

OFFICE OF THE FIRST APPELLATE AUTHORITY
(Appointed under the Right to Information Act, 2005)
The Institute of Company Secretaries of India
ICSI House, C-36, Institutional Area, Sector-62,
Noida - 201 309 (U.P.)

APPEAL NO. 59/2022

IN THE MATTER OF:

Ajay Kumar Gupta
C 25, Nizamuddin East
New Delhi-110013

Appellant

Vs.

Central Public Information Officer
The Institute of Company Secretaries of India
ICSI House
22, Institutional Area, Lodi Road
New Delhi - 110 003

Respondent

Date of Order: 24th September, 2022

ORDER

- i. The Appellant has filed first appeal on 26.08.2022 under Section 19(1) of the Right to Information Act, 2005 in connection with response Ref. No. RTI 2005/5370/(22) dated 26.08.2022 against the Central Public Information Officer (CPIO) (hereinafter referred to as Respondent) of the Institute.
- ii. The Appellant vide his RTI application dated 30.07.2022 has requested to provide the information is sought as per records : 1. Please provide copy of complete notings in the file pertaining to the complaint under DC/641/2021 as per records. 2. Please provide copy of the complete file as per records including but not limited to the notices issued to the company and alleged CS after receipt of Rejoinders and the responses thereto, prima facie opinions by the Deputy Director etc.
- iii. The Appellant has informed in the instant appeal that "Refused access to Information Requested" and requested to ensure supply of sought information to the applicant.
- iv. The reply of the Respondent against the instant appeal is as under: -

"1 A complaint of professional misconduct (DC/641/2021) filed by the Appellant herein against Shri Dinesh Sharma, ACS-44736, CP-16704 was closed and disposed-off by the Board of Discipline vide its order issued on 25th July, 2022.

2. Accordingly, pursuant to sub rule (3) of the Rule 15 of the Company Secretaries (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 (the Rules), the Applicant, vide email dated 25th July, 2022 and letter dated 25th July, 2022 was provided with a copy of the aforesaid order of the Board of Discipline and the same is admitted by the Appellant, as received. The Rules have laid down the mechanism for providing the exchange of pleadings between the parties

and sending the final order of the Disciplinary Committee and the Board of Discipline (as the case may be) to the parties, which has been complied with in this case.

3. Since, in compliance of the Company Secretaries (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Appellant herein has already been provided with the copy of the final order of the Board of Discipline, it is not required to provide him the copy of the complete file with official noting, notices and prima facie opinion of the Director (Discipline) etc. as sought by him.
4. Section 22 of the RTI Act, 2005 provides that the provisions of the RTI 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.
5. Whereas the Company Secretaries (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 came into force (subsequent to enactment of RTI Act, 2005) on 27th February, 2007 i.e., date of publication in the Gazette of India, Extraordinary, Part II, Section 3(i) vide Notification No. GSR 111(E), dated 27th February, 2007 at New Delhi.
6. Further, the disciplinary proceedings before the Board of Discipline are quasi-judicial in nature and therefore, supply of the proceedings and documents placed before the Board of Discipline are exempted under section 8(1) (b) of the RTI Act, 2005. Pursuant to section 8(1) (b) of the RTI Act, 2005, the Board of Discipline has expressly forbidden the supply of information and documents w.r.t. disciplinary matter being investigated by the Board of Discipline including the matter which have been disposed-off by the Board of Discipline which Company Secretaries Act, 1980 and the Rules do not provide to supply. Under section 21C of the Companies Secretaries Act, 1980, Board of Discipline has power of civil courts. Hence, the information viz. copy of complete file including noting, copy of notices issued to the company and the Respondent after receipt of rejoinders and the responses thereto and, copy of prima facie opinion of the Director (Discipline) etc. sought by the Appellant is exempted under section 8(1) (b) of the RTI Act, 2005. Disclosure of noting of the officials of Disciplinary Directorate is also exempted under section 8(1) (g) of the RTI Act, 2005.
7. The Rules are made by the Central Government under the Company Secretaries Act, 1980 in exercise of the powers conferred by Clauses (c) and (d) of Sub-section (2) of Section 38A, read with Sub-section (4) of Section 21 and Sub-sections (2) and (4) of Section 21B of the Company Secretaries Act, 1980.
8. Since the aforesaid rules are made after the enactment of the RTI Act, 2005, provisions of section 22 of the RTI Act, 2005 are not having any overriding effect on the Rules and thus, the Appellant is wrongly relying upon section 22 of the RTI Act, 2005. In any case subsequent legislations i.e. the Rules referred herein above would prevail over the provisions of earlier statutes i.e. RTI Act, 2005.
9. That it is further relevant to point out that, law is no more res-integra, that non obstante clause of the RTI Act does not mean an implied repeal of sub rule (3) of the Rule 15 of the Company Secretaries (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. A special enactment or rule cannot be held to be overridden by a general enactment simply because previous statute opens up with a non obstante clause, particularly when RTI Act is a general statute and the Rules framed under the Company Secretaries Act, 1980 is special in nature. Hence, in case of conflict, principle of "Generalia specialibus non derogant" would be squarely applicable. In the present case, the Rules stated herein above are

special in nature belonging to a Special Act i.e., the Company Secretaries Act, 1980 and subsequent to the RTI Act, 2005, which is general in nature.

10. The Company Secretaries Act, 1980 and the Company Secretaries (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 are not inconsistent to the RTI Act, 2005. Further, both the RTI Act, 2005 and the Company Secretaries Act, 1980 are made by the Parliament of India, and therefore, both these statutes and the Company Secretaries (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, are required to be given effect in their true letter and spirit.
11. Therefore, in view of above, it is not required to provide the copy of the complete file with official noting, notices and prima facie opinion of the Director (Discipline) etc. as sought by the Applicant.”
- v. This Office has carefully considered the application, the response, the appeal and the records made available and finds that the matter can be decided based on the material available on record.
- vi. This Office concurs with the submission of the Respondent.

The appeal is accordingly disposed of.

Sd/-
(Ankur Yadav)
First Appellate Authority

Copy to :

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3. Directorate of IT - For publishing on the website