

\$~9

*

IN THE HIGH COURT OF DELHI AT NEW DELHI*Date of Decision: 3rd February, 2023*

+

W.P.(C) 9971/2019 & CM APPL. 41318/2019**EHTESHAM QUTUBUDDIN SIDDIQUE** Petitioner

Through: Mr. Arpit Bhargava, Ms. Hina Bhargava and Mr. Pankaj, Advocates (M: 9871316969).

versus

CPIO, PUBLICATIONS DIVISION MINISTRY OF INFORMATION AND BROADCASTING Respondent

Through: Mr. Satya Ranjan Swain, Sr. panel Counsel with Mr. Kautilya Birat, Advocate.

(12)

AND

+

W.P.(C) 10258/2020**EHTESHAM QUTUBUDDIN SIDDIQUE** Petitioner

Through: Mr. Arpit Bhargava, Ms. Hina Bhargava and Mr. Pankaj, Advocates (M: 9871316969).

versus

CPIO, MINISTRY OF HOME AFFAIRS Respondent

Through: Mr. Rahul Sharma, Central Govt. Counsel with Mr. C.K. and Mr. Ayush Bhatt, Advs. (M: 981155594).

CORAM:**JUSTICE PRATHIBA M. SINGH****Prathiba M. Singh, J. (Oral)**

1. This hearing has been done through hybrid mode.

W.P.(C) 9971/2019 & CM APPL. 41318/20192. The Petitioner is a death row convict who is currently in the Nagpur Central Prison, Nagpur, Maharashtra. He has filed the present writ petition challenging the order of the Central Information Commission (*hereinafter* 'CIC') dated 13th June, 2019. The CIC in its decision had directed the Jail

Superintendent, Nagpur Central Prison, to facilitate the downloading of copies of the documents sought by the Petitioner.

3. The Petitioner filed an RTI application dated 4th February, 2019 addressed to the Central Public Information Officers (*hereinafter* 'CPIO') Publication Division, Ministry of Information and Broadcasting (*hereinafter* 'MIB') seeking hard copies of the following publications:

- i. Courts of India (Compilation)*
- ii. Belief in ballot*
- iii. Why people protest (Del.)*
- iv. Right to Information*
- v. Citizen and Constitution*
- vi. Dist. Administration (theory and practice)*
- vii. My book of human rights*
- viii. National unity and integrity*
- ix. Local governance (A global perspective)*
- x. A history of socialism (Del.)"*

4. The claim of the Petitioner is that he is below the poverty line being a death row convict and cannot afford the price of these books. He thus prays for the same to be given free of cost to him.

5. The publication division responded and stated that the same cannot be provided free of cost to the general public. However, if the Petitioner is interested, he could contact the sales emporium in Navi Mumbai to purchase the books online. This order was challenged by the Petitioner before the Petitioner before the First Appellate Authority under Section 19(1) of the RTI Act, 2005 which also held that there was no document to prove that the applicant is below the poverty line. Accordingly, the appeal was rejected. Thereafter, the CIC also disposed of the appeal with the following directions:

“9. In view of the above, the Commission finds that an appropriate reply has been furnished to the appellant by the respondent. However, in view of the appellant’s submission that he is in jail where he has no access to the internet, the Commission directs the Jail Superintendent, Nagpur Central Prison, Nagpur to facilitate downloading of copies of Acts/Rules as sought vide the appellant’s RTI application within a period of four weeks from the date of receipt of a copy of this order under intimation to the Commission.”

6. Notice was issued in this writ petition on 16th September, 2019. A counter affidavit has been filed by the MIB to the following effect:

“i. THAT in its order, Hon’ble Chief Information Commissioner (CIC), Mr Sudhir Bhargava on 13.06.2019 finds that an appropriate reply has been furnished to the Petitioner by the Respondent. However, in view of the Petitioner's submission that he is in jail where he has no access to the internet, the Commission directed the Jail Superintendent, Nagpur Central Prison, Nagpur to facilitate downloading of copies of Acts/Rules as sought vide the Petitioner's RTI application within a period of four week from the date of receipt of a copy of this order under intimation to the Commission. With the above observations, the appeal was disposed-off.

j. THAT it may be seen therefore that the Chief Information Commissioner (CIC) has duly upheld the stand taken by the First Appellate Authority, Shri Rajiirder Chaudhary, Director (B).

k. THAT the Appellate Authority suggested the Nagpur Central Jail, keeping in view the circumstances of the prisoner, to take a broader view. Accordingly, the Respondent had requested the Superintendent, Nagpur Central Prison to purchase the books of Publications Division and issue the same to the Prisoner for facilitating his appeal. This stand was again duly appreciated and upheld by the Chief Information

Commissioner (CIC) and vide the Para No.9. Chief Information Commissioner (CIC) has directed the Jail Superintendent to provide the copies of the Act as sought by the Petitioner.”

7. A perusal of the above affidavit filed by the MIB shows that in fact the Appellate Authority has already requested the Jail Superintendent, Nagpur Central Prison to purchase the books of the publication division and issue the same to the Petitioner.

8. Thus, the stand of the MIB is that if the Petitioner is not entitled to internet access, then the Jail Superintendent of the Prison can purchase the books and issue the same to the Petitioner.

9. Ld. counsel for the Petitioner submits that the RTI Rules which were notified with effect from 31st July, 2017 provide clearly that subsequent to the CIC's order, the exemption for persons below the poverty line has in fact been incorporated in the Rules itself in Rules 4 and 5 which read as under:

“4. Fees for providing information.-Fee for providing information under sub-section (4) of Section 4 and sub-sections (1) and (5) of Section 7 of the Act shall be charged at the following rates, namely:-

(a) rupees two for each page in A-3 or smaller size paper;

(b) actual cost or price of a photocopy in large size paper;

(c) actual cost or price for samples or models,

(d) rupees fifty per diskette or floppy;

(e) price fixed for a publication or rupees two per page of photocopy for extracts from the publication;

(f) no fee for inspection of records for the first hour of inspection and a fee of rupees 5 for each subsequent hour or fraction thereof; and

(g) so much of postal charge involved in supply of information that exceeds fifty rupees.

5. Exemption from Payment of Fee. *No fee under rule 3 and rule 4 shall be charged from any person who is below poverty line provided a copy of the certificate issued by the appropriate Government in this regard is submitted along with the application*

10. Considering the stand of the MIB, it is directed that the Jail Superintendent, Nagpur Central Prison may make the said books available to the Petitioner either through online means or by purchasing the same. The same shall be done within a period of four weeks. If the access to the books is not given, the Petitioner is free to avail his remedies in accordance with the law.

11. Petition is disposed of in these terms. All pending applications, if any, are also disposed of.

W.P.(C) 10258/2020

12. The present case has been filed by the Petitioner- Ehtesham Qutubuddin Siddique seeking quashing of the impugned order dated 31st July 2019 passed by the Central Information Commission (CIC).

13. The Petitioner is in judicial custody and has been convicted in the 11th July, 2006 Mumbai Train Blast case (7/11 bomb blast). He was convicted and sentenced to death on 30th September, 2015 by the Special Judge, under Maharashtra Control of Organised Crime Act (MACOCA), 1999 and National Investigation Agency Act, 2008, Special Court No.1, Mumbai.

14. The confirmation proceedings regarding the same are stated to be pending before the Hon'ble Bombay High Court. The Petitioner filed RTI application dated 21st May, 2017 seeking the following documents:

“a) True copy of the report/ dossier etc submitted by Maharashtra Government regarding investigation of 7/ 11 bomb blast case in the year 2006,

b) True copy of the report/dossier etc submitted by the then Andhra Pradesh Government in the year 2009 regarding investigation of Indian Mujahideen group related to 7/ 11 bomb blast case.”

15. The said RTI application was rejected by the CPIO, Ministry of Home Affairs (Internal Security Division-I) vide order dated 22nd June, 2017. The document at serial no.(a) was reject by the CPIO by invoking Section 8(1)(a) of the Right to Information Act, 2005 (*hereinafter “the RTI Act”*). Insofar as the document at serial no.(b) is concerned, the same was rejected on the ground of unavailability.

16. The Petitioner filed first appeal bearing *No. 17011/10/2016/IS-VI(Part III)* before the Joint Secretary (IS-I), First Appellate Authority, under Section 19(1) of the RTI Act. The same was rejected vide order dated 9th August, 2017.

17. Finally, second appeal, being *Second Appeal No. CIC/MHOME/A/2017/166137* titled *Ehtesham Qutubuddin Siddique v. CPIO, O/o Internal Security, Division-I(IS VI Desk), Ministry of Home Affairs, New Delhi*, was filed before the CIC under Section 19(3) of the RTI Act. The same was dismissed by the CIC vide impugned order dated 31st July, 2019.

18. As per the impugned order passed by the CIC it was held that the requested documents cannot be provided in view of Sections 8(1)(h) and 8(1)(a) of the RTI Act as also the fact that there are various other accused, including foreign nationals, who are still absconding in this matter.

19. Notice was issued in this petition on 13th January, 2021 and a counter affidavit was called for by the Respondents. The said counter affidavit has now been filed. Ld. Counsels for the parties have also been heard.

20. Mr. Arpit Bhargava Id. Counsel for the Petitioner submits as under:

- i) that the CPIO had initially relied upon only Section 8(1)(a) of the RTI Act to reject the disclosure of the information, however, at the second appellate stage, the CIC also relied upon Section 8(1)(h) and Section 24 of the RTI Act. The same is not permissible as the RTI applicant is taken by surprise at the second appellate stage;
- ii) that if the information in respect of document at serial no.(b) was not available with the Ministry of Home Affairs, the matter ought to have been transferred to the concerned authority under Section 6 of the RTI Act;
- iii) that insofar as the document at serial no.(a) is concerned, the principle of severability as applicable under Section 10 of the RTI Act has not been applied as to which part of the said document is classified or secret;
- iv) that in view of the Section 8(2) of the RTI Act, the argument of the Respondents that the incident involved a terrorist attack where hundreds of people were affected and deaths were caused, would lead to a conclusion that it would be in the overall public interest to disclose the documents requested under the RTI application;
- v) that the reliance placed on Section 8(1)(h) of the RTI Act by the CIC is completely misplaced inasmuch as the investigation has

already concluded and the Petitioner has already been convicted.;

- vi) that the impugned orders deserve to be set aside and the information which is the basis of the report/dossier mentioned in the Indian Express news article dated 25th February, 2017 would be liable to be disclosed.

21. Mr. Rahul Sharma, Id. Counsel for the Respondents submits as under:

- i) that the Petitioner was involved in one of the worst terrorist attacks in India;
- ii) that the entire RTI application is based on a newspaper article;
- iii) that the report/dossier which is sought by the Petitioner, cannot be severed in the manner as the same may contain various other facts on which investigation is still underway;
- iv) that since the investigation is incomplete and all the accused including certain foreign nationals have not been apprehended the same cannot be disclosed under Section 8(1)(h) of the RTI Act;
- v) that the Anti Terrorist Squad (ATS) of Maharashtra Police being a notified body under Section 24, the reports/dossier would not be liable to be disclosed.

22. The Court has heard the Id. Counsels for the parties.

23. The information sought in the RTI application is in the nature of a report/dossier which is claimed to have been submitted by the Maharashtra Government in respect of the investigation of 7/11 bomb blast. The second information which is sought is a report/dossier claimed to have been

submitted by the Andhra Pradesh Government in the year 2009 regarding the same very bomb blast.

24. Both these reports are sought by the Petitioner are on the basis of a newspaper article dated 25th February, 2017 published in the Indian Express. Ld. Counsel for the Petitioner has read through the newspaper publication which seeks to quote a Minister who was holding office at the relevant point of time.

25. The primary premise on which the CPIO has rejected the Petitioner's RTI application is Section 8(1)(a) of the RTI Act, 2005. The said exemption under the Act 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;

26. At the second appellate stage, the CIC has also relied upon Section 8(1)(h) and Section 24. The relevant portion of the said provisions are as under:

“8. Exemption from disclosure of information.—
(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,—
(h) information which would impede the process of investigation or apprehension or prosecution of offenders;

24. Act not to apply in certain organisations.—(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”

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.

30. Insofar as the decision in ***W.P.(C) 9773/2018*** is concerned, the Id. Single Judge in the said order dated 16th January 2019, concludes that the exemptions under Section 8 would be applicable even *qua* information relating to corruption and human rights violations. In the said case, the Court had remanded the matter to CIC for reconsideration.

31. Insofar as reliance on Section 8(1)(h) and Section 24 is concerned, this is a legal plea which can be relied upon by the CIC even at the second appellate stage inasmuch as investigations into terrorist activities are an ongoing process. In the opinion of this Court, there can be no doubt that the ATS of a State Police would be an organization covered under Section 24 of the RTI Act. Ld. Counsel seeks to rely upon the human rights of the Petitioner and thus argues that the exception would apply in the present case. The facts of this case would show that the rights of innocent people could be jeopardised by the disclosure of the information and thus the disclosure of the information cannot be made on the plank of human rights.

32. Thus, the CPIO's order dated 22nd June, 2017 rejecting the Petitioner's RTI Application under the exemption incorporated under Section 8(1)(a), cannot be faulted with and the same has been rightly upheld by the CIC vide the impugned order dated 31st July 2019.

33. In these facts and circumstances, the present writ petition, along with all pending applications is disposed of.

PRATHIBA M. SINGH
JUDGE

FEBRUARY 3, 2023