IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

LPA No. 1252 of 2009
Date of Decision: 29.11.2010

P.C.Wadhwa ...Appellant

Versus

Central Information Commission and others

..Respondents.

CORAM: HON'BLE MR. JUSTICE MUKUL MUDGAL, CHIEF JUSTICE
HON'BLE MR. JUSTICE RANJAN GOGOI.

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. Whether to be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

Present : Mr. B.R.Mahajan, Advocate,
for the appellant.

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MUKUL MUDGAL, C.J.

This is an appeal filed against the judgment of learned Single Judge dated 29.7.2009, dismissing the writ petition filed by the petitioner-appellant for quashing the order dated 28.12.2006 whereby the Central Information Commission had declined the prayer to supply information in respect of certain public figures, demanded by the petitioner.

2. The petitioner-appellant had moved an application under the Right to Information Act, 2005 to respondent No.3 i.e. Registrar General, Census Operations, New Delhi, seeking information regarding certain individuals, which according to him are the leaders

of the nation and the information regarding their religion was sought in public interest. The said request for supplying the information was declined on 7.2.2006 by the respondent No.3 on the ground that no person had a right to inspect any book, register or record made by a Census Officer in the discharge of his duty as such or any item under Section 10 of the Act. On 9.5.2006, the petitioner-appellant challenged that order before the higher officer, who vide order dated 9.5.2006, rejected the prayer by holding that for preparing census, facts are collected from individuals in a household, which are confidential in nature and used only for statistical purposes. On the basis of the above findings, the petitioner's request for supplying information was dismissed. This order was challenged before the Central Information Commission by filing an appeal which was also dismissed vide order dated 28.12.2006. That order was sought to be reviewed by the petitioner-appellant and review application was also dismissed vide order dated 26.3.2008 by the Central Information Commission.

3. A reading of the order dated 28.12.2006 would go to show that the request of the petitioner was declined by the authority in view of the provisions of Section 15 of the Census Act, 1948 which reads as follow:-

> "15. No person shall have a right to inspect any book, register or record made by a census-officer in the discharge of his duty as such, or any schedule delivered under section 10, and notwithstanding anything to the contrary in the Indian Evidence Act, 1872, no entry in any such book, register, record or schedule shall be admissible as evidence in any civil proceeding whatsoever or in any criminal proceeding other than a prosecution under this Act or any other law for any act or omission which constitutes an offence under this Act."

4. Feeling aggrieved by the order of the said Authority, the writ petitioner filed an appeal before the Appellate Authority under the Act and the said Appellate Authority while relying upon Section 8 (1)(j) of the Right to Information Act, 2005, dismissed the appeal. Section 8(1)(j) of the Right to Information Act, 2005 reads as follow:-

> 8(1)((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:
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> Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person."

5. Relying upon the above, the Appellate Authority while dismissing the appeal moved by the appellant-petitioner, observed as follows:-

> "4. It is quite clear that the information given by the citizens to officers connected with the Census Operation is treated as personal and confidential, and all records, registers, etc. maintained in respect of that information is not allowed to go into public domain on account of the strict confidentiality with which this information is treated.
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> 5. The information requested by the appellant is in respect of personal date furnished by third parties to the Census Officers in terms of the provisions of the Census Act. This information was given and accepted with a strict understanding that it shall not be disclosed and shall always be held as confidential. In that sense, its disclosure is barred by Section 8(1) of the RTI Act.
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> 6. The RTI Act very clearly also bars disclosure of such information Section 8(1)(i). This Section prohibits disclosure of personal information which have had no relationship with a public activity or interest or which would leas to invasion of privacy of an individual. The information which the appellant has now requested attracts all the ingredients of this exemption of Section 8(1) (i) of the RTI Act.

> 7. A question may arise as to whether the explicit provisions of the Census Act of 1948 stand abrogated by the over-riding effect given to the RTI Act of 2005. In this context, it is pertinent to refer to the provisions of Section 22 of the RTI Act, which reads as under:-
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> > "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."
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> It is a fact that the RTI Act, being a recent legislation, will over-ride the inconsistent provisions contained in other enactments, including the Census Act of 1948. But, the over-riding effect is only to the extent of inconsistency. It is not that Section 22 of the RTI act has the effect of either abrogating or repealing all other enactments dealing with furnishing of information to an information-seeker. In the instant case, the denial of information has been under the provisions of Section 8(1)(i) of the RTI Act and not under the Census Act. If the provisions of Census Act, 1948 are read together with the provisions of Section 8(1)(e)and Section 8(1) (i) of the RTI Act, it has to be held that the AA had correctly concluded that the information as requested by the appellant could not be disclosed to him."

6. Aggrieved, the writ petition out of which this appeal has arisen was filed. The learned Single Judge based upon the above findings held that for preparing the census, facts are collected by the authorities in confidence and could not be disclosed to any other individual. The learned Single Judge further held that orders dated 7.2.2006 and 9.5.2006 (Annexures P-9 and P-10) passed by the Government of India, Ministry of Home Affairs, Directorate of Census Operations, Delhi were not challenged by the appellant and thus have become final. Both these orders declined to give information sought by the appellant on the basis of Section 15 of the Census Act, 1948, already extracted above.

7. Section 22 of the Right to Information Act, 2005, on which reliance is placed by the appellant reads as follow:-

> **"22.** 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."

8. The sum and substance of the appellant's plea is that the person in respect of whom information is sought are important public figures and he as a citizen is entitled to know the religion practiced by them. We are unable to agree with the appellant. The appellant seeks to know the religion disclosed by important public figures to the Census Authorities. Since this information is disclosed to the authorities in the census operation, such information is consequently covered by the mandate of the Census Act and in particular Section 15 of the said Act already extracted above. The appellant's plea is that Section 22 of the Right to Information Act, 2005 overrides the provisions of Section 15 of the Census Act and hence disclosure of the information sought by the appellant cannot be withheld.

9. In our view, the provisions of Section 15 of the Census Act, 1948 are not inconsistent with provisions of Section 8(1)(j) of the Right to Information Act, 2005 and both can be read harmoniously. Accordingly, Section 22 of the Right to Information Act, 2005 will not come into operation and cannot sustain the pleas of the appellant. Further more, it is apparent that the appellant is wanting to elicit information about the religion of such public persons. India being a socialist, democratic and secular democratic republic, the quest to obtain the information about the religion professed or not professed by a citizen cannot be in any event, be considered to be in public interest, which information is strictly confidential as per Section 15 of

the Census Act, 1948. Mere terming of the members of the 'family' in respect of which the information is sought as public figures and the leaders of nation, cannot change the statutory impact of the above provisions. It is thus evident that the petitioner is making efforts to make unjustified inroads into the privacy of said individuals even if they are public figures. Consequently, the information supplied to the Census Officer cannot be made public in view of the statutory bar imposed by Section 15 of the Census Act which is not inconsistent with Section 22 read with section 8(1)(j) of the Right to Information Act, 2005. Accordingly, we find no merit in this appeal which stands dismissed.

(MUKUL MUDGAL)
CHIEF JUSTICE

(RANJAN GOGOI)
JUDGE

29th November, 2010.
'ravinder'