

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 16.01.2019

+ **W.P.(C) 9773/2018**

EHTESHAM QUTUBUDDIN SIDDIQUE

..... Petitioner

versus

CPIO, INTELLIGENCE BUREAU

..... Respondent

Advocates who appeared in this case:

For the Petitioners: Mr Arpit Bhargava, Advocate with Mr Varun Tazwar.

For the Respondents: Mr Rahul Sharma, Mr C.K. Bhatt, Advocates for Intelligence Bureau Government of India.

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HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner has filed the present petition under Article 226 of the Constitution of India, *inter alia*, impugning the order dated 26.03.2018 (hereafter 'the impugned order') passed by the Central Information Commission (hereafter 'CIC').

2. By the impugned order, the CIC rejected the second appeal preferred by the petitioner under Section 19(3) of the Right to Information Act, 2005 (hereafter 'the RTI Act'). The petitioner had sought information

from the Intelligence Bureau (hereafter 'IB'), which was denied on the ground that the IB is excluded from the purview of the RTI Act and the information sought by the petitioner does not relate to allegations of human rights violation or corruption.

3. The petitioner disputes the above and claims that the information sought by him relates to allegations of human rights violation. Thus, the controversy to be addressed is whether the information sought by the petitioner relates to allegation of violation of human rights.

Factual Background

4. In July 2006, the petitioner was arrested in relation to Mumbai Train Blast case, which happened on 11.07.2006 (commonly known as 7/11 blast case) by the Anti Terrorism squad, Mumbai.

5. In September 2008, members of an organisation referred to as Indian Mujahideen were arrested by the Mumbai Crime Branch (DCB-CID) for their involvement in various bomb blasts cases viz. Ahmedabad blast in 2008; Delhi blast in 2008; and Hyderabad blast in 2007. The petitioner states that during investigation by various agencies, it was revealed that members of Indian Mujahideen were also involved in the case of the Mumbai Train Blast (hereafter 'the 7/11 blast case').

6. The petitioner claims that the IB collected information about the involvement of Indian Mujahideen from various agencies and prepared a report and placed it before the Home Minister in the year 2009, suggesting review of the evidence in the 7/11 blast case. It is suggested that the said

report indicated that Indian Mujahideen and not the earlier accused (including the petitioner) were responsible for the blasts in the Mumbai Trains on 7th July 2006.

7. The petitioner was tried in the 7/11 blast case and was convicted by a judgment dated 30.09.2015 rendered by Special Maharashtra Control of Organised Crime Act (MCOCA) Court. The petitioner states that the said decision is pending confirmation before the Bombay High Court.

8. On 04.09.2017, the petitioner filed an application under Section 6(1) of the RTI Act before the Central Public Information Officer (CPIO), Intelligence Bureau, Ministry of Home Affairs seeking true copy of the IB report, which was placed before the Ministry of Home Affairs in the year 2009 for review/re-appreciation of evidence in the 7/11 blast case.

9. On 21.09.2017, the concerned CPIO rejected the application and denied the information as sought by the petitioner on the ground that by virtue of Section 24(1) of the RTI Act, IB (the Intelligence Bureau) is excluded from the purview of the RTI Act.

10. Aggrieved by the aforesaid reply of the CPIO, on 23.10.2017, the petitioner filed an appeal under Section 19(1) of the RTI Act before the First Appellate Authority (FAA) seeking the IB report. In his appeal, the petitioner claimed that Section 24(1) of the RTI Act was inapplicable in the present case as it fell within the exceptions carved out under Section 24(1) of the RTI Act: that are, (i) violation of human rights; and (ii) allegation of corruption.

11. The petitioner also relied on the judgment dated 23.08.2017 passed by a Coordinate Bench of this Court in ***CPIO, Intelligence Bureau v. Sanjiv Chaturvedi: W.P.(C) 5521/2016*** in support of his contention that the information sought by it was not excluded from the scope of Section 24 of the RTI Act.

12. By an order dated 15.11.2017, the FAA upheld the decision of the CPIO rejecting the petitioner's request for the information on the ground that IB was excluded from the scope of the RTI by virtue of Section 24 of the Act. The petitioner preferred a second appeal before the CIC under Section 19(3) of the RTI Act. The said appeal was rejected by the impugned order.

Submissions

13. Mr Bhargava, the learned counsel appearing for the petitioner contended that the information sought for by the petitioner pertains to violation of human rights. He contended that it was petitioner's case that he had been falsely implicated in the 7/11 blast case by fabrication of evidence and was awarded the capital punishment on the basis of false and fabricated evidence. According to him, this would clearly fall within the scope of human rights violation. He also referred to the decision of the Division Bench of the Madras High Court in ***V. Vidya v. The State Information Commissioner, Tamil Nadu Information Commission: W.A. 857/2017, decided on 14.12.2017*** in support of this contention.

Reasons and Conclusion

14. Section 24(1) of the RTI Act expressly provides that nothing contained in the Act shall apply to Intelligence and Security organisations specified in the Second Schedule. The first proviso to Section 24(1) carves out an exception in respect of information pertaining to allegations of corruption and human rights violation. Such information is not excluded under Section 24(1) of the Act. The second proviso to Section 24(1) further provides that information in respect of allegations of violation of human rights would be provided only after the approval of the CIC. Section 24(1) of the RTI Act is set out below:-

“24. Act not to apply to certain organizations.—

(1) Nothing contained in this Act shall apply to the intelligence and security organisations specified in the Second Schedule, being organisations established by the Central Government or any information furnished by such organisations to that Government:

Provided that the information pertaining to the allegations of corruption and human rights violations shall not be excluded under this sub-section:

Provided further that in the case of information sought for is in respect of allegations of violation of human rights, the information shall only be provided after the approval of the Central Information Commission, and notwithstanding anything contained in Section 7, such information shall be provided within forty-five days from the date of the receipt of request.

15. The expression ‘human rights’ is not defined in the RTI Act. However, the said expression is defined under Section 2(1)(d) of the Protection of Human Rights Act, 1993, which reads as under:-

“2. Definitions. —

(1) In this Act, unless the context otherwise requires,—

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(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;

16. The expression ‘human rights’ can also be understood with reference to the Universal Declaration of Human Rights that was proclaimed in Paris on 10.12.1948 by the United Nations General Assembly. The said declaration is universally accepted as setting out fundamental inalienable rights, which require to be protected. Article 3 and Article 10 of the said Declaration are relevant in the context of the present petition and are set out below:-

“Article 3

Everyone has the right to life, liberty and security of person.

Article 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.”

17. In the present case, the petitioner’s allegation is that he has been implicated by false evidence and that the report placed before the Home

Ministry does contain material that would establish that the petitioner is innocent of the offence for which the petitioner has been tried and convicted.

18. There can be no dispute that the human rights would include life and liberty. It is the petitioner's case that he is deprived of his liberty on the basis of false evidence and the information available in the report placed before the Home Minister would indicate the same.

19. In view of the above, there can be little doubt that the petitioner's application seeking review report does pertain to an allegation of human rights violation. The gravamen of his allegation is that he has been falsely implicated by the respondent despite the respondent having information that the petitioner was not involved in 7/11 blast case.

20. The CIC has held that the query raised by the petitioner failed to satisfy either of the essential preconditions of being related to allegations of corruption or human rights violation. This Court is of the view that the said conclusion is erroneous, as the information does relate to violation of human rights.

21. It is also necessary to observe that in terms of second proviso to Section 24(1) of the RTI Act, the information sought for by the petitioner can be provided to him only on the approval of the CIC. Clearly, the CIC would have to examine whether such information is relevant and material. If the CIC on examination of the material finds that it is not so, the approval for disclosure of such information would not be granted.

22. In addition to the above, it is also necessary to observe that merely because such information regarding allegations of corruption and human rights violation is not excluded from the purview of Section 24(1) of the Act, does not necessarily mean that the said information is require to be disclosed. The only import of second proviso to Section 24(1) is that information relating to corruption and human rights violation would fall within the scope of the RTI Act. Section 8 of the RTI Act provides for certain exemptions from disclosure of information and the said provisions would be equally applicable to information pertaining to allegations of corruption and human rights violation. Thus, the concerned authorities would have to examine whether the information sought for by the petitioner is otherwise exempt from such disclosure by virtue of Section 8 of the RTI Act.

23. In view of the above, the impugned order is set aside and the matter is remanded to the CIC to consider afresh having regard to the observations made in this order.

24. The petition is disposed of in the above terms.

VIBHU BAKHRU, J

JANUARY 16, 2019

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