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

\+ LPA 1192/2024

UNION OF INDIA .....Appellant

Through: Ms. Arunima Dwivedi, CGSC with Ms. Pinky Pawar, GP and Ms. Himanshi Singh, Ms. Monalisha, Mr. Sainyam, Advocates

versus

PRABODH SAXENA .....Respondent

Through: Mr. Rajeev Kr. Mishra and Mr. Dattatray Vyas, Mr. Abhinav Kr. Dewaliya, Advocates

% ***Date of Decision: 19.08.2025***

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

J U D G E M E N T

TUSHAR RAO GEDELA, J: (ORAL)

CM APPL. 72175/2024 (Delay)

1. Heard learned counsel representing the parties on the application seeking condonation of delay. Though certain objections have been raised by the respondent on the prayer seeking condonation of delay, however, having regard to the averments made in the application and also in the interest of justice, the prayer made is allowed.

2. Accordingly, the delay of 67 days in filing the letters patent appeal is condoned.

3. The application stands disposed of.

LPA 1192/2024 & CM APPL. 72173/2024 (Stay)

4. Present Letters Patent Appeal has been filed by the appellant challenging the order dated 16.08.2025 passed by this Court in W.P.(C) 13710/2023 titled *"Prabodh Saxena vs. Department of Personnel and Training"*, wherein the learned Single Judge had directed the appellant herein to furnish the information to respondent pertaining to respondent's prosecution sanction in the case of INX Media within two weeks from date.

5. The appellant/Department of Personnel and Training (hereinafter referred to as *"Appellant"*) being aggrieved by the impugned judgment has preferred the present appeal.

6. Briefly, the facts are in a narrow compass, in that, the respondent was serving as an Officer in the Indian Administrative Services (hereinafter referred to as *"IAS"*) belonging to the 1990 Cadre. It is alleged that the respondent was posted in the Ministry of Finance at New Delhi and holding the designation of Director/Joint Secretary for the period from January, 2008 to January 2013. A Regular Case (hereinafter referred to as *"RC"*) was registered by the Central Bureau of Investigation (hereinafter referred to as *"CBI"*) on 15.05.2017 involving offences under Section 120-B read with Section 420 of Indian Penal Code (hereinafter referred to as *"IPC"*), Section 8 and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988.

7. Whilst things stood thus, an application under the Right to Information Act, 2005 (hereinafter referred to as *"RTI Act"*) was filed by the respondent on 17.01.2020 before the Central Public Information Officer (hereinafter referred to as *"CPIO"*) of the appellant department. The information sought

was denied under Section 8(1)(h) of the RTI Act, aggrieved whereof the respondent approached the Appellate Authority. The Appellate Authority too *vide* the order dated 15.02.2021 denied the disclosure of an information sought on the ground that the prosecution against the respondent and other persons was pending and such information contained vital details of investigation, gist of report and documents related to CBI and the pending prosecution. On such refusal, the respondent preferred an appeal before the Central Information Commission (hereinafter referred to as *"CIC"*). *Vide* order dated 08.06.2022, the CIC rejected the second appeal upholding the order denying disclosure of information predicated on provisions of Section 8(1)(h) of the RTI Act.

8. Aggrieved by the order dated 08.06.2022 of CIC, the respondent preferred the underlying writ petition before this Court, which was allowed *vide* the order dated 16.08.2024, directing the appellant to disclose the information as sought by the respondent in the application dated 17.01.2020. The appellant has challenged the impugned order dated 16.08.2024 by way of the present appeal.

9. Ms. Arunima Dwivedi, learned CGSC appearing for the appellant, at the outset submits that the information as sought by the respondent is clearly covered by the exemptions provided in Section 8(1), particularly Clause (h) of the RTI Act. She emphasizes that the information sought by the respondent relates to the file notings/comments/advice appended and endorsed in the appellant department by the officers concerned and seeking complete file of the correspondences/notings/advice appended and endorsed in the appellant-department is, *ipso facto*, dependent upon the report received from the CBI, which essentially contains sensitive information in regard to the investigations carried out by the CBI upto that period.

10. She forcefully submits that disclosure of such information would also entail, within its scope, disclosure of sensitive information /investigative reports as generated by the CBI, which may include references to other persons or officers who too were found to be involved in the offences noted in the RC. She submits that the appellant would be in no position to provide the information sought without compromising on either the sensitive material indicating the involvement of the respondent and other officers or without disclosing the names and role of other officers. Either way, the information sought is intrinsically connected with the investigation conducted so far and would necessarily impede the process of investigation or prosecution of offenders. She also states that notwithstanding the fact that a chargesheet has indeed been filed before the competent Court, the investigations otherwise *qua* INX Media has not concluded and is still in progress.

11. On the above basis, learned CGSC emphatically contends that the impugned order is in the teeth of the provisions of Section 8(1)(h) of the RTI Act as also Section 24 of the said Act. She states that overlooking the clear and explicit language of the aforesaid provisions, the learned Single Judge has passed directions which are unsustainable in law.

12. *Per contra*, learned counsel appearing for the respondent vehemently opposes the submissions urged on behalf of the appellant. He states that the chargesheet in the present case was filed in the month of October, 2019 and the respondent was subsequently released on bail. He emphasizes that the information sought by the respondent pertains to the sanction for prosecution sought by the prosecuting agency and the nature and reasons which went into according sanction by the appellant DoPT. He emphasizes that once the chargesheet has been filed, that too almost 6 years ago; investigations *qua* the respondent having reached their conclusion; the respondent in the meanwhile

having been released on bail; the exemption under Section 8(1)(h) of the RTI Act cannot create an impediment to the disclosure of the information relating to the sanction which has already been accorded.

13. Learned counsel for the respondent emphatically submits that the learned single Judge has correctly relied upon the judgment of the Single Judge of this Court in ***Union of India vs. OP Nahar:*** W.P.(C) 3616/2012 and W.P.(C) 4056/2014 rendered on 22.04.2015 to pass the impugned directions. He submits that the judgment in ***OP Nahar*** *(supra)* and another judgment of a learned single Judge in ***Sudhir Ranjan Senapati vs. Union of India and Ors***.: W.P.(C) 7048/2011 rendered on 05.03.2013 also unequivocally reiterate similar directions in almost identical factual situation. He thus submits that there is no impediment legal or otherwise from the disclosure as sought.

14. Apart from the aforesaid, he submits that the respondent has sought the information pertaining only to himself and that too in relation to the grant of sanction and not related to any investigation which was carried out or is being carried out by the CBI. He further states that such information, surely cannot in any manner whatsoever impede, much less create any obstacle, even if it is believed that the CBI is still conducting further investigations. As such the non-disclosure of the information sought is otherwise contrary to the provisions of Sections 3 and 4 of the RTI Act.

15. Having heard the learned counsel for the parties, perusing the records and examining the impugned judgment, the submissions addressed on behalf of the appellant do not appeal to us.

16. The RTI Act was promulgated by the Legislature in order to provide a regime of right to the 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 object of the Act

has succinctly been enunciated by the Hon'ble Supreme Court in ***Institute of Chartered Accountant of India vs. Shaunak H Satya*** (2011) 8 SCC 781. The relevant paragraphs are extracted hereunder:-

> *"**24.** One of the objects of democracy is to bring about transparency of information to contain corruption and bring about accountability. But achieving this object does not mean that other equally important public interests including efficient functioning of the governments and public authorities, optimum use of limited fiscal resources, preservation of confidentiality of sensitive information, etc. are to be ignored or sacrificed. The object of the RTI Act is to harmonise the conflicting public interests, that is, ensuring transparency to bring in accountability and containing corruption on the one hand, and at the same time ensure that the revelation of information, in actual practice, does not harm or adversely affect other public interests which include efficient functioning of the governments, optimum use of limited fiscal resources and preservation of confidentiality of sensitive information, on the other hand. While Sections 3 and 4 seek to achieve the first objective, Sections 8, 9, 10 and 11 seek to achieve the second objective."*

17. Section 2(f) defines *"information"*, which means any material in any form including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, log books, contracts, reports, papers, samples, models, data material held in any material form and information to any private body which can be accessed by a public authority under any other law for the time being in force. Section 2(j) defines *"right to information"* which means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to (i) inspection of work, documents, records; (ii) taking notes, extracts or certified copies of documents or records; (iii) taking certified samples of material; and (iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device. Section 3 mandates that subject to the provisions of the RTI Act, all citizens shall have the right to information.

18. Section 8 carves out exemption from disclosure of information from Clause (a) to (j). Section 10 is in regard to severability which can be exercised by the concerned CPIO in providing information to that part which does not contain any information which is exempt from disclosure under that Act and which can reasonably be severed from any part that contains exempt information. It appears that Section 10 is an enabling provision, conferring discretion and a right upon the CPIO to grant access to such part of the record which does not contain exempted information under the provisions of Section 8. Apparently, the RTI Act appears to be providing transparency to the disclosure of information to the extent possible, including but not limited to, by applying the doctrine of severability.

19. In the present case, undoubtedly, the chargesheet was filed in the month of October, 2019 which is almost 6 years to date. It appears that during this period, the respondent was also released on bail as per the submission of the counsel for the respondent. There is nothing to show on record that the investigations *qua* the case has reached any conclusion and may still be progressing. However, the appellant has not denied that the chargesheet *qua* the respondent stands filed as far back as in the year 2019, as noted above. It would be apposite to examine the nature of information sought by the respondent *vide* the application dated 17.01.2020, the relevant portion is extracted hereunder:-

> *"1. Petitioner filed an RTI application dated 17th January, 2021 seeking following information:*
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> > *"1. copy of complete file noting/comments/advice made in DOPT on issue of my prosecution sanction in the case of INX Media*
> > *2. copy of complete file correspondence/noting/advice made in DOPT on issue of my prosecution sanction in the case of INX Media"*

20. In the present case, learned counsel for the appellant has been unable to show or demonstrate as to how the information as sought above would

impede the process of investigation or apprehension or prosecution of the offenders. The same was the situation before the learned Single Judge too, which is apparent from the observations contained in para 5, which are extracted hereunder:-

> *5. Careful reading of the provision reveals that the holder of information can only withhold the information if they are able to demonstrate that the information would "impede the process of investigation or apprehension or prosecution of the offenders." In the present case, undeniably, the investigation is over and the chargesheet has been filed. Thus, in the opinion of the Court, Respondents' denial of information premised on Section 8(1)(h) of the Act, cannot apply. Similar situation was considered by this Court in Union of India and Sh. O.P.Nahar, wherein this Court after referring to several other case laws have taken a view that Section 8(1)(h) of the Act would not apply in case the investigation has concluded.*

21. From the arguments addressed by the parties, particularly the respondent, it is clear that the only information he seeks is in respect of the sanction accorded by the DoPT for his prosecution in the case of INX Media and the file notings/comments/correspondences and advice rendered by the appellant while granting such sanction. There is nothing in the queries which point out to him seeking any sensitive material or investigations which is already not part of the chargesheet. Infact, alongwith the chargesheet, the list of witnesses and their statements under Section 161 of Criminal Procedure Code, 1973, must have already been furnished to the respondent in accordance with the provisions of Cr.P.C. Meaning thereby, the role played by him and other persons, including other similarly situated officers, is also revealed to him through the chargesheet. All that the respondent now seeks under the RTI application is in respect of the file notings etc. in regard to the sanction of the prosecution *qua* the respondent alone.

22. Another relevant issue, though not arising in the present *lis*, is in respect of the law as enunciated and transparency and fairness in criminal

procedure and rights of an accused settled by Hon'ble Supreme Court in what is now known as the doctrine of *"fair disclosure"*. Though not applicable *stricto sensu*, yet the principles of transparency and availability of information evolved can be a worthwhile prod. It is settled that the liberty of an accused cannot be interfered with except under due process of law. The expression *"due process of law"* shall deem to include fairness in trial. The Court gives a right to the accused to receive all documents and statements as well as to move an application for production of any record or witness in support of his case. This constitutional mandate and statutory rights given to the accused places an implied obligation upon the prosecution (prosecution and the prosecutor) to make fair disclosure. The concept of fair disclosure would take in its ambit furnishing of a document which the prosecution relies upon whether filed in court or not. That document should essentially be furnished to the accused and even in the cases where during investigation a document is *bona fide* obtained by the investigating agency and in the opinion of the Prosecutor is relevant and would help in arriving at the truth, that document should also be disclosed to the accused. This is the view taken by the Hon'ble Supreme Court in ***Manoj vs. State of M.P.: (2023) 2 SCC 353***. This principle also persuades us to consider the issue in favour of the respondent.

23. Ergo, we do not find any reason to sustain the unfounded apprehension of the appellant and the insistence that such information is exempt under Section 8(1)(h) of the RTI Act.

24. We have also perused the judgment rendered by the learned single Judge of this Court in ***OP Nahar*** *(supra)* and ***Sudhir Ranjan Senapati*** *(supra)*. We dare say that both the judgments have been rendered in almost identical factual background. No judgment has been cited by the appellant in its favour or contrary to the judgments in ***OP Nahar*** *(supra)* ***and Sudhir***

Ranjan Senapati *(supra)*. The relevant paragraphs of ***OP Nahar*** *(supra)* are extracted hereunder:-

> *"12. This brings me to the other question, which is: whether the petitioner can take recourse to the provisions of Section 8(1)(h) of the Act to deny information to the respondent. The relevant provisions of Section 8(1)(h) of the RTI Act read as follows:-*
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> > *"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;*
> >
> > *(emphasis is mine)*
>
> *13. A careful reading of the provision would show that the holder of the information can only withhold the information if, it is able to demonstrate that the information would "impede" the process of investigation or apprehension or prosecution of the offenders.*
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> *14. In the present case, the facts, as set out hereinabove clearly demonstrate that the investigation is over. The charge sheet in the case was filed, as far back as on 31.12.2010.*
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> *14.1 The question then is, would the information sought for by the respondent "impede" the respondent's apprehension or prosecution. The respondent is in court and he says that he has been granted bail by the competent court. Therefore, prima face, the view of the competent court, which is trying him, is that there is no impediment in apprehending the respondent, and that he would be available as and when required by the court. The petition makes no averments as to how the information sought for by the respondent would prevent his prosecution.*
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> *14.2 In that view of the matter, according to me the provisions of Section 8(1)(h) of the RTI Act will not help the cause of the petitioner. Accordingly, the information, as directed by the CIC, will have to be supplied to the respondent. It so ordered. In support of this proposition, I may only advert to the following judgments of this Court (See Bhagat Singh v. Chief Information Commissioner [2008 (100) DRJ 63]; B.S. Mathur v. Public Information Officer of Delhi High Court [180 (2011) DLT 303]; Adesh Kumar v. Union of India and Ors. [216 (2015) DLT 230]; Director of Income Tax (Investigation) and Anr. v. Bhagat Singh and Anr. [(2008) 168 TAXMAN 190 (Delhi)]; Sudhir Ranjan Senapati v. Addl. Commissioner of Income Tax, W.P.(C) 7048/2011 dated 5.3.2013; and Pradeep Singh Jadon v. UOI, W.P.(C) 7863/2013 dated 2.2.2015. which have taken similar view on this issue."*

25. In view of the aforesaid analysis as also the reasoning rendered in ***OP Nahar*** *(supra)*, we do not find any reasons much less cogent reasons to interfere with the impugned order. As a result, the present appeal is bereft of any merit and is dismissed, however without any order as to costs.

TUSHAR RAO GEDELA, J

DEVENDRA KUMAR UPADHYAYA, CJ

AUGUST 19, 2025/*aj/rl*