



Right to Information and Good Governance
Dr. Sairam Bhat
Professor of Law
National Law School of India University
Lecture - 53
Exempted Information - 7

(Refer Side Time: 00:14)

Other aspects under sec. 8: non disclosure norms

- Whether information about Judgements [how] can be sought u/RTI Act 2005? Khanapuram Gandaiah Vs. Administrative Officer SC Special Leave Petition (Civil) No.34868 OF 2009 (Decided on January 4, 2010)
- Quasi Judicial proceedings; impedes the process of investigation: Vijay Kamble Vs Customs Department, Mumbai F.No.CIC/AT/A/2008/01466 dated 23.03.2009: copies of show-cause notices and other documents relating to the proceeding by Directorate of Revenue Intelligence (DRI) and currently under adjudication by Commissioner of Customs (Exports).



Friends, indeed to continue other aspects of exemptions that are provided under Section 8 of the Right to Information Act, one would deal with Section 8(1)(b), in which the law provides for information, which has been explicitly forbidden to be published by any court of law or tribunal of the disclosure of which may constitute contempt of court is also exempted under Section 8 1b on the Right to Information Act.

Now, Section 8(1)(b) states the non-disclosure norms that are set by the judiciary, which is another important organ of the government. And it would very clearly say when the courts of the judiciary has expressly forbidden any information to be shared or provided for, then such information shall not be disclosed under the Right to Information Act.

And it also suggests that any information that may amount to contempt of court are also exempted on the Right to Information Act. Now, there are some very interesting developments that have arisen vis-a-vis the judiciary and the Right to Information Act and what information will the judiciary share, and what probably it may not do so.

In a case called Khanapuram versus the Administrative Officer, it is a case decided by the Supreme Court in 2010, the interesting issues that were discussed in this case was, what are the grounds on which a judge makes a decision in a judicial order.

Now, the right to information is a right and there are tendencies where citizens expand this right and use it like a rubber band, they rather stretch the rubber band to test what kind of information can be accessed under the right information act. And in this case, very interestingly, the petitioner or the applicant this case had filed certain litigation. And after not getting a satisfactory outcome of the litigation, he wanted to know, why did the judge decide in this case, rather, he wanted to know under the right to know the reasons why a particular judge decided in a particular matter.

Now, this was a very interesting issue that came before the Supreme Court of India because very often than not, under Right to Information Act, citizens have a tendency of asking why, what, and how; they expect this to be provided for you know, for example, if I have applied for a driving license and if it is denied, I want to know why it was denied and hence I have a tendency to question the same.

Now, generally, if those things which are so-called, 'why', have been recorded in a file and there are reasons that are already stated, then as a part of that record, you can definitely access that said information. However, when a judge decides any particular matter, you will notice that the judge passes a speaking order, right. And when a judge passes a speaking order, you know, the judgments have to speak for themselves.

If any party feels aggrieved by the order or the judgment passed by a judge, there are remedies that are available to such party in challenging that order through appeal or through revision. These are legally permissible mode that litigants can take in trying to ask whether the judge has done right or whether it can be done otherwise.

No litigant can be allowed to seek information as to why and for what reason the judge had come to a particular decision of conclusion. The judge is not bound to explain to any

person as to what reason or what were the reasons for which he came to a particular conclusion.

‘A judge cannot be expected to give reasons other than those that have been enumerated in the judgment or the order. The application filed by the petitioner before the public authority hence is per se, legal, and unwarranted’ is what the Supreme Court observed in this Khanapuram versus the Administrative Officer’s case.

A judicial official’s the Supreme Court said, is not the same is not to protect malicious or corrupt judges but to protect the public from the danger which the administration of justice would be exposed if the consent judicial officer were subject to inquiry as to malice or to the litigation with those whom that decision might offend.

If anything is done contrary to this, it would certainly affect the independence of judiciary. A judge should be free to make independent decisions. And this were the observations that the Supreme Court did in this case. And hence, the Supreme Court came down pretty heavily on the applicant in this case, saying that by filing such an RTI application, asking the judge to explain why he decided about a particular matter, wanting to know the reasons why a decision was taken in a particular matter, is nothing but a misuse of the Right to Information Act.

Now, what happened, in this case, was the applicant had raised nearly 10 questions to which he wanted answers. But more or less, he was an aggrieved individual. He was an aggrieved individual by an order that was much, which was definitely not in his favor. And most of the 10 questions that he raised were about seeking explanation from the judge about why he decided in a particular matter and why he did not decide otherwise.

So that is a very interesting development that we have seen vis-a-vis the judiciary. I think this applies to not only the judicial officers even for quasi-judicial officers, that I think nobody under the Right to Information Act can petition to them seeking as to why they have decided in a particular matter or to give reasons or explain their orders.

I think the judgment will speak for itself; the order will speak for itself. No other further explanation will be required from those individual judicial officers regarding their judgment. I think that is a very significant clarification that the Supreme Court did vis-a-vis the scope and ambit of the Right to Information Act about what can citizens seek and what they cannot seek.

So definitely the non-disclosure norms are definitely something that are setting in the trend of what is accessible as a Right to Information and what is exempted under the Right to Information Act.

The second case is interesting because it is in relation to quasi-judicial proceedings. And the quasi-judicial proceedings are very, very relevant, important and as you understand, there is a tendency among citizens to seek information in between the quasi-judicial proceedings, which means they do not wait for the proceedings to get complete or get over and they file RTI petitions to get several information about the way, the manner, and the method in which the quasi-judicial proceedings are being organized or conducted.

Now, if one refers to Section 8(1)(h) of the Right to Information Act, Section 8(1)(h) of the Right to Information Act very clearly exempts information which would impede the process of investigation or apprehension or prosecution of offenders.

So, any information that may impede the process of investigation is exempted, right. And hence, you notice that that is a very, very clear exemption that judicial proceedings can take and they need not entertain the Right to Information Act if , you know, providing the said information impedes the process of the set investigation.