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

+ W.P.(C) 8393/2016 & CM No. 34715/2016

PRESIDENT'S SECRETARIAT

..... Petitioner

Through: Mr Jasmeet Singh, Advocate.

versus

SUBHASH CHANDRA AGARWAL

..... Respondent

Through: Mr Amit Khemka and Ms Nidhi
Bhuwania, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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31.01.2018

VIBHU BAKHRU, J

1. The petitioner has filed the present petition, *inter alia*, impugning an order dated 11.05.2016 (hereafter 'the impugned order') passed by the Central Information Commissioner (hereafter 'the CIC') allowing the respondent's second appeal under Section 19(3) of the Right to Information Act, 2005 (hereafter 'the Act'). The controversy involved in the present petition relates to two queries raised by the respondent in his application dated 16.04.2014 filed under the Act. The said queries are reproduced below:-

“(4) Did President's Secretariat and/or others raise security and/or others concerned on allowing

residential complex at the mentioned plot in Diplomatic Enclave (New Delhi) as also referred in enclosed new-reports and letters of Dr. Subramanian swamy?

- (5) Complete information on President's Secretariat and/or others raising security and/or other concerns as referred in query above, enclosing also copies of all correspondence/file notings/documents in this regard."

2. The Public Information Officer ('PIO') of the petitioner declined to provide any information as to the aforesaid queries and responded that "*the requested information cannot be shared as organizations under Section 24(1) of the RTI Act, 2005 are involved*".

3. Aggrieved by the aforesaid response, the respondent preferred an appeal before the First Appellate Authority (hereafter 'the FAA'), under Section 19 of the Act. The said appeal was also rejected by an order dated 03.06.2014, whereby the FAA held that "*with regard to query nos.4 & 5, the appellant is informed that his contention regarding Section 24(1) of the RTI Act, 2005 cannot be applicable in this case and the reply of CPIO, President's Secretariat is found to be in order.*"

4. Aggrieved by the same, the respondent preferred a Second Appeal under Section 19(3) of the Act, which was allowed by the impugned order.

5. Before proceeding further, it is necessary to refer to the context in which the respondent had sought the information under the Act. A

newspaper report captioned “*Row heightens as Swamy seeks probe into high-rise plan near Rashtrapati Bhavan*” was published in a national newspaper – The Hindu – on 05.03.2014.

6. The said report indicates that there were allegations that the private company owned by M/s DLF had acquired a plot of land measuring approximately 23 acres near the Rashtrapati Bhavan and was proposing to build luxury apartments on the said plot. It was reported that the said property had been sold for an amount, which was allegedly less than the market price. It is further reported that there were allegations that the promoters of the private company were keen on increasing the current height of construction from the permitted four storeys (30 metres to eight storeys), despite the concerns of a possible security breach of the Rashtrapati Bhavan.

7. It was stated that initially permission to construct apartments on the said plot had been denied but the matter was subsequently agitated before a Division Bench of this Court and it was reported that this Court had held that the master plan permits residential use of the land and there were many other residential premises in the vicinity.

8. Mr Khemka, the learned counsel appearing for the respondent contended that a plain reading of the newspaper report indicated that the issues sought to be raised were related to allegations of corruption and therefore the information sought by the respondent fell outside the scope of Section 24(1) of the Act.

9. Mr Singh, the learned counsel for the petitioner contended that it was an admitted case that President Secretariat had raised security

concerns. However, the said concerns could not be shared with the respondent as it involved information received from the Intelligence Bureau (IB), which was an organization listed in the Second Schedule to the Act. He contended that in terms of Section 24(1) of the Act, any information received from an organization listed in the Second Schedule was outside the purview of the Act.

10. Mr Singh further contended that the allegation of corruption as discernable from the newspaper report in question, only pertained to sale of land below the market rate and did not relate to any security concerns.

11. I have heard the learned counsel for the parties.

12. A plain reading of the response of the PIO of the petitioner indicates that he had even declined to provide the information (which now Mr Singh states is admitted) that the President Secretariat had raised concerns regarding allowing of residential complex as mentioned in the newspaper report. Concededly, there was no plausible reason for the PIO of the petitioner to have declined providing this information in response to the information sought in query no.4 (quoted above).

13. The next question that arises is whether further information regarding the concerns raised by the petitioner could be shared with the respondent.

14. It is seen that the exclusionary clause of Section 24(1) of the Act has limited application insofar as the petition is concerned. In terms of Section 24(1) of the Act, information submitted by certain

intelligence and security organizations to the Government is exempt from disclosure. Therefore, the petitioner could claim exemption only with regard to information that it had received from a security organization - in this case the IB - and not in respect of any other information including the concerns raised by the President's Secretariat.

15. It is also relevant to state that even the information, which a Public Authority has received from security agencies is required to be disclosed to an information seeker if it pertains to allegations of corruption or violations of human rights.

16. In view of the above, the question that follows is whether the information sought by the respondent pertains to allegations of corruption.

17. It is seen that the impugned order does not reflect that this aspect was considered by the CIC. The impugned order is bereft of any reasoning as it merely states that the information is not exempt under Section 24(1) of the Act.

18. It does not appear that the petitioner had advanced any contention that the information regarding the security concerns did not pertain to the allegations of corruption and perhaps this is the reason why this issue has not been considered by the CIC.

19. In this view, the impugned order is set aside. The present petition and the pending application are disposed of with the following directions:-

a) The petitioner shall disclose the relevant information in response to the query nos.4 & 5 as submitted by the respondent except to the extent that such information has been received from security/intelligence agencies as included in the second schedule to the Act;

b) The CIC shall examine whether the information received by the petitioner from security agencies pertains to allegations of corruption as is contended by the respondent; and

c) The CIC shall pass a reasoned order as expeditiously as possible and preferably within a period of six months from today.

20. The parties are left to bear their own costs.

JANUARY 31, 2018
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VIBHU BAKHRU, J