

IN THE HIGH COURT OF ORISSA AT CUTTACK**W.P.(C) Nos.14286, 16718 and 17950 of 2016**

Subash Mohapatra
(In W.P.(C) No.14286 of 2016)

Sudhanshu Kumar Nanda ***Petitioners***
(In W.P.(C) No.16718 of 2016)

Pradip Kumar Pradhan
(In W.P.(C) No.17950 of 2016)

-versus-

State of Odisha and another ***Opposite Parties***

Advocates, appeared in these cases:

For Petitioners : **Mr. S. P. Das, Advocate**
(In W.P.(C) Nos.14286 and 16718 of 2016)

None
(In W.P.(C) No.17950 of 2016)

For Opposite Parties : **Mr. S. N. Das, ASC for the State**
Mr. Srimanta Das
Senior Standing Counsel for the
Vigilance Department (Intervener)

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAİK

JUDGMENT
20.06.2022

Dr. S. Muralidhar, CJ.

1. These three writ petitions, each filed by way of Public Interest Litigation (PIL), involve a challenge to the impugned notification dated 11th August 2016 issued by the Commissioner-cum-

Secretary, Information and Public Relations Department, Government of Odisha under Section 24 (4) of the Right to Information Act, 2005 (RTI Act), and are accordingly being disposed of by this common judgment. The said notification provides that nothing contained in the RTI Act “shall apply to the General Administration (Vigilance) Department” of the Government of Odisha “and its organization”.

Contentions of the Petitioners

2. The main ground of challenge in the aforesaid three writ petitions to the impugned notification is that it violates Article 19 (1) (a) of the Constitution of India which guarantees to all Indian citizens the fundamental right to information. It is submitted that under the RTI Act disclosure is the norm and refusal of information, the exception. Reliance in this regard is placed on the decisions in ***State of Uttar Pradesh v. Raj Narain AIR 1975 SC 865***; ***S.P. Gupta v. President of India AIR 1982 SC 149*** and ***Union of India v. Association for Democratic Reforms AIR 2002 SC 2112***.

3. Referring to Section 24 (4) of the RTI Act and, in particular, to the proviso thereto, it is submitted that the power of exemption granted to the State Government thereunder is not available even in the case of intelligence and security organizations where the allegations pertain to corruption and human rights violations. It is submitted that inasmuch as the impugned notification seeks to exempt the entire Vigilance Department in Odisha from the purview of the RTI Act, irrespective of the proviso to Section 24 (4) of the RTI Act, it is *ultra vires* Section 24 (4) of the RTI Act.

In other words, it is contended that by the impugned notification the Government intends to keep away from disclosure to the public, instances of corruption and human right violations, notwithstanding the proviso to Section 24 (4) of the RTI Act. It is further submitted that the notification issued under Section 24 (4) of the RTI Act or even the Rules made under Section 28 of the RTI Act cannot exceed the scope of the restriction under Section 24 of the RTI Act. It is submitted that the Rules and the notifications are meant to carry out the provisions of the RTI Act and not whittle down or take away what is guaranteed by the RTI Act. Reliance is placed on the decision in ***Commissioner of Income Tax, Bombay v. Gwalior Rayon Silk Manufacturing Company Ltd. AIR 1992 SC 1782***. It is further submitted that the impugned notification imposes a restriction not envisaged under Sections 8 and 9 of the RTI Act.

Contentions of the Opposite Parties

4. In reply to the writ petitions, the stand of the Opposite Parties (State) is that the activities of the Vigilance Department and its organizations are similar to that of the Central Bureau of Investigation (CBI) which is entrusted with the responsibility of administering anti-corruption laws. It is pointed out that the Government of India has exempted the CBI from the purview of the RTI Act since 2011. Likewise, the States of Tamil Nadu, Madhya Pradesh, Uttar Pradesh and Sikkim have issued notifications exempting their respective Vigilance Departments from the purview of the RTI Act. It is submitted that the Vigilance Department of the Government of Odisha and its organization are functioning as the premier anti-corruption agencies of the State

and are entrusted with the responsibility of implementing an effective prevention, enforcement and prosecution mechanism thereby ensuring transparency and good governance for the benefit of the people. The essential tasks of the Vigilance Department are stated to be the collection of secret intelligence and making of secret discreet inquiries on the corrupt activities of public servants.

5. It has been further elaborated in the written submissions filed separately by the State on 2nd August, 2021 and again on 9th May, 2022 as well as the separate written notes of submissions of the State Vigilance Department on 9th May, 2022 that if the Vigilance Department were not to be exempted from the purview of the RTI Act then all kinds of information regarding the functioning of the Vigilance Department would become available to the public and that would be against the interests of the security and public interest. In particular, reference is made to the fact that under Section 8 (1) (h) of the RTI Act, information that is otherwise to be made available only under the orders of the Court like the information under Section 91 read with Section 311 of Cr PC; or under Section 162 of the Indian Evidence Act read with Section 123 thereof, would become easily available to an applicant and this in turn might impede the progress of investigation or the prosecution of the case and delay the trial. Reliance in this regard is placed on the decision in ***Hemant Goswami v. CBI 2014 SCC Online P & H 104***. It is contended by the Opposite Parties that premature disclosure of the information, especially file notings, prior to a final decision being taken in disciplinary action has the potential to disrupt such proceedings.

6. The State Vigilance Department contends that revealing confidential information under the RTI Act to an individual, or an organization or even an aggrieved person at any stage would impede the entire process of an enquiry into corruption. It is submitted that Section 8 (1) (h) of the RTI Act does not adequately cover the confidential process which is undertaken in order to build up an enquiry against a corrupt person. It is submitted that the first proviso to Section 24 (4) of the RTI Act regarding allegations of corruption and human rights violation is in an entirely a different context and should not be misconstrued as information regarding corruption which is under investigation. Reliance is placed on the decision of the Madras High Court in ***S. Vijayalakshmi v. Union of India AIR 2011 Mad 275.***

7. It is further submitted that any interference with the procedure mentioned in the Cr PC and the Indian Evidence Act is exempted under Section 8 (1) (h) of the RTI Act. In this context, the order of the Chief Information Commissioner in ***B. Seetharamaiah v. Commissioner of Customs and Central Excise 2010 SCC OnLine CIC 6330*** is relied upon. Reliance is also placed on the decision in ***Chief Information Commissioner v. High Court of Gujarat (2020) 4 SCC 702***, where the Supreme Court had held that RTI Act cannot be invoked if there is already in place an effective legal regime for securing information and there is no lack of transparency. It is submitted that there is sufficient opportunity available to a party to a Vigilance case or a third party to obtain relevant information under Sections 91 and 311 of the Cr PC, Sections 162 and 165 of the Indian Evidence Act and

Sections 4 (3), 5 and 22 of the Prevention of Corruption Act, 1988 (PC Act).

8. The Opposite Parties submit that both the Allahabad High Court in its order dated 25th October, 2010 in PIL No.63607 of 2010 (*Saleem Baig v. State of U.P.*) and the Madras High Court in *Superintendent of Police v. M. Kannappan (2013) 1 MLJ 348* had upheld the constitutional validity of a similar notification under Section 24 (4) of the RTI Act keeping the Vigilance Department out of the purview of the RTI Act and held it not to be *ultra vires* the RTI Act. It is submitted that if the Vigilance Department is not exempted from the scope of the RTI Act, it would frustrate the intent of the legislature while inserting Section 8 (b) of the RTI Act. It is contended that even under Section 172 of the Cr PC, an accused does not have a right to seek to see the Case Diary whereas without the impugned notification such statements may become easily available under the RTI Act. Reliance is placed on the decisions in *Jagannath Rao Dani v. Emperor AIR 1935 Nag 23* and *Emperor v. Dharam Vir AIR 1933 Lah 498*.

9. The Opposite Parties submit that it was not the intent of the legislature to reveal the source of information given in confidence by an individual to the law enforcement agency and this includes the Vigilance Department. This information stands protected under Section 8 (g) of the RTI Act. Even under Section 7 of the PC Act, a person who gives information to the Vigilance

Department about alleged illegal demand of gratification by a public servant can request that his name be kept anonymous.

10. Relying on the decision in ***Girish Ramchandra Deshpande v. Central Information Commissioner (2013) 1 SCC 212***, it is submitted by the Opposite Parties that protection from the probing eyes of outsiders needs to be provided to vigilance officers in performing their duties. It is submitted that the performance of an employee in an organisation is a matter between the employee and employer which would be governed under service rules falling under “personal information” under Section 8 (1) (j) of the RTI Act. It is submitted that the Government issued the impugned notification after receiving representations from the Vigilance Department that they were facing difficulties due to queries raised under the RTI Act. Relying on the decision in ***Bihar Public Service Commission v. Sayad Hussain Abbas Rizvi, (2012) 13 SCC 61*** it is submitted that denial of information of the person whose document and information are with the Vigilance Department on the ground of protecting the person’s fundamental right to privacy would be justified.

11. While it is not disputed by the Opposite Parties that the right of information is a fundamental right, it is submitted that it is also subject to reasonable restrictions. Reliance is placed on the decision in ***Harkchand Ratanchand Banthia v. Union of India (1969) 2 SCC 166***, ***KA Abbas v. Union of India (1970) 2 SCC 780***, ***Dinesh Trivedi v. Union of India (1997) 4 SCC 306*** and the decision in ***Saleem Baig v. State of U.P. (supra)*** to contend that

the right to information is subject to reasonable restrictions and the impugned notification is not *ultra vires* the RTI Act or for that matter the Constitution of India.

12. This Court has heard the submissions of Mr. S. P. Das and Mr. N. Nayak, learned counsel for the Petitioners; Mr. S. N. Das, learned Additional Standing Counsel for the State and Mr. Srimanta Das, learned Senior Standing Counsel for the Vigilance Department.

Analysis and reasons

13. Before proceeding to discuss the submissions made, the Court would like to reflect on the process that led to the enactment of the RTI Act. The precursor to the RTI Act was the Freedom of Information Act, 2002, which never became operational. It was later amended extensively and enacted as the RTI Act in 2005. The Statement of Objects and Reasons appended to the RTI Act explains the process thus:

“In order to ensure greater and more effective access to information, the Government resolved that the Freedom of Information Act, 2002 enacted by the Parliament needs to be made more progressive, participatory and meaningful. The National Advisory Council deliberated on the issue and suggested certain important changes to be incorporated in the existing Act to ensure smoother and greater access to information. The Government examined the suggestions made by the National Advisory Council and others and decided to make a number of changes in the law.

The important changes proposed to be incorporated, inter alia, include establishment of an appellate machinery with investigating powers to review decisions of the Public

Information Officers; penal provisions for failure to provide information as per law; provisions to ensure maximum disclosure and minimum exemptions, consistent with the constitutional provisions, and effective mechanism for access to information and disclosure by authorities, etc. In view of significant changes proposed in the existing Act, the Government also decided to repeal the Freedom of Information Act, 2002. The proposed legislation will provide an effective framework for effectuating the right of information recognized under Article 19 of the Constitution of India.”

14. Another key to understanding the main object and purpose behind the RTI Act, is its Preamble, which reads as under:

“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 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.”

15. Thus, it is clear that one of the essential features of the RTI Act is transparency in public affairs and the need for the public to know how the government functions. Section 24 of the RTI Act, which is relevant to the present context, reads as under:

"24. Act not to apply to certain organizations—

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

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

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

(2) The Central Government may, by notification in the Official Gazette, amend the Schedule by including therein any other intelligence or security organisation established by that Government or omitting therefrom any organisation already specified therein and on the publication of such notification, such organisation shall be deemed to be included in or, as the case may be, omitted from the Schedule.

(3) Every notification issued under sub-section (2) shall be laid before each House of Parliament.

(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 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) Every notification issued under sub-section (4) shall be laid before the State Legislature."

16. What is immediately relevant as far as the present case is concerned, is Section 24 (4) of the RTI Act, which states that the State Government may by a Notification in the Official Gazette, specify "such intelligence and security organisations, being organisations established by the State Government" to which the RTI Act would not apply.

17. The first proviso is an important check on the above power of the State Government. It specifically states that information pertaining to the allegations of corruption and human rights violations shall not be excluded under sub-section (4) of section

24 of the RTI Act. There could be at least two broad sub-categories here. One is cases generally concerning allegations of corruption and human rights violations which are under investigation by or have been investigated by the concerned 'intelligence and security organisations, being organisations established by the State Government'. The other sub-category is cases concerning allegations of corruption and human rights violations involving those working for or employed by the concerned 'intelligence and security organisations, being organisations established by the State Government'. The plain wording of the first proviso to Section 24 (4) of the RTI Act makes it clear that it applies to both the sub-categories noted hereinbefore.

18. Section 24 (1) of the RTI Act is more or less similarly worded as Section 24 (4) of the RTI Act, with one difference being that the former relates to 'intelligence and security organisations, being organisations established by the Central Government' whereas Section 24 (4) of the RTI Act pertains to those established by the State Government. The other difference is that the prohibition in the main part of Section 24 (1) on the applicability of the RTI Act is to the organisation specified in the said Second Schedule to the RTI Act "or any information furnished by such organisations to that Government". This additional phrase "or any information furnished by such organisations to that Government" is not to be found in Section 24 (4) of the RTI Act. However, the two provisos to both Section 24 (1) as well Section 24 (4) of the RTI Act are identically worded.

In other words, in both instances, “information pertaining to the allegations of corruption and human rights violations shall not be excluded” from disclosure. Again, in both instances, where information that is sought is in respect of allegations of violations of human rights, the prior approval of the concerned Information Commission, Central or State, as the case may be, is required. Plainly the legislative intent is to provide information, and not to withhold it, particularly when it pertains to allegations of corruption and human rights violations.

19. The proviso to Section 24 (1) of the RTI Act has been interpreted by the Delhi High Court in ***CPIO, Intelligence Bureau v. Sanjiv Chaturvedi AIR 2017 Del 192***, where it was 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 to the exempt intelligence and security organizations or not or pertains to an Officer of the Intelligence Bureau or not.”

20. This was reiterated subsequently by the same High Court in ***CPIO CBI v. C.J. Karia 2017 SCC OnLine Del 10475*** where the contention of the Petitioner that the CBI was named as an organization to the Second Schedule to the RTI Act by virtue of Section 24 (1) of the RTI Act and was, therefore, totally exempted from its purview, was not accepted by the Delhi High Court. It held as under:

“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.”

21. Thus, it is seen that what cannot be kept outside the purview of disclosure under the RTI Act as spelt out in the proviso to Section 24 (4) of the RTI Act is information pertaining to "allegations of corruption and human rights violations" in both sub-categories of cases as noted hereinbefore viz., cases generally concerning allegations of corruption and human rights violations which are under investigation by or have been investigated by the concerned intelligence and security organisations established by the State Government' or cases concerning allegations of corruption and human rights violations involving those working

for or employed by the said organisations established by the State Government.

22. At this stage, it is necessary to refer to Section 8 of the RTI Act which reads as under:

“8. Exemption from disclosure of information.-

(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,-

(a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;

(b) information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;

(c) information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;

(d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;

(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;

(f) information received in confidence from foreign government;

(g) 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 purposes;

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

(i) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers:

Provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over:

Provided further that those matters which come under the exemptions specified in this section shall not be disclosed;

(j) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:

Provided that the information, which cannot be denied to the Parliament or a State Legislature shall not be denied to any person”.

23. This Court is unable to accept the plea of the Opposite Parties that the information that stands protected from disclosure under Section 8 of the RTI Act will somehow straightway become available to an applicant in the absence of the impugned

notification under Section 24 (4) of the RTI Act. One important factor to be noted is that Section 8 of the RTI Act opens with a non-obstante clause. The other factor is that the category of information that is highlighted in the first proviso to Section 24 (1) and Section 24 (4) of the RTI Act viz., “information pertaining to the allegations of corruption and human rights violations” is not found mentioned as such in Section 8 of the RTI Act. In other words, what stands protected by Section 8 of the RTI Act would remain as such and additionally when such information pertains to allegations of corruption and human rights violations, the proviso to Section 24 (4) of the RTI Act would have to be considered as well. The exercise under Section 8 of the RTI Act would obviously be on a case-by-case basis. The object of the RTI Act, as spelt out in its Preamble, and the legislative intent and emphasis throughout that disclosure is the norm and withholding of information the exception, will have to be kept in view.

24. In this context, it must be noticed that the 2nd proviso under Section 24 (4) of the RTI Act provides a second layer of protection to a public servant, when it states that the information sought in respect of the allegations of violation of human rights shall be only be provided “after the approval of the State Information Commission”. Therefore, it is not as if such information would be straightway made available to a person seeking such information. In processing the request by an applicant seeking information regarding violation of human rights or involving corruption, regard will be had to Section 8 of the RTI Act. That is the true purport of the non obstante clause at the beginning of Section 8 of the RTI Act. In effect, therefore, there is

no conflict between Section 8 on the one hand and the proviso to Section 24 (4) of the RTI Act on the other.

25. This distinction was noticed by the Kerala High Court in ***Joseph M. Puthussery v. State Information Commissioner 2012 SCC OnLine Ker 4133*** where it was observed as under:

“3. The Government has issued Ext.P6 and Ext.P7 notifications in tune with Section 24 (4) of the Right to Information Act, 2005. Several intelligence and security organisations including various wings of the Police Department have been exempted from the Act as per the notifications. The authorities are therefore well founded in not divulging the information sought for by the petitioner which are sensitive in nature. The information sought for do not pertain to allegations of corruption and human rights violation so as to fall within the purview of proviso to section 24(4) of the Act. Any report regarding the Goonda-Police nexus cannot be divulged to the public as it is likely to be misused. The correctness of such report is yet to be established and the identity of the informants cannot be revealed lest it would act as a deterrent.”

26. It is thus seen that on a case-by-case basis it should be possible for the PIO or for that matter the State Information Commission, while considering whether certain information is governed by Section 8 of the RTI Act and should therefore not be divulged straightway to also keep in view the first proviso to Section 24 (4) of the RTI Act. That is sufficient answer to the apprehension expressed by the Opposite Parties that but for the impugned notification, the information pertaining to investigation in criminal cases and other sensitive information concerning disciplinary inquiries will *per force* have to be disclosed to an applicant in terms of the proviso to Section 24 (4) of the RTI Act.

Thus, as regards the process to be adopted in dealing with the applications under the proviso to Section 24 (4) of the RTI Act, inasmuch as Section 8 of the RTI Act opens with a non-obstante clause, if the information sought is covered thereunder it can be disclosed after satisfying the requirements of Section 8 of the RTI Act with regard being had to the true purport of the proviso Section 24 (4). In this context the following observations of the Delhi High Court in ***B.S. Mathur v. Public Information Officer (2011) 125 DRJ 508*** are relevant:

“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."

27. The above decision is also an answer to the apprehension expressed by the Opposite Parties that if the RTI Act were to be made applicable to the Vigilance Department then sensitive information pertaining to criminal investigation would become easily available to an applicant. Such requests will obviously be evaluated on a case-by-case basis, applying, where it is so warranted, Section 8 of the RTI Act. That, however, cannot be the justification for exempting the entire Vigilance Department from the purview of the RTI Act. Strangely, the argument of the Opposite Parties in support of the impugned notification misses the point that if the RTI Act is entirely excluded from application, then the shield of Section 8 of the RTI Act would also not be available.

28. Not each and every aspect of the functioning of the Vigilance Department would involve issues concerning security and the sanctity of investigation. There could be many an instance where the information concerning an organization would not be amenable to protection from disclosure. One such information could be that pertaining to recruitment in the organisation. In ***Bipan Modi v. State of Punjab 2012 SCC OnLine P&H 18520***, the Court negated the plea that information pertaining to recruitment in the Police Department would be protected from disclosure. The Court held as under:

“The object of granting exemption to police or allied departments vide the above reproduced notification is to protect the confidential, sensitive information pertaining to the intelligence or Security Organizations in accordance with Section 24 (4) of the Act. The notification dated 23.2.2006 (Annexure P-2) issued by the Government of Punjab has to be construed in the context of object sought to be achieved by Section 24(4) of the Act which in no certain terms further provides that “information pertaining to the allegations of corruption and Human Rights violations shall not be excluded under this sub-section”. If there were selections based upon considerations other than merits, will it not amount to a kind of ‘corruption’ in the matter of public employment?”

29. Again, in *Md. Abid Hussain v. State of Manipur 2015 SCC OnLine Mani 129*, the Manipur High Court had occasion to examine the scope and ambit of Section 24 (4) of the RTI Act. It was held as under:

“[15] 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”. ... 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.”

“[11] Thus, a reading of the aforesaid provisions of the Act would clearly show that what had been taken out from the purview of the Right to Information Act, 2005 by the main part of sub-Section 4 of Section 24 of the Act, has been brought back by the proviso as far as information pertaining to allegations of corruption and human rights violation are concerned. In other words, even if any intelligence or security organisations have been excluded from the purview of the Act on the basis of notification issued in the 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.”

[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 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.” (emphasis supplied)

30. The above nuanced interpretation by the Manipur High Court of the scope of the proviso to Section 24 (4) of the RTI Act, with which this Court respectfully concurs, is not to be found in the earlier decisions of the Allahabad High Court in ***Saleem Baig v. State of U.P.*** (supra) or the Madras High Court in ***Superintendent of Police v. M. Kannappan*** (supra) which purportedly negated the challenge to the constitutional validity of similar notifications under Section 24 (4) of the RTI Act.

31. Again, in ***First Appellate Authority-cum-Additional Director General of Police v. Chief Information Commissioner, Haryana AIR 2011 P&H 168***, the Punjab and Haryana High Court examined the scope of the expression “information pertaining to allegations of corruption and human rights violation” and in that

context whether information in respect of employment in public post can be said to be “information pertaining to allegations of corruption and human rights violation”. While directing disclosure of the information sought for to be provided, it was pointed out that public officers should be attentive, fair and impartial in the performance of their functions and not give undue preferential treatment to any group or individuals. The information sought was in respect of number of vacancies and whether the posts were filled up from amongst the eligible candidates. Disclosure of such information, according to the High Court, lead to transparent administration which would be antithesis of corruption.

32. Turning to the decision of the Madras High Court in *S. Vijayalakshmi* (supra) on which considerable reliance has been placed by the Opposite Parties, the issue there was concerning the interpretation of Section 24 (1) of the RTI Act granting full exemption to the CBI as an organisation from the applicability of the RTI Act. The High Court did not accept the plea that such an exemption under Section 24 (1) of the RTI Act could be termed as a blanket exemption. Terming as ‘misconceived’ the contention of the Petitioner there “that in view of the exemptions contemplated under Section 8(1) of the RTI Act there would be no necessity for a blanket exemption under Section 24(1) of the Act”, the Madras High Court proceeded to explain as under:

“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 subsection (1) of section 24, nothing contained in the RTI Act shall apply to the Intelligence and Security

organisation 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 applicant 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.”

33. Thus, the Madras High Court did not find a notification issued under Section 24 (1) of the RTI Act to be a ‘blanket’ exemption and gave importance to the first proviso thereto. It clarified that insofar as the information sought pertained to “allegations of corruption and human rights violations” its disclosure cannot be prevented under the shield of a notification under Section 24 (1) of the RTI Act. In doing so the Madras High Court drew on the decision of the Supreme Court in ***Central Board of Secondary Education v. Aditya Bandopadhyah [2011] (8) SCALE 645*** where, it explained, it was held that the RTI Act “seeks to bring about a balance between two conflicting interests as harmony between them is essential for preserving democracy” and that

Sections 3 and 4 seek to achieve the first objective i.e. to bring about transparency and accountability and sections 8, 9, 10 and 11 to achieve the second objective viz. to ensure that revelation of information does not conflict with other public interest which include preservation of confidentiality of sensitive information. Therefore, it was held that “Section 8 should not be considered to be fetter on the right to information, but as an equally important provision protecting other public interest essential for the fulfillment and preservation of democratic ideals.” Later, another Bench of the Madras High Court in ***Superintendent of Police v. R Karthikeyan AIR 2012 Mad 84***, held likewise viz., a notification under Section 24 (4) of the RTI Act would not prevent disclosure of information “pertaining to allegations of corruption and human rights violations.”

34. Indeed, information pertaining to allegations of corruption and human rights violations has been legislatively identified by the RTI Act as a species as deserving of a different treatment in terms of disclosure, which is what is highlighted by the first proviso to both Section 24 (1) as well as Section 24 (4) of the RTI Act. If Section 8 is read with Section 24 of the RTI Act, as it has to since no provision can be viewed as otiose, then it becomes apparent that even while dealing with requests for information falling in the domain of Section 8 of the RTI Act, if such information pertains to allegations of human rights violations or corruption, regard will have to be had to the first provisos to Section 24 (1) Section 24 (4) of the RTI Act.

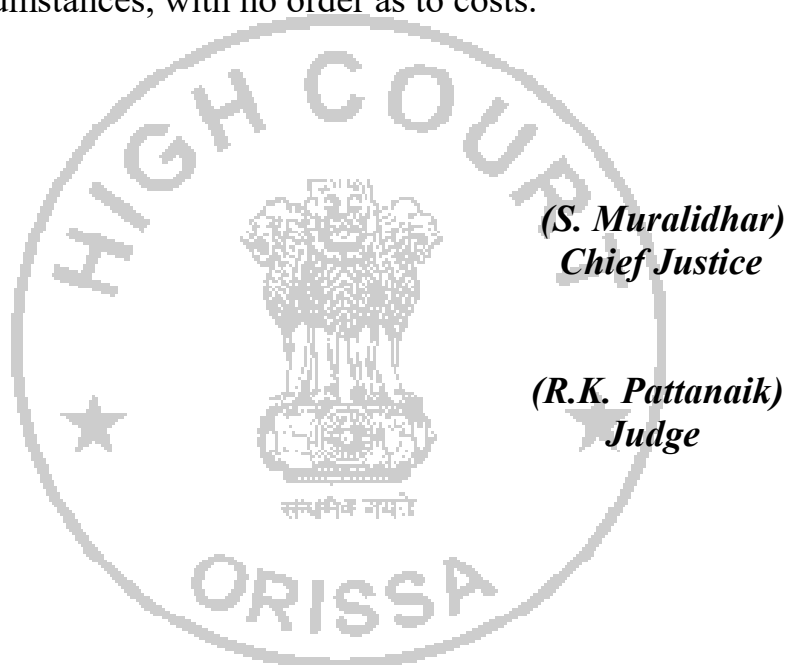
35. The upshot of the above discussion is that this Court finds that the impugned notification in so far as it seeks to exempt the entire Vigilance Department of the Government from the view of the RTI Act would run counter to the 1st proviso to Section 24 (4) of the RTI Act. In other words, the notification insofar as it prevents disclosure of information concerning the General Administration (Vigilance) Department even when it pertains to allegations of corruption and human rights violations would be contrary to the first proviso to Section 24 (4) of the RTI act and, by that yardstick, would be unsustainable in law. If under the RTI Act disclosure is the norm, and non-disclosure the exception, then the impugned notification seeks to take away what is provided by the RTI Act and is therefore ultra vires the RTI Act.

36. In effect, therefore, by virtue of this decision of the Court, the General Administration (Vigilance) Department of the Government of Odisha cannot, notwithstanding the impugned notification dated 11th August 2016, refuse to divulge information pertaining to corruption and human rights violations, which information is expressly not protected from disclosure by virtue of the first proviso to Section 24 (4) of the RTI Act. Also, information that does not touch upon any of the sensitive and confidential activities undertaken by the Vigilance Department, cannot be withheld.

37. For all of the aforementioned reasons, this Court issues a declaratory writ to the effect that the impugned notification dated 11th August, 2016 issued by the Information and Public Relations Department, Government of Odisha under Section 24 (4) of the

RTI Act, will not permit the Government to deny information pertaining to the Vigilance Department involving allegations of corruption and human rights violations, and other information that does not touch upon any of the sensitive and confidential activities undertaken by the Vigilance Department. A further clarificatory notification to the above effect be issued by the Government of Odisha within four weeks.

38. The writ petitions are disposed of in the above terms, but in the circumstances, with no order as to costs.



SK Jena/Secy.