



\$~112.

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

+ **Date of Decision: 11.10.2023**

% **LPA 696/2023 and CM APPL. 52742/2023**

ADARSH KANOJIA Appellant

Through: **Mr. Sudhir Sharma, Advocate.**

versus

UNION OF INDIA Respondent

Through: **Mr. Rahul Sharma, CGSC with Mr. Ayush Bhatt, Advocates.**

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJEEV NARULA

SATISH CHANDRA SHARMA, CJ. (ORAL)

1. This is an appeal filed against a judgement dated 17.08.2023 passed by the Learned Single Judge in W.P.(C) 12264 of 2019 titled '*Adarsh Kanojia v. CPIO, Ministry of Home Affairs*' (the "Writ Petition") wherein the Learned Single Judge has dismissed the Writ Petition observing *inter alia* that the rigours of the Right to Information Act, 2005 (the "RTI Act") ordinarily do not apply to the Intelligence Bureau (the "IB") i.e., an organisation specified under the Second Schedule of the RTI Act; and (ii) mere allegations of corruption cannot be made grounds to direct the IB to supply the information sought by the Appellant under the exception



contained under the *proviso* to Section 24 of the RTI Act(the “**Impugned Judgement**”).

2. The Appellant before this Court appeared in the Assistant Central Intelligence Officer Grade -II Examination, 2017 conducted by the IB on 15.10.2017 (the “**Examination**”) *vide* roll number 23059397; and registration ID: MHA111984471 for the recruitment of persons to the post of Assistant Central Intelligence Officer, Grade -II (“**ACIO-II**”). On 19.01.2018, the results of the Examination were declared however, the name of the Appellant did not feature in the list of successful candidates.

3. It is stated that certain irregularities in relation to the Examination were reported by newspapers on (i) 21.10.2017; and (ii) 24.10.2017. Furthermore, it had been pointed out that pursuant to the allegations of irregularities, the IB came to cancel 4 (four) questions of the Examination. Aggrieved, the Appellant filed an application dated 20.02.2018 under the RTI Act seeking certain information in relation to the Examination; and the Appellant’s marksheet (the “**RTI Application**”). For ease of reference the key particulars of the RTI Application are reproduced below:

- “a. Please inform the marks obtained by me,*
- b. Please inform me the cut off marks,*
- c. Please provide me a certified copy of my OMR sheet,*
- d. Please provide a model answer key.”*

4. The RTI Application came to be transferred on 21.02.2018 from the Department of Personnel and Training (the “**DoPT**”) to the IB and, accordingly, came to be registered as: INBRU/R/2018/80007. As no



response was received qua the RTI Application, the Appellant preferred an appeal dated 03.04.2018 under the RTI Act, which came to be registered as INBRU/A/2018/60015 (the “**First Appeal**”). As no response was received in relation to the First Appeal, the Appellant made representation(s) *via* email(s) dated 26.04.2018; and 1.05.2018 to the Respondent Authority. Aggrieved by the non-responsive nature of the Respondent Authority, the Appellant preferred a second appeal dated 07.05.2018 before the Central Information Commission (the “**CIC**”) (the “**Second Appeal**”).

5. *Vide* a letter dated 21.05.2018, the Appellant was informed that the RTI Application was never received by the relevant vertical of the IB and, accordingly, the Second Appeal was transferred to an identified branch of Ministry of Home Affairs (the “**MHA**”). However, *vide* a letter dated 05.06.2018, the RTI Application came to be answered wherein it was stated that the information sought under the RTI Application was exempt from disclosure under Section 24(1) of the RTI Act (the “**IB Response**”). Unsatisfied with the IB Response, the Appellant filed a complaint dated 10.07.2018 with the CIC reiterating his request for information (the “**Complaint**”). Subsequently, a letter dated 22.10.2018 came to be issued by the Appellant to the CIC seeking *inter alia* the early hearing and disposal of the Second Appeal.

6. Aggrieved by the delays, the Appellant herein filed a writ petition bearing number W.P. (C) 7419 of 2019 titled ‘*Adarsh Kanojia v. Union of India & Anr.*’ wherein, this Court *vide* an order dated 23.07.2019, observed that the CIC would consider the Complaint. Thereafter, the CIC passed an order on 4.10.2021 wherein the CIC observed *inter alia* that (i) the IB is an



organisation that is exempt from the rigors of the RTI Act on account of being an organisation specified under the Second Schedule of the RTI Act; and (ii) the nature of information sought does not pertain to (a) human rights violations; or (b) allegations of corruption i.e., information which must be disclosed by even exempted institutions under the *proviso* to Section 24 of the RTI Act (the “**CIC Order**”).

7. The CIC Order came to be challenged by way of the Writ Petition. Pertinently, the Writ Petition came to be dismissed by way of the Impugned Judgement. Aggrieved by the Impugned Judgement, the Appellant has filed this Appeal seeking the following reliefs:

“(a) set aside impugned Order 17.08.2023 passed by the Hon’ble Single Judge in Writ Petition (Civil) No.12264/2019; titled as ADARSH KANOJIA v. CPIO, Ministry of Home Affairs (Annexure A:1) whereby Hon’ble Court not allowed the setting aside of order dated 04.10.2019 passed by CIC under the provisions of RTI Act, 2005 and further

(b) direct the Ministry to provide the evaluated OMR sheet to him to repose a trust/faith in the transparency of the examination. Or in the alternative

(c) direct the respondent to deposit the OMR sheet with this Hon’ble Court for proper adjudication and furnish the marks secured by the last inducted SC category candidate i.e. cut off marks for SC category;

(d) pass any other order or relief which this Hon’ble Court may deem fit, just and proper in the facts and circumstances of the case in favour of the petitioner and against the respondents.

8. The main thrust of the arguments of Mr. Sudhir Sharma, the learned counsel appearing on behalf of the Appellant is that suspicion of corruption



is apparent in light of the news-articles dated (i) 21.10.2017; and (ii) 24.10.2017 regarding irregularities in the Examination, and accordingly, the information sought by the Appellant is squarely covered under the exception under the *proviso* to Section 24 of the RTI Act.

9. On the other hand, Mr. Rahul Sharma, Central Government Standing Counsel appearing on behalf of the Respondent(s) has adopted the arguments canvassed by him before the Learned Single Judge.

10. This Court has heard the counsel(s) for the parties and perused the record. The matter is being disposed of at the stage of admission with the consent of the learned counsels' appearing on behalf of the parties.

11. The limited issue before this Court is whether, the Respondent was justified in passing the CIC Order i.e., an order upholding the rejection of the Appellant's RTI Application, on account of (i) the IB being an organisation specified under the Second Schedule of the RTI Act read with Section 24 of the RTI Act; and (ii) the information failing to satisfy the exception enshrined under the *proviso* to Section 24 of the RTI Act. For ease of reference Section 24 of the RTI Act is reproduced below:

“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:

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 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.

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

12. Undoubtedly, the IB is an organisation specified under the Second Schedule of the RTI Act and, accordingly, under Section 24 of the RTI Act, the IB is exempt from the rigours of the RTI Act. Certain exceptions have



been carved out wherein the information requisitioned is strictly in relation to (i) allegations of corruption; and / or (ii) allegations of human rights violations. Admittedly, the present case does not satisfy the exception as the underlying RTI Application (as more particularly identified in Paragraph 3 of this Judgement) does not seek information in relation to the category of information as outlined above.

13. Furthermore, unsubstantiated submissions; and bald averments alleging corruption cannot be made the bedrock of a direction from this Court to an organisation specified under the Second Schedule of the RTI Act. Accordingly, we find no infirmity with the Impugned Judgement passed by the Learned Single Judge.

14. With the observations above, the LPA is dismissed.

SATISH CHANDRA SHARMA, CJ

SANJEEV NARULA, J.

OCTOBER 11, 2023