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

Date of Decision 26th April, 2023

+ **W.P.(C) 11301/2017**

NISHA PRIYA BHATIA Petitioner

Through: None.

versus

CPIO, DIRECTORATE OF ESTATES, MINISTRY OF URBAN
DEVELOPMENT & ANR Respondents

Through: Mr. Rakesh Kumar, CGSC with Mr.
Sunil, Advocate for UOI. (M:
9811549455)

Mr. Sudhir Walia & Ms. Ishita
Deswal, Advocate for R-2. (M:
9999449889)

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through hybrid mode.
2. None appears for the Petitioner.
3. The present petition challenges the impugned order dated 30th October, 2017 by which the CIC has dismissed the appeal of the RTI Applicant and held that the RTI applicant is not entitled to get the information sought. The RTI applicant had sought the following information from the Directorate of Estates, Government of India on 23rd January, 2012:

“Certified copies of applications for allotment of government accommodation made by Shri S.K. Tripathi; IPS (UP; 1972) between 1986 to present”

4. The allegation of the RTI Applicant is that no reply was received from the CPIO. Thus, an appeal was filed to the First Appellate Authority. However, no reply was received from the First Appellate Authority. Accordingly, a second appeal was preferred to the CIC. It is the case of the Petitioner that a letter dated 8th May, 2017 was written by Mr. G.P. Sarkar-Deputy director of Estates (A-1) to the Registrar of CIC requesting closure of Petitioner's RTI application. The said letter, which has been annexed with the present petition reads as under:

"Sir/ Madam,
I am to refer to your Appeal/ Complaint No. CIC/VS/C/2012/000454 dated 28.03.2017 on the subject mentioned above and to inform you that Smt. Nisha Priya Bhatia vide her letter dtd. 30.01.2012 and appeal dated 03.03.2012 had requested to provide certified copies of applications for allotment of government accommodation made by Sh. S.K. Tripathi, IPS (UP; 1972) between 1986 to present. She was informed vide this Dte's letter of even number dated 11.5.2012 that the information sought could not be provided to her as the Department of Sh. Tripathy did not want to disclose the information since he was the head of an organization known as RAW and the application form contained some service details whose exposure might not be in functional interest of the organization known as RAW and the application form contained some service details whose exposure might not be in the functional interest of the organization. Copy of the letter is enclosed for your kind perusal and information.

2. In view of above, you are requested to close the Appeal/ Complaint No. CIC/VS/ C/ 2012/ 000454 dtd. 09.19.2012. ""

5. Thereafter, the impugned order has been passed by the CIC in the second appeal filed by the Petitioner. The finding of the CIC is that the Research and Analysis Wing (RAW) is covered by Section 24 as an exempt organization and no case of human rights or corruption is made out in the present case to attract the exception. The findings of the CIC are set out below:

“After hearing parties and perusal of record, the Commission notes that the appellant has sought certified copy of application for allotment of Government accommodation by Sh. S K Tripathi from 1986 till date. The issue which arises for consideration is as follows:

Whether application form for seeking Government accommodation, by a Government servant, deserves to be exempt from public disclosure on account of some confidential information which may be figuring in the application. For example, there are a number of personal details entered in the passport application form. These are essentially in the nature of private information and if disclosed would be a clear case of infringement of privacy. The allotment related details of official accommodation to Government employees are displayed on the website of Directorate of Estates. Hence a case of public interest is to be made out making available copies of application forms of individual Government employees to a third party. In any case, the provisions as laid out by the Section 11 of the RTI Act also have to be utilized in such cases.

In the instant case however, R&AW being a secret organization, the Cabinet Secretariat has taken the plea in their communication to the Directorate of Estates that R&AW being listed as one of the organizations in Section 24, Second Schedule of the RTI Act, the information cannot be given. The Cabinet Secretariat has further stated that the application would contain

service details of the concerned officer, whose disclosure will not be in functional interest of the Organisation - R&AW.

Given the facts and circumstances of the case, the appellant sought to establish that it is a case of misrepresentation of facts by Sh. Tripathi who despite being permanently seconded to the Organisation and serving as RAS i.e., the parent cadre of the Organisation, was still applying for Government accommodation as IPS officer and getting better accommodation in the process. Her case is that since this points to an anomaly hinting at corruption, she should be provided the information.

The Commission after hearing the views of both the parties is unable to uphold the appellant's contention that the said case is covered under either corruption or human rights. As averred during the hearing, the Respondents stated that pay scale was the basic criterion was assigning a particular category of accommodation to a Government servant. It is the Directorate of Estates which allotted the accommodation to the officer, as per his entitlement, whether he belonged to RAS or the IPS. The Commission also feels that it would not be advisable in public interest, to disclose information about his service in the various applications filed by him since 1986 till date.

Moreover, in view of the fact that the information relates to the Head of a security Organization, which is expressly exempt from the ambit of the RTI Act, the tenets of the celebrated doctrine of colourable legislation are attracted. By exercising the principle of the doctrine, that "Whatever legislature can't do directly, it can't do indirectly. No case of overriding public interest has been made out, as noted above. Hence, the Commission is of the considered opinion that no further adjudication is required in this case. The case is closed as such. "

6. Section 24 of the Right to Information Act provides that the said Act does not apply to the security and intelligence organizations specified in the Second Schedule of the Act. RAW is one of the organizations specified in the Second Schedule. However, the first proviso to Section 24 provides an exception to exemption provided in section 24 if the information sought pertains to the allegations of corruption and human rights violations. The said provision reads:

“24. Act not to apply to 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.....”

7. The Second schedule specifically mentions RAW as a listed entity which is exempt. The said entry reads:

“THE SECOND SCHEDULE

***INTELLIGENCE AND SECURITY
 ORGANISATION ESTABLISHED BY THE
 CENTRAL GOVERNMENT***

- 1. Intelligence Bureau.*
- [2. Research and Analysis Wing including its technical wing namely, the Aviation Research Centre*

of the Cabinet Secretariat].....”

8. Recently, the Supreme Court in ***Union of India v. Central Information Commission [SLP(C) No.5557/2023, decision dated 11th April, 2023]*** has observed as under:

Respondent No. 2 has prayed for the following information under the Right to Information Act, 2005 (for short, the RTI Act’)-

- “(1) copies of all the seniority list in respect of LDCs for the period of 1991 till date;*
- (2) copies of the proposal for promotion of LDCs placed before the DPC together with copies of the Minutes of the Meetings and copies of the promotion orders issued on the recommendations of the DPC from time to time.”*

*It was the case on behalf of the appellant that the appellant/Directorate of Enforcement, being in the Second Schedule of the RTI Act, the RTI Act shall not be applicable/applied to the said Organisation. **However, the High Court by the impugned judgment and order has observed that the “information sought can be said to pertaining to the human rights violations” and therefore, Section 24 of the RTI Act shall not be applicable.***

Though, we do not approve the reasoning given by the High Court, however, taking into consideration the fact that what was sought was the service record, namely, seniority list and copies of the proposal for promotion of the Lower Division Clerks placed before the DPC, keeping the question of law open, whether on other aspects or with respect to other information whether RTI Act shall be applicable to the appellant or not, we do not entertain the present Special Leave Petition in the peculiar facts and circumstances of the documents sought.

***At the cost of repetition, it is observed that we do not approve the reasoning given by the High Court.** However, still, for the reasons stated hereinabove, we refuse to entertain the present Special Leave Petition, keeping the*

question of law open.”

9. In view of the above order of the Supreme Court, the words ‘corruption’ and ‘human rights’ have to be interpreted narrowly. Recently, this Court in ***W.P.(C) 9971/2019*** has held that the ‘***State Police ATS***’ is an exempt organisation under RTI Act. In the said decision, this Court observed that reports and dossiers of State Police intelligence would not qualify under the exemption of human rights and corruption.

10. RAW is an organisation which is specifically mentioned in the Section Schedule to the RTI Act. It is an exempt organisation. Unless the nature of information sought relates to human rights or corruption related issues, information is not liable to be disclosed. In the present petition, the nature of information sought, i.e., the residences where the subject person who was the head of RAW which is a security agency, would not be covered in the exemption. In view of the above discussion, the impugned order does not deserve to be interfered with.

11. The Petition is accordingly, disposed of. All pending applications are also disposed of.

PRATHIBA M. SINGH
JUDGE

APRIL 26, 2023

dj/sk