



2023:DHG:9013



\$~1 & 2 (SB)

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

Date of Decision: 12th December, 2023

+ **W.P.(C) 5588/2019 & CM APPL. 24577/2019**

DIRECTORATE OF ENFORCEMENT

..... Petitioner

Through: Mr. Zoheb Hossain, Spl. Counsel for
ED; Mr. Vivek Gurnani, Ms.
Manisha Dubey, Mr. Kanishk
Maurya, Advs. (M. 8802918860)

versus

MS. SONALI G BADHE

..... Respondent

Through: None.

2 (SB)

AND

+ **W.P.(C) 1640/2020, CM APPLs. 5748/2020 & 5749/2020**

DIRECTORATE OF ENFORCEMENT

..... Petitioner

Through: Mr. Zoheb Hossain, Spl. Counsel for
ED; Mr. Vivek Gurnani, Ms.
Manisha Dubey, Mr. Kanishk
Maurya, Advs. (M. 8802918860)

versus

MR. AJAY KUMAR

..... Respondent

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUDGMENT

PRATHIBA M. SINGH, J.

1. This hearing has been done through hybrid mode.
2. These matters have been taken up on office note as the Registry has inadvertently not listed the matters on 31st October, 2023.



Brief Facts

3. These two writ petitions have been filed by the Petitioner - Directorate of Enforcement (ED) seeking quashing of the orders dated 18th March, 2019 and 27th November, 2019 passed by the Central Information Commission (CIC) directing the Petitioner to supply information to the Respondents holding that the information sought by the Respondents does not fall under the exemption provided in the proviso to Section 24 of the Right to Information Act, 2005 (RTI Act, 2005).

W.P.(C) 1640/2020

4. The present petition has been preferred by the ED challenging the impugned order dated 27th November, 2019 passed by the CIC.

5. The RTI Application dated 30th January, 2018 was filed by the RTI Applicant/ Respondent in this case i.e. Mr. Ajay Kumar, who was an employee of the Income Tax Department seeking documents and other information relating to Recruitment Rules for the post of Assistant Enforcement Officer since 1990 till date. The CPIO filed its reply dated 19th February, 2018 in which reliance was placed upon Section 24 of the RTI Act, 2005 read with 2nd Schedule under which ED is one of the intelligence/security organisations exempted from disclosing information under the RTI Act, 2005.

6. The appeal which was filed by the RTI Applicant/ Respondent was also rejected on 16th March, 2018 by relying upon the Section 24 of the RTI Act, 2005. The matter then travelled to the CIC which disposed the matter vide its impugned order dated 27th January, 2019. The CIC held that the issue would be covered by this Court's decision in ***Union of India & Ors. v. Adarsh Sharma WPC 7453/2011, date of decision 9th October, 2013*** and



that the information is excluded under Section 24. The CIC went on to direct the ED to proceed to provide pointwise administrative information in response to the RTI Application within a period of 30 days. The operative portion of the CIC's order reads as under:

“Keeping in view the facts of the case and the submissions made by both the parties and in the light of the decision of the Superior Courts granting protection to the Respondent Public Authority under Section 24 of the RTI Act, 2005, the Commission is constrained not to take any further action in the matter. However, taking into consideration the spirit of the provisions of the RTI Act, 2005 and in the light of the aforesaid decision in the matter of Union of India & ors v. Adarsh Sharma in W.P. (C) 7453/2011 dated 09.10.2013 and the fact that such information relating to the current period was already displayed on its website, therefore in order to assist the information seeker, the Commission advised the Respondent to provide point wise administrative information to the Appellant within a period of 30 days from the date of receipt of this order.”

W.P.(C) 5588/2019

7. The present petition has been preferred by the Directorate of Enforcement (ED) challenging the impugned order dated 18th March, 2019 passed by the CIC.

8. The RTI Applicant/ Respondent in this case i.e. Dr. Sonali G. Badhe Assistant Legal Adviser, Directorate of Enforcement, Ahmedabad filed an RTI Application dated 5th April, 2017 seeking certain information and details regarding implementation of the order dated 21st June, 2016 against



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Mr. A.C Singh which related to certain allegations of sexual harassment made by the RTI Applicant/ Respondent.

9. The CPIO in its reply dated 8th May, 2017 held that the documents and information sought cannot be provided in view of the exemption granted under Section 24 read with 2nd Schedule of the RTI Act, 2005. Thereafter the appeal filed by the RTI Applicant/ Respondent was also rejected on 14th June, 2017 by relying upon the same Section 24 of the RTI Act, 2005 on the ground that the information sought by RTI Applicant/ Respondent did not pertain to allegations of corruption or human rights violation and the order passed by the CPIO was right and within the scope and ambit of Section 24 of the RTI Act, 2005.

10. Thereafter, a second appeal was filed by the RTI Applicant/ Respondent before the CIC. The CIC vide order dated 18th March, 2019 directed the Petitioner to supply the information sought by Respondent No.2 within fifteen days from the date of receipt of the CIC's order and further held the exemption sought by the Petitioner under Section 24 (1) of the RTI Act, 2005 was unjustified and untenable.

Submissions

11. The Respondents in both these cases have not appeared despite notice being served upon them.

12. Mr. Hossain, Id. Counsel for the ED has brought to the notice of the Court various orders and judgments dealing with Section 24 and the 2nd schedule of the RTI Act, 2005. Id. Counsel relies on the following decisions:

- (a) In ***Union of India & Ors. v. Adarsh Sharma (supra)*** Id. Single Judge of this Court held that the Intelligence Bureau (IB) is an



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organisation which would be covered by Section 24 of the RTI Act, 2005. Subsequently, in ***Dr. Neelam Balla v. Union of India & Ors.*** [LPA 229/2014, decision dated 11th March, 2014] Id. Division Bench of this Court again observed the same for Defence Research & Development Organisation (DRDO).

- (b) This legal position has also been affirmed in ***CPIO, Intelligence Bureau vs. Sanjiv Chaturvedi*** [WPC 5521/2016, date of decision 23rd August, 2017] wherein the proviso to Section 24 of the RTI Act, 2005 has been interpreted and it has been held that except in the case of corruption and human rights violations, the information of the exempted organisations cannot be disclosed. In ***CPIO, Directorate of Enforcement, New Delhi and Anr. vs. Mr. Bimal Kumar Bhattacharya*** [WPC 354/2018 dated 19th February, 2018] it has been held that ED is covered by Section 24 of the RTI Act, 2005.
- (c) The Id. Division Bench of this Court had taken a contrary view in ***LPA 734/2018*** titled ***Union of India v. Central Information Commission & Anr.***, 2022/DHC/001042. In the said judgment, the Division Bench has come to the conclusion that the non-supply of information relating to the service record could be considered as human rights violation and had, therefore, allowed the disclosure of the information by the Directorate of Enforcement under the RTI Act, 2005. This judgment was challenged in ***SLP (Civil) Diary No(s). 5557/2023*** titled ***Union of India v. Central Information Commission & Anr*** wherein the Hon'ble Supreme Court has



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not approved the reasoning in ***Union of India v. CIC*** in ***LPA 734/2018***.

13. Mr. Hossain, Id. Counsel for the ED submits that as per the said judicial precedents, the consistent view has been that the IB, ED and DRDO are considered to be exempted organizations as per Section 24 of the RTI Act, 2005.

Analysis

14. This Court has heard the submissions made by Mr. Hossain, Id. Counsel for the ED. The Respondents have not appeared in these matters.

15. These two matters were kept part heard, awaiting the decision of the Hon'ble Supreme Court in the SLP challenging the decision passed by Id. Division bench of this Court in ***LPA 734/2018*** titled ***Union of India vs. Central Information Commission & Anr.***

16. The first decision that would be relevant in the present case is the decision in ***Union of India & Ors. v. Adarsh Sharma (supra)*** where the Id. Single Judge of this Court has held that the IB is an organisation which would be covered by Section 24 of the RTI Act, 2005. After having held so, the Court observed as under:

“4. The information sought by the respondent was neither any information related to the allegations of corruption in Intelligence Bureau nor an information related to the human rights violations. The Commission, therefore, was clearly wrong in directing the Intelligence Bureau to provide the said information to the respondent under the provisions of Right to Information Act. Therefore, the order passed by the Central Information Commission being contrary to the provisions of the Act, cannot be sustained and is hereby quashed.



5. However, in my view, if an information of the nature sought by the respondent is easily available with the Intelligence Bureau, the agency would be well-advised in assisting a citizen, by providing such an information, despite the fact that it cannot be accessed as a matter of right under the provisions of Right to Information Act. It appears that there is a litigation going on in Rajasthan High Court between the respondent and Dr. Vijay Kumar Vyas. It also appears that the respondent has a serious doubt as to whether Dr. Vijay Kumar Vyas, who was reported to have died on 03.09.2009, has actually died or not. The Intelligence Bureau could possibly help in such matters by providing information as to whether Dr. Vyas had actually left India on 10.10.2009 for Auckland on flight No CX708. Therefore, while allowing the writ petition, I direct the Intelligence Bureau to consider the request made by the respondent on administrative side and take an appropriate decision thereon within four weeks from today. It is again made clear that information of this nature cannot be sought as a matter of right and it would be well within the discretion of the Intelligence Bureau whether to supply such information or not. Whether a person aggrieved from refusal to provide such information can approach this Court under Article 226 of the Constitution, is a matter which does not arise for consideration in this petition. The writ petition stands disposed of. No order as to costs.”

17. A perusal of the above decision shows that while the Court categorically holds that under the RTI Act, 2005 the information cannot be provided, on the administrative side, the Court directed the IB to consider such a request and take a decision. Thus, clearly, the information sought was kept outside the purview of the RTI Act, 2005.



18. Subsequently, in **Dr. Neelam Balla v. Union of India & Ors.[LPA 229/2014, decision dated 11th March, 2014]** ld. Division Bench of this Court observed that the DRDO would be an organisation covered under Section 24 of the RTI Act, 2005 and observed as under:

“3. On a plain reading of the above provisions, it is evident that the Act does not apply to intelligence and security organizations specified in the Second Schedule, being organizations established by the Central Government or to any information furnished by such organizations to that Government. It is an admitted position that DRDO is a Central Government organization and is specified in the Second Schedule. Therefore, in the first instance, DRDO is an exempted organization and the said Act does not apply to it. However, the first proviso to Section 24(1) of the said Act clearly stipulates that information pertaining to allegations of corruption and human rights violations are not to be excluded under this sub-section. In other words, the Act would apply to DRDO only to the extent of information pertaining to allegations of corruption and human rights violations.

4. In the present case, we note that the learned Single Judge has observed that the information sought by the appellant/petitioner did not pertain to corruption or human rights violations and, therefore, did not fall within the proviso to Section 24(1) of the said Act.

5. We agree with the view expressed by the learned Single Judge inasmuch as the information that was sought by the appellant/petitioner pertained to her service record which had nothing to do with any allegation of corruption or of human rights violations. Therefore, the CIC as well as the learned Single Judge were correct in holding that the information sought would not come within the



purview of the Right to Information Act. It is another matter that the CIC had, as a matter of course, directed the DRDO to supply the information, which was ultimately supplied by the DRDO. The fact of the matter is that the DRDO could not have been compelled to supply the information under the said Act. That being the position, the provisions with regard to penalty under Section 20 of the said Act would also not apply.”

19. This legal position has also been affirmed by another Id. Single Judge of this Court in ***CPIO, Intelligence Bureau vs. Sanjiv Chaturvedi [WPC 5521/2016, date of decision 23rd August, 2017]*** wherein the proviso to Section 24 of the RTI Act, 2005 has been interpreted and it has been held that except in the case of corruption and human rights violations, the information of these exempted organisations cannot be disclosed.

20. In ***CPIO, Directorate of Enforcement, New Delhi and Anr. vs. Mr. Bimal Kumar Bhattacharya [WPC 354/2018 dated 19th February, 2018]*** it has been held that ED is covered by Section 24 of the RTI Act, 2005. Accordingly, the information relating to FEMA violation has been outside the proviso as well. The relevant portion of the said judgment is set out below:

“6. Plainly, the impugned order cannot be sustained as it is contrary to the expressed language of Section 24(1) of the Act. Section 24(1) of the Act expressly excludes intelligence and security organizations specified in the Second Schedule of the Act from the purview of the Act. Admittedly, the Directorate of Enforcement is included in the Second Schedule to the Act and, thus, cannot be called upon to disclose information under the provisions of the Act. The



only exception carved out from the exclusionary clause of Section 24(1) of the Act relates to information pertaining to allegations of corruption and human rights violation. Undisputedly, the information sought for by the petitioner cannot be categorized as such information

*7. The aforesaid question has also been considered by a Coordinate Bench of this Court in **CPIO Intelligence Bureau v. Sanjiv Chaturvedi: 242 (2017) DLT 542**, wherein this Court held that an organisation specified in the Second Schedule of the Act was excluded from the purview of the Act.*

8. In view of the above, the petition and the pending application are allowed and the impugned order is set aside. However, it is clarified that this would not preclude the respondent from instituting any proceedings that he may be advised against M/s Thomas Cook (India) Limited, if so, entitled in law.”

21. Mr. Zoheb Hossain, Id. Counsel for the ED, fairly submits that the Division Bench of this Court had taken a different view in decision dated 22nd March, 2022 in **LPA 734/2018** titled **Union of India v. Central Information Commission & Anr., 2022/DHC/001042**. In the said judgment, the Division Bench has come to the conclusion that the non-supply of information relating to the service record could be considered as human rights violation and had, therefore, allowed the disclosure of the information by the ED under the RTI Act, 2005. Relevant portion of the said judgment reads as under:

“15. Accordingly, the issue that arises for consideration in the present case is whether the information sought for by the respondent falls within the expression ‘human rights’.



16. Though, the term ‘human rights’ has not been defined in the RTI Act, yet it has been defined in the Protection of Human Right Act, 1993 (in short ‘1993 Act’). Section 2(1)(d) of the 1993 Act provides for definition of the term ‘human rights’ which reads as under:

‘2. Definitions – (1) In this Act, unless the context otherwise requires-

Xxxx xxxx xxxx

(d) “human rights” means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India.”

17. This Court is of the opinion that the expression ‘human rights’ cannot be given a narrow or pedantic meaning. It does not refer to the rights of the accused alone. Human rights have been used for a variety of purposes, from resisting torture and arbitrary incarceration to determining the end of hunger and of medial neglect. In fact, the human rights are both progressive and transformative.

IN THE PRESENT CASE, NON-SUPPLY OF THE INFORMATION/DOCUMENTS IS A HUMAN RIGHTS VIOLATION AS IN THE ABSENCE OF THE SAME RESPONDENT NO.2 WOULD NOT BE ABLE TO AGITATE HER RIGHT TO PROMOTION.

18. It is settled law that employees have a legitimate expectation of promotion. It is not the case of the Appellant that its employees and officers cannot file legal proceedings to air their grievances with regard to service conditions and wrongful denial of promotions. The intent of service jurisprudence at the level of any



establishment/organization is to promote peace and harmony and at the level of the society, the objective is to promote human rights. If employees of an establishment cannot agitate their grievances before judicial forums, these organizations/establishments may become autocratic.

19. In fact, RTI Act is a tool which facilitates the employees and officers in airing their grievances systematically. According to Statement of Objects and Reasons, the intent and purpose of RTI Act is to secure access to information in order to promote transparency and accountability in the working of every public authority. It is said that 'Sunlight is the best disinfectant' and RTI Act promotes the said concept. Consequently, both service and RTI laws 'act like a safety valve in the society'.

20. In the opinion of this Court, the employees of a security establishment cannot be deprived of their fundamental and legal rights just because they work in an intelligence and security establishment. To hold so would amount to holding that those who serve in these organizations have no human rights.

21. Though, the Division Bench in Dr. Neelam Bhalla (supra) has stated that "...we agree with the view expressed by the learned Single Judge inasmuch as the information that was sought by the appellant/petitioner pertained to her service record which had nothing to do with any allegation of corruption or of human rights violations...", yet upon a perusal of the judgment passed by learned Single Judge (which was authored by one of us i.e., Manmohan, J), it is apparent that the Appellant-petitioner in that case had sought compensation and disciplinary action against certain Government officials for furnishing



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inaccurate and incomplete information. Consequently, the observations in the said judgment have to be read in the light of the issue that arose for consideration. Further, in Dr. Neelam Bhalla (supra), the concept of human rights was neither argued nor dealt with. Accordingly, the aforesaid judgment offers no assistance to the Appellant.

22. This Court is also not in agreement with the submission of learned counsel for the Appellant that only such information that is furnished by the exempted organization to the Government pertaining to allegations of corruption and human rights violation is to be provided.

23. It is also pertinent to mention that the respondent by way of RTI application in question is not seeking information with regard to any investigation or intelligence or covert operations carried out nationally or internationally. This Court clarifies that the respondents may be well entitled to deny information under the RTI Act, if the facts of a case so warrant.

24. Consequently in the present case, non-supply of the information/documents is a human rights violation as in the absence of the same respondent No.2 would not be able to agitate her right to promotion.”

22. This judgment was challenged in **SLP (Civil) Diary No. 5557/2023** titled **Union of India v. Central Information Commission & Anr.** The said SLP was disposed of by the Hon’ble Supreme Court vide order dated 11th April, 2023 with the following directions:

“It was the case on behalf of the appellant that the appellant/Directorate of Enforcement, being in the Second Schedule of the RTI Act, the RTI Act shall not be applicable/applied to the said Organisation. However, the High Court by the impugned



judgment and order has observed that the "information sought can be said to pertaining to the human rights violations" and therefore, Section 24 of the RTI Act shall not be applicable. Though, we do not approve the reasoning given by the High court, however, taking into consideration the fact that what was sought was the service record, namely, seniority list and copies of the proposal for promotion of the Lower Division Clerks placed before the DPC, keeping the question of law open, whether on other aspects or with respect to other information whether RTI Act shall be applicable to the appellant or not, we do not entertain the present Special Leave Petition in the peculiar facts and circumstances of the documents sought.

At the cost of repetition, it is observed that we do not approve the reasoning given by the High Court. However, still, for the reasons stated hereinabove, we refuse to entertain the present Special Leave Petition, keeping the question of law open. Pending application (s), if any, shall stand disposed of."

23. As can be seen from the above judicial precedents, the consistent view has been that the IB, ED and DRDO are considered to be exempted organizations as per Section 24 of the RTI Act, 2005. Further, the Hon'ble Supreme Court has in ***Union of India v. CIC, SLP (C) Diary No. 5557/2023*** has not approved the reasoning in ***Union of India v. CIC*** in ***LPA 734/2018***, however, the question of law has been kept open by the Hon'ble Supreme Court.

Findings

24. In ***W.P.(C) 1640/2020***, the RTI Applicant vide his RTI application dated 30th January, 2018 sought the following information/ documents:

"1. Please provide me legible photocopy of the



Recruitment Rules for the post of Assistant Enforcement officer since 1990 to till date and copy of-amendment if any thereof.

2. Copy of note sheet pages of that Recruitment Rules file, which -was put up during the process of change of Recruitment Rules for the Post of Assistant Enforcement officer where the reason for change of Recruitment Rules i.e. one set of Recruitment Rules is replaced by another one is clearly mentioned in the notes since 1990 to till date.

3. Copy of note sheet pages/correspondence pages of Recruitment Rules file, where the DOPT has accorded for the change of above said Recruitment Rules for the Post of Assistant Enforcement officer since 1990 to till date.

4. Copy of the notes sheet/correspondence pages of that Recruitment Rules file for the post of Assistant Enforcement officer where the objection was raised during the finalization of present Recruitment Rules by the DOPT/Ministry of Law.

5. Please provide me information regarding maintenance of seniority list for the Post of Assistant Enforcement officer as it is maintained on zonal level or all India level, since 1990 to till date. It essentially entails information regarding basis of promotions, as on zonal level or all India level.”

25. Considering the fact that the information requested is only about recruitment rules, thus bearing in mind the various judicial precedents, including the decision of this Court in **WP(C) 345/2018** titled **CPIO, Directorate of Enforcement v. Mr. Bimal Kumar Bhattacharya** as also the recent order of the Hon’ble Supreme Court in **SLP (Civil) Diary No. 5557/2023**, this Court is of the view that this is not a case which would



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involve any human rights violation and is accordingly not exempted by the proviso to Section 24 of the RTI Act, 2005.

26. The ED is exempted under Section 24 of the RTI Act, 2005 from disclosing the said information. Accordingly, the impugned order dated 27th November, 2019 passed by the CIC is set aside.

27. Insofar as **W.P.(C) 5588/2019** is concerned, in the opinion of this Court, the information sought in the RTI Application dated 5th April, 2017 relates to an allegation of sexual harassment by the RTI Applicant/ Respondent.

28. The Hon'ble Supreme Court has left the question of law open in the order dated 11th April 2023. Thus, the issue would have to be considered on a case to case basis.

29. In this case, the non-disclosure of information of allegations of sexual harassment, in the opinion of this Court, would fall clearly within the conspectus of human rights violations, as exempted by the proviso to Section 24 of the RTI Act, 2005. In view thereof, the ED is directed to disclose the information sought by the RTI Applicant/ Respondent within eight weeks.

30. It is clarified that this Court has not examined any allegation of sexual harassment in the present case and this order is only in respect of the information sought in the RTI Application.

31. Both the writ petitions are, accordingly, disposed of.

32. All pending applications are disposed of.

PRATHIBA M. SINGH
JUDGE

DECEMBER 12, 2023/dk/kt