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

Decided on: 26.2.2018

+ W.P.(C) 1803/2018 & CM No.7410/2018

UNION OF INDIA. Petitioner

Through : Mr. R.V. Sinha and
Mr. A.S. Singh, Advs.

versus

MANJIT SINGH BALI Respondent

Through : None.

CORAM: -

HON'BLE MR. JUSTICE RAJIV SHAKDHER

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RAJIV SHAKDHER, J. (ORAL)

1. Mr. Sinha, who appears for the petitioner, assails the order of the Central Information Commission (in short "CIC") to the extent that the Department of Post (in short "DOP") has been directed to furnish to the respondent, copies of the file notings/correspondence relating to sanction accorded qua his prosecution.

2. Mr. Sinha says that insofar as the order according sanction for prosecution is concerned, the same was already furnished to the respondent.

3. A perusal of the order passed by the CPIO would show that the defence taken by the petitioner to deny access to the documents, information and/ or correspondence with the CBI was that it would impede the prosecution/departmental action contemplated against the respondent.

3.1 However, the records show that the First Appellate Authority while dismissing the appeal of the respondent, has ordered despatch of notings and/ or information available with the petitioner to CBI, ACB, Mumbai by taking recourse to Section 6 of the Right to Information Act, 2005.

3.2 The First Appellate Authority, thus, put the ball in CBI's court as to whether or not information ought to be given. In effect, the First Appellate Authority, has put the onus on the respondent to approach CBI to seek the information for which it had approached the DOP in the first instance.

3.3 This step has been taken, according to Mr. Sinha, in consonance with the provisions of Section 11 of the RTI Act, 2005 (here after "RTI Act"). *Prima facie* the method adopted by the First Appellate Authority does not appear to be in order. Instead of deciding the appeal of the appellant i.e., the respondent herein, DOP has washed its hands by despatching the information/correspondence available with it to CBI.

3.4 To my mind, *prima facie*, Section 6 of the RTI Act would have no applicability. This provision enables the Public Authority to transfer the application seeking information to another public authority if information is held by such authority or to such public authority with which the subject matter qua which information is sought is more closely connected. The information in this case was, in fact, held by DOP. The DOP, it appears, has used the device of despatching the information available with it to CBI to lend impregnability to the stand taken by it, which is, that the information cannot

be accessed by the respondent.

3.5 Likewise, Section 11 of RTI Act has been erroneously taken recourse to, in the facts of this case, for the following reasons. First, CBI is not a third party. It is a part of Union of India, that is, the petitioner herein. DOP and CBI are two authorities amongst many others which are housed under the umbrella of Union of India. Second, the petitioner, if it wanted to treat the information as third party information, it was required to issue notice to CBI. If upon receipt of notice, had CBI taken an objection to the release of information, the petitioner would then have had to take a decision bearing mind the mandate of the first proviso to Section 11, which requires it to ascertain as to whether public interest in disclosure outweighs any possible harm to the interest of CBI. In my view, the language of Section 11 is suggestive of the fact that CBI does not fall within its ambit. This is so as CBI has a protective shield around it in the form of Section 24 of the RTI Act. The legislative shield engrafted in Section 24 has certain exceptions which I need not deliberate upon, presently.

3.6 The principal defence which was taken by the DOP before CPIO rested on the provisions of Section 8(1)(h) of the RTI Act. For this provision to apply, as has been held by this court in several judgments, the onus would be on the concerned public authority to show as to how prosecution would get impeded if the information sought for is furnished. Mere replication of the words of Section 8(1)(h) in its defence statement would not suffice. Reference in this behalf can be

made to the following judgments of the Delhi High Court: *Sudhirranjan Senapati, Addl Commissioner of IT v. UOI*, W.P.(C) No.7048/2011; *Bhagat Singh v. Chief Information Commissioner and Ors.*, W.P.(C) No.3114/2007; *B.S. Mathur vs. Public Information Officer of Delhi High Court*, W.P.(C) No.295/2011; and *Union of India vs. O.P. Nahar*, W.P.(C) No.3616/2012.

3.7. Moreover, Mr. Sinha is unable to tell me at this juncture as to whether a charge sheet has been filed by CBI in the concerned court.

3.8 Therefore, no case for stay is made out. The application is, accordingly, dismissed.

4. Since, the petitioner desires a detailed ruling on the matter, issue notice to the respondents, counter affidavit, if any, be filed before the next date of hearing.

4.1 Renotify the matter on 25.7.2018

5. *Dasti.*

**RAJIV SHAKDHER
(JUDGE)**

FEBRUARY 26, 2018
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