



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.12.2021

CORAM :

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.37231 of 2016

Gulab Singh Rana,
Roll No. 14083
General Manager,
Indian Overseas Bank,
Central Office,
763, Anna Salai,
Chennai - 600 002.

...Petitioner

Vs.

1. The Central Public Information Officer,
Indian Overseas Bank,
Central Office, #763, Anna Salai,
Chennai - 600 002.
2. The First Appellate Authority cum General Manager,
Law Department, (RTI Cell)
Indian Overseas Bank,
Central Office,
#763, Anna Salai,
Chennai - 600 002
3. The Central Bureau of Investigation
Rep. by the Head of the Branch,
Bank Securities & Fraud Cell,
5th Floor, CBI Head Quarters,
5-B, CGO Complex, Lodhi Road,
New Delhi - 110 003
4. The Central Information Commission
Rep. by its Registrar,
Room No. 306, 3rd Floor,
"B" Wing, August Kranti Bhavan,
Bhikaji Cama Place,
Old JNU Campus,
New Delhi - 110 066

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the 4th respondent in Second Appeal No. SA/ UG/ 15/ f9219ydtm in File No.CIC/SH/A/2015/001081 dated, 21.7.2016 and to quash the same consequently, direct the



1st and 3rd respondents to provide the point-wise information sought for by the petitioner vide, RTI Application dated, 30.9.2014.

WEB COPY

For Petitioner : Mr.S.Sathiaseelan

For R1 and R2 : Mr.R.Manimuthu

For R3 : Mr.K.Srinivasan
Special Public Prosecutor [For CBI]

For R4 : Mr.K.Venkataswamy Babu
Central Government Standing Counsel

O R D E R

The writ on hand has been instituted, questioning the legality of the findings arrived by the 4th respondent/The Central Information Commission in order 21.07.2016 and to direct the respondents 1 and 3 to provide point wise information sought for by the petitioner vide Right to Information Act (RTI Act, 2005) application dated 30.09.2014.

2. The petitioner was working as General Manager, in Marketing Department, Indian Overseas Bank (IOB), Central Office at Chennai. The Central Bureau of Investigation (CBI), Bank Securities and Fraud Cell at New Delhi, has registered an F.I.R on 23.02.2012 and arrayed the petitioner as accused No.12 for the alleged offences under Section 120B read with 420, 467, 468 and 471 of I.P.C and under Section 13 (2) read with 13 (1) (d) of the Prevention of Corruption Act, 1988.

3. The petitioner approached the Central Public Information Officer of the Indian Overseas Bank (IOB), Central Office at Chennai under Right to Information Act, 2005 vide an application dated 30.09.2014, seeking the following informations namely:

"1. Copy of request letter received from CBI for seeking sanction for any prosecution.

2. Copy of internal office memorandum containing the opinion/views of my Disciplinary Authority for giving sanction for my prosecution based upon my reply date 01.12.2012 to the first explanation letter dated 18.10.2012 issued to me.

3. Copy of first advice given by CVC, New Delhi.

4. The outcome of the reconciliatory meeting between my Disciplinary Authority and CBI called by Central Vigilance Commissioner at the office of CVC, New Delhi.

5. The copy of any further clarification sought



7. Relying on the said proviso clause, the learned counsel for the petitioner reiterated that in the case of the petitioner, the investigations were completed during the relevant point of time and even charge sheet was filed. In view of certain discrepancy, the petitioner submitted an application seeking informations, which all are vital to defend this case. Thus, the denial of right of information under the Act is unlawful and not in consonance with the provisions of the Act.

8. The learned counsel for the petitioner is of an opinion that there is no reason to deny point wise informations and documents sought for by the petitioner. The information cannot be construed as confidential and more so, investigations were completed and charge sheet laid before the Competent Criminal Court of Law. Thus, the decisions taken by the Public Information Officer/1st Appellate Authority and Central Information Commission are perverse and liable to be set aside.

9. The learned counsel for the petitioner relied on various judgments to convince that information sought for should be provided and in the present case, the petitioner is entitled for the informations. In the case of Bhagat Singh Vs. Chief Information Commissioner and Others reported in 2008 (100) DRJ 63, the Delhi High Court held as follows:

"13. Access to information, under Section 3 of the Act, is the rule and exemptions under Section 8, the exception. Section 8 being a restriction on this fundamental right, must therefore be strictly construed. It should not be interpreted in manner as to shadow the very right itself. Under Section 8, exemption from releasing information is granted if it would impede the process of investigation or the prosecution of the offenders. It is apparent that the mere existence of an investigation process cannot be a ground for refusal of the information; the authority withholding information must show satisfactory reasons as to why the release of such information would hamper the investigation process. Such reasons should be germane, and the opinion of the process being hampered should be reasonable and based on some material. Sans this consideration, Section 8 (1) (h) and other such provisions would become the haven for dodging demands for information.

14. A rights based enactment is akin to a welfare measure, like the Act, should receive a liberal interpretation. The contextual background and history of the Act is such that the exemptions, outlined in Section 8, relieving the authorities from the obligation to provide information, constitute restrictions on the exercise of the rights provided by



WEB COPY

has been undertaken during last four years by the Director of Income Tax (Investigation). In fact proceedings before the said Director have drawn to a close and the matter is now with the ITO i.e. the Assessing Officer. Under [Section 8\(1\)\(h\)](#) information can be withheld if it would impede investigation, apprehension or prosecution of offenders. It is for the appellant to show how and why investigation will be impeded by disclosing information to the appellant. General statements are not enough. Apprehension should be based on some ground or reason. Information has been sought for by the complainant and not the assessee. Nature of information is not such which interferes with the investigation or helps the assessee. Information may help the respondent No. 1 from absolving himself in the criminal trial. It appears that the appellant has held back information and delaying the proceedings for which the respondent No. 1 felt aggrieved and filed the aforesaid writ petition in this Court. We also find no reason as to why the aforesaid information should not be supplied to the respondent No. 1. In the grounds of appeal, it is stated that the appellant is ready and willing to disclose all the records once the same is summoned by the criminal court where proceedings under [Section 498A](#) of the Indian Penal Code are pending. If that is the stand of the appellant, we find no reason as to why the aforesaid information cannot be furnished at this stage as the investigation process is not going to be hampered in any manner and particularly in view of the fact that such information is being furnished only after the investigation process is complete as far as Director of Income Tax (Investigation) is concerned. It has not been explained in what manner and how information asked for and directed will hamper the assessment proceedings."

11. In the case of Secretary to Government and others Vs. S.Suresh Babu and others, reported in 2010 (3) CTC 742, the Hon'ble High Court of Madras held as follows:

"2.By the impugned order, the Commission held that the Home Department of the State Government cannot deny information sought for by respondents 1 to 3 and that protections claimed by virtue of exemption under Section 8(h) of the Right to Information Act (for short RTI Act) will not apply to the petitioner department. The Writ Petition was admitted on 20.4.2007 and an interim order was granted. Subsequently when the matter came up on 23.12.2009, at the instance of the learned Government Pleader, the Writ Petition was permitted to



WEB COPY

be withdrawn. Accordingly it was dismissed as withdrawn. Thereafter, the State Government filed a Review Application in Review Application No. 37 of 2010. After due notice to the parties, the Review Application was allowed by an order, dated 17.3.2010 and the Writ Petition was restored.

8. Throughout the case, the petitioner only relied upon the exemption granted under Section 8(h) of the Act, which reads as follows:

"8(h) information which would impede the process of investigation or apprehension or prosecution of offenders;"

During the course of argument, learned Advocate General also placed reliance upon Section 8(e) which reads as follows:

"8(e) information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;"

14. It is not as if the official correspondence between the Police Department and the Government took place on the basis of fiduciary relationship. But they are the official correspondence between two departments. In so far as Section 8(h) is concerned, exemption is available only when it is considered to be impediment in the process of investigation or apprehension or prosecution of offenders. In the present case, the information is about derailment of the prosecution by the police. Therefore pressing into service Section 8(h) will not arise.

15. Even Section 24 of the RTI Act provides immunity to certain organisations set up by the State Government. Section 24(4) reads as follows:

"24(4) Nothing contained in this Act shall apply to such intelligence and security organisation being organisations established by the State Government, as that Government may, from time to time, by notification in the Official Gazette, specify:

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 State 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."

16. By virtue of power vested under Section 24, the State Government has issued G.O.Ms. No. 158, P & AR Department, dated 26.8.2008 exempting only the Tamil Nadu State Vigilance Commission and Directorate of Vigilance and Anti-Corruption. Even in such cases, as per the First Proviso, notwithstanding such exemption, there is no immunity if informations are sought for on the allegations of corruption and human rights violation and which information can never be excluded from the public purview.

17. That question came up for consideration before this Court in Superintendent of Police, Central Range, Office of the Directorate of Vigilance and Anti-Corruption, Chennai-600 028 v. R. Karthikeyan and others, W.P. No. 23507 and 23508 of 2009, dated 12.1.2010. In paragraph Nos. 11 to 14, this Court held as follows:

"11. He also submitted that when the said G.O. came to be challenged, a Division Bench of this Court in P. Pugalenthir v. State of Tamil Nadu and others in W.P. No. 4907 of 2009, dated 30.3.2009 upheld the validity of the said G.O. In paragraphs 5, 6, 8, 9 and 11 of the order, the Division Bench had observed as follows:

"5. As can be seen from the language used in the main part of sub-section (4), it states that nothing contained in this Act shall apply to such intelligence and security organisation. Thus, in the first part, two entities are mentioned in singular as organisation. Subsequently, they are referred as 'organisations' established by the State Government. If intelligence and security organisation was only one, there was no need to use the plural term 'organisations' subsequently. It clearly indicates that such an organisation can be for intelligence purpose or for security purpose. The word "and" between the two words intelligence and security organisation will have to be read as "or". Therefore, the second submission of Mr. Radhakrishnan cannot be accepted.

6. The third submission of Mr. Radhakrishnan was that this provision affects the fundamental rights envisaged under Article 19(1)(a) of the Constitution of India for freedom of speech and expression. It is material to note that sub-clause (2) of Article 19 of



WEB COPY

the Constitution of India provides that any such law insofar as it imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of [the sovereignty and integrity of India,] particularly the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of Court, defamation or incitement to an offence, its operation will not be affected by sub-clause 1(a). In our view, Section 24(4) of the Act provides for reasonable restriction in the interest of public order.

...

8. As can be seen from this paragraph, these two organisations primarily deal with investigation into alleged corrupt activities of public servants. The investigations and subsequent actions culminate in disciplinary action or criminal action in the appropriate Courts of law. Thereafter, it is stated that confidentiality and secrecy in certain cases are required to be maintained right from the initial stage upto filing of charge-sheet on the one hand and upto issue of final orders in the case of disciplinary proceedings. In the latter part of this paragraph, it is stated that in vigilance cases, giving information at the initial stage, investigation stage and even prosecution stage, would lead to unnecessary embarrassment and would definitely hamper due process of investigation.

9. In our view, the State has given sufficient reasons as to why it was exercising powers under Section 24(4) of the Act and this is in exercise of discretionary power, which is otherwise also protected under sub-clause (2) of Article 19 of the Constitution of India as stated earlier.

...

11. The third ground is that the property held by these organisations or their budgetary allocations must be known to the public. It is not for us to dictate to the State as to how it has to function, when it gives exemption to these organisations. Insofar as the allegation of corruption and human rights violation are concerned, the First Proviso to Section 24(4) of the Act takes care of apprehension of the petitioner. It clearly provides that information on allegation of corruption and human rights will not be excluded under this sub-section. In our view, there is no reason for the petitioner to have any such



apprehension.”

(Emphasis added)

12. Therefore, he submitted that the petitioner is well within their right to deny the information sought for by the first respondent in both the Writ Petitions and that the Information Commission had erred in directing the petitioner to furnish such information.

13. In the light of the above order of the Division Bench, this Court is not inclined to go into the efficacy of exemption given to the Directorate of Vigilance and Anti-Corruption from the purview of the RTI Act. But, as rightly observed by the Commission, if some organisations operate in different spheres such as intelligence and security, in those areas, exemption can be valid. But when the very same organisation dealt with corruption cases of public servants, then exemption under Section 24(4) of the RTI Act cannot be taken advantage of, since the Proviso to Section 24(4) clearly says that information pertaining to the allegations of corrupt and human rights violations shall not be excluded under the sub-section.

14. Therefore, notwithstanding the exemption obtained by the petitioner organisation, any information relating to the allegations of corrupt cannot be excluded from the purview of public access. The information sought for by the first respondent are wholly statistical information regarding the number of cases filed, their success rate and the post conviction or post trial action taken against such officers. These information are vital in a transparency Government as public are entitled to know the officers who are facing charge of corruption as well as conviction or acquittal obtained by them as well as the result of departmental action initiated by the Government. Perhaps, consequent to Proviso to Section 24(4), in paragraph 11 the Division Bench has specifically referred to the Proviso and held that the First Proviso will take care of apprehension expressed by the petitioner in that case. The Section cannot be used to exclude the information of allegation of corruption.

18. The Supreme Court in its decision in *Union of India v. Assn. for Democratic Reforms*, 2002 (5) SCC 294, while directing the personal information of candidates standing in election to be divulged as it



WEB COPY

should be available in public domain, in paragraph 44 had observed as follows:

"44. It is also submitted that even the gazetted officers in all Government services are required to disclose their assets and thereafter to furnish details of any acquisition of property annually. In our view, it is rightly submitted that in a democratic form of Government, MP or MLA is having higher status and duty to the public. In P.V. Narasimha Rao v. State (CBI/SPE) the Court inter alia considered whether Member of Parliament is a public servant. The Court (in para 162) held thus: (SCC p. 747)

"162. A public servant is 'any person who holds an office by virtue of which he is authorised or required to perform any public duty'. Not only, therefore, must the person hold an office but he must be authorised or required by virtue of that office to perform a public duty. Public duty is defined by Section 2(b) of the said Act to mean 'a duty in the discharge of which the State, the public or that community at large has an interest'. In a democratic form of government it is the Member of Parliament or a State Legislature who represents the people of his constituency in the highest law-making bodies at the Centre and the State respectively. Not only is he the representative of the people in the process of making the laws that will regulate their society, he is their representative in deciding how the funds of the Centre and the States shall be spent and in exercising control over the executive. It is difficult to conceive of a duty more public than this or of a duty in which the State, the public and the community at large would have greater interest."

(Emphasis supplied)

The aforesaid underlined portion highlights the important status of an MP or an MLA."

19. The Supreme Court in Vineet Narain v. Union of India, 1998 (1) SCC 226, dealing with cases of corruption of public servants dealt with the role of the judiciary in dealing with such matters and in paragraph 55, it had observed as follows:

"55. These principles of public life are of general application in every democracy and one is expected to bear them in mind while scrutinising the conduct of every holder of a public office. It is trite that the holders of public offices are entrusted with certain



WEB COPY

powers to be exercised in public interest alone and, therefore, the office is held by them in trust for the people. Any deviation from the path of rectitude by any of them amounts to a breach of trust and must be severely dealt with instead of being pushed under the carpet. If the conduct amounts to an offence, it must be promptly investigated and the offender against whom a prima facie case is made out should be prosecuted expeditiously so that the majesty of law is upheld and the rule of law vindicated. It is the duty of the judiciary to enforce the rule of law and, therefore, to guard against erosion of the rule of law."

20. Therefore, in the light of the above, this Court cannot interfere with the order passed by the fourth respondent-Information Commission. Hence, the Writ Petition will stand dismissed. No costs. Consequently, connected Miscellaneous Petition stands closed.

12. In the case of Deputy Commissioner of Police Vs. D.K.Sharma, reported in 2010 SCC Online Del 4454, the Delhi High Court held as follows:

"6.This Court is inclined to concur with the view expressed by the CIC that in order to deny the information under the RTI Act the authority concerned would have to show a justification with reference to one of the specific clauses under Section 8 (1) of the RTI Act. In the instant case, the Petitioner has been unable to discharge that burden. The mere fact that a criminal case is pending may not by itself be sufficient unless there is a specific power to deny disclosure of the information concerning such case. In the present case, the criminal trial has concluded. Also, the investigation being affected on account of the disclosure information sought by the Respondent pertains to his own case. No prejudice can be caused to the Petitioner if the D.D. entry concerning his arrest, the information gathered during the course of the investigation, and the copies of the case diary are furnished to the Respondent. The right of an applicant to seek such information pertaining to his own criminal case, after the conclusion of the trial, by taking recourse of the RTI Act, cannot be said to be barred by any provision of the CrPC. It is required to be noticed that Section 22 of the RTI Act states that the RTI Act would prevail notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923 and any other law for the time being in force.

13. In the case of B.S.Mathur Vs. Public Information officer reported in 2011 (125) DRJ 508, the High Court of Delhi,



head as follows:

"19. The question that arises for consideration has already been formulated in the Court's order dated 21st April 2011: Whether the disclosure of the information sought by the Petitioner to the extent not supplied to him yet would "impede the investigation" in terms of Section 8(1)(h) RTI Act" The scheme of the RTI Act, its objects and reasons indicate that disclosure of information is the rule and non-disclosure the exception. A public authority which seeks to withhold information available with it has to show that the information sought is of the nature specified in Section 8 RTI Act. As regards Section 8 (1)(h) RTI Act, which is the only provision invoked by the Respondent to deny the Petitioner the information sought by him, it will have to be shown by the public authority that the information sought "would impede the process of investigation." The mere reproducing of the wording of the statute would not be sufficient when recourse is had to Section 8(1)(h) RTI Act. The burden is on the public authority to show in what manner the disclosure of such information would 'impede' the investigation. Even if one went by the interpretation placed by this Court in W.P.(C) No. 7930 of 2009 [Additional Commissioner of Police (Crime) v. CIC, decision dated 30th November 2009] that the word "impede" would "mean anything which would hamper and interfere with the procedure followed in the investigation and have the effect to hold back the progress of investigation", it has still to be demonstrated by the public authority that the information if disclosed would indeed "hamper" or "interfere" with the investigation, which in this case is the second enquiry.

24. No grounds have been made out by the Respondent under Section 8(1)(h) of the RTI Act to justify exemption from disclosure of the information sought by the Petitioner.

25. The writ petitions are accordingly allowed and the impugned order dated 6th September 2010 of the CIC is hereby set aside. Information to the extent not already provided in relation to the three RTI applications should be provided to the Petitioner by the Respondent within a period of four weeks from today. While providing the information it will be open to the Respondent to apply Section 10 RTI Act where required.



14. In the case of Sudhirranjan Senapati, Addl. Commissioner of Income Tax Vs. Union of India and other, the High Court of Delhi in W.P.(C).No.7048 of 2011 dated 05.03.2013, held as follows:

"4.1 More specifically, the information sought was as follows:

Certified true copies of all order sheet entries / Note Sheet entries

/ File notings of US, VandL / DS, VandL/Director, VandL/JS (Admn.)/Member (PandV)/Chairman,CBDT/Secretary,Revenue/MOS (R), if any, / Finance Minister, if any? pertaining to prosecution sanction by the Central Government u/s. 19(1)(a) of Prevention of Corruption Act, 1988 vide such sanction order dated 09.04.2009 in F.No.C-14011/8/2008-VandL of Central Board of Direct Taxes, Department of Revenue, Ministry of Finance, GOI, New Delhi.

4.2 The CPIO vide order dated 16/17.08.2010, declined the request for furnishing information by taking recourse to the provisions of Section 8(1)(h) of the RTI Act. Pertinently, no reasons were set out in the order. All that is said, in the order of the CPIO is that, requisite information cannot be supplied as the same is exempted from disclosure under Section 8(1)(h) of the RTI Act.

5. Being aggrieved, the petitioner preferred an appeal with the First Appellate Authority. The appeal met the same fate. By an order dated 05.10.2010, the First Appellate Authority dismissed the petitioner's appeal. The sum and substance of the rationale given in the order of the First Appellate Authority was that, since criminal prosecution was pending, information sought for by the petitioner could not be disclosed. The First Appellate Authority went on to observe in its order that, any disclosure of information prior to a final decision would be premature and injurious to the process of investigation. Accordingly, relying upon the provisions of Section 8(1)(h) of the RTI Act, it sustained the order of the CPIO.

6. The petitioner being aggrieved, with the order of the First Appellate Authority, preferred an appeal with the CIC. The CIC by virtue of the impugned order dated 18.07.2011, rejected the petitioner's appeal. By a cryptic order, the CIC accepted the stand of the respondents that information sought for, could not be supplied to the petitioner as the case was pending in court and that disclosure of information would impede the process of prosecution.



WEB COPY

7. The learned counsel for the petitioner has impugned the decision of the CIC and the authorities below on the following grounds :-

(i). The investigation is complete. The chargesheet qua the accused, which includes the petitioner, has been filed in court. On failure of the respondents to demonstrate as to how the disclosure of information would impede prosecution of the petitioner, the said information ordinarily ought to have been supplied to the petitioner. The learned counsel for the petitioner says that disclosure of information is the rule, the denial of the same is an exception. He submits that the exception carved out in Sections 8 and 9 of the RTI Act have thus to be construed strictly.

8. In support of the submission, the learned counsel for the petitioner relies upon the judgment of a Single Judge of this Court in Bhagat Singh Vs. Chief Information Commissioner and ors., 146 (2008) DLT 385.

9. The contesting respondents i.e., respondent nos. 2 and 3 are represented by Mr. Singh, who has largely relied upon the stand taken in the counter affidavit. Mr. Singh submits that since the prosecution of the petitioner is ensuing, any disclosure of information would compromise the case of the prosecution and hence, cannot be divulged. Recourse was taken to the provisions of Section 8(1)(h) to support the stand of the respondents.

9.1 Mr. Singh also relied upon a judgment of another learned Single Judge of this court, dated 10.11.2006, passed in WP(C) 16712/2006, titled Surinder Pal Singh Vs. Union of India and Others. Mr. Singh submits with all persuasive powers at his command that the facts in Surinder Pal's case are identical to the present case and therefore having regard to the fact that the court sustained the stand of the official respondents in that case wherein information was denied by taking recourse to the provisions of Section 8(1)(h) of the RTI Act, similar result ought to follow in the present case.

10. I have heard the learned counsels for the parties and perused the record.

11. At the outset, as noticed above, a chargesheet against the petitioner has been filed and the trial has commenced. Therefore, the questions which falls for consideration is: whether the case of the petitioner would come within the ambit of the provisions of Section 8(1)(h) of the RTI Act. The



WEB COPY

said provision reads as follows :

8. Exemption from disclosure of information ?

(i). Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen ?

(a). x x x x

(b). x x x x

(c). x x x x

(d). x x x x

(e). x x x x

(f). x x x x

(g). x x x x

(h). Information which would impede the process of investigation or

apprehension or prosecution of offenders.

11.1 As rightly contended by the learned counsel for the petitioner, a learned Single Judge of this court in Bhagat Singh's case has construed the said provision of the Act to mean that in order to claim exemption under the said provision, the authority withholding the information must disclose satisfactory reasons as to why the release of information would hamper investigation. The reasons disclosed should be germane to the formation of opinion that the process of investigation would be hampered. The said opinion should be reasonable and based on material facts. The learned Single Judge, I may note goes on to observe that sans this consideration, Section 8(1)(h) and other such provisions of the RTI Act would become a ?haven for dogging demands for information.

11.2 In the light of the aforesaid observations of the learned Single Judge in Bhagat Singh's case, one would have to see as to whether the affidavit filed on behalf of respondent nos.2 and 3 discloses the reasons as to how information sought, would hamper the prosecution of the petitioner. A perusal of the affidavit shows that no such averment is made in the counter affidavit filed by respondent nos.2 and 3. Undoubtedly, the petitioner here is seeking information with regard to the sanction accorded for his own prosecution. It cannot be disputed, as is noticed by my predecessor, in this very matter, in the order dated 14.10.2011, that the accused during the course of his prosecution can impugn the sanction accorded for his prosecution, on the basis of which the prosecution is launched. For this proposition, the learned Judge, in its order dated 14.10.2011, relies upon the following judgments :

State Inspector of Police, Visakhapatnam Vs. Surya



WEB COPY

Sankaran Karri (2006) 7 SCC 172 and Romesh Lal Jain Vs. Naginder Singh Rana, (2006) 1 SCC 294.

11.3 I have no reason to differ with the view taken either in Bhagat Singh case or with the prima facie view taken in the order passed by my predecessor in his order dated 14.10.2010. It is trite that an accused can challenge the order by which sanction is obtained to trigger a prosecution against the accused. If that be so, I do not see any good reason to withhold information which, in one sense, is the underlying material, which led to the final order according sanction for prosecution of the petitioner. As a matter of fact, the trial court is entitled to examine the underlying material on the basis of which sanction is accorded when a challenge is laid to it, to determine for itself as to whether the sanctioning authority had before it the requisite material to grant sanction in the matter. See observations in Gokulchand Dwarkadas Morarka vs The King AIR 1948 PC 82 and State of Karnataka vs Ameerjan (2007) 11 SCC 273. Therefore, the said underlying material would be crucial to the cause of the petitioner, who seeks to defend himself in criminal proceedings, which the State as the prosecutor cannot, in my opinion, withhold unless it can show that such information, would hamper prosecution.

12. As indicated above, no reasons are set out in the counter affidavit. The argument of Mr. Singh that a Single Judge of this court in Surinder Pal Singh's case (supra) has taken a view in favour of the respondents, is not quite correct, for the reason that the learned Single Judge in the facts and circumstances of that case came to the conclusion that the apprehension of the respondent i.e., the State in that case, was not without any basis.

12.1 It appears in that case the petitioner, who was being criminally prosecuted for having fraudulently reduced the quantum of excise duty to be paid by an assessee, while passing an adjudication order, had sought information with regard to: note sheets; correspondence obtaining qua the material in the file of the CBI; correspondence in the file of the CVC pertaining to the matter; and correspondence in the file of the Department of Vigilance, CBES.

12.2 A close perusal of the nature of information sought seems to suggest that much of it may have been material collected during the course of investigation, the disclosure of which could have perhaps hampered the prosecution of the petitioner.



WEB COPY

13. Therefore, in my view, in such like cases when, the State takes a stand the information cannot be disclosed; while dilating on its stand in that behalf, the State would necessarily have to, deal with the aspect as to how the information sought, is of such a nature, that it could impede prosecution. Much would thus depend, on the nature of information sought, in respect of which, a clear stand needs to be taken by the state, while declining the information. The burden in this regard is on the State (see B.S. Mathur Vs. Public Information Officer of Delhi High Court, 180 (2011) DLT 303)

13.1 The facts obtaining in Surinder Pal case?s are distinguishable and hence, the ratio of that judgment would not apply to the facts obtaining in the present case.

13.2 It also be noted that the learned Single Judge?s view in Bhagat Singh case has been upheld by a reasoned order by the Division Bench in Directorate of Income Tax and Anr. Vs. Bhagat Singh, dated 17.12.2007 passed in LPA 1377/2007."

15. In the case of Adesh Kumar Vs. Union of India and others reported in 2014 SCC Online Del 7203, the Delhi High Court held as follows:

"9. It is apparent from a bare perusal of the CIC's order that it does not indicate the reasons that persuaded the CIC to uphold the view of the Public Authority that the disclosure of information sought by the petitioner would impede prosecution of the petitioner. A co-ordinate Bench of this Court in the case of B.S. Mathur v. Public Information Officer of Delhi High Court:W.P.(C)295/2011, decided on 03.06.2011 had considered the contention with regard to withholding information under Section 8(1)(h) of the Act and held as under:

"19. The question that arises for consideration has already been formulated in the Court's order dated 21st April 2011: Whether the disclosure of the information sought by the Petitioner to the extent not supplied to him yet would "impede the investigation" in terms of Section 8(1)(h) RTI Act? The scheme of the RTI Act, its objects and reasons indicate that disclosure of information is the rule and non-disclosure the exception. A public authority which seeks to withhold information available with it has to show that the information sought is of the nature specified in Section 8 RTI Act. As regards Section 8(1)(h) RTI Act, which is the only provision invoked by the Respondent to deny the Petitioner the information sought by him,



WEB COPY

it will have to be shown by the public authority that the information sought "would impede the process of investigation." The mere reproducing of the wording of the statute would not be sufficient when recourse is had to Section 8(1)(h) RTI Act. The burden is on the public authority to show in what manner the disclosure of such information would 'impede' the investigation. Even if one went by the interpretation placed by this Court in W.P. (C) No. 7930 of 2009 [Additional Commissioner of Police (Crime) v. CIC, decision dated 30th November 2009] that the word "impede" would "mean anything which would hamper and interfere with the procedure followed in the investigation and have the effect to hold back the progress of investigation", it has still to be demonstrated by the public authority that the information if disclosed would indeed "hamper" or "interfere" with the investigation, which in this case is the second enquiry."

10. A bare perusal of the order passed by the FAA also indicates that the aspect as to how the disclosure of information would impede prosecution has not been considered. Merely, citing that the information is exempted under Section 8(1)(h) of the Act would not absolve the public authority from discharging its onus as required to claim such exemption. Thus, neither the FAA nor the CIC has questioned the Public Authority as to how the disclosure of information would impede the prosecution."

16. The Central Information Commission in the case of Shri.Madhu K. Farde Vs. Employees Provident Fund, CPIO & RPFC-I (Vigilance) held as follows:

"It is submitted that to deny file-notings exemption has not been claimed u/s 8(1)(h) of the RTI Act. Rather exemption is claimed u/s 8(1) (e) and (g) of the RTI Act, 2005 provisos of which exempt information available to a person in his fiduciary relationship unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information; and also exempts from disclosure of such information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purpose. It is submitted that confidentiality of note-files is an entirely wholesome principle conducive to good governance. Any compromise with objectivity in processing matters extant in the file is potentially damaging to governance by exposing those entrusted in



WEB COPY

charge of processing the matter to undue and sometimes, intimidating, scrutiny by interested parties, Anonymity of vigilance officers recording files notes deserves to be protected in their own interest as well as the interest of the system they serve. The public authority is duty bound to protect the interests of its officers who examine through their notings in files the conduct of other employees of the public authority and thereby expose themselves to possible revengeful action by those whose conduct they bring under scanner. Further applying section 10 (1) and hiding the names of the authors of the file notings will not serve any purpose as even without the authors' names, the identity of the authors of the notes could be disclosed by reference to the hierarchies through which the file passed as well as the handwriting in which the notes were recorded. Protection needs to be provided to the officers of sensitive department such as the vigilance in performing their duties from the probing eyes of outsiders. Also parting file notings with the applicant serves no public interest as the personal interest of the applicant cannot be equated with public interest.

The performance of an employee/officer in an organization is primarily a matter between the employee and the employer and normally those aspects are governed by the service rules which fall under the expression "personal information", the disclosure of which has no relationship to any public activity or public interest. Hence falls squarely under the dictum of Hon'ble Supreme Court India judgment in Girish R Deshpande Vs. CIC in special leave petition (Civil) No.27734 of 2012 @ 14781/2012 dated 03/10/2012.

If the file-noting is provided to the applicant it would affect the fair and free expression of view by the officers who have to analyze the investigation report and evidences on record with the fear that it would be sought for in future and would prejudice the delinquent officers against them, if the noting against the officer being investigated is parted with. In view of the above, provision of Section 8(1) (e) and (g) of the RTI Act is claimed to deny the file notings."

17. In the case of Union of India and others Vs. Col.V.K. Shad and others reported in 2012 SCC Online Del 5710, the High Court of Delhi held as follows:

"20. Before I proceed further, I may also note that the first proviso in Section 8 says that,



WEB COPY

information which cannot be denied to the Parliament or the State Legislature, shall not be denied to any person. Sub-section (2) of Section 8, states that notwithstanding anything contained in the Official Secret Acts, 1923, or any of the exemptions provided in Sub-section (1), would not come in the way of a public authority in allowing access to information if, public interest in its disclosure outweighs the harm to the protected interest.

20.1 A Full Bench of this court in the case of Secretary General, Supreme Court of India v. Subhash Chandra Agarwal, 166 (2010) DLT 305 : 2010 (114) DRJ 505 [FB], in the context of provisions of Section 8(1) (j) also examined what would constitute a fiduciary relationship. The observations contained in paragraph 97 to 101, being apposite are extracted hereinbelow:

"....97. As Waker defines it: "A "fiduciary" is a person in a position of trust, or occupying a position of power and confidence with respect to another such that he is obliged by various rules of law to act solely in the interest of the other, whose rights he has to protect. He may not make any profit or advantage from the relationship without full disclosure. The category includes trustees, Company promoters and directors, guardians, solicitors and clients and other similarly placed." [Oxford Companion to Law, 1980 p. 469]

98. "A fiduciary relationship", as observed by Anantnarayanan, J., "may arise in the context of a jural relationship. Where confidence is reposed by one in another and that leads to a transaction in which there is a conflict of interest and duty in the person in whom such confidence is reposed, fiduciary relationship immediately springs into existence." [see Mrs. Nellie Wapshare v. Pierce Lasha & Co. Ltd. AIR 1960 Mad 410]

99. In Lyell v. Kennedy (1889) 14 AC 437, the Court explained that whenever two persons stand in such a situation that confidence is necessarily reposed by one in the other, there arises a presumption as to fiduciary relationship which grows naturally out of that confidence. Such a confidential situation may arise from a contract or by somegratuitous undertaking, or it may be upon previous request or undertaken without any authority.

100. In Dale & Carrington Invt. (P) Ltd. v. P.K. Prathaphan: (2005) 1 SCC 212 and Needle Industries (India) Ltd. v. Needle Industries Newey (India) Holding Ltd. (1981) 3 SCC 333, the Court held that the directors of the company owe fiduciary duty to its shareholders. In P.V. Sankara Kurup v. Leelavathy



WEB COPY

Nambier: (1994) 6 SCC 68, the Court held that an agent and power of attorney can be said to owe a fiduciary relationship to the principal.

101. Section 88 of the Indian Trusts Act requires a fiduciary not to gain an advantage of his position. Section 88 applies to a trustee, executor, partner, agent, director of a company, legal advisor or other persons bound in fiduciary capacity. Kinds of persons bound by fiduciary character are enumerated in Mr. M. Gandhi's book on "Equity, Trusts and Specific Relief (2nd ed., Eastern Book Company)

- (1) Trustee,
- (2) Director of a company,
- (3) Partner,
- (4) Agent,
- (5) Executor,
- (6) Legal Adviser,
- (7) Manager of a joint family,
- (8) Parent and child,
- (9) Religious, medical and other advisers,
- (10) Guardian and Ward,
- (11) Licensees appointed on remuneration to purchase stocks on behalf of government,
- (12) Confidential Transactions wherein confidence is reposed, and which are indicated by (a) Undue influence, (b) Control over property, (c) Cases of unjust enrichment, (d) Confidential information, (e) Commitment of job,
- (13) Tenant for life,
- (14) Co-owner,
- (15) Mortgagee,
- (16) Other qualified owners of property,
- (17) De facto guardian,
- (18) Receiver,
- (19) Insurance Company,
- (20) Trustee de son tort,
- (21) Co-heir,
- (22) Benamidar.

20.2 The above would show that there are two kinds of relationships. One, where a fiducial relationship exists, which is applicable to legal relationships between parties, such as guardian and ward, administrator and heirs, executors and beneficiaries of a testamentary succession; while the other springs from a confidential relationship which is pivoted on confidence. In other words confidence is reposed and exercised. Thus, the term fiduciary applies, it appears, to a person who enjoys peculiar confidence qua other persons. The relationship mandates fair dealing



WEB COPY

and good faith, not necessarily borne out of a legal obligation. It also permeates to transactions, which are informal in nature. [See words and phrases Permanent Edn. (Vol. 16-A, p. 41) and para 38.3 of the CBSE v. Aditya Bandopadhyay]. As indicated above, the Supreme Court in the very same judgment in paragraph 39 has summed up as to what the term fiduciary would mean.

20.3 In the instant case, what is sought to be argued in sum and substance that, it is a fiducial relation of the latter kind, where the persons generating the note or opinion expects the fiduciary, i.e., the institution, which is the Army, to hold their trust and confidence and not disclose the information to the respondents herein, i.e., Messers V.K. Shad and Ors. If this argument were to be accepted, then the persons, who generate the notes in the file or the opinions, would have to be, in one sense, the beneficiaries of the said information. In an institutional set up, it can hardly be argued that notes on file qua a personnel or an employee of an institution, such as the Army, whether vis-a-vis his performance or his conduct, in any manner, can benefit the person, who generates the note or renders an opinion. As a matter of fact, the person who generates the note or renders an opinion is presumed to be a person who is objective and not conflicted by virtue of his interest in the matter, on which, he is called upon to deliberate. If that position holds, then it can neither be argued nor can it be conceived that notes on file or opinions rendered in an institutional setup by one officer qua the working or conduct of another officer brings forth a fiduciary relationship. It is also not a relationship of the kind where both parties required the other to act in a fiduciary capacity by treating the other as a beneficiary. The examples of such situations are found say in a partnership firm where, each partner acts in fiduciary capacity qua the other partner(s).

20.4 If at all, a fiduciary relationship springs up in such like situation, it would be when a third party seeks information qua the performance or conduct of an employee. The institution, in such a case, which holds the information, would then have to determine as to whether such information ought to be revealed keeping in mind the competing public interest. If public interest so demands, information, even in such a situation, would have to be disclosed, though after taking into account the rights of the individual concerned to whom the information pertains. A denial of access to such information to the information seekers, i.e., the respondents herein, (Messers V.K. Shad & Co.)



WEB COPY

especially in the circumstances that the said information is used admittedly in coming to the conclusion that the delinquent officers were guilty, and in determining the punishment to be accorded to them, would involve a serious breach of principles of natural justice, as non-communication would entail civil consequences and would render such a decision vulnerable to challenge under Article 14 of the Constitution of India provided information is sought and was not given. [See UOI v. R.S. Khan 173 (2010) DLT 680].

21. It is trite law that the right to information is a constitutional right under Article 19(1)(a) of the Constitution of India which, with the enactment of the RTI Act has been given in addition a statutory flavour with the exceptions provided therein. But for the exceptions given in the RTI Act; the said statute recognizes the right of a citizen to seek access to any material which is held or is in possession of public authority."

18. In the case of State (NCT of Delhi) Vs. Sanjay, reported in (2014) 9 Supreme Court Cases 772, the Hon'ble Supreme Court of India held as follows:

"63. It is well known that a non obstante clause is a legislative device which is usually employed to give overriding effect to certain provisions over some contrary provisions that may be found either in the same enactment or some other enactment, that is to say, to avoid the operation and effect of all contrary provisions."

19. In the case of Kerala Public Service Commission and others Vs. State Information Commission and others, reported in 2011 SCC Online Ker 3927, the Kerala High Court held as follows:

"21. One of the issues that arise for consideration is the plea of the PSC that it having made rules for issuance of copies and dissemination of information to candidates; it ought not to be compelled to issue such information, also under the provisions of the RTI Act This argument appears to be quite appealing because public institutions like PSC meet their expenses from public funds. Necessarily, it has to be the endeavor of all concerned to ensure that expenditure from such funds is confined to actual requirements. At the same time, the mode and provision for access to information under the provisions of the rules made by the PSC, as also, the cost factor, if any, involved, may be relevant considerations to ultimately conclude as to whether there could be any



WEB COPY

exclusion of access to such information under the provisions of the RTI Act and the rules framed there under, on the premise that alternate, efficacious and cost-friendly modes of access to information are otherwise provided for by the statutory rules and other provisions that govern the working of the public authority from which, information could be sought under the RTI Act. But, as the law now stands, there is no scope for any judicial recognition of such a plea and a favourable decision on that issue through a judicial order. This is because Section 22 of the RTT Act provides that the provisions of that Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923 (19 of 1923), and any other law for the time being in force or in any instrument having effect by virtue of any law other than that Act. Such statutory provision having been made by the legislature, within its competence, it cannot be watered down or modified except by recourse to legislative procedures. We therefore do not find way to accept the contention of the PSC in this regard."

20. In the case of The Superintendent of police Vs. R.Karthikeyan and others, reported in 2011 (3) CTC 241, the High Court of Madras held as follows:

"17. In terms of Section 24(4), the State Government is empowered to notify in the Official Gazette that nothing contained in the Right to Information Act shall apply to such intelligence and security organization being organizations established by the State Government. Nevertheless, in the light of the First Proviso, such power being conferred on the State Government to notify exempting such intelligence and security organizations, it cannot notify in respect of the information pertaining to the allegations of corruption and human rights violations. As a necessary corollary, the power to exempt from the provisions of the Act is not available to the State Government even in case of intelligence and security organizations in respect of the information pertaining to the allegations of corruption and human rights violations. The Application of the Notification depends upon the nature of information required. In this context, we may refer that the First Respondent in W.A. No. 321 of 2010 has sought for the particulars relating to the number of investigations completed and the number of persons convicted for the years from 2003-2004 to 2007-2008 with the details as to the names of such convicted persons, the post held by them when the act of corruption was done, the charges framed and the



WEB COPY

recommendations given to the Vigilance Commissioner after investigation. Likewise the First Respondent in W.A. No. 320 of 2010 has sought for the particulars relating to the number of Police Stations/ wings/ branches within the Chennai city were raided by the DVAC officials during the last five years i.e., from January, 2003, how many Police officials were caught during the raids, the list of names, the designation and the address of such officials who were caught and the amount recovered from each official, details of departmental actions taken against such official including the copy of enquiry report, the details of prosecution launched against such officials, the status of prosecution against each official, how many have been re-inducted into active service including the date of rejoining the service and their present place/station of service, the details of action taken by the Department to prevent corruption at Police Stations/branches/wings especially in Chennai city and the grievance redressal machinery for the public to make a Complaint against such corrupt official demanding bribe/favour to do the duty. As all these particulars would certainly relate to corruption, the Government Order has no application to the facts of this case."

21. In the case of S.Vijayalakshmi Vs. Union of India and others, reported in 2011 (5) CTC 376, the High Court of Madras held as follows:

"37. The apprehension that the CBI by virtue of its inclusion in the Second Schedule has got a blanket exemption, cannot be countenanced for the simple reason that what has been contemplated under Section 24 is no such blanket exemption. The Act was intended among other things to contain corruption and to hold Governments and their Instrumentalities accountable to the Government. This purpose and intent of the Act is sufficiently provided for in the two Provisos to Section 24(1) of the Act. The information pertaining to allegation of corruption and human rights violation are not excluded under sub-section (1) of Section 24. Therefore, the exemption by virtue of inclusion of CBI in the Second Schedule to a RTI Act is not a wholesale or a blanket exemption as contended by the Petitioner. After taking note of the facts placed before this Court and the law discussed above, it cannot be stated that every Police Thana is an Intelligence Agency and should be treated on par with the CBI for the benefit of the exemption under Section 24 of the Act."



22. In the case of V.Vidya Vs. The State Information Commission, reported in 2017 SCC Online Mad 22613, the High Court of Madras held as follows:

"7. Both, the first respondent and the learned Single Judge have declined the appellant's request to furnish the copies of the report dated 08.07.2015 and 17.08.2015, on the ground that CBCID was an authority which came within the ambit of sub-section (4) of section 24 of the RTI Act and hence, the provisions of the said Act were not applicable to it. In this behalf, reference was made to the G.O.Ms. No. 1043, dated 14.10.2015, issued by the Government of Tamil Nadu.

8. In effect, it was contended that the CBCID was one amongst those establishments, to which the RTI Act would not apply. The said G.O. was issued by the State Government, admittedly, in exercise of powers vested upon it under Section 24(4) of the RTI Act.

13. The main plank of the submission of the counsels appearing for the respondents, was that, the RTI Act was not applicable to CBCID, in view of the provisions of Sub-section (4) of Section 24 of the RTI Act. The fact that CBCID had been notified as an organization, which was exempt from the provisions of the RTI Act, was sought to be demonstrated by relying upon G.O.Ms. No. 1043, dated 14.10.2015.

14. We have heard the learned counsel for the parties and perused the record.

15. Shorn of unnecessary details and verbiage, the only issue which arises for our consideration is, as to whether the first proviso to Sub-section (4) of Section 24 of the RTI Act is applicable to the facts obtaining in the instant case.

16. For the sake of convenience, the relevant part of the aforesaid Section is extracted hereafter:

"24. (1) xxxx

(2) xxxx

(3) xxxx

(4) Nothing contained in this Act shall apply to such intelligence and security organisation being organisations established by the State Government, as that Government may, from time to time, by notification in the Official Gazette, specify:

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



WEB COPY

the approval of the State 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."

(emphasis is ours)

17. It is not in dispute that by virtue of G.O.Ms. No. 1043, dated 14.10.2005, CBCID has been notified as an agency by the Government of Tamil Nadu, to which the provisions of RTI Act would not apply. The issue, which arises for consideration is as to whether the instant case falls within exception carved out to in the first proviso to Sub-section (4) of Section 24 of the RTI Act.

18. The first proviso of Sub-section (4) of Section 24 of the RTI Act, stipulates that information pertaining to allegations of corruption and human rights violation, shall not stand included in the Sub-section, i.e., Sub-section (4) of Section 24 of the RTI Act.

19. The facts narrated above would show that the appellant alleges that because of the association of Mr. S.R. Jangid (the then Suburban Commissioner) with Mr. K.C. Bose, her complaint against the latter was not taken forward, and instead six (6) false cases were foisted upon her. The fact that out of the six (6) false cases, four (4) cases were closed, has not been disputed by the counsel for the respondents. As a matter of fact, the record also shows that the appellant had filed a writ petition against Mr. S.R. Jangid for initiating departmental action against him. The said writ petition, we are informed, is pending adjudication in this Court.

20. Furthermore, as indicated above, the appellant has also filed a civil suit for damages on the alleged ground of malicious prosecution and defamation. As noticed above, vide order dated 24.02.2014, two (2) criminal complaints of cheating being C.C. No. 101 of 2010 and 426 of 2010, were quashed by this Court on the ground that both cases had falsehood and mala fides as its edifice. The observations made by a learned Single Judge of this Court, tend to indicate that the then Suburban Commissioner may have had something to do in the lodgement of the complaints. This order of the learned Single Judge, despite a SLP having been filed by the complainant in those cases, was not interfered by the Supreme Court. As a matter of fact, the complainant made himself scarce as he was not available at the given address. The police, in fact, were unable to effect service in the CrI.O.P. filed by the appellant, to quash the said criminal complaints.

21. The matter thus boils down to one aspect, which is,



WEB COPY

do these broad assertions bring the case within the purview of the first proviso to Section 24(4) of the RTI Act.

21.1. The term "human rights" has not been defined in the RTI Act. However, the expression "human rights" has been defined in the Protection of Human Right Act, 1993 (in short "1993 Act"). Section 2(1)(d) of the 1993 Act, which provides a definition of human rights reads as follows:

"2. Definitions-(1) In this Act, unless the context otherwise requires—

XXXXX

(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. XXXX"

21.2. "Human rights" means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in International Covenants and enforceable by a Court in India. Therefore, quite clearly, a citizen of this country is entitled to live his life with dignity. Deprivation of dignity would, to our minds, involve violation of human rights.

21.3. The appellant contends that six (6) false criminal cases were lodged against her, out of which four (4) were closed. These being: Crime Nos. 1225/2009, 1247/2009, 960/2009 and 804/2009. Besides these four (4) cases, the appellant has referred to, two other cases i.e., C.C. No. 101 of 2010, pending before the Judicial Magistrate, Ambattur, and C.C. No. 426 of 2010, pending on the file of the Judicial Magistrate, Alandur. These cases as noted herein above were quashed by the learned Single Judge of this Court vide judgement dated 24.02.2014, on the ground that they were predicated on falsehood and mala fides.

21.4. Having regard to these facts and circumstances, to our minds, it was incumbent upon the first respondent to make further inquiries in the matter.

21.5. The first respondent, on the other hand, rejected the appellant's plea on the short ground that it was for her to establish that her complaints related to corruption and violation of human rights. Furthermore, the first respondent went on to observe that in the complaints lodged against her, by Mr. K.C. Bose, investigation was carried out and she was placed in judicial custody. According to the first respondent, since, the police officer acted in accordance with law, it could not be said that their action violated human



WEB COPY

rights or they had indulged in corrupt activities.

21.6. The learned Single Judge, more or less, adopted the same reasoning. In our view, the reasoning is flawed. The reason for the same is this: While, the police officers in lodging cases against the appellant, based on the complaints made against her, and in having her prosecuted thereafter may have acted under the authority of law-the fact that four (4) out of the six (6) cases fell by the wayside did denude the appellant of her dignity, while she was being prosecuted. The reasoning given by the first respondent that the police officer acted under the authority of law, may be a valid defence in an action for malicious prosecution, provided they are able to show good faith that, however, by itself would not prevent the appellant from contending that her dignity was impaired and hence, violated her human rights. If, that be the position, surely, information with regard to the result of the enquiries carried out, based on her complaints ought to be furnished to the appellant for whatever they are worth.

22. In view of the foregoing discussion, we are inclined to allow the writ appeal. Consequently, the order of the learned Single Judge is set aside. This would result in the order of the first respondent dated 19.08.2016 also being set aside. Consequently, the second respondent will furnish the information sought by the appellant in her applications dated 18.12.2014 and 24.08.2015.

23. In the case of The Superintendent of Police Vs.M.Kannappan, reported in 2012 SCC Online Mad 4747, the High Court of Madras held as follows:

"5. On the other hand, Mr. G. Rajagopalan, learned senior counsel appearing for the second respondent has submitted that as per the provisos to Section 24(4) of the RTI Act, the information pertaining to allegations of corruption and human rights violations are not excluded and the authorities shall provide the information relating to those allegations. He has relied on the judgment of a Division Bench of this Court in The Superintendent of Police, Central Range, Office of the Directorate of Vigilance and Anti-Corruption v. R. Karthikeyan, 2011 (3) CTC 241. He has also taken me through Sections 2(f), 4(1)(b)(v) and 8 of the RTI Act and has submitted that in view of the aforesaid provisions viz., Sections 2(f), 4(1)(b)(v) & 8 and the provisos to Section 24, the first respondent is entitled to a copy of the manual.

7. We are not concerned with sub-sections (1) to (3)



WEB COPY

of Section 24 and are concerned only with sub-section (4) of Section 24 and the provisos thereto. The provisos to Section 24(4) make it clear that even if the intelligence and security organizations established by the State Government are exempted from the application of the Act under Section 24(4), the information pertaining to the allegations of corruption and human rights violations shall not be excluded. In these circumstances, this Court dismissed the Writ Petition Nos. 23507 and 23508 of 2009 by a common order dated 12.1.2010, which were preferred by the writ petitioner herein questioning the order of the Tamil Nadu Information Commission directing the authorities to furnish the details relating to the number of police officials who were caught during the raid by DVAC together with the list of names, designation and the address of officials, number of investigations completed and convictions arrived at between the years 2003-04 and 2007-08 etc., in corruption matters to the applicants therein. The order of the learned single Judge was upheld by the Division Bench in the judgment reported in 2011 (3) CTC 241. Paragraphs 4 & 5 of the order dated 12.1.2010 in W.P. Nos. 23507 & 23508 of 2009 and paragraphs 16 & 17 of the judgment of the Division Bench reported in 2011 (3) CTC 241 are extracted hereunder:-

"4. In W.P. No. 23507 of 2009, the first respondent sought for information regarding the number of police officials who were caught during the raid by DVAC together with the list of names, the designation and the address of officials, who were caught during raids along with the amount recovered from each officials as well as the details of departmental action taken against each officials, the details of prosecution launched against the officials under the Prevention of Corruption Act and the status of such prosecution against each officials and whether the persons whose names are furnished were reinstated in service and if so, the date on which they had rejoined service as well as the details of list of action taken by the department to prevent corruption at Police Station/Branches/Wings in Chennai City.

5. The letter which was originally sent to the State Government was forwarded to the Director of Vigilance and Anti-Corruption. On such redirection, the appellate authority further directed the petitioner organization to examine the scope of giving such information in accordance with law. It was, thereafter, the petitioner organization by an order dated 2.2.2009 informed the first respondent that they



WEB COPY

are exempted from the purview of the RTI Act. When the first respondent made a complaint to the second respondent Information Commission, the second respondent passed the impugned order directing the petitioner to furnish the information.

16. The validity of the said Government Order was questioned before this Court in P. Pugalenthil v. State of T.N. represented by the Secretary to Government, Personnel and Administrative Reforms (N) Department, Chennai and others, W.P. No. 4907 of 2009 and the same has been upheld by order dated 30.3.2009. The contention of the learned Special Government Pleader is that in view of the above, the Chief Information Commissioner should not have directed the furnishing of information required by each of the first respondent in the appeals and consequently the learned Judge should not have dismissed the writ petitions filed by the department. In our opinion, the said contention is totally unacceptable. Even in the said judgment, the Division Bench has categorically held that in the event the information required by an applicant relates to the allegations of corruption, the said Government Order cannot be made applicable and accordingly the department cannot claim the exemption from furnishing those particulars relating to corruption. The learned Judge has correctly applied the above judgment with reference to the particulars required by each of the first respondent in these appeals, as they relate only to corruption.

17. In terms of Section 24(4), the State Government is empowered to notify in the Official Gazette that nothing contained in the Right to Information Act shall apply to such intelligence and security organization being organizations established by the State Government. Nevertheless, in the light of the first proviso, such power being conferred on the State Government to notify exempting such intelligence and security organizations, it cannot notify in respect of the information pertaining to the allegations of corruption and human rights violations. As a necessary corollary, the power to exempt from the provisions of the Act is not available to the State Government even in case of intelligence and security organizations in respect of the information pertaining to the allegations of corruption and human rights violations. The application of the notification depends upon the nature of information required. In this context, we may refer that the first respondent in W.A. No. 321 of 2010 has sought for the particulars relating to the number of investigations completed and the number of



persons convicted for the years from 2003-2004 to 2007-2008 with the details as to the names of such convicted persons, the post held by them when the act of corruption was done, the charges framed and the recommendations given to the Vigilance Commissioner after investigation. Likewise the first respondent in W.A. No. 320 of 2010 has sought for the particulars relating to the number of police stations/wings/branches within the Chennai city were raided by the DVAC officials during the last five years i.e., from January, 2003, how many police officials were caught during the raids, the list of names, the designation and the address of such officials who were caught and the amount recovered from each official, details of departmental actions taken against such official including the copy of enquiry report, the details of prosecution launched against such officials, the status of prosecution against each official, how many have been re-inducted into active service including the date of rejoining the service and their present place/station of service, the details of action taken by the Department to prevent corruption at police stations/branches/wings especially in Chennai city and the grievance redressal machinery for the public to make a complaint against such corrupt official demanding bribe/favour to do the duty. As all these particulars would certainly relate to corruption, the Government Order has no application to the facts of this case."

8. The Division Bench has taken note of the fact that G.O.Ms. No. 158 dated 26.8.2008 was upheld in W.P. No. 4907 of 2009 on 30.3.2009. Thereafter, the Division Bench upheld the order of the learned single Judge dismissing the writ petitions preferred by the Public Information Officer, the petitioner herein in refusing to furnish the information.

9. The first appellate authority has stated that a proposal had been sent to the Government for preferring Special Leave Petition. The Tamil Nadu Information Commission also noted that no stay order was produced staying the operation of the order of the Division Bench. Even today, though the learned Special Government Pleader has stated that an SLP was preferred against the order of the Division Bench, he is not able to state that the order of the Division Bench is stayed by the Apex Court.

10. In view of the judgment of the Division Bench read with the provisos to Section 24(4) of the RTI Act, I am of the view that the first respondent herein is



WEB COPY

entitled to have the manual of the DVAC. The manual cannot be kept as a secret document. It is nothing but a set of rules as to how the DVAC is functioning. I am not able to understand as to why the DVAC feels shy to furnish the manual. In fact, the information that were the subject matter before the Division Bench were concerned with the corruption and the consequent action taken by the DVAC and those details were directed to be furnished. Hence, the DVAC cannot refuse to furnish the manual maintained by it. At this juncture, I wish to refer to the submission made by the learned senior counsel for the second respondent that the manual is not exempted from disclosure as per Section 8 of the RTI Act. While Section 8 states that there shall be no obligation to give the information relating to various documents mentioned therein, the manual of the DVAC is not one among them. Likewise, the public authorities shall maintain the rules, regulations, instructions, manuals and records for discharging their functions as contemplated under Section 4(1)(b)(v) of the RTI Act. Section 2(f) defines "information" and the same is also extracted hereunder:-

"2. Definitions.--In this Act, unless the context otherwise requires,--(f) "information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force."

11. On a cumulative reading of Sections 2(f), 4(1)(b)(v), 8 and the provisos to Section 24(4), I am of the view that the first respondent is entitled to the manual of DVAC. Hence, finding no infirmity in the impugned order, the writ petition fails and the same is dismissed. No costs."

24. In the case of First Appellate Authority-cum-Additional Director General of Police and Anr. Vs. Chief Information Commissioner, Haryana and Anr. reported in 2011 SCC Online P&H 17663, the High Court of Punjab and Haryana, held as follows:

"4. Since the question of law raised in both appeals is common, therefore, the appeals are being taken for decision together. It is argued by learned counsel for the appellant that the appellant-authority is exempted from the purview of the Act on the basis of the notification dated 29.12.2005. Since, the Act



WEB COPY

itself is not applicable, the information cannot be sought under the Act by respondent No. 2. It is argued that the information which is sought does not pertain to violation of human rights or corruption, therefore, the same cannot be supplied in terms of exception to Section 24(4) of the Act. The notification dated 29.12.2005 and the relevant extract of Section 24(4) of the Act reads as under:

Notification: dated 29th December, 2005

No. 5/4/2005-IAR - In exercise of the power conferred by sub-section (4) of section 24 of the "Right to Information Act" 2005 (Central Act No. 22 of 2005), the Governor of Haryana hereby specifies the intelligence and security organizations as mentioned in the schedule given, below for the purpose of the said sub-section.

Schedule

- (i) State Criminal Investigation Department (C.I.D.) including the Crime Branch:
- (ii) Haryana Armed Police:
- (iii) Security Organization of Police:
- (iv) Haryana Police Telecommunication Organization:
- (v) India Reserve Battalion:
- (vi) Commando

Section 24(4)

Nothing contained in this Act shall apply to such intelligence and security organizations, being organizations established by the State Government, as that Government may, from time to time, by notification in the Official Gazette, specify:

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 State 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.

5. Learned counsel for the appellant has argued that the learned State Information Commissioner has found that the information, which is sought by the applicant-respondent No. 2, is not sensitive in nature dealing with sovereignty and integrity of India, therefore, such information can be disclosed is not tenable as such ground for non-disclosure is contemplated by Section 8 of the Act. It is contended that in terms of Section 24(4) of the Act, the information which can be disclosed is in respect of the allegations of corruption and human rights violations but since the



WEB COPY

information sought does not relate to any of the excepted matters, the information cannot be sought. We have heard learned counsel for the appellant and find no merit in the present appeal. Learned single Judge has held that the information sought pertains to allegation of corruption and, therefore, cannot be withheld by the appellant. The question needs to be examined is whether the information in respect of encroachment of the public land or of filling up the public post can be said to be the information "pertaining to allegation of corruption".

6. The expression "pertaining to allegation of corruption" is not defined in the Act. Even, the Prevention of Corruption Act, 1988 does not define what are the allegations pertaining to corruption? In the absence of any statutory definition in the Act, the ordinary meaning to the expression used in the Act has to be applied. The expression "pertaining to allegation of corruption" cannot be defined. It includes within its meaning many colours and shades of corruption. There cannot be any exhaustive definition that what are the allegations pertaining to corruption. But an attempt can be made to understand the scope of the expression used in the statute.

13. As mentioned above, the expression pertaining to allegation of corruption cannot be exhaustively defined. The Act is to step-in-aid to establish the society governed by law in which corruption has no place. The Act envisages a transparent public office. Therefore, even in organizations which are exempt from the provisions of the Act, in terms of the notification issued under Section 24(4) of the Act Still information which relates to corruption or the information which excludes the allegation of corruption would be relevant information and cannot be denied for the reasons that the organization is exempted under the Act. The information sought in the present case is in respect of the number of vacancies which have fallen to the share of the specified category and whether such posts have been filled up from amongst the eligible candidates. If such information is disclosed, it will lead to transparent administration which is antithesis of corruption. If organization has nothing to hide or to cover a corrupt practice, the information should be made available. The information sought may help in dispelling favouritism, nepotism or arbitrariness. Such information is necessary for establishing the transparent administration. Therefore, we do not find any illegality in the order passed by the. State



Information Commissioner, Haryana and affirmed by learned single Judge in the orders impugned in the present appeals."

25. In the case of Ym.Md.Abid Hussain Vs. The State of Manipur, reported in 2015 SCC Online Mani 129, the High Court of Manipur, held as follows:

"[8] The Right to Information Act, 2005 (hereinafter referred to as the "Act") was enacted in the year 2005 for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority as mentioned in the Preamble to the said Act. The said Act was enacted keeping in mind the necessity of democracy of having an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed and to harmonise the conflicting interests of the equally public importance which may arise to maintain efficient operations of the Governments, optimum use of limited fiscal resources and preservation of confidentiality of sensitive information. Thus, while enacting the Right to Information Act, 2005, the Parliament had kept into consideration these two conflicting public interests and while allowing access to information relating to the public authorities, certain restrictions have been also placed, for example, by enumerating the areas as provided under Section 8 of the Act, which provides that notwithstanding anything contained in this Act, there shall be no obligation to give any citizen information relating to the matters indicated in Section 8 of the Act. Similarly, certain information relating to the third party has also been restricted as provided under Section 11 of the Act. Section 24 of the Act further provides that nothing contained in the Act shall apply to the intelligence and security organisations specified in the Second Schedule, being organisations established by the Central Government and such organisations established by the State Government as the State Government may from time to time by Notification in official gazette specify. Thus, in respect of these intelligence and security organisations referable to Section 24 of the Act no one will have a right under the Act to seek for information. Yet, a certain exception has been made by opening a window of limited access in respect of





WEB COPY

official gazette by the State such exemption would not be applicable as regards information pertaining to allegations of corruptions and human rights violence. Hence, if the information sought for pertains to allegations of corruptions and human rights violence, even in respect of such intelligence and security organisations, the provisions of the Right to Information Act, 2005 will be applicable. In that context, the expression "information pertaining to allegations of corruption and human rights violence" needs to be understood properly for if any information is covered by the said expression, the authorities are under obligation to provide the information. As to the scope of the aforesaid expression "information pertaining to allegations of corruption and human rights violence" this has been analysed and explained by the Hon'ble Punjab and Haryana High Court in an order dated 28.04.2011 rendered in LPA No. 744 of 2011 and LPA No. 745 of 2011 (supra) which has been relied on by the counsel for the petitioner. The Hon'ble Punjab and Haryana High Court has examined the scope of the expression "information pertaining to allegations of corruption and human rights violence" with reference to the issue involved in the said case as to whether any information in respect of encroachment of the public post or of filling up the public post can be said to be "information pertaining to allegations of corruption and human rights violence". The Hon'ble High Court observed that this expression is not defined in the Act and even in the definition clauses in the Corruption Act, 1988. Referring to the resolution of the General Assembly of the United Nations in its meeting held on 8th January, 1997 which dealt with the seriousness of the problems of corruption and various facets of corruption, the Hon'ble High Court observed that the public officers are to be attentive, fair and impartial in the performance of their functions and at no time should afford any undue preferential treatment to any group or individual or improperly discriminate against any group or individual, or otherwise abuse the power and authority vested in them and information which relates to the working of a public office and whether such office acted in accordance with laws would be relevant so as to exclude the allegation of corruption. The Hon'ble High Court in the said case held that the information sought for which is in respect of the number of vacancies which have fallen to share of the specified category and whether such posts have been filled up from amongst the eligible candidates, if



WEB COPY

disclosed, will lead to transparent administration which is antithesis of corruption and help in dispelling favouritism, nepotism or arbitrariness. Accordingly, the Hon'ble Punjab & Haryana High Court directed furnishing of such information.

[12] This Court respectfully agrees with the reasoning and conclusion arrived at for holding that information in the nature sought for in the said case could not be withheld and ought to be disclosed. In the present case, the information sought for relates to the marks obtained by the successful candidates as well as the petitioner and it is the case of the petitioner that the information sought for before this Court is to dispel any doubt over corruption. Therefore, it can be said that the information sought for by the petitioner in the present case also pertains to the allegations of corruption. In this respect, it may be observed that the expression used in this provision is about "information pertaining to the allegations of corruption" and not "information pertaining to corruption". The earlier expression is of wider import. As per the earlier expression which has been used in the statute, the allegation need not be about a proven corruption or clearly shows existence of corruption. Allegation of corruption may or may not result in proving existence of corruption but there must be indication of the possibility of existence of corruption. However, it does not mean that anybody can seek information by making an allegation of corruption. There must be some proximity or nexus with the information sought and possibility of a corruption. In the present case, if it is found on the basis of the information sought by the petitioner that persons who do not otherwise qualify in terms marks obtained by the candidates have been included in the select list, obviously, the charge of corruption can certainly be validly raised. To that extent such information sought for by the petitioner can be said to be pertaining to allegations of corruption. It is not necessary that the information so furnished would prove an instance of corruption. It would be sufficient if the information so provided leads to a genuine complaint or allegation about the existence of corrupt practice. Therefore, this Court would hold that if the information sought for has a proximate link with the charge of corruption, such information would be covered by the expression "information pertaining to allegations of corruption". Similar position is with the case where there is allegation of human rights violation. The information sought for so



WEB COPY

provided per se may not establish corrupt practice or violation of human rights but it forms a valid and reasonable basis for making allegations of corrupt practice or violation of human rights, such information would come within the scope of the expression "information pertaining to allegations of corruption and human rights violation". This Court would hold that if any such information has the potential to raise a serious question of the existence of corruption or violation of human rights, it can be certainly considered to be "pertaining to allegations of corruption and human rights violation". In that event, such information cannot be withheld, if sought for.

[13] One may look at this issue from another perspective. The exclusion of certain organisations under the main provisions of Sub-sections(1) and (4) of Section 24 is to ensure efficient functioning and operations of the Government, optimum use of limited fiscal resources, preservation of confidentiality of sensitive information and as such other public interest and to protect such other public interest as clearly mentioned in the Preamble to the Act. It is a well established principle that provisions of preamble could be invoked for a proper construction of the statute if the language used is too general. As already discussed above, the expression used in the proviso i.e., "information pertaining to allegations of corruption and human rights violence" is of too general and of wide amplitude which has not been defined in the Act or any cognate Act. However, giving a too wide interpretation may defeat the very purpose of ensuring preservation of the public interests as clearly mentioned in the Preamble. Therefore, a balanced and reasonable interpretation of the said expression can be done by referring to the Preamble as mentioned above. The Preamble is a key to open the mind of the Legislative and proves the board parameters of the enactment which impelled the lawmakers to craft such statutes. The aforesaid preamble is reproduced hereinbelow:-

"An Act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto.

WHEREAS the Constitution of India has established



WEB COPY

democratic Republic;

AND WHEREAS democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed;

AND WHEREAS revelation of information in actual practice is likely to conflict with other public interests including efficient operations of the Governments, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information;

AND WHEREAS it is necessary to harmonise these conflicting interests while preserving the paramountcy of the democratic ideal;

NOW, THEREFORE, it is expedient to provide for furnishing certain information to citizens who desire to have it."

[14] Therefore, in the context of the Preamble, what is evident is that these organisations referred to in Section 24 of the Act have been specifically sought to be taken out of the purview of the Right to Information Act, 2005 in order to protect certain public interests including efficient operations of Government, optimum use of limited resources and preservation of confidentiality of sensitive information. However, an exception has been made to this exclusionary provision by inserting the said proviso where the "information pertaining to allegations of corruption and human rights violence" will be subject to the provisions of the Right to Information Act, 2005. This Court is of the view that if any information sought for does not relate to any of these areas referred to in the Preamble which the Act seeks to protect and preserve and thus keep away from public domain but are also relatable to any allegation of corruption and violence of human rights, there is no reason why such an information should be withheld, if sought for.

[15] This issue can be viewed from another perspective. The legislature in their anxiety to keep certain organisations which are engaged in activities involving sensitive information, secrecy of the State, have sought to keep these organisations away from the purview of the Act by including such organisations in the Second Schedule of the Act as far as Central Organisations are concerned and in the official gazette in respect of State organisations. It does not, however, mean that all information relating to these organisations are completely out of bound of the



WEB COPY

public. For example, even though the Central Bureau of Investigations is one of the organisations included in the Second Schedule to the Act, it does not mean that all information relating to it are out of bound of the public. If one looks at the website of the Central Bureau of Investigation which is in the public domain, there are so many information about the organisation which are already voluntarily made open to the public. This is for the simple reason that disclosure of these information does not in any way compromise with the integrity of the organisation or confidentiality of the sensitive nature of works undertaken by this organisation. The purpose of excluding all these organisations from the purview of the Act as provided under Section 24 is to merely protect and ensure the confidentiality of the sensitive works and activities undertaken by these organisations. Therefore, if there are any information which do not impinge upon the confidentiality of the sensitive activities of the organisation and if such information is also relatable to the issues of corruption or violation of human rights, disclosure of such information cannot be withheld. Similarly, in respect of the police organisations in the State of Manipur if anybody seeks any information which does not touch upon any of the sensitive and confidential activities undertaken by the police department and if the said information also can be related to the issues of any allegation of corruption or violation of human rights, such information cannot be withheld. We may further clarify this position by borrowing the concept of doctrine of "pith and substance". The doctrine of "pith and substance" was evolved by the courts primarily to determine whether a particular law relates to a subject mentioned in one list or the other and while doing so, the Court looks into the substance of the enactment. Thus, if the substance of the enactment falls within the Union List then the incidental and encroachment by the enactment on the State list would not make it invalid. Thus, the essence of this doctrine centred round the substantive part of the enactment or the core subject of the enactment. Though this doctrine cannot be invoked to decide the issue raised in this petition, the principle behind it may be referred to while deciding the issue at hand. By doing so, this Court will hold that if any information relates to the core activity of the organisation because of which such an organisation has been excluded from the purview of the Act, any such information can be withheld except which relates to



of Manipur, reported in 2016 SCC Online Mani 13, the High Court of Manipur, held as follows:

"5. The subject matter in issue relates to the interpretation of the provisions of Section 24 of the RTI Act, 2005 and in particular, Section 24(4) which is reproduced herein below:

"Section 24(4). Nothing contained in this Act shall apply to such intelligence and security organisations, being organisations established by the State Government, as that Government may, from time to time, by notification in the Official Gazette, specify:

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 not be provided after the approval of the State 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."

6. Shri Th. Khagemba, learned counsel appearing for the petitioner has heavily relied upon the judgment and order dated 13-10-2015 passed by this court in W.P. (C) No. 880 of 2014 wherein this court had examined the question as to whether the petitioner therein was entitled to information sought for by him when the Police Department, Government of Manipur had been exempted and no allegation pertaining to corruption and violence of human rights had been made by him. Similar issue has arisen in the present case and the only difference is that in the said case, the information sought for was with regard to the recruitment process of Sub-Inspector of Police whereas in the present case, the information sought for by the petitioner are as regards his service namely the initial appointment, suspension order, documents relating to departmental proceedings, termination order etc. On perusal of the said judgment and order, this court is of the view that the issue involved herein is covered by it and in that case, this court held that the information sought for by the petitioner therein which pertained to allegations of corruption, would be covered by the expression "information pertaining to allegations of corruption". It has further been held that if any information has the potential to raise a serious question of the existence of corruption or violation of human rights, it can be certainly considered to be "pertaining to allegations of corruption and human



WEB COPY

rights violation". The para 12 thereof is as under:

"[12] This issue can be viewed from another perspective. The legislature in their anxiety to keep certain organisations which are engaged in activities involving sensitive information, secrecy of the State, have sought to keep these organisations away from the purview of the Act by including such organisations in the Second Schedule of the Act as far as Central Organisations are concerned and in the official gazette in respect of State organisations. It does not, however, mean that all information relating to these organisations are completely out of bound of the public. For example, even though the Central Bureau of Investigations is one of the organisations included in the Second Schedule to the Act, it does not mean that all information relating to it are out of bound of the public. If one looks at the website of the Central Bureau of Investigation which is in the public domain, there are so many information about the organisation which are already voluntarily made open to the public. This is for the simple reason that disclosure of these information does not in any way compromise with the integrity of the organisation or confidentiality of the sensitive nature of works undertaken by this organisation. The purpose of excluding all these organisations from the purview of the Act as provided under Section 24 is to merely protect and ensure the confidentiality of the sensitive works and activities undertaken by these organisations. Therefore, if there are any information which do not impinge upon the confidentiality of the sensitive activities of the organisation and if such information is also relatable to the issues of corruption or violation of human rights, disclosure of such information cannot be withheld. Similarly, in respect of the police organisations in the State of Manipur if anybody seeks any information which does not touch upon any of the sensitive and confidential activities undertaken by the police department and if the said information also can be related to the issues of any allegation of corruption or violation of human rights, such information cannot be withheld. We may further clarify this position by borrowing the concept of doctrine of "pith and substance". The doctrine of "pith and substance" was evolved by the courts primarily to determine whether a particular law relates to a subject mentioned in one list or the other and while doing so, the Court looks into the substance of the enactment. Thus, if the substance of the enactment falls within the Union List then the incidental and encroachment by



WEB COPY

the enactment on the State list would not make it invalid. Thus, the essence of this doctrine centred round the substantive part of the enactment or the core subject of the enactment. Though this doctrine cannot be invoked to decide the issue raised in this petition, the principle behind it may be referred to while deciding the issue at hand. By doing so, this Court will hold that if any information relates to the core activity of the organisation because of which such an organisation has been excluded from the purview of the Act, any such information can be withheld except which relates to allegation of corruption and violation of human rights. Therefore, if there be any information which does not relate to the principal or the core function of the organisation which is sought to be protected by including in Section 24 of the Act, but if it can have some reference or relatable to corruption or violation of human rights, such an information cannot be withheld. It may be observed that the core function of the police organisation is to maintain law and order, security of the State and discharge such activities which are related to and ancillary to these functions. In that context, undertaking the exercise of a recruitment process is not part of the core function of the police department. It is some function which could be outsourced to any other agency like the Public Service Commission etc. and this activity does not form part of the core function of the Police Department which cannot be outsourced to any other agency. Of course, recruitment of intelligence officials may form part of the core function. But in the present case, such is not the case. The recruitment in issue is the general recruitment process of the personnel of the police department generally."

7. While passing the said judgment and order, this court has agreed to and subscribed to the views of the Hon'ble Punjab and Haryana High Court rendered in its order dated 28-04-2011 in LPA No. 744 of 2011 and LPA No. 745 of 2011 wherein it has examined the scope of the expression "information pertaining to allegations of corruption and human rights violence" as regards the issue whether any information, in respect of encroachment of the public post or of filling up the public post, can be said to be "information pertaining to allegations of corruption and human rights violence". The said Hon'ble High Court has observed that this expression is not defined in the Act and that the public officers are to be attentive, fair and impartial in the performance of their functions and at no time should afford any undue preferential treatment



WEB COPY

to any group or individual or improperly discriminate against any group or individual, or otherwise abuse the power and authority vested in them and information which relates to the working of a public office and whether such office acted in accordance with laws would be relevant so as to exclude the allegation of corruption. The said Hon'ble High Court has further held that the information sought for which is in respect of the number of vacancies which have fallen to the share of the specified category and whether such posts have been filled up from amongst the eligible candidates, if disclosed, will lead to transparent administration which is antithesis of corruption and help in dispelling favouritism, nepotism or arbitrariness. Accordingly, the Hon'ble Punjab & Haryana High Court are directed for furnishing of such information.

8. This court proposes to add further observations to its earlier judgment and order referred to above. There can be no any dispute that the RTI Act, 2005 is enacted with the avowed objective of conferring a statutory right on the citizens in India to have access to Government-controlled information or to seek information from Central Government/State Governments, local bodies and other competent authorities as a matter of right. The idea is that it would prove to be instrumental in bringing in transparency and accountability in Government and Public Institutions which would help in bringing the growth of corruption in check. The scope of the Act is wide enough to cover all the Constitutional Institutions and subject to exemptions, universally applies to all Public Authorities. Section 3 gives statutory recognition to the right to information subject to the other provisions of the Act. Section 8 sets out limitations on the right of access as exemptions from disclosure of information. Similarly, Section 24(4) confers power on the State Government to exempt any intelligence and security organisation established by it from the purview of the provisions. It may be noted that the right to information is a facet of "freedom of speech and expression", as contained in Article 19(1)(a) of the Constitution, which are the foundation of all democratic organisations. Fundamental rights should not be cut down by too restricted an approach. Even prior to the enactment of RTI Act, 2005, the expression "freedom of speech and expression" has been construed by the Hon'ble Supreme Court, in a catena of decisions, to include not only liberty to propagate one's views,



WEB COPY

ideas, opinions and thoughts but also the right to acquire information. In other words, the right to information can be said to be a fundamental right subject to the exemptions as contained in Section 8 and 24 of the RTI Act. As has been held by the Hon'ble Punjab & Haryana High Court, the expression "information pertaining to allegations of corruption and human rights violence" is not defined in the Act but it has a wide connotation in view of the objective sought to be achieved in the Act. The relevance of transparency and accountability in the administration has arisen because of the corruption being rampant and power allegedly being misused by the Public Authorities in the country. Article 19 of the Universal Declaration of Human Rights, 1948 provides that everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. To comprehend the intent of the Legislature while enacting the RTI Act specially as regards the said expression, the provisions of the Act, as a whole, are to be read keeping in mind the purpose for which the RTI Act is enacted and it may further be noted that the exemptions cannot be construed so as to defeat the very objective sought to be achieved in the RTI Act, 2005. Therefore, it has been rightly held by this court in the said case of Md. Abid Hussain v. State of Manipur, W.P. (C) No. 880 of 2014 that any information which does not touch upon any of the sensitive and confidential activities undertaken by the Police Department, Government of Manipur cannot be withheld at all. In other words, access to such information cannot be denied to the citizens. It can be seen from the facts of the present case that the information sought for by the petitioner have nothing to do with the sensitive and confidential activities undertaken by the Police Department, Government of Manipur and therefore, the same cannot be denied to him.

9. In view of the above, the instant writ petition is allowed and consequently, the decision/order dated 26-06-2015 passed by the State Chief Information Officer, Manipur Information Commission, Imphal in Appeal Case No. 17 of 2015 is quashed and set aside with the direction that the respondent No. 4 shall provide the information sought for by the petitioner within a period of three weeks from the date of receipt of a copy of this judgment and order. There shall be no order as to costs."

27. In the case of CPIO CBI Vs. C.J.Karira, reported in



2017 SCC Online Del 10475, the High Court of Delhi held as follows:

"4. In view of the above, the only controversy to be addressed is whether the information sought by the petitioner falls within the proviso to Section 24(1) of the Act.

5. The respondent had filed an application dated 31.01.2012 with the petitioner, inter alia, seeking the following information for the period January 2007 to December 2011.

"1. All the Ministries/Departments of the Government of India.

2. Union Public Service Commission/Lok Sabha Secretariat/Rajya Sabha Secretariat/Cabinet Secretariat/Central Vigilance Commission/President's Secretariat/Vice-President's Secretariat/Prime Minister's Office/Planning Commission/Election Commission.

3. Central Information Commission/State Information Commissions

4. Staff Selection Commission, CGO Complex, New Delhi

5. Office of the Comptroller & Auditor General of India, 10, Bahadur Shah Zafar Marg, New Delhi

6. All Officers/Desks/Sections, Department of Personnel & Training and Department of Pension & Pensions Welfare"

6. The petitioner had responded to the aforesaid request by a letter dated 05.03.2012 claiming that CBI was included within the second schedule to the Act and, thus, in terms of section 24(1) of the Act was excluded from the applicability of the Act.

7. Before proceeding further, it would be relevant to refer to Section 24(1) of the Act, which is set out below:-

"24. Act not to apply in 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



WEB COPY

forty-five days from the date of the receipt of request.”

8. It is apparent from the plain reading of the first proviso to Section 24(1) of the Act that information pertaining to allegations of corruption and human rights violation are not excluded from the purview. The petitioner contended that since the information sought related to allegations of corruption, the same were not excluded from the scope of Section 24(1) of the Act.

9. The learned counsel for the petitioner had countered the aforesaid contention and submitted that the proviso must be read in a restricted manner and, only information pertaining to allegations of corruption relating to the public authority - in this case CBI - was excluded from the purview of Section 24 (1) of the Act. It was contended that since the information sought by the respondent pertain to allegations of corruption in other organisations, the first proviso would be inapplicable and, the petitioner would not be obliged to disclose the same.

10. The aforesaid question is squarely covered by the decision of the Coordinate Bench of this Court in CPIO, Intelligence Bureau v. Sanjiv Chaturvedi: W.P.(C) 5521/2016, decided on 23.08.2017, whereby this Court has held as under:-

“29. The plain reading of the proviso shows that the exclusion is applicable with regard to any information. The term “any information” would include within its ambit all kinds of information. The proviso becomes applicable if the information pertains to allegations of corruption and human rights violation. The proviso is not qualified and conditional on the information being related to the exempt intelligence and security organizations. If the information sought, furnished by the exempt intelligence and security organizations, pertains to allegations of corruption and human rights violation, it would be exempt from the exclusion clause.

30. The proviso “Provided that the information pertaining to the allegations of corruption and human rights violations shall not be excluded under this sub-section” has to be read in the light of the preceding phrase “or any information furnished by such organisations to that Government”.

31. When read together, the only conclusion that can be drawn is that, if the information sought pertains to allegation of corruption and human right violation, it would be exempt from the exclusion clause, irrespective of the fact that the information pertains



11. The respondent who is present in Court states that the information sought by him has become stale and, he be permitted to file a fresh application under the Act. Plainly, the respondent is not precluded from filing an application before the petitioner for information relating to allegations of corruption or human rights violation. In the event such application is filed, the petitioner would examine the same. Although, it would not be open for the petitioner to claim that information relating to allegations of corruption in other organisation is exempt from disclosure, however, the petitioner would be at liberty to examine whether the information sought by the petitioner is exempt under any of the clauses of Section 8(1) of the Act."

29. The learned counsel appearing on behalf of the respondents objected the contentions raised by the petitioner by stating that the F.I.R was registered on 23.02.2012 and the petitioner was arrayed as an accused. The petitioner worked as Assistant General Manager in Defence Colony Branch of Indian Overseas Bank from 24.06.2007 to 29.04.2008. Indian Overseas Bank is the leader Bank for the Consortium of Banks, who sanctioned term loans to M/s. Century Communications Limited. The limits sanctioned by the Consortium Banks were released through a no-lein account maintained with Indian Overseas Bank, Defence Colony Branch. During his tenure, the petitioner as Assistant General Manager of the Branch had committed serious irregularities of disbursing an amount of Rs.69.85 Crores without collecting the invoices/quotations, credit report of suppliers and further, he had failed to monitor the no-lein account and allowed operations using check books and thereby the company diverted the funds by issuing various cheques. These irregularities on the part of the petitioner had facilitated the



borrower to defraud the Consortium of Banks by diverting the funds to their own associate concerns without creation of the asset, for which, the limits were sanctioned. The fraud was detected during December, 2011 and is reported to the Reserve Bank of India on 22.02.2012 and thereafter, the Central Bureau of Investigation/3rd respondent lodged an F.I.R against the company, its directors, several Bank officials and others as admitted by the petitioner himself.

30. The CBI had sought sanction for prosecution of the petitioner and the competent authority had granted the same in order dated 10.09.2014. The information sought for by the petitioner under the Right to Information Act relates to the correspondence between the CBI and the sanctioning authority and also the administrative decisions of the sanctioning authority. Thus, the application of the petitioner was rejected by invoking Section 8 (1) (d), (g), (h) of the RTI Act.

31. The learned counsel for the respondents reiterated that in various decisions of the Central Information Commission and the Courts, the exemption under Section 8(1) (h) is a continuous exemption till the prosecution of the offenders. Hence, it is not mandatory to furnish the information, if charge sheet is laid. In fact, the Central Information Commission had impleaded the CBI as the 3rd respondent and found that the informations sought for by the petitioner relates to the confidential correspondence between the sanctioning authority and CBI. Thus, there is no infirmity as such in rejecting the application filed by the petitioner.

32. With reference to the above contentions, the learned counsel for the respondent relied on the judgment of the Central Information Commission in the case of Shri K.L.Bablani Vs. Directorate General of Vigilance, Customs and Central Excise dated 16.09.2009 and the observations are as follows:

"7. It is my belief, therefore, that a public authority which is authorized to hold file-notings in sensitive files, such as vigilance and disciplinary matters, confidential under the provisions of Section 124 of AT-16092009-04.doc the Indian Evidence Act can also hold such documents (file-notings) confidential under Section 11(1) of RTI Act read with Section 2(n), on satisfying certain conditions, Section 2(n) of RTI Act, which states that a "third party" means a person other than the citizen making a request for information and includes a public authority."

33. The Hon'ble Division Bench of the High Court of Madras in the case of the S.Vijayalakshmi Vs. Union of India, reported in 2011 (5) CTC 376, elaborately considered the rights of the



"22. Repeated reference has been made by stating that the exemption under Section 24 (1) is a blanket exemption or in other words a whole sale exemption. In the preceding paragraphs we have reproduced Section 24 of the Act. In terms of sub-Section (1) of Section 24, nothing contained in the RTI 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. As noticed above, First Proviso to Section 24 (1) of the Act states that information pertaining to the allegations of corruption and human right violation shall not be excluded under Section 24(1) of the Act. In terms of the Second Proviso, to sub-Section (1) of Section 24, that in case of information sought for is in respect of allegations of violation of human right, the information shall only be provided after the approval of the Central Information Commission and notwithstanding anything contained in Section 7 (which deals with the disposal of requests), and such information shall be provided within 45 days from the date of receipt of request. Therefore, it can hardly be stated to be case of a whole sale exemption or a blanket exemption. If an RTI applicants comes with a query alleging corruption in any of the Agencies or Organisations, listed out in the Second Schedule to the RTI Act, such information sought for is bound to be provided and the protection under Section 24 (1) cannot be availed of. Similar is the case relating to violation of human rights. Therefore, the safeguard is inbuilt in the Statute so as to ensure that even in respect of the Agencies or Organisations listed out in the Second Schedule are not totally excluded from the purview of the RTI Act."

34. The High Court of Madras in the above judgment, in unequivocal terms, held that agencies or organizations listed out in the Second Schedule are not totally excluded from the purview of the RTI Act. Further, with reference to the 1st Proviso to Section 24(1) of the Act, which is also relied upon by the learned counsel for the petitioner. The Court states that information pertaining to the allegations of corruption and human rights violation shall not be excluded under Section 24(1) of the Act.

35. The learned counsel for the respondent reiterated that



though there is no absolute prohibition for providing information in respect of the organizations listed out in the Second Schedule, the nature of the informations sought for is to be considered by the Public Information Officer. Thus, in the present case, the information sought for was considered as confidential and under those circumstances, the application was rejected.

36. In the case of Chandra Bhushan Sahay Vs. CPIO & General Manager (MP and IR), Central Information Commission, passed an order dated 10 July, 2020 and the relevant paragraph held as follows:

"5. The Supreme Court in its order dated February 12, 2019 has held as under:

4. The dispute remains about document Nos.1, 3 and 4 as they were not supplied considering the provisions of Section 8 (i) (h) of the Right to Information Act which prohibits disclosure of information connected with ongoing investigations and prosecutions and it was opined that it was source information that has triggered the anti-corruption proceedings and nothing should be done which affects the proceedings or which compromises the position of the sources of information. 5. In view of the aforesaid reasons employed by the Information commissioner, we are of the opinion that there was justification in refusing to supply the aforesaid documents. However, as rightly pointed out by learned counsel for the appellant that during the course of trial, if the trial Court feels it appropriate and if a prayer is made, the documents may be called by court in accordance with law."

37. Considering the arguments as advanced by the respective learned counsels appeared on behalf of the parties to the lis, let us consider the information sought for by the petitioner.

38. The petitioner requested for a copy of request letter received from CBI for seeking sanction, copy of internal office memorandum containing the opinion/views of Disciplinary Authority for giving sanction for prosecution, copy of first advice given by CVC, New Delhi, the outcome of the reconciliatory meeting between Disciplinary Authority and CBI office of the New Delhi, the copy of any further clarification sought for by the CVC, the copy of internal office memorandum containing the opinion/views of Disciplinary Authority for giving sanction for prosecution, the copy of latest correspondence from CVC requesting/advising the Bank, the copy of internal office memorandum containing the opinion/views of the present Disciplinary Authority and finally copy of draft



sanction supplied by CBI.

39. Considering the nature of questions sought for, interestingly, the first information is the request letter received from the CBI for seeking sanctioning. The said letter may have certain informations pertaining to the investigation/interrogation. The second document is copy of internal office memorandum containing the opinion/views of the Disciplinary Authority.

40. This Court is of the considered opinion that note file, opinions, views of the Disciplinary Authority may vary from time to time based on the informations and based on the collection of facts and evidences. Even at later point of time, initial opinion may not be final opinion in many cases. Subsequent facts may provide a different views and opinion and therefore, if the copy of the opinion and views are supplied, it will create unnecessary hindrance for the peaceful investigation, interrogation and to proceed with the departmental disciplinary proceedings as well as the criminal proceedings. For example, on receipt of the preliminary report, the Disciplinary Authority would have formed certain opinions or expressed some views. However, those opinions and views cannot be construed as final, as far as the decisions to be taken. During subsequent period, if further documents are made available or certain other facts are placed, then the Disciplinary Authority may change his opinion or views. This is exactly the reason why, in disciplinary case, the rule contemplates opportunities to the delinquent officials. Therefore, the internal office memorandum containing opinion/views if supplied, undoubtedly, would create unnecessary issues as the petitioner will certainly rely on the document for the purpose of destroying the case. However, any accused/delinquent officials is entitled to defend his case in the manner known to law.

41. Thus, furnishing of such opinions and views of the Disciplinary Authority at various stages, if provided under the RTI Act, then it will hamper the continuation of the disciplinary proceedings and further, disrupt the investigation to be conducted by the investigating agency.

42. Perusal of other documents and informations sought for by the petitioner are all relatable to the reconciliatory meeting between the officials. Clarifications sought for by the CVC, latest correspondence etc., of such informations and documents sought for reveals that it is between the authorities and more so, relating to views/opinions, internal correspondences etc.,

43. No doubt, all such correspondences are protected under



WEB COPY

Section 8 of the RTI Act. However, it is the "subjective satisfaction" of the authorities. The "subjective satisfaction" must be considered by the Public Information Officer, while complying with the request of the information seekers. This exactly is the purpose and object of 8 (h) of the Act.

"Section 8 (h) contemplates of information which would impede the process of investigation or apprehension or prosecution of offenders."

44. Where the circumstances narrated under Section 8 (h) on that informations, which would impede the process of investigation or apprehension or prosecution of offenders. Thus, if the information provided, would cause any hindrance to the investigation or apprehension or prosecution of offenders. The language employed is "Apprehension". Thus, "Apprehension" of the competent authority is also considered in the legislation. The word "Apprehension", no doubt, can be interpreted widely and further, it provides discretion to the authorities for forming an opinion, whether there is an an "Apprehension" or not. In this regard, the subjective satisfaction of the competent authority is of paramount importance. The Public Information Officer is expected to consider in the event of furnishing such informations, which all are connected with the investigation or prosecution of offenders and providing of such informations, would impede the process, then, he is empowered to exercise power of discretion and reject the application of the information seeker. Thus, the scope of section 8 (h) is to be understood, with reference to the context and to the subjective satisfaction of the authorities competent. If the competent authority satisfied that there is a likelihood of impede the process of investigation or prosecution of offenders, then such informations or documents shall be denied.

45. The purpose and object of the exemption clause is to ensure that the administrative confidentiality are protected and because of providing of information, the further continuation of investigation or prosecution cannot be impeded. This being the scope of exemption under Section 8 (h), the questions sought for by the petitioner in the present case with reference to 8 (h) is to be considered.

46. As discussed in the aforementioned paragraphs, the questions and documents sought for by the petitioner in the present case is relatable to internal office memorandum containing opinions/views of reconciliatory meeting between the Disciplinary Authority and CBI clarification sought for by CVC internal office memorandum containing opinions/views latest correspondences from CVC etc.,

47. This Court is of the considered opinion that such



inforcements, if provided, it will create unnecessary hampering of the Disciplinary Proceedings or the prosecution. Even an apprehension in this regard is sufficient to deny information to the applicants. The word "Apprehension" is employed in the Act, so as to protect the prosecution and process of investigation, which should not be paralyzed at any circumstances in the public interest. When the investigation is undertaken, then the authorities must be provided with an amount of discretion for the purpose of culling out the truth in respect of the allegations. Thus, any hindrance in between, would undoubtedly paralyze the investigation process, which would dilute the prosecution and would extend unlawful benefit to the accused persons.

48. The opinions and views formed by the competent authorities on every stage may vary or change depending on the progress made in the investigation and based on the further facts culled out from and out of the evidences. During the course of such investigation or prosecution, if informations are provided regarding the opinions already formed, then undoubtedly the same will hamper further investigation and disrupt the prosecution to be conducted by the agency. If such nature of informations or documents are provided, then it may not be possible to proceed with the prosecution for the purpose of establishing the offence.

49. In this context, the rights of both the parties should be considered by the Courts. It is not only the right of the information seekers, but the right of the information provider must also considered by this Court. Whenever a statutory right is conferred to the citizen, equally such right is conferred to the other citizen, whose interest is also to be protected before allowing a person to exercise such a statutory right. To elaborate, right and duties are corresponding terms, so also, rights can be exercised by any citizen, honoring the corresponding rights of the other citizen. It is exactly the constitutional perspective and the philosophy. Take a case, where informations or documents are mechanically provided to the information seekers in all circumstances, then the right and duties of the investigating agency and the prosecutors are denied, establishing their cases before the competent Court of law or before the Disciplinary Authority. Thus, a balancing approach is required, while implementing the provisions of the RTI Act. It is not as if, an information seeker is entitled to get all informations and documents including certain internal correspondences and views or opinions recorded by the competent authorities then and there and time to time. Therefore, practical and pragmatic approach coupled with rules of constructive interpretation is of paramount importance to take a decision in such circumstances. In the event of committing any



lapses, the same would provide unlawful gain to the accused/delinquent persons, which would result in destruction of the prosecution or the case of the Disciplinary Authority and larger the public interest involved in the matter of criminal prosecution is also to be considered by the Court. State being the prosecutors, right of investigation, collected evidence, record the opinions and views in those files must be protected in all circumstances and by obtaining all such informations and documents from the competent authorities, the accused may not be allowed to destroy the basis of prosecution as such views/opinions or internal correspondence can never be construed as final opinion/views or the final decision.

50. Considering the fact that the Central Information Commission elaborately considered the grounds raised by the petitioner in the order passed in the Second Appeal, arrived a conclusion that the exemption granted to CBI from applicability of the RTI Act, in terms of Section 24 (1) would become meaningless. If RTI applicants would get information from another Public Authority, the very information that they cannot get from the CBI or information, inexplicably linked to the information and materials provided by the CBI to the Public Authority.

51. The above findings of the Central Information Commission explicitly clarifies that what an information seeker could not able to get from the CBI, cannot attempt to get from his employer or from other agencies. Such calculated applications filed under the RTI Act, at no circumstances, are entertainable. In the present case, the informations and documents sought for are no doubt relating to the files being maintained by the CBI and about the investigation of the Criminal case, so also pertaining to the sanction, which all are relatable to investigation/interrogation or prosecution. Thus, the first proviso to Section 24 (1) cannot be extended merely under the ground that the word 'Corruption' is employed in the Statute.

52. Distinctions are to be drawn in this regard and Section 24 (1) proviso must be read and understood along with the spirit of Section 8 (h) of the Right to Information Act. Rule of constructive interpretation in such circumstances are imminent to ensure that the purpose and object of the RTI Act is not defeated. So also at the time of providing informations or documents, the rights of other parties and the criminal laws system of prosecution by the State is not affected or destroyed on account of providing such confidential informations to the information seekers.

53. In view of the principles considered by this Court in



the aforementioned paragraphs, this Court is able to form a concrete opinion that the informations and documents sought for by the petitioner are rightly rejected by the Public Information Officer, Indian Overseas Bank, First Appellate Authority and finally by the Central Information Commission/Second Appellate Authority.

54. Thus, this Court do not find any infirmity or perversity as such in respect of the reasons and findings given, which all are candid and convincing. Consequently, the Writ Petition fails and stands dismissed. No costs.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

Jeni

To

1. The Central Public Information Officer,
Indian Overseas Bank,
Central Office, #763, Anna Salai,
Chennai - 600 002.
2. The First Appellate Authority cum General Manager,
Law Department, (RTI Cell)
Indian Overseas Bank, Central Office,
#763, Anna Salai, Chennai - 600 002
3. The Head of the Branch,
The Central Bureau of Investigation
Bank Securities & Fraud Cell,
5th Floor, CBI Head Quarters,
5-B, CGO Complex, Lodhi Road,
New Delhi - 110 003
4. The Registrar,
The Central Information Commission
Room No. 306, 3rd Floor,
"B" Wing, August Kranti Bhavan,
Bhikaji Cama Place, Old JNU Campus,
New Delhi - 110 066

+2cc to Mr.R.Manimuthu, Advocate, S.R.No.64645

+1cc to Mr.S.Sathiaseelan, Advocate, S.R.No.64761

W.P.No.37231 of 2016

PL(CO)

RGA(29/12/2021)