

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

% **Date of decision: 1st April, 2016.**

+ **W.P.(C) No.2822/2014 & CM No.5849/2014 (for stay)**

UNION OF INDIA & ANR.

..... Petitioner

Through: Mr. Anil Soni with Mr. Naginder
Benipal, Advs.

Versus

SUHAS CHAKMA & ANR.

..... Respondents

Through: Mr. Nitesh Kumar Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This petition under Article 226 of the Constitution of India impugns the order dated 1st December, 2009 of the Central Information Commission (CIC) constituted under the Right to Information Act, 2005 (RTI Act) directing the Ministry of External Affairs (MEA), Union of India to disclose to the respondent No.1 information seeker information which according to the petitioners is exempted from disclosure under Section 8(1)(f) of the Act.

2. It is the case of the petitioners:

(i) that the respondent No.1 information seeker vide application dated 6th February, 2009 sought information from the Central Public Information Officer (CPIO) of MEA, (1) whether a Commission Rogatoire had been received from Mr. Marc Tappolet, Judge

d'instruction, Geneva Canton, Switzerland; (2) copy of the Commission Rogatoire; and, (3) action taken on the Commission Rogatoire;

(ii) that the information was denied seeking exemption under Section 8(1)(a) & (f) of the RTI Act;

(iii) that being dissatisfied, the respondent No.1 information seeker filed an appeal on 17th March, 2009 with the Appellate Authority;

(iv) that the First Appellate Authority vide order dated 28th April, 2009 upheld the decision of the CPIO and dismissed the appeal reasoning that the information is also exempted from disclosure under Section 8(1)(j) of the RTI Act;

(v) that the respondent No.1 information seeker by way of second appeal approached the CIC which, vide the impugned order dated 1st December, 2009 allowed the appeal and directed the petitioner to supply the information;

(vi) that the petitioners vide their letter dated 21st December, 2009 informed the respondent No.1 information seeker that MEA had received a Note Verbale from the Embassy of Switzerland in New Delhi for investigation into the case of "Mr. Nair and forwarding a

copy of the Note Verbale available with the Ministry and informing that the other information was available with the Ministry of Home Affairs”;

(vii) that the Ministry of Home Affairs (MHA) vide its letter dated 4th January, 2010 to the respondent No.1 information seeker further informed that after consideration of the Letter Rogatoire / Note Verbale, the Interpol Wing of Central Bureau of Investigation (CBI) had been directed to get the same executed through Anti-Corruption Branch of CBI, Delhi and as per the information available with Legal Cell, CBI had already forwarded the report to MEA for onward transmission to the requesting country;

(viii) that the respondent No.1 information seeker applied to the CIC under Section 19 of the Act averring non-compliance of the order dated 1st December, 2009;

(ix) that the CIC vide its order dated 24th June, 2010 observed that though information against queries No.1 & 3 had been supplied but information against query No.2 being sensitive, need not be given to the respondent No.1 information seeker;

(x) that the respondent No.1 information seeker aggrieved therefrom filed W.P.(C) No.5086/2010 which was allowed merely on the ground that the CIC had no power to review its decision dated 1st December, 2009 and the order dated 24th June, 2010 of CIC quashed.

Hence, the need to challenge the order dated 1st December, 2009.

3. The petition came up before this Court first on 5th May, 2014 when while issuing notice thereof, considering the fact that the CIC itself had in the order dated 24th June, 2010 agreed that the information earlier directed to be disclosed was sensitive and would give an opportunity to the accused to influence and manipulate the outcome of the investigation by destroying and distorting evidence and was required to be protected by the Mutual Legal Assistance Treaty (MLAT) executed between India and Switzerland, the disclosure of further information in pursuance to the order dated 1st December, 2009 was stayed. The counsel for the respondent no.1 appeared and though sought time to file counter affidavit but no counter affidavit has been filed. The counsels were heard and order reserved on 9th October, 2015.

4. The counsel for the petitioner, during the hearing reiterated the case as set out in the petition and drew attention to the MLAT between India and Switzerland, Annexure-P8 to the petition. No substantial argument was urged by the counsel for the respondent no.1. The respondent no.2 Ms. Nitaly Dewan is the wife of the respondent no.2 but the reason for her impleadment as respondent nowhere disclosed.

5. CIC in its order dated 24th June, 2010 on the application of the respondent no.1 under Section 19 of the RTI Act reviewed / modified its earlier order dated 1st December, 2009 reasoning:

- (i) that at the time of passing of the order dated 1st December, 2009 only the Ministry of External Affairs (MEA) was heard and not the Ministry of Home Affairs (MHA);
- (ii) that the MHA had given some insight into the particulars of the pending investigation against Mr. Ravi Nair and also explained its role under Section 166B of the Code of Criminal Procedure, 1973 (Cr.P.C.);
- (iii) that under Section 166B Cr.P.C. and the Allocation of Business Rules, 1961, IS-II Division in the MHA is assigned the function

and handles the issues related to Letter of Request received from a foreign country for execution;

- (iv) that MHA, on earlier occasion, had not been informed of the information sought by the respondent no.1 from the MEA and the orders thereon;
- (v) that MHA had explained that India does not have a full fledged treaty but a limited agreement on mutual cooperation by way of exchange of letters with Switzerland;
- (vi) that the Government of India is only custodian of the information till the same is executed or returned but the information is not under the control of the MHA;
- (vii) that as per treaties and diplomatic conventions all matters relating to mutual legal assistance in criminal matters are treated as confidential;
- (ix) that by the Letter Rogatoire, the Swiss Court was seeking to participate in investigation as going on in the Indian Court against Mr. Ravi Nair;

- (x) that the MLAT between Indian and Swiss Governments contains the confidential clause as also the “Assurance of Reciprocity”;
- (xi) that the only remaining information being the copy of the Commission Rogatoire is exempt from disclosure because of the nature of its contents;
- (xii) that the original file had been produced before the CIC and perusal of its contents showed the documents to be sensitive in nature, disclosure whereof may indeed hamper the progress of the case filed by the CBI against Mr. Ravi Nair;
- (xiii) that the investigation at the CBI Court was pending and yet to attain finality;
- (xiv) that disclosure of sensitive information relating to charges, grounds for framing charges etc. against the accused pose a risk of hampering the progress of the case and may enable the accused to influence and / or manipulate the outcome of the investigation by destroying and / or distorting evidence against him; and,

(xv) hence copy of Rogatoire need not be furnished under Section 8(1)(h) of the RTI Act.

6. The counsel for the respondent no.1 as aforesaid could not dent the reasoning given in the order dated 24th June, 2010 of the CIC.

7. This Court in order dated 18th November, 2011 in W.P.(C) No.5086/2010 earlier filed by the respondent no.1 set aside the order dated 24th June, 2010 merely on the ground of CIC not having power to review and not on merits.

8. I am satisfied that a ground for setting aside the order dated 1st December, 2009 directing disclosure of remaining information is made out.

9. The petition is accordingly allowed.

10. The order dated 1st December, 2009 of CIC is quashed.

No costs.

RAJIV SAHAI ENDLAW, J.

APRIL 01, 2016

‘bs/gsr’