

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

% Judgment reserved on: 17th May 2017
Judgment delivered on: 23rd August 2017

+ W.P.(C) 5521/2016 & CM No.23078/2016 (stay)

CPIO, INTELLIGENCE BUREAU Petitioner

versus

SANJIV CHATURVEDI Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. R.V. Sinha with Mr. R.N. Singh and Mr. A.S. Singh, Advocates.

For the Respondent : Respondent in person.

**CORAM:-
HON'BLE MR JUSTICE SANJEEV SACHDEVA**

JUDGEMENT

SANJEEV SACHDEVA, J

1. The Central Public Information Officer (hereinafter referred to as CPIO) of the Intelligence Bureau has filed this petition impugning order dated 21.04.2016, passed by the Central Information Commission under the Right to Information Act, 2005 (hereinafter referred to as the 'Act').

2. The Central Information Commission (hereinafter referred to as CIC), by the impugned order dated 21.04.2016, has held that the copy of the report of the Intelligence Bureau (hereinafter referred to as IB), concerning the respondent, is information pertaining to allegations of

corruption and human rights violation and is, thus, liable to be given to the respondent. The Commission has directed the Intelligence Bureau and the Ministry of Environment, Forests & Climate Change (hereinafter referred to as MoEF) to provide a certified copy of the IB report relating to the respondent, as sought for by him by an application dated 05.12.2015.

3. The directions have been issued by the CIC on arriving at the following conclusion

- a) *It is factually proved that appellant was put to extreme hardship by the corrupt political rulers and corrupt public servants In retaliation of his unstinted Implementation of rule of law.*
- b) *The gist of IB report as furnished by IB in response to the RTI request of appellant in this case shows that its disclosure could cause no harm to core activity of security or intelligence of IB.*
- c) *section 24 of RTI Act does not authorize the public authorities exempted under this section to block entire Information held by it or generated and given to other public authorities enbloc, but its exclusion from disclosure is limited to that which pertains to core functioning of 'security' and 'intelligence' aspect of exempted organization.*
- d) *The IB report sought by appellant is not the information excluded from purview of disclosure by RTI Act.*
- e) *The IB report is information as per Section 2(f) held by MoEF and also information pertaining to the allegation of corruption or human rights violation*

as per Section 24 second proviso and hence certified copy of the same shall be given to the appellant.

- f) *The public authorities exempted under S. 24 cannot use it to stonewall all RTI requests indiscriminately. The IB has a statutory duty to make all arrangements to provide the information other than that concerning 'security' and 'Intelligence' if it pertains to corruption or human rights violation, or useful to prevent corruption or human rights violation either under voluntary disclosure clauses or other provisions of RTI Act."*

4. The respondent on 05.12.2015 had filed an application seeking information under the Act. The applicant sought the following information:-

"i. Kindly provide me certified copy of all the file noting/documents,correspondences/all type of reports between Ministry of Environment, Forest &Climate Change. Department of Personnel &Training, Cabinet Secretariat and Appointment Committee of Cabinet, regarding interstate Cadre Transfer of Mr. Sanjiv Chaturvedi, IFS, Deputy Secretary AIIMS, New Delhi from Haryana to Utrakhand (excluding my own representations).

ii. Kindly provide me certified copy of all the file noting/documents/correspondences/all type of reports between Ministry of Environment, Forest & Climate Change, Ministry of Health & Family Welfare, Department of Personnel &Training, Cabinet Secretariat and Appointment Committee of Cabinet, regarding Interstate Cadre Deputation of Mr. Sanjiv Chaturvedi, IFS, Deputy Secretary, AIIMS, New Delhi, to GNCT, Delhi (excluding my own representations)."

5. The CPIO, MoEF, by its response dated 07.01.2016, to the above application, provided copies of all the correspondences and notesheet other than the representations of the respondent.

6. On 18.01.2016, after receipt of the above documents, the respondent requested for supply of the IB report. The request was made on the ground that a mention had been made in the file noting/correspondences of an IB report about the respondent. The gist of the said report has been reproduced in the file noting.

7. Copy of the report was sought by the respondent contending that the information contained in the IB report pertained only to the respondent and was not about anyone else and further had no connection with the national securities or relation with foreign countries.

8. The CPIO, MoEF declined supply of copy of the IB report on the ground that the same was exempted from disclosure in terms of Section 24 of the Act.

9. Consequent to the denial of supply of copy of the IB report, the respondent filed an application under Section 24 of the Act with the Central Information Commission.

10. The petitioner as well as the CPIO, MoEF opposed the application, filed by the respondent under Section 24 of the Act, on the ground that the information was exempted from disclosure as the

report was an intelligence report of the Intelligence Bureau, which is one of the organizations mentioned in the Schedule of the Act and exempted in terms of Section 24 of the Act.

11. The CPIO also relied on the judgment of the Coordinate Bench dated 09.10.2013 in WP(C) 7453/2011 titled UNION OF INDIA & ORS. VS. ADARSH SHARMA to contend that the exception carved out from the exemption would be applicable in case the allegation of corruption and the human right violation was with regard to the intelligence Bureau.

12. The CIC allowed the application of the respondent under Section 24 of the Act and passed the impugned order dated 21.04.2016.

13. Aggrieved by the said decision, the petitioner i.e. the CPIO, Intelligence Bureau has filed the present petition contending that the directions issued by the CIC, are contrary to Section 8(1)(j) of the Act and the impugned order is without jurisdiction in view of Second Schedule of Section 24 of the Act, wherein, not only the Intelligence Bureau has been exempted but also the information provided by the Intelligence Bureau to the Government has been specifically exempted. It is contended by the petitioner that the information sought does not fall within the exception carved out by the proviso to Section 24 of the Act inasmuch as neither it pertains to any allegation of corruption nor of human rights violation within the intelligence

bureau. It is contended that the issue raised by the respondent is an ordinary service matter.

14. It is contended on behalf of the petitioner that the exception carved out by the proviso to Section 24, which, specifies “*information pertaining to the allegations of corruption and human rights violations shall not be excluded under this sub-Section*” would apply only if the allegation of corruption or human rights violations were within the Intelligence Bureau or pertaining to an Officer of the Intelligence Bureau. It is contended that only in case the allegations of corruption or human rights violation were relatable specifically to the officers of the Intelligence Bureau would the exceptions carved out by the proviso apply. It is further contended that the exception would have no application in case the allegations of corruption or human rights violation pertain to organization other than the Intelligence Bureau, in respect of which the report was submitted.

15. It is further contended that no allegations were made with regard to corruption or human rights violation by the officers of the Intelligence Bureau and the allegations were with regard to the Department where the respondent was serving. Since the IB report, submitted by the petitioner, had been with regard to the organization where the respondent was serving, the same did not come within the purview of the exceptions carved out by the proviso to Section 24 of the Act.

16. Reliance is placed by the learned counsel for the petitioner on the decision in the case of ADARSH SHARMA (*supra*). Further, reliance is placed on the decision of the Supreme Court in the case of S. SUNDARAM PILLAI & ORS. VS. V.R. PATTABIRAMAN & ORS.: 1985 SCC 591 to contend that a proviso cannot be interpreted as a general rule that has been provided for nor can it be interpreted in a manner that would nullify the enactment or to take away in entirety a right that has been conferred. Further, that a Court has no power to add or subtract even a single interpretation to legislation. Reference is also drawn to a judgment of the Supreme Court in ROHITASH KUMAR VS. OM PRAKASH SHARMA: (2013) 11 SCC 451.

17. The respondent, in his response, has contended that the respondent, who is an officer belonging to 2002 batch of Indian Forrest Service, was earlier allocated Haryana Cadre, which was subsequently changed to Utrakhand in August 2015, on account of extreme hardships. It is contended that the gist of the Intelligence Bureau report, copy of which had been sought by the respondent, as disclosed to the respondent states that “*there appears to be truth in the contention of Sh. Sanjiv Chaturvedi regarding alleged harassment meted out to him by Haryana Government. His request for change of cadre from Haryana to Uttarakhand merits consideration.*” It is contended that the gist of the report clearly evidences that the case involves issue of corruption and human rights violation and, hence, is covered by the exceptions created by the proviso to Section 24 of the Act.

18. It is further contended that the Intelligence Bureau is not exempted from disclosure of information, if the information is related to allegations of corruption and human rights violation. It is contended that the respondent has been fighting against corruption and has been raising the issues of corruption. Because of the issues of corruption, raised by the respondent, several orders were passed by the State Government against the respondent. Four presidential orders were issued in favour of the respondent quashing various orders passed by the State Government.

19. It is contended that the respondent has been appreciated and rewarded for his performance and integrity. The respondent, during his tenure in the Haryana cadre, is alleged to have exposed corruption in multi-crore plantation scam in Jhajjar and Hisar district, corruption in construction of a Herbal Park at private land with Government money, illicit felling and poaching in Saraswati Wildlife Sanctuary, corruption in granting license to plywood units etc.

20. It is contended that the respondent was harassed through suspension, major penalty, departmental chargesheet, police and vigilance cases and 12 transfers in just five years.

21. It is contended that the respondent applied for change of cadre from Haryana to Utrakhand in October 2012 on the ground of major hardships and threat to life. To assess the threat to life of the respondent, the then Secretary, MoEF sought for a report from the

Intelligence Bureau in August 2014. The intelligence Bureau confirmed extreme hardships and harassment of the respondent.

22. It is contended by the respondent that proviso to Section 24 covers all cases of corruption and human rights violation and is not restricted to issues of corruption and human rights violation within the organizations referred to in the Schedule.

23. It is further contended that, in terms of the Preamble of the Act, which lays down that the Act is made to promote transparency and accountability in the working of every public authority and to contain corruption and to hold Governments and their instrumentalities accountable to the governed, the information relating to corruption, if withheld, would negate and defeat the very preamble of the Act.

24. It is contended that several Ministries and Organizations of the Central Government have disclosed information supplied to them by the Intelligence Bureau in cases of corruption without claiming exemptions under Section 24 of the Act.

25. The question that arises for consideration is whether the exception carved out by the proviso to Section 24 would apply only if the allegation of corruption or human rights violations were with regard to the Intelligence Bureau itself or pertaining to an Officer of the Intelligence Bureau?

26. Section 24 (1) of the Act reads as under:-

“24. Act not to apply to certain organizations.—

(1) Nothing contained in this Act shall apply to the intelligence and security organisations specified in the Second Schedule, being organisations established by the Central Government or any information furnished by such organisations to that Government: Provided that the information pertaining to the allegations of corruption and human rights violations shall not be excluded under this sub-section: Provided further that in the case of information sought for is in respect of allegations of violation of human rights, the information shall only be provided after the approval of the Central Information Commission, and notwithstanding anything contained in Section 7, such information shall be provided within forty-five days from the date of the receipt of request.

(2) *****

27. Section 24 (1) *inter alia* make the Act inapplicable to intelligence and security organizations, established by the Central Government, specified in the Second Schedule and further excludes any information furnished by such organisations to the Central Government from being liable to be disclosed. However, an exception is carved out to the exclusion clause with respect to information covered by the proviso. The proviso stipulates that if the information pertains to allegations of corruption and human rights violations, it shall not be excluded under this sub-section.

28. A distinction is drawn by the proviso between intelligence and security organizations and the information furnished by such organisation to the Central Government. The exception carved out by the proviso to the exclusion clause is only with regard to the

information and not with regard to the intelligence and security organizations.

29. The plain reading of the proviso shows that the exclusion is applicable with regard to any information. The term “any information” would include within its ambit all kinds of information. The proviso becomes applicable if the information pertains to allegations of corruption and human rights violation. The proviso is not qualified and conditional on the information being related to the exempt intelligence and security organizations. If the information sought, furnished by the exempt intelligence and security organizations, pertains to allegations of corruption and human rights violation, it would be exempt from the exclusion clause.

30. The proviso “*Provided that the information pertaining to the allegations of corruption and human rights violations shall not be excluded under this sub-section*” has to be read in the light of the preceding phrase “*or any information furnished by such organisations to that Government*”.

31. When read together, the only conclusion that can be drawn is that, if the information sought pertains to allegation of corruption and human right violation, it would be exempt from the exclusion clause, irrespective of the fact that the information pertains to the exempt intelligence and security organizations or not or pertains to an Officer of the Intelligence Bureau or not.

32. The Judgments in the case of SUNDARAM PILLAI (Supra) and ROHITASH KUMAR (supra) are clearly not applicable in the facts of the present case. The interpretation as rendered above, does not nullify the enactment or take away a right in entirety. In fact, the right to obtain information, conferred by the Act, is taken away by the exclusion in Section 24 of the Act. The proviso carves out an exception to the exclusion clause and further brings the information within the ambit of the Act. The proviso is in line with the very object of the Act.

33. A Division Bench of the Madras High Court in SUPERINTENDENT OF POLICE, CENTRAL RANGE, OFFICE OF THE DIRECTORATE OF VIGILANCE AND ANTI-CORRUPTION V. R. KARTHIKEYAN, AIR 2012 Mad 84 has very aptly culled out the necessity and the object for enactment of the Act in the following manner:

“8. India has adopted a democratic form of Government and no democratic Government can survive without accountability and the basic postulate of accountability is that the people should have information about the functioning of the Government. It is only when the people know how the Government is functioning, they can fulfill the role which democracy assigned to them and make democracy a really effective participatory democracy. Right to information is basic to any democracy. A vibrant citizenry is a pre-requisite for survival of democratic society and governance. The quality of life in a civilized society depends upon the quality of exchange of information about the governance and related aspects. It is now widely recognised that

openness and accessibility of people to information about the Government's functioning is a vital component of democracy. Disclosure of allowable information would lead to better system and it would be in the public interest that a Public Authority should throw open the process of public scrutiny, which would result in evolving a better system. Disclosure of information would compromise the integrity and efficiency of the functioning of the Public Authority. In an increasingly knowledge-based society, information and access to information holds the key to resources, benefits and distribution of power. Information, more than any other element, is of critical importance in a participatory democracy.

9. *The Right to Information Act is a rights based enactment more akin to any other enactments safeguarding fundamental rights. As the statement of the object of the Act goes, democracy requires an informed citizenry and transparency of information. The Act encompasses basically two things, firstly, the right of a citizen to seek for information to which he is entitled under the provisions of the Act and the corresponding duty of the Information Officers to furnish such information and secondly, it leads to transparency in the Government functioning.*

10. *The use of the Right to Information Act needs no elaborate reference as the very fact that such a right to get information has been recognised as a fundamental right. To put it precisely, the information supplied under the Act brings about transparency and accountability, both of which hold to reduce corruption and increased efficiency in governance and it also encourages participation of the people in a democracy. The need for right to information ensures people's participation, ensures principle of accountability, transparency, limiting the discretion powers given to officials, protects*

the civil liberties, effective and proper implementation of schemes of Government and makes media more effective.

11. *Though the Indian Constitution has no express provision guaranteeing the right to information, it has been recognized by the Courts in a plethora of cases as implicit in Article 19(1)(a), which guarantees to all citizens the right to free speech and expression, and Article 21 of the Constitution which guarantees the right to life in accordance with due process to all citizens. The background of the enactment will not be complete if the contribution of the Hon'ble Apex Court for the legislation is not mentioned. The Apex Court in the decision in State of U.P. v. Raj Narain, AIR 1975 SC 865, interpreted Article 19(1)(a) of the Constitution of India so widely so as to include so many rights within its sweeping shadow. One such right is the right to information. It is observed in the said judgment that "the right to know which is derived from the concept of freedom of speech, though not absolute is a factor which should make wary, when secrecy is claimed for transactions which can at any rate have no repercussion on public security." The Apex Court further observed that "the people of this country have the right to know every public act, everything that is done in a public way by their public functionaries. They are entitled to know the particulars of every public transaction in its bearing." The concept of an open Government is the direct emanation from the right to know which seems to be implicit in the right of free speech and expression guaranteed under Article 19(1)(a), as observed by the Apex Court in S.P. Gupta v. Union of India, AIR 1982 SC 149.*

12. *In the Secretary, Ministry of Information and Broadcasting, Government of India v. The Cricket Association of Bengal, 1995 (2) SCC 179, the Apex Court, while considering the freedom of speech and expression in the light of the right to information, has*

observed that “freedom of speech and expression is basic to and indivisible from a democratic polity. It includes the right to impart and receive information.” The Apex Court has also observed that “for ensuring the free speech right of the citizens of the country, it is necessary that the citizens have the benefit of plurality of views and a range of opinions on all public issues and a successful democracy posits an ‘aware’ citizenry.”

13. The pride for enactment of the Right to Information Act would certainly go to the judiciary as could be seen from certain observations of the Hon'ble Apex Court in some of the judgments. The judgment in Union of India v. Association for Democratic Reforms, AIR 2002 SC 2112 is again a forerunner for recognising the right to information as a fundamental right and the said judgment laid the foundation over which the superstructure of the Right to Information Act, 2005 was built. In Peoples' Union for Civil Liberties v. Union of India, 2004 (1) CTC 241 (SC) : 2004 (2) SCC 476, it was observed that—

“Right of information is a facet of the freedom of ‘speech and expression’ as contained in Article 19(1)(a) of the Constitution of India. Right of information, thus, indisputably is a fundamental right.”

In another case in Union of India v. Assn. for Democratic Reforms, 2002 (5) SCC 294, it was observed that “the right to get information in a democracy is recognized all throughout and it is a natural right flowing from the concept of democracy”.

14. The Apex Court in India Jaising v. Registrar General, Supreme Court of India, 2003 (5) SCC 494, also took the same view and held —

“It is no doubt true that in a democratic framework free flow of information to the citizens is necessary for proper functioning particularly in matters which form part of a public record. The decisions relied upon by the learned Counsel of the Petitioner do not also say that right to information is absolute. There are several areas where such information need not be furnished. Even the Freedom of Information Act, 2002, to which also reference has been made, does not say in absolute terms that information gathered at any level in any manner for any purpose shall be disclosed to the public.”

34. CIC has found that the Respondent was put to extreme hardship by the corrupt political rulers and corrupt public servants in retaliation of his unstinted Implementation of rule of law. CIC has further found that the gist of IB report as furnished by IB in response to the RTI request of appellant shows that its disclosure could cause no harm to core activity of security or intelligence of IB. The IB report is information as per Section 2(f) held by MoEF and the information pertains to allegation of corruption and human rights violation.

35. Clearly, the information sought by the respondent falls in the category of being exempt from the exclusion clause and is liable to be supplied.

36. The judgment in the case of ADARSH SHARMA (*supra*) relied upon by learned counsel for the petitioner has no applicability in the facts of the present case. The Court in that case was dealing with

information sought, concerning one doctor from the Ministry of Home Affairs. The information sought was about the date of last departure of the doctor from India, the destination, airlines and the passport number. The application was transferred by the CPIO, Ministry of Home Affairs to the Intelligence Bureau. The Intelligence Bureau claimed exemption under Section 24 of the Act. The information sought for, pertained to the Immigration Department of the Intelligence Bureau. Since the information was not related to the allegations of corruption or human rights violation, learned Single Judge held that the said information did not come within the purview of the exceptions carved out by the proviso to Section 24 of the Act. It is, in these circumstances, that the directions of the CIC, directing supply of information, were quashed.

37. In view of the above, looked at from any angle, there is no infirmity with the view taken by the CIC by the impugned order dated 21.04.2016. There is no merit in the petition. The same is accordingly dismissed. No orders as to costs.

SANJEEV SACHDEVA, J

August 23 , 2017

St/HJ