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

Date of Decision: 18th April, 2023

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W.P.(C) 11957/2019

EHTESHAM QUTUBUDDIN SIDDIQUE Petitioner

Through: Mr. Arpit Bhargava & Mr. Panka,
Advocates (M: 9871316969).

versus

**CPIO (IS-I) (IS-IV DESK) MINISTRY OF
HOME AFFAIRS**

..... Respondent

Through: Mr Satya Ranjan Swain, Sr. Panel
Counsel -Central Government & Mr.
Kautilya Birat, Adv. (M: 88601-
89238).

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The Petitioner- Mr. Estesham Qutubuddin Siddique is a death row convict, who is currently in the Central Prison, Nagpur, Maharashtra. He has filed the present writ petition challenging the impugned order dated 13th June, 2019 passed by the Central Information Commission (*hereinafter*, 'CIC') under the provisions of the RTI Act, 2005.
3. Vide the impugned order, the CIC rejected the Second Appeal filed by the Petitioner, challenging the order dated 10th November 2017 passed by Respondent No. 1- CPIO, Ministry of Home Affairs (Internal Security Division-I) under Section 19(3) of the RTI Act, and also non-issuance of the First Appeal Order (FAO) by the First Appellate Authority (FAA), under Section 19(1) of the RTI Act *qua* his RTI application.
4. The Petitioner has been convicted in the 11th July, 2006 Mumbai

Train Blast Case (*'7/11 bomb blast'*). The 7/11 bomb blast was stated to be carried out by the terrorist organisation Indian Mujahideen (*hereinafter, 'the Organisation'*).

5. The Petitioner filed an RTI application on 16th October, 2017 seeking the following information (*'said information'*) from Respondent No. 1-CPIO:-

- "a. Subject matter of the information: Indian Mujahideen*
- b. The period to which the information relates: 2008- till date*
- c. Description of the information required: Kindly furnish the copies of the following documents related to ban on Indian Mujahideen under the Unlawful Activities (Prevention) Act 1967:*
 - i. Background notes.*
 - ii. Reports of all state government,*
 - iii. Notifications.*
- d. Whether the information is required by post or in person: By Speed/ Registered Post"*

6. The said application was filed with the Deputy Secretary (IS-II)-CPIO, MHA, GOI. The CPIO replied on 10th November, 2017 and claimed exemption *qua* the said information at serial nos. (i) and (ii) above in terms of Section 8(1)(g) and Section 24(1) of the RTI Act. Insofar as the Notification issued by Respondent No. 1-MHA under the provisions of the Unlawful Activities (Prevention) Act, 1967 (*'UAPA'*) declaring 'Indian Mujahideen' as a terrorist organisation is concerned, a copy of the said Notification dated 2nd June, 2010 passed under Section 35(1)(a) of the UAPA was provided to the Petitioner.

7. The First Appeal under Section 19(1) of the RTI Act against the reply of the CPIO was filed by the Petitioner on 27th November 2017 raising

grounds to the effect that the backgrounds notes and reports of all the State Governments in the said information, ought not to be denied under Section 8(1)(g) of the RTI Act. It was also urged that such information would not be ‘*exempted information*’ under Section 24(1) of the RTI Act. Since the organisation has already been declared as a terrorist organisation under the provisions of UAPA, the purpose of the said information retained by the Respondents has already been completed. Thus, there is no such information that would be confidential for being retained under Section 8(1)(g) of the RTI Act.

8. Ld. Counsel for the Petitioner, Mr. Arpit Bhargava, also submitted that the said First Appeal has remained pending since no order was passed by the FAA, therefore the Petitioner approached the CIC by way of a Second Appeal reiterating the same grounds. Vide its impugned decision dated 13th June, 2019, the CIC followed the decision of the Id. Single Judge in *Ehtesham Qutubuddin Siddiqui v. CPIO, Ministry of Home Affairs, Internal Security-I Division [(2019) 256 DLT 411]* wherein it was held that though the information would not be exempted under Section 24(1) of the RTI Act, however, under Section 8(1)(g) of the RTI Act, the said information would be exempted from disclosure to the RTI applicant. The operative portion of the said order reads as under:-

“7. In view of the above, the exemption provided under Section 24(1) of the RTI Act will not be applicable to the instant case. The Commission, however, agrees with the submissions of the respondent that disclosure of the information sought for would identify the source of information or, assistance given in confidence for law enforcement. Hence, its disclosure is exempted under Section 8(1)(g) of the RTI Act. Therefore, the information sought for cannot be provided to the appellant. Hence, no further

intervention of the Commission is required in the matter.”

9. Ld. Counsel for the Petitioner, Mr. Arpit Bhargava appearing for the Petitioner makes the following submissions:-

- i) Under Section 8(1)(g) of the RTI Act, the exemption *qua* the said information sought would not be applicable inasmuch as the purpose of the said information has already been satisfied and the information has been used by the Government to take action of banning the organisation. The said information has also in fact, been transmitted to various law enforcement authorities across the country. He places on record a report, which he has been able to obtain, which is titled ‘*Study Material on Indian Mujahideen*’ bearing the seal of the Government of Andhra Pradesh to prove this point.
- ii) He further submits that the Petitioner has been incorrectly convicted, and therefore the Petitioner needs said information to prove his innocence, and to the extent that the said information was confidential as per the provisions of the Section 8(1)(g) of the RTI Act, the same ought to have been severed in terms of Section 10 of the RTI Act, which provides for supply of partial information.

10. On behalf of the Respondent, Id. Counsel Mr. Satya Ranjan Swain along with Mr. Kautilya, submits that the counter affidavit filed on 17th February 2020, clearly gives the reasons as to why the said information cannot be disclosed to the Petitioner. The Id. Counsel for the Respondent made a reference to paragraphs B and C of the said counter affidavit. The same are set out below:-

“b. THAT the records available in the Ministry of Home Affairs (MHA) were searched to find availability of information sought by the Petitioner. On perusal of the concerned file regarding proposal to enlist the terrorist outfit “Indian Mujahideen” under section 35 of UAPA Act, 1967, it was found that Deputy Secretary (Home), Govt. of Delhi has forwarded 'CONFIDENTIAL' letter dated 18.01.2009 enclosing the Deputy Commissioner of Police (Special Cell) Delhi Police letter dated 10.12.2009 and DCP (HQ) commissioner of Police letter dated 21.12.2009 regarding proposal to enlist the terrorist outfit Indian Mujahideen in the Schedule to UAPA Act, 1967 under Section 35 of the said Act. Further, the consolidated noting of the above said file includes the ‘secret’ reports from IB, Cabinet Secretariat (R) and State Governments. Therefore, the information sought was denied to the Petitioner under Section 24 (1) and 8(1) (g) of RTI Act, 2005.

c. THAT since the reports were graded as ‘Confidential’ by the Home Department, Delhi Government, the CPIO was denied the information to the Petitioner under Section 8 (1) (g) and Section 24(1) of the RTI Act, 2005.”

11. He also submits that the said information is quite confidential, and the disclosure of the same would prejudice the public interest and would be covered by the exemptions provided under Section 8 of the RTI Act.

12. Heard. The Court has considered the matter. A perusal of the information sought by the Petitioner would show that the same has far reaching implications inasmuch the Petitioner vide the RTI application dated 16th October, 2017 seeks copies of **‘Entire background notes and reports of all State Governments relating to the banning of Indian Mujahideen’**.

13. Further, as per the Petitioner’s own submission, the said Organisation is stated to be involved in various unfortunate incidents since 2005, some of these incidents have resulted in severe loss of life and injury to property.

14. Under such circumstances, the Respondent- Union of India/Government received confidential reports from several sources, which may have been collected from across the country before issuing the Banning orders under provisions of UAPA in respect of the Organisation. The said notification itself is a public document which has been made available to the Petitioner vide reply of the CPIO dated 10th November 2017. However, this Court is of the opinion that the information, consisting of background notes and all the reports would have to be viewed not merely from the view of the right to information of the Petitioner under the RTI Act, but also from the larger issue of the safety and security of the public and the country as per Section 8 of RTI Act.

15. Information contained in these notes and reports, if disclosed, could also severely jeopardise various sources which may have provided information to the law enforcement agencies and other Government authorities both at the level of State Governments and the Central Government. Thus, in the opinion of this Court, the CIC's position vide decision dated 13th June 2019, that the disclosure of the said information to the Petitioner would endanger the life or physical safety of persons would be correct and would not require interference by this Court.

16. Moreover, in the present case, the nature of the information would also have a bearing on the sovereignty and integrity of India, and the security interests of India. Therefore, even the exemption provided under Section 8(1)(a) of the RTI Act, which is not relied upon by the CPIO, would be applicable in the present case. As held in the case of the Petitioner itself in *Ehtesham Qutubuddin Siddiqui v. CPIO, MHA [W.P(C) 10258/2020, decision dated 3rd February 2023]*, this Court has observed as under:-

“27. There can be no doubt that terrorist activities affect the integrity of India as also the safety and security of its citizens. The fact that one particular investigation qua a particular individual may have been concluded would not in any manner mean that all the investigations have concluded finally. The Mumbai blasts which are the subject matter of the reports, were one of the worst terror attacks on India, leading to hundreds of deaths and hundreds of injured persons. Thus, reports/dossiers on such investigations can have a major bearing on India’s security, sovereignty and integrity.

28. On the one hand, the Petitioner seeks access these reports on the basis of right to information being a convict in the 7/11 bomb blast case. On the other hand, the Respondents are interested in safeguarding the safety of the citizens and the security of the country. The exemption under Section 8(1)(a) of the RTI Act is enacted keeping in mind cases of this nature.

29. Reports and dossiers by intelligence authorities relating to terrorist activities, which are subject matter of investigation are barred and thus, cannot be disclosed under RTI especially, if they compromise the sovereignty and integrity of the country. The larger public interest is in protecting the safety and security and not in disclosing such reports.”

17. In view of the above reasoning, the present writ petition is devoid of merit and is, accordingly, dismissed.

18. The Report which was handed over by the Id. Counsel for the Petitioner, has been handed over to the Id. Counsel for the Respondent for appropriate action.

**PRATHIBA M. SINGH
JUDGE**

APRIL 18, 2023/mr/dn