An intimation to this effect may then be conveyed to the applicant by the CPIO. In case neither the Project Report nor any records of its receipt in Ministry are available, the applicant may be so informed by the CPIO. Action has to be taken within 15 days".

3. Being still dissatisfied, the respondent preferred a second appeal before the Central Information Commission. During the course of hearing before the Commission, the appellant produced a photocopy of a report purporting to be signed by Department of Tourism, Government of Kerala in December, 2005. The aforesaid report purported to be signed by various officials. The PIO confirmed that the signatures of the then Joint Secretary Mr. Amitabh Kant and Director Mrs. Leena Nandan. She, however, stated that there was no trace of the said Report in the Ministry nor any other relevant papers were available to indicate the presence of such a report. The Commission, therefore, directed Secretary, Ministry of Tourism to inquire into the matter and send his report to the appellant and the Commission. In this regard, the Commission observed that either the PIO or some other officer could be hiding the information or the report being submitted could be forged or it could be a conspiracy by which the report and all associated papers

were taken away from the Government. Being aggrieved from the order of the Commission, the Union of India is before this Court by way of this writ petition.

4. Vide an interim order, this Court directed the petitioner to place on record the fact finding report of the Ministry of Tourism, Government of India and also directed that copy of the report be provided to the respondent. A perusal of the said report would show that the officer who conducted the said inquiry reported that there was no documentary record in the Ministry to show that the original report was received in the year 2006. He concluded beyond reasonable doubt that the original project documents on the subject matter was not available in the Ministry of Tourism. However, the said report does not indicate that any attempt was made to contact the then Joint Secretary (T) and Director (T) whose signatures on the photocopy of the report were admitted by the PIO before the Commission, to find out when, where, and in what circumstances they had signed the documents photocopy of which was produced before the Commission. In my view, it was incumbent upon the officer who conducted the inquiry into the matter to contact the above referred officers and inquire from them about the aforesaid report, before taking the final view in the matter. There is no explanation at this stage as to why no such attempt was made. The impression which I get in these circumstances is that the petitioner somehow wants to avoid a proper inquiry in terms of the directions given by the Commission.

5. The learned counsel for the petitioner assailed the order of the Commission primarily on the ground that the Right to Information Act does not authorize the Commission to direct an inquiry of this nature by the department concern, though the Commission itself can make such an inquiry as it deems appropriate. Reference in this regard is made to the provisions contained in Section 19(8) of the Act. A careful perusal of sub section (8) of Section 19 would show that the Commission has the power to require the public authority to take any such steps as may be

necessary to secure compliance with the provisions of the Act. Such steps could include the steps specified in clause (i) to (iv) but the sub-section does not exclude any other step which the Commission may deem necessary to secure compliance with the provisions of the Act. In other words, the steps enumerated in clause (i) to (iv) are inclusive and not exhaustive of the powers of the Commission in this regard.

6. The Right to Information Act is a progressive legislation aimed at providing, to the citizens, access to the information which before the said Act came into force could not be claimed as a matter of right. The intent behind enactment of the Act is to disclose the information to the maximum extent possible subject of course to certain safeguards and exemptions. Therefore, while interpreting the provisions of the Act, the Court needs to take a view which would advance the objectives behind enactment of the Act, instead of taking a restrictive and hyper-technical approach which would obstruct the flow of information to the citizens.

7. This can hardly be disputed that if certain information is available with a public authority, that information must necessarily be shared with the applicant under the Act unless such information is exempted from disclosure under one or more provisions of the Act. It is not uncommon in the government departments to evade disclosure of the information taking the standard plea that the information sought by the applicant is not available. Ordinarily, the information which at some point of time or the other was available in the records of the government, should continue to be available with the concerned department unless it has been destroyed in accordance with the rules framed by that department for destruction of old record. Therefore, whenever an information is sought and it is not readily available, a thorough attempt needs to be made to search and locate the information wherever it may be available. It is only in a case where despite a thorough search and inquiry made by the responsible officer, it is concluded that the information

sought by the applicant cannot be traced or was never available with the government or has been destroyed in accordance with the rules of the concerned department that the CPIO/PIO would be justified in expressing his inability to provide the desired information. Even in the case where it is found that the desired information though available in the record of the government at some point of time, cannot be traced despite best efforts made in this regard, the department concerned must necessarily fix the responsibility for the loss of the record and take appropriate departmental action against the officers/ officials responsible for loss of the record. Unless such a course of action is adopted, it would be possible for any department/ office, to deny the information which otherwise is not exempted from disclosure, wherever the said department/ office finds it inconvenient to bring such information into public domain, and that in turn, would necessarily defeat the very objective behind enactment of the Right to Information Act.

8. Since the Commission has the power to direct disclosure of information provided, it is not exempted from such disclosure, it would also have the jurisdiction to direct an inquiry into the matter wherever it is claimed by the PIO/CPIO that the information sought by the applicant is not traceable/ readily traceable/ currently traceable. Even in a case where the PIO/CPIO takes a plea that the information sought by the applicant was never available with the government but, the Commission on the basis of the material available to it forms a prima facie opinion that the said information was in fact available with the government, it would be justified in directing an inquiry by a responsible officer of the department/ office concerned, to again look into the matter rather deeply and verify whether such an information was actually available in the records of the government at some point of time or not. After all, it is quite possible that the required information may be located if a thorough search is made in which event, it could be possible to supply it to the applicant. Fear of disciplinary action, against

the person responsible for loss of the information, will also work as a deterrence against the willful suppression of the information, by vested interests. It would also be open to the Commission, to make an inquiry itself instead of directing an inquiry by the department/ office concerned. Whether in a particular case, an inquiry ought to be made by the Commission or by the officer of the department/ office concerned is a matter to be decided by the Commission in the facts and circumstances of each such case.

9. In the case before this Court, as noted earlier, the PIO, who appeared before the Commission and admitted that the photocopy of the report made available to the Commission was signed by the concerned Joint Secretary and Director at the relevant time. Prima facie, they would have signed the documents only if they had received either the original report or its copy. The endorsement made on the cover of the documents would show that the report/ copy on which endorsement was made was signed by the Secretary, Tourism, Government of Kerala. Had a thorough inquiry been made by inquiring from the concerned officer to find out as to where, when and in what circumstances they had signed the documents, it could have been possible to locate the report in the records of the government.

10. For the reasons stated hereinabove, I find no merit in the writ petition and the same is hereby dismissed. The interim order dated 1.6.2012 stands vacated. In my view, the inquiry conducted by the petitioner in compliance of the order passed by the Commission on 17.4.2012 was not at all satisfactory. It is, therefore, directed that a thorough and meaningful inquiry in terms of the provisions of the directions of the Commission be carried out by an officer not below the rank of a Joint Secretary to the Government within eight weeks from today and a copy each of the said report shall be provided to the Commission as well as to the respondent before this Court.

11. The petitioners are directed to circulate a copy of this order to all the CPIOs/PIOs of the Government of India and other Public Authorities, within four weeks for information and guidance.

There shall be no orders as to costs.

V.K. JAIN, J

SEPTEMBER 13, 2013/*rd*