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

\+ **W.P.(C) 3616/2012**

UNION OF INDIA ..... Petitioner

Through: Mr. Ruchir Mishra, Mr. Mukesh Tiwari and Ms. Ramneek Mishra, Advs.

versus

SH. O.P.NAHAR ..... Respondent

Through: Respondent in person.

\+ **W.P.(C) 405/2014**

UNION OF INDIA ..... Petitioner

Through: Mr. Ruchir Mishra, Mr. Mukesh Tiwari and Ms. Ramneek Mishra, Advs.

versus

O.P. NAHAR ..... Respondent

Through: Respondent in person.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER

<u>O R D E R</u>

% **22.04.2015**

1. These are two writ petitions placed before me. The first writ petition; being W.P.(C) No.3616/2012, assails the order dated 5.12.2011, passed by the Central Information Commission (in short the CIC). In the second writ petition, being W.P. (C) No.405/2014, a challenge has been laid to order dated 26.6.2013, passed by the CIC.

2. There are two issues which, according to the learned counsels for the parties, arise for consideration of this court. These are as follows:-

(i) Whether, the respondent, is entitled to the information sought which, essentially, pertains to his own prosecution in a criminal case lodged by the Central Bureau of Investigation (in short the CBI)?

(ii) Whether, the notification dated 9.6.2011 whereby, the CBI has been included in the second schedule to the Right to Information Act, 2005 (in short the RTI Act), will impact the applications filed by the respondent prior to the said date, i.e., on 28.02.2011 and 5.5.2011?

3. Before I proceed further, I may only indicate that the respondent had filed a third application under the RTI Act, which is, dated 26.12.2011. The respondent, who appears in person, says that he does not wish to press the application dated 26.12.2011.

4. The matter has reached this court in the background of the following facts:

4.1 The respondent, who at one time, was serving as the Chairperson of the Appellate Tribunal for Foreign Exchange (in short the Tribunal), had a criminal case registered against him by the CBI. This case was registered by the CBI, in 2007. The investigation, in this case, was carried on and, admittedly, a charge sheet was filed by the CBI, in the competent court on 20.12.2010.

4.2 I am informed by the respondent that no charges have been framed to date.

4.3 Be that as it may, on 28.2.2011, the respondent filed an application before the Central Public Information Officer (in short the CPIO) of the CBI, seeking information with regard to certain aspects. Since, information was not furnished to the respondent, the respondent preferred an application with the First Appellate Authority (in short the FAA).

4.4 On 18.4.2011, some part of the information was supplied to the respondent. The CPIO, also filed, its reply to the appeal, on 3.5.2011, which was finally disposed of by the FAA on 5.5.2011. The petitioner on that very date, filed a second application under the RTI Act. This application is also dated 5.5.2011.

4.5 The respondent, being aggrieved by the order dated 5.5.2011, passed by the FAA, decided to prefer a second appeal with the CIC. This appeal was filed on 1.6.2011. Pertinently, while the appeal was pending before the CIC, on 9.6.2011, the Government of India issued a notification whereby, CBI was placed in the second schedule of the RTI Act, as indicated above. The effect of this notification and the inclusion of the CBI in the second schedule was that it could avail of the protective shield provided by Section 24 of the RTI Act. In other words, agencies which are included in the second schedule of the RTI Act, are exempted from the provisions of the RTI. The exception of course being, qua information pertaining to allegations of corruption and human rights violation.

4.6 The CIC, vide order dated 5.12.2011 partially allowed the appeal of the respondent. The operative directions contained in the order of the CIC are as under:

> "8. In any contingency, the Commission hereby directs that the information sought by the Appellant on Query Nos.3 & 6 of his RTI Application must be provided to him free of cost within 15 days of the receipt of this Order. Since the information sought by the Appellant under Query No.1 is not maintained in its official record by the Respondent Ministry, the Commission cannot direct the Respondent to create and provide the same. However, it shall be open for the Respondent Ministry to call for such information from the CBI, in case it decides

> to complete and maintain its own official file records and if so happens, then the Appellate will be entitled to get such information under the RTI Act."

4.7 To be noted, the directions contained in paragraph 8 were passed in the context of the queries set out in the respondent's application dated 28.2.2011. The queries, which the respondent made and in respect of which he had sought information are set out in paragraph 1 of the order dated 5.12.2011, passed by the CIC. The queries, as recorded in the order, are extracted hereinafter:

> "1. The date and nature of permission sought for by the CBI in 2007 to register a criminal case against Sh. O.P. Nahar, the then Chairman ATFE, and the documents filed in support of the request.
>
> 2. Whether sought for permission is granted or declined and on what date along with reasons for such decision.
>
> 3. The notings recorded by the CVO and the Law Secretary while taking decision on the request of the CBI. Also name the final authority who took decision on the above described request and the reasons thereof.
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> 4. Any replies, if sought for from Sh. O.P. Nahar before taking the final decision then supply the comments received from him.
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> 5. Provide details of procedure adopted with documents before taking final decision on the matter.
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> 6. Did CBI request on second occasion in 2009 for the grant of permission, if yes, then supply the date and copy of the second request or otherwise the first decision is over-ruled suo moto on the same facts narrated in the CBI's request. Please supply the documents and the notings made by the CVO, the Law Secretary or any other authority functioning

> in this regard.
>
> 7. Is it a fact firstly that the 2007 request by CBI was declined but later in 2009 same request is granted without any addition of fresh factual difference or fresh request, if so, then supply the reasons recorded for change of the old decision and name the authority with their notings on what they recorded this regard".

4.8 Since directions were issued by the CIC only with regard to query Nos.1, 3 & 6, the same are set out hereinbelow:

> "1. The date and nature of permission sought for by the CBI in 2007 to register a criminal case against Shri O.P. Nahar, the then Chairman ATFE and the documents filed in support of the request..."
>
> "3. The notings recorded by the CVO and the Law Secretary while taking decision on the request of the CBI. Also name the final authority who took decision on the above described request and the reasons thereof..."
>
> "6. Did CBI request on second occasion in 2009 for the grant of permission, if yes, then supply the date and copy of the second request or otherwise the first decision is over-ruled suo moto on the same facts narrated in the CBI's request. Please supply the documents and the notings made by the CVO, the Law Secretary or any other authority functioning in this regard..."

4.9. Insofar as the second order of the CIC is concerned, which is dated 26.6.2013, the operative directions passed by the CIC are contained in paragraph 10 of the said order. For the sake of convenience, the same are extracted hereinbelow:

> "10. Having considered the submissions of the parties

> and perused the relevant documents on the file, the Commission finds that the CBI has been exempted under the provisions of the RTI Act vide Notification dated 9.6.2011 whereas the appellant's RTI application is dated 5.5.2011, which is prior to the said Notification. Therefore, the CBI was not an exempted organisation at the time of filing of the RTI application. Moreover, it has not been explained by the respondent how the disclosure of the information in the present case can impede the process of investigation or apprehension or prosecution of offenders, which is admittedly over. The Commission hereby directs the Deputy Secretary/Vig. & CPIO to provide to the appellant the documents as requested by him at Para 9 above **within two weeks** of receipt of this order."

5. The issues, therefore, in these facts, which arise for consideration, have been set out hereinabove.

6. Mr. Mishra, who appears for the CBI, says that CBI is not obliged to provide any information of the kind that CIC has directed for the reason that it is an agency which falls within the ambit of the second schedule of the RTI Act.

6.1 This apart, it is Mr. Mishra's contention that the provisions of Section 8(1)(h) of the Act clearly provides that notwithstanding anything contained in the RTI Act, there would be no obligation on the holder of information to provide such information which would impede the process of investigation or apprehension or prosecution of the offenders.

6.2 This submission is made by Mr. Mishra in support of his contention that, even if, the respondent's stand was to be accepted, that a vested right enured in his favour, on 28.2.2011, and thereafter on 5.5.2011, the said information, can be denied if, the information would "impede" investigation or apprehension or prosecution of the offender.

7. The respondent, who appears in person, says that the provision of the Act, in particular, Section 7 is indicative of the fact that the holder of the information, i.e. a public authority, is required to furnish the information within a period of 30 days. The respondent submits that the period of 30 days, in this case, was well and truly over, if one were to have regard to the date of the first application, which is, dated 28.2.2011.

8. Insofar as the second application is concerned, the period of 30 days also came to an end prior to the date of notification, which is, 9.6.2011.

9. I have heard the learned counsels for the parties. According to me, what is important is the events which occurred prior to the issuance of the notification dated 9.6.2011. Admittedly, two applications were filed by the respondent to seek information. The first application, as indicated above, is dated 28.2.2011. The second application is dated 5.5.2011.

10. I had asked Mr. Mishra as to what was the date of receipt of the application, which is dated 5.5.2011. Mr. Mishra was not able to furnish any information in that regard.

10.1 The moot point, which has been raised in the second petition, is whether notification dated 9.6.2011, will apply, to an application filed prior to that date. The said aspect should have, therefore, been adverted to by the petitioner in, at least, the second writ petition. Therefore, it will have to be presumed, at this juncture, that the application was received by the petitioner herein on 5.5.2011.

11. Having regard to the provisions of Section 7 of the RTI, it was incumbent upon the petitioner to furnish the information sought, if otherwise permissible, under the provisions of the RTI Act, within 30 days of the

receipt of the application. The information having not been supplied, a vested right accrued in favour of the respondent after the completion of the 30 days and, therefore, notification dated 9.6.2011 insofar as the respondent is concerned, in my view cannot come in his way. Therefore, this would be the position not only vis-a-vis the application dated 28.02.2011 but also qua application dated 05.05.2011.

12. This brings me to the other question, which is: whether the petitioner can take recourse to the provisions of Section 8(1)(h) of the Act to deny information to the respondent. The relevant provisions of Section 8(1)(h) of the RTI Act read as follows:-

> "8. **Exemption from disclosure of information**. — (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,—
> ...
> (h) information which would **impede** the process of investigation or apprehension or prosecution of offenders;
>
> (emphasis is mine)

13. A careful reading of the provision would show that the holder of the information can only withhold the information if, it is able to demonstrate that the information would **"impede"** the process of investigation or apprehension or prosecution of the offenders.

14. In the present case, the facts, as set out hereinabove, clearly demonstrate that the investigation is over. The charge sheet in the case was filed, as far back as on 31.12.2010.

14.1 The question then is, would the information sought for by the respondent "***impede***" the respondent's apprehension or prosecution. The respondent is in court and he says that he has been granted bail by the competent court. Therefore, *prima faice,* the view of the competent court, which is trying him, is that there is no impediment in apprehending the respondent, and that he would be available as and when required by the court. The petition makes no averments as to how the information sought for by the respondent would prevent his prosecution.

14.2 In that view of the matter, according to me the provisions of Section 8(1)(h) of the RTI Act will not help the cause of the petitioner. Accordingly, the information, as directed by the CIC, will have to be supplied to the respondent. It so ordered. In support of this proposition, I may only advert to the following judgments of this Court (See ***Bhagat Singh v. Chief Information Commissioner [2008 (100) DRJ 63]; B.S. Mathur v. Public Information Officer of Delhi High Court [180 (2011) DLT 303]; Adesh Kumar v. Union of India and Ors. [216 (2015) DLT 230]; Director of Income Tax (Investigation) and Anr. v. Bhagat Singh and Anr. [(2008) 168 TAXMAN 190 (Delhi)]; Sudhir Ranjan Senapati v. Addl. Commissioner of Income Tax,*** W.P.(C) 7048/2011 dated 5.3.2013***;*** and ***Pradeep Singh Jadon v. UOI,*** W.P.(C) 7863/2013 dated 2.2.2015, which have taken similar view on this issue.

15. The petitioner will comply with the order of the CIC.

16. The writ petitions are dismissed accordingly. Parties are, however, left to bear their own costs.

RAJIV SHAKDHER, J

APRIL 22, 2015

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