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

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W.P.(C) 6030/2013 & CM APPL. 13275/2013

CBDT, M/O FINANCE,  
REVENUE DEPARTMENT NORTH BLOCK ..... Petitioner  
Through: Mr. Jaswinder Singh, Advocate.

versus

CENTRAL INFORMATION  
COMMISSION & ANR. .... Respondents  
Through: None.

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Date of Decision: 26<sup>th</sup> February, 2016

**CORAM:**  
**HON'BLE MR. JUSTICE MANMOHAN**

**J U D G M E N T**

**MANMOHAN, J: (Oral)**

1. Present writ petition has been filed challenging the orders dated 24<sup>th</sup> June, 2013 and 14<sup>th</sup> August, 2013 passed by respondent No.1-CIC on the ground that it failed to appreciate that petitioner was an exempted organisation under the Right to Information Act, 2005 and could not be compelled to disclose information sought for in the RTI application.
2. None is present for the respondent No.2. On the last date of hearing also, none was present for the respondent No.2.

3. Consequently, this Court has no other option, but to proceed ahead with the matter.

4. Section 24(1) of the Right to Information Act, 2005 reads as under:-

*“24. Act not to apply to certain organizations.—(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.”*

5. Learned counsel for petitioner has handed over a copy of the Notification dated 27<sup>th</sup> March, 2008 which reads as under:-

**NOTIFICATION**

*New Delhi, the 27<sup>th</sup> March, 2008*

**G.S.R. 235(E).**—*In exercise of the powers conferred by sub-section (2) of Section 24 of the Right to Information Act, 2005 (22 of 2005), the Central Government hereby makes the following further amendments in the Second Schedule to the said Act, namely:--*

*In the Second Schedule to the Right to Information Act, 2005:--*

*(i) for serial number 16 and the entries relating thereto, the following shall be substituted, namely:--*

*“16. Directorate General of Income-tax (Investigation)”.*

- (ii) *for serial number 17 and the entries relating thereto, the following shall be substituted, namely:-  
“17. National Technical Research Organisation.”;*
- (iii) *for serial number 18 and the entries relating thereto, the following shall be substituted, namely:--  
“18. Financial Intelligence Unit, India.”; and*
- (iv) *Serial number 22 and the entry relating thereto shall be omitted.”*

(emphasis supplied)

6. From the aforesaid Section and the Notification, it is apparent that the petitioner is an exempted organisation under the Right to Information Act. Even the information sought does not pertain to allegations of corruption and/or Human Rights Violation.

7. Consequently, the impugned orders dated 24<sup>th</sup> June, 2013 and 14<sup>th</sup> August, 2013 are set aside and the present writ petition and application are allowed.

**FEBRUARY 26, 2016**

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**MANMOHAN, J**

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

% Judgment reserved on: 17<sup>th</sup> May 2017  
Judgment delivered on: 23<sup>rd</sup> August 2017

+ W.P.(C) 5521/2016 & CM No.23078/2016 (stay)

CPIO, INTELLIGENCE BUREAU ..... Petitioner

versus

SANJIV CHATURVEDI ..... Respondents

**Advocates who appeared in this case:**

For the Petitioner : Mr. R.V. Sinha with Mr. R.N. Singh and Mr. A.S. Singh, Advocates.

For the Respondent : Respondent in person.

**CORAM:-  
HON'BLE MR JUSTICE SANJEEV SACHDEVA**

**JUDGEMENT**

**SANJEEV SACHDEVA, J**

1. The Central Public Information Officer (hereinafter referred to as CPIO) of the Intelligence Bureau has filed this petition impugning order dated 21.04.2016, passed by the Central Information Commission under the Right to Information Act, 2005 (hereinafter referred to as the 'Act').

2. The Central Information Commission (hereinafter referred to as CIC), by the impugned order dated 21.04.2016, has held that the copy of the report of the Intelligence Bureau (hereinafter referred to as IB), concerning the respondent, is information pertaining to allegations of

corruption and human rights violation and is, thus, liable to be given to the respondent. The Commission has directed the Intelligence Bureau and the Ministry of Environment, Forests & Climate Change (hereinafter referred to as MoEF) to provide a certified copy of the IB report relating to the respondent, as sought for by him by an application dated 05.12.2015.

3. The directions have been issued by the CIC on arriving at the following conclusion

- a) *It is factually proved that appellant was put to extreme hardship by the corrupt political rulers and corrupt public servants In retaliation of his unstinted Implementation of rule of law.*
- b) *The gist of IB report as furnished by IB in response to the RTI request of appellant in this case shows that its disclosure could cause no harm to core activity of security or intelligence of IB.*
- c) *section 24 of RTI Act does not authorize the public authorities exempted under this section to block entire Information held by it or generated and given to other public authorities enbloc, but its exclusion from disclosure is limited to that which pertains to core functioning of 'security' and 'intelligence' aspect of exempted organization.*
- d) *The IB report sought by appellant is not the information excluded from purview of disclosure by RTI Act.*
- e) *The IB report is information as per Section 2(f) held by MoEF and also information pertaining to the allegation of corruption or human rights violation*

*as per Section 24 second proviso and hence certified copy of the same shall be given to the appellant.*

- f) *The public authorities exempted under S. 24 cannot use it to stonewall all RTI requests indiscriminately. The IB has a statutory duty to make all arrangements to provide the information other than that concerning 'security' and 'Intelligence' if it pertains to corruption or human rights violation, or useful to prevent corruption or human rights violation either under voluntary disclosure clauses or other provisions of RTI Act."*

4. The respondent on 05.12.2015 had filed an application seeking information under the Act. The applicant sought the following information:-

*"i. Kindly provide me certified copy of all the file noting/documents,correspondences/all type of reports between Ministry of Environment, Forest &Climate Change. Department of Personnel &Training, Cabinet Secretariat and Appointment Committee of Cabinet, regarding interstate Cadre Transfer of Mr. Sanjiv Chaturvedi, IFS, Deputy Secretary AIIMS, New Delhi from Haryana to Utrakhand (excluding my own representations).*

*ii. Kindly provide me certified copy of all the file noting/documents/correspondences/all type of reports between Ministry of Environment, Forest & Climate Change, Ministry of Health & Family Welfare, Department of Personnel &Training, Cabinet Secretariat and Appointment Committee of Cabinet, regarding Interstate Cadre Deputation of Mr. Sanjiv Chaturvedi, IFS, Deputy Secretary, AIIMS, New Delhi, to GNCT, Delhi (excluding my own representations)."*

5. The CPIO, MoEF, by its response dated 07.01.2016, to the above application, provided copies of all the correspondences and notesheet other than the representations of the respondent.

6. On 18.01.2016, after receipt of the above documents, the respondent requested for supply of the IB report. The request was made on the ground that a mention had been made in the file noting/correspondences of an IB report about the respondent. The gist of the said report has been reproduced in the file noting.

7. Copy of the report was sought by the respondent contending that the information contained in the IB report pertained only to the respondent and was not about anyone else and further had no connection with the national securities or relation with foreign countries.

8. The CPIO, MoEF declined supply of copy of the IB report on the ground that the same was exempted from disclosure in terms of Section 24 of the Act.

9. Consequent to the denial of supply of copy of the IB report, the respondent filed an application under Section 24 of the Act with the Central Information Commission.

10. The petitioner as well as the CPIO, MoEF opposed the application, filed by the respondent under Section 24 of the Act, on the ground that the information was exempted from disclosure as the



report was an intelligence report of the Intelligence Bureau, which is one of the organizations mentioned in the Schedule of the Act and exempted in terms of Section 24 of the Act.

11. The CPIO also relied on the judgment of the Coordinate Bench dated 09.10.2013 in WP(C) 7453/2011 titled UNION OF INDIA & ORS. VS. ADARSH SHARMA to contend that the exception carved out from the exemption would be applicable in case the allegation of corruption and the human right violation was with regard to the intelligence Bureau.

12. The CIC allowed the application of the respondent under Section 24 of the Act and passed the impugned order dated 21.04.2016.

13. Aggrieved by the said decision, the petitioner i.e. the CPIO, Intelligence Bureau has filed the present petition contending that the directions issued by the CIC, are contrary to Section 8(1)(j) of the Act and the impugned order is without jurisdiction in view of Second Schedule of Section 24 of the Act, wherein, not only the Intelligence Bureau has been exempted but also the information provided by the Intelligence Bureau to the Government has been specifically exempted. It is contended by the petitioner that the information sought does not fall within the exception carved out by the proviso to Section 24 of the Act inasmuch as neither it pertains to any allegation of corruption nor of human rights violation within the intelligence

bureau. It is contended that the issue raised by the respondent is an ordinary service matter.

14. It is contended on behalf of the petitioner that the exception carved out by the proviso to Section 24, which, specifies “*information pertaining to the allegations of corruption and human rights violations shall not be excluded under this sub-Section*” would apply only if the allegation of corruption or human rights violations were within the Intelligence Bureau or pertaining to an Officer of the Intelligence Bureau. It is contended that only in case the allegations of corruption or human rights violation were relatable specifically to the officers of the Intelligence Bureau would the exceptions carved out by the proviso apply. It is further contended that the exception would have no application in case the allegations of corruption or human rights violation pertain to organization other than the Intelligence Bureau, in respect of which the report was submitted.

15. It is further contended that no allegations were made with regard to corruption or human rights violation by the officers of the Intelligence Bureau and the allegations were with regard to the Department where the respondent was serving. Since the IB report, submitted by the petitioner, had been with regard to the organization where the respondent was serving, the same did not come within the purview of the exceptions carved out by the proviso to Section 24 of the Act.

16. Reliance is placed by the learned counsel for the petitioner on the decision in the case of ADARSH SHARMA (*supra*). Further, reliance is placed on the decision of the Supreme Court in the case of S. SUNDARAM PILLAI & ORS. VS. V.R. PATTABIRAMAN & ORS.: 1985 SCC 591 to contend that a proviso cannot be interpreted as a general rule that has been provided for nor can it be interpreted in a manner that would nullify the enactment or to take away in entirety a right that has been conferred. Further, that a Court has no power to add or subtract even a single interpretation to legislation. Reference is also drawn to a judgment of the Supreme Court in ROHITASH KUMAR VS. OM PRAKASH SHARMA: (2013) 11 SCC 451.

17. The respondent, in his response, has contended that the respondent, who is an officer belonging to 2002 batch of Indian Forrest Service, was earlier allocated Haryana Cadre, which was subsequently changed to Uttrakhand in August 2015, on account of extreme hardships. It is contended that the gist of the Intelligence Bureau report, copy of which had been sought by the respondent, as disclosed to the respondent states that *“there appears to be truth in the contention of Sh. Sanjiv Chaturvedi regarding alleged harassment meted out to him by Haryana Government. His request for change of cadre from Haryana to Uttarakhand merits consideration.”* It is contended that the gist of the report clearly evidences that the case involves issue of corruption and human rights violation and, hence, is covered by the exceptions created by the proviso to Section 24 of the Act.

18. It is further contended that the Intelligence Bureau is not exempted from disclosure of information, if the information is related to allegations of corruption and human rights violation. It is contended that the respondent has been fighting against corruption and has been raising the issues of corruption. Because of the issues of corruption, raised by the respondent, several orders were passed by the State Government against the respondent. Four presidential orders were issued in favour of the respondent quashing various orders passed by the State Government.

19. It is contended that the respondent has been appreciated and rewarded for his performance and integrity. The respondent, during his tenure in the Haryana cadre, is alleged to have exposed corruption in multi-crore plantation scam in Jhajjar and Hisar district, corruption in construction of a Herbal Park at private land with Government money, illicit felling and poaching in Saraswati Wildlife Sanctuary, corruption in granting license to plywood units etc.

20. It is contended that the respondent was harassed through suspension, major penalty, departmental chargesheet, police and vigilance cases and 12 transfers in just five years.

21. It is contended that the respondent applied for change of cadre from Haryana to Utrakhand in October 2012 on the ground of major hardships and threat to life. To assess the threat to life of the respondent, the then Secretary, MoEF sought for a report from the

Intelligence Bureau in August 2014. The intelligence Bureau confirmed extreme hardships and harassment of the respondent.

22. It is contended by the respondent that proviso to Section 24 covers all cases of corruption and human rights violation and is not restricted to issues of corruption and human rights violation within the organizations referred to in the Schedule.

23. It is further contended that, in terms of the Preamble of the Act, which lays down that the Act is made to promote transparency and accountability in the working of every public authority and to contain corruption and to hold Governments and their instrumentalities accountable to the governed, the information relating to corruption, if withheld, would negate and defeat the very preamble of the Act.

24. It is contended that several Ministries and Organizations of the Central Government have disclosed information supplied to them by the Intelligence Bureau in cases of corruption without claiming exemptions under Section 24 of the Act.

25. The question that arises for consideration is whether the exception carved out by the proviso to Section 24 would apply only if the allegation of corruption or human rights violations were with regard to the Intelligence Bureau itself or pertaining to an Officer of the Intelligence Bureau?

26. Section 24 (1) of the Act reads as under:-

*“24. Act not to apply to certain organizations.—*

(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) \*\*\*\*\*

27. Section 24 (1) *inter alia* make the Act inapplicable to intelligence and security organizations, established by the Central Government, specified in the Second Schedule and further excludes any information furnished by such organisations to the Central Government from being liable to be disclosed. However, an exception is carved out to the exclusion clause with respect to information covered by the proviso. The proviso stipulates that if the information pertains to allegations of corruption and human rights violations, it shall not be excluded under this sub-section.

28. A distinction is drawn by the proviso between intelligence and security organizations and the information furnished by such organisation to the Central Government. The exception carved out by the proviso to the exclusion clause is only with regard to the

information and not with regard to the intelligence and security organizations.

29. The plain reading of the proviso shows that the exclusion is applicable with regard to any information. The term “any information” would include within its ambit all kinds of information. The proviso becomes applicable if the information pertains to allegations of corruption and human rights violation. The proviso is not qualified and conditional on the information being related to the exempt intelligence and security organizations. If the information sought, furnished by the exempt intelligence and security organizations, pertains to allegations of corruption and human rights violation, it would be exempt from the exclusion clause.

30. The proviso “*Provided that the information pertaining to the allegations of corruption and human rights violations shall not be excluded under this sub-section*” has to be read in the light of the preceding phrase “*or any information furnished by such organisations to that Government*”.

31. When read together, the only conclusion that can be drawn is that, if the information sought pertains to allegation of corruption and human right violation, it would be exempt from the exclusion clause, irrespective of the fact that the information pertains to the exempt intelligence and security organizations or not or pertains to an Officer of the Intelligence Bureau or not.

32. The Judgments in the case of SUNDARAM PILLAI (Supra) and ROHITASH KUMAR (supra) are clearly not applicable in the facts of the present case. The interpretation as rendered above, does not nullify the enactment or take away a right in entirety. In fact, the right to obtain information, conferred by the Act, is taken away by the exclusion in Section 24 of the Act. The proviso carves out an exception to the exclusion clause and further brings the information within the ambit of the Act. The proviso is in line with the very object of the Act.

33. A Division Bench of the Madras High Court in SUPERINTENDENT OF POLICE, CENTRAL RANGE, OFFICE OF THE DIRECTORATE OF VIGILANCE AND ANTI-CORRUPTION V. R. KARTHIKEYAN, AIR 2012 Mad 84 has very aptly culled out the necessity and the object for enactment of the Act in the following manner:

*“8. India has adopted a democratic form of Government and no democratic Government can survive without accountability and the basic postulate of accountability is that the people should have information about the functioning of the Government. It is only when the people know how the Government is functioning, they can fulfill the role which democracy assigned to them and make democracy a really effective participatory democracy. Right to information is basic to any democracy. A vibrant citizenry is a pre-requisite for survival of democratic society and governance. The quality of life in a civilized society depends upon the quality of exchange of information about the governance and related aspects. It is now widely recognised that*



*openness and accessibility of people to information about the Government's functioning is a vital component of democracy. Disclosure of allowable information would lead to better system and it would be in the public interest that a Public Authority should throw open the process of public scrutiny, which would result in evolving a better system. Disclosure of information would compromise the integrity and efficiency of the functioning of the Public Authority. In an increasingly knowledge-based society, information and access to information holds the key to resources, benefits and distribution of power. Information, more than any other element, is of critical importance in a participatory democracy.*

9. *The Right to Information Act is a rights based enactment more akin to any other enactments safeguarding fundamental rights. As the statement of the object of the Act goes, democracy requires an informed citizenry and transparency of information. The Act encompasses basically two things, firstly, the right of a citizen to seek for information to which he is entitled under the provisions of the Act and the corresponding duty of the Information Officers to furnish such information and secondly, it leads to transparency in the Government functioning.*

10. *The use of the Right to Information Act needs no elaborate reference as the very fact that such a right to get information has been recognised as a fundamental right. To put it precisely, the information supplied under the Act brings about transparency and accountability, both of which hold to reduce corruption and increased efficiency in governance and it also encourages participation of the people in a democracy. The need for right to information ensures people's participation, ensures principle of accountability, transparency, limiting the discretion powers given to officials, protects*

*the civil liberties, effective and proper implementation of schemes of Government and makes media more effective.*

11. *Though the Indian Constitution has no express provision guaranteeing the right to information, it has been recognized by the Courts in a plethora of cases as implicit in Article 19(1)(a), which guarantees to all citizens the right to free speech and expression, and Article 21 of the Constitution which guarantees the right to life in accordance with due process to all citizens. The background of the enactment will not be complete if the contribution of the Hon'ble Apex Court for the legislation is not mentioned. The Apex Court in the decision in State of U.P. v. Raj Narain, AIR 1975 SC 865, interpreted Article 19(1)(a) of the Constitution of India so widely so as to include so many rights within its sweeping shadow. One such right is the right to information. It is observed in the said judgment that "the right to know which is derived from the concept of freedom of speech, though not absolute is a factor which should make wary, when secrecy is claimed for transactions which can at any rate have no repercussion on public security." The Apex Court further observed that "the people of this country have the right to know every public act, everything that is done in a public way by their public functionaries. They are entitled to know the particulars of every public transaction in its bearing." The concept of an open Government is the direct emanation from the right to know which seems to be implicit in the right of free speech and expression guaranteed under Article 19(1)(a), as observed by the Apex Court in S.P. Gupta v. Union of India, AIR 1982 SC 149.*

12. *In the Secretary, Ministry of Information and Broadcasting, Government of India v. The Cricket Association of Bengal, 1995 (2) SCC 179, the Apex Court, while considering the freedom of speech and expression in the light of the right to information, has*

*observed that “freedom of speech and expression is basic to and indivisible from a democratic polity. It includes the right to impart and receive information.” The Apex Court has also observed that “for ensuring the free speech right of the citizens of the country, it is necessary that the citizens have the benefit of plurality of views and a range of opinions on all public issues and a successful democracy posits an ‘aware’ citizenry.”*

13. *The pride for enactment of the Right to Information Act would certainly go to the judiciary as could be seen from certain observations of the Hon'ble Apex Court in some of the judgments. The judgment in Union of India v. Association for Democratic Reforms, AIR 2002 SC 2112 is again a forerunner for recognising the right to information as a fundamental right and the said judgment laid the foundation over which the superstructure of the Right to Information Act, 2005 was built. In Peoples' Union for Civil Liberties v. Union of India, 2004 (1) CTC 241 (SC) : 2004 (2) SCC 476, it was observed that—*

*“Right of information is a facet of the freedom of ‘speech and expression’ as contained in Article 19(1)(a) of the Constitution of India. Right of information, thus, indisputably is a fundamental right.”*

*In another case in Union of India v. Assn. for Democratic Reforms, 2002 (5) SCC 294, it was observed that “the right to get information in a democracy is recognized all throughout and it is a natural right flowing from the concept of democracy”.*

14. *The Apex Court in India Jaising v. Registrar General, Supreme Court of India, 2003 (5) SCC 494, also took the same view and held —*

*“It is no doubt true that in a democratic framework free flow of information to the citizens is necessary for proper functioning particularly in matters which form part of a public record. The decisions relied upon by the learned Counsel of the Petitioner do not also say that right to information is absolute. There are several areas where such information need not be furnished. Even the Freedom of Information Act, 2002, to which also reference has been made, does not say in absolute terms that information gathered at any level in any manner for any purpose shall be disclosed to the public.”*

34. CIC has found that the Respondent was put to extreme hardship by the corrupt political rulers and corrupt public servants in retaliation of his unstinted Implementation of rule of law. CIC has further found that the gist of IB report as furnished by IB in response to the RTI request of appellant shows that its disclosure could cause no harm to core activity of security or intelligence of IB. The IB report is information as per Section 2(f) held by MoEF and the information pertains to allegation of corruption and human rights violation.

35. Clearly, the information sought by the respondent falls in the category of being exempt from the exclusion clause and is liable to be supplied.

36. The judgment in the case of ADARSH SHARMA (*supra*) relied upon by learned counsel for the petitioner has no applicability in the facts of the present case. The Court in that case was dealing with

information sought, concerning one doctor from the Ministry of Home Affairs. The information sought was about the date of last departure of the doctor from India, the destination, airlines and the passport number. The application was transferred by the CPIO, Ministry of Home Affairs to the Intelligence Bureau. The Intelligence Bureau claimed exemption under Section 24 of the Act. The information sought for, pertained to the Immigration Department of the Intelligence Bureau. Since the information was not related to the allegations of corruption or human rights violation, learned Single Judge held that the said information did not come within the purview of the exceptions carved out by the proviso to Section 24 of the Act. It is, in these circumstances, that the directions of the CIC, directing supply of information, were quashed.

37. In view of the above, looked at from any angle, there is no infirmity with the view taken by the CIC by the impugned order dated 21.04.2016. There is no merit in the petition. The same is accordingly dismissed. No orders as to costs.

**SANJEEV SACHDEVA, J**

**August 23 , 2017**

***St/HJ***

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

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Judgment delivered on: 19.02.2018

+ **W.P.(C) 5547/2017 & CM No. 23333/2017**

**CENTRAL BOARD OF DIRECT TAXES**

..... Petitioner

versus

**SATYA NARAIN SHUKLA**

..... Respondent

**Advocates who appeared in this case:**

For the Petitioner : Mr Ruchir Bhatia, Senior Standing Counsel  
with Mr Gurpreet Shah Singh, Dy. CIT  
(O&D), CBDT.  
For the Respondent : Respondent in person.

**CORAM:-**

**HON'BLE MR JUSTICE VIBHU BAKHRU**

**JUDGMENT**

**VIBHU BAKHRU, J**

1. The petitioner (hereafter 'CBDT') impugns an order dated 29.05.2017 (hereafter 'the impugned order') passed by the Central Information Commission (hereafter 'the CIC') in a second appeal preferred by the respondent under Section 19(3) of the Right to Information Act, 2005 (hereafter 'the Act').

2. By the impugned order, the CIC has, *inter alia*, directed disclosure of the information sought by the respondent and photocopies of responses received from Director Generals of Income Tax (DGs) to CBDT's letter dated 11.08.2015. According to CBDT, the said information is excluded from the scope of the Act as it emanates from the Directorate General of Income Tax (Investigation). The said office is placed in the Second

Schedule of the Act and, thus, any information received from the said office is excluded from the purview of the Act by virtue of Section 24(1) of the Act. CBDT also claims that the said information is exempt from disclosure under the provisions of Section 8(1)(h) of the Act.

3. Briefly stated, the relevant facts necessary to consider the aforesaid controversy are as under:-

4. The respondent filed an application dated 16.11.2015 seeking the following information under the Act:-

“(1) Photocopies of the letters no. F. No. 282/4/2012-IT(Inv) dated 1.10.2013 and No. 282/04/2012-IT(Inv. V)/140 dated 9.7.2015.

(2) Photocopies of the responses received from the DGs to the letter No. 282/4/012-IV (Inv. V)/192 dated 11.08.2015 from Shri Rajat Mittal, Under Secretary (Inv. V) CBDT.”

5. The Central Public Information Officer (CPIO) of CBDT responded to the petitioner's application by a letter dated 28.12.2015. He did not provide the photocopies of the letters as sought for at point no.1 but briefly indicated the contents of those letters. Insofar as the information sought at point no.2 is concerned, the CPIO responded as under:-

“Since, the matter is under investigation, hence under the provisions of Section 8(h) of RTI Act, 2005 (Information which would impede the process of investigation or apprehension or prosecution of offenders) information cannot be provided at this stage.”

6. Aggrieved by the response of the CPIO, the respondent preferred an appeal under Section 19(1) of the Act before the First Appellate Authority

(hereafter 'the FAA'). The said appeal was disposed of by an order dated 11.02.2016, whereby the FAA directed the CPIO to provide photocopies of the relevant letters as requested by the respondent as per point no.1 of his application. In respect of the respondent's request for responses received from the DGs to the letter dated 11.08.2015 is concerned, the FAA upheld the CPIO's decision that the said information was exempt under the provisions of Section 8(1)(h) of the Act and, therefore, could not be provided at that stage. However, the FAA directed the CPIO to convey the outcome of the investigations once the same are concluded.

7. Aggrieved by the decision of the FAA rejecting the request for furnishing the responses received from the DGs, the respondent preferred a second appeal before the CIC. The said appeal was allowed by the impugned order and the CPIO was directed to supply the information sought for by the respondent.

8. The controversy relates to the verification of the affidavits filed by the Members of Parliament (MPs) and Members of Legislative Assembly (MLAs) disclosing their assets to the Election Commission. The respondent had submitted a list of MPs and MLAs whose assets have allegedly increased more than fivefold after the previous election (that is, during the term of their office as elected representatives after the previous election).

9. The said list of MPs and MLAs were forwarded to the DGs for verification. By a letter dated 11.08.2015, the following instructions were issued to the DGs with regard to the list of MPs and MLAs provided by the respondent:-



“The undersigned is directed to convey that any such case, featuring in the list that is yet to be verified, should be got verified urgently. A comprehensive report of the verifications done as per guidelines fixed by the Board may also be provided, if not done earlier. The report may be submitted *within a month from the date* of this letter in the annexed proforma. It is requested that the “Brief outcome” column must sufficiently record the outcome and the suggested course of action.”

10. The learned counsel appearing for CBDT submitted that CBDT could not be compelled to provide the photocopies of responses received from the DGs because: (i) the information sought for is exempted from disclosure by virtue of Section 8(1)(h) of the Act; and (ii) that any information from Directorate General of Income Tax (Investigation) is excluded from the purview of the Act by virtue of Section 24(1) of the Act.

11. Section 8(1)(h) of 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—

XXXX

XXXX

XXXX

XXXX

(h) information which would impede the process of investigation or apprehension or prosecution of offenders.”

12. It is clear from the above that only such information which would (i) impede the process of investigation; (ii) impede the apprehension or prosecution of offenders, is exempted from disclosure by virtue of Section 8(1)(h) of the Act. In the present case, there is no material to indicate that any investigation is being conducted, which would be impeded by disclosure

of the information sought for by the respondent. It is stated by CBDT that the Election Commission of India forwards the affidavits submitted by MPs and MLAs disclosing their assets for verification to CBDT. Such affidavits are forwarded by CBDT to the Directorate General of Income Tax (Investigation) for verification and the outcome of such verification is shared directly by the Directorate General of Income Tax (Investigation) with the Election Commission of India.

13. The petitioner further states that the verification exercise carried out by the Directorate General of Income Tax (Investigation) is only indicative in nature and any further action proposed under the Income Tax Act, 1961 has to be followed up by an assessment order, which is passed by the concerned assessing officers. The verification affidavits filed by the candidates cannot be equated with an investigation as referred to in Section 8(1)(h) of the Act. The process of investigation as contemplated under Section 8(1)(h) of the Act is one in the nature of a probe and an inquiry. Clearly, verification from records cannot be termed as an “investigation”.

14. Even if, it is assumed that the verification being conducted by the Directorate General of Income Tax (Investigation) is in the nature of an investigation, the same is no ground for denial of information. Only such information which impedes the process of investigation can be denied. Thus, it would be necessary for the CPIO to specify the CIC that: (a) the investigation was conducted or was proposed; and (b) the information sought would impede the process of investigation. It is apparent that in the present case, these conditions are not met. First of all, there is no assertion that any process of investigation is under way; and secondly, there is no

material to indicate that disclosure of the information as sought would impede any such investigation.

15. The suggestion that the expression “process of investigation” includes within its ambit an assessment proceedings resulting in the assessment order is plainly unmerited. The assessment proceedings merely relate to scrutiny of the Income Tax Returns and an assessment income on tax payable by an assessee. Plainly, such proceedings do not take the colour of investigation.

16. The next question to be addressed is whether the information sought for by the respondent is excluded from the purview of the Act.

17. Section 24(1) of the Act reads as under:-

**“24. Act not to apply to certain organizations.—** (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.”

18. A plain reading of Section 24(1) of the Act indicates that the provisions of the Act would not be applicable to Intelligence and Security

Organizations as specified in the Second Schedule. Further, any information received from such organizations falls under the exclusionary clause of Section 24(1) of the Act. CBDT is not one of the offices, public organizations which are specified under the Second Schedule; but, the Directorate General of Income Tax (Investigation) is. Thus, any information received from the Directorate General of Income Tax (Investigation) by any Public Authority would also fall within the exclusionary provisions of Section 24(1) of the Act. Indisputably, the information sought for by the respondent emanates from the Directorate General of Income Tax (Investigations) (various DGs who have called upon to submit a comprehensive report of verification). Thus, CBDT would be justified in denying such information to the respondent.

19. It was also contended by the respondent that since the information sought for by him related to allegations of corruption, the same falls within the exception to the exclusionary clause of Section 24(1) of the Act. The respondent is correct that by virtue of the first proviso to Section 24(1) of the Act, all information pertaining to allegations of corruption and human rights violations falls within the exception to Section 24(1) of the Act. In other words, notwithstanding that such information emanates from any of the organizations as specified under the Second Schedule of the Act, it is not excluded from the purview of the Act.

20. However, in the present case, it is difficult to accept that the information sought by the respondent pertains to allegations of corruption, as no such allegations have been made at any stage. The respondent had merely highlighted that the net wealth of certain MLAs and MPs had

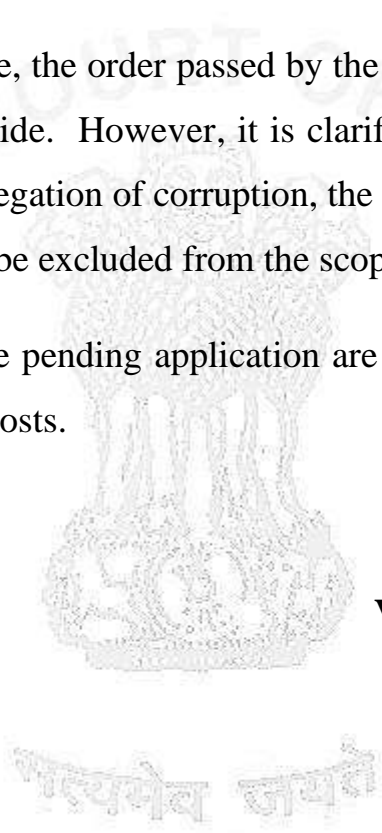
increased fivefold and the respondent had sought verification of the same in order to bring about a higher level of transparency. No specific or general allegations of corruption were advanced by the respondent.

21. Thus, it is not possible to accept that the information as sought for by the respondent falls within the purview of the Act even though it emanates from the organization which is placed in the Second Schedule.

22. In view of the above, the order passed by the CIC cannot be sustained and is, accordingly, set aside. However, it is clarified that in the event any citizen was to make an allegation of corruption, the information as sought by the respondent would not be excluded from the scope of the Act.

23. The petition and the pending application are disposed of. The parties are left to bear their own costs.

**FEBRUARY 19, 2018**  
**RK**



**VIBHU BAKHRU, J**

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

+ W.P.(C) 8393/2016 & CM No. 34715/2016

PRESIDENT'S SECRETARIAT ..... Petitioner

Through: Mr Jasmeet Singh, Advocate.

versus

SUBHASH CHANDRA AGARWAL ..... Respondent

Through: Mr Amit Khemka and Ms Nidhi  
Bhuwania, Advocates.

**CORAM:**

**HON'BLE MR. JUSTICE VIBHU BAKHRU**

**ORDER**

% **31.01.2018**

**VIBHU BAKHRU, J**

1. The petitioner has filed the present petition, *inter alia*, impugning an order dated 11.05.2016 (hereafter 'the impugned order') passed by the Central Information Commissioner (hereafter 'the CIC') allowing the respondent's second appeal under Section 19(3) of the Right to Information Act, 2005 (hereafter 'the Act'). The controversy involved in the present petition relates to two queries raised by the respondent in his application dated 16.04.2014 filed under the Act. The said queries are reproduced below:-

“(4) Did President's Secretariat and/or others raise security and/or others concerned on allowing

residential complex at the mentioned plot in Diplomatic Enclave (New Delhi) as also referred in enclosed new-reports and letters of Dr. Subramanian swamy?

- (5) Complete information on President's Secretariat and/or others raising security and/or other concerns as referred in query above, enclosing also copies of all correspondence/file notings/documents in this regard."

2. The Public Information Officer ('PIO') of the petitioner declined to provide any information as to the aforesaid queries and responded that "*the requested information cannot be shared as organizations under Section 24(1) of the RTI Act, 2005 are involved*".

3. Aggrieved by the aforesaid response, the respondent preferred an appeal before the First Appellate Authority (hereafter 'the FAA'), under Section 19 of the Act. The said appeal was also rejected by an order dated 03.06.2014, whereby the FAA held that "*with regard to query nos.4 & 5, the appellant is informed that his contention regarding Section 24(1) of the RTI Act, 2005 cannot be applicable in this case and the reply of CPIO, President's Secretariat is found to be in order.*"

4. Aggrieved by the same, the respondent preferred a Second Appeal under Section 19(3) of the Act, which was allowed by the impugned order.

5. Before proceeding further, it is necessary to refer to the context in which the respondent had sought the information under the Act. A

newspaper report captioned “*Row heightens as Swamy seeks probe into high-rise plan near Rashtrapati Bhavan*” was published in a national newspaper – The Hindu – on 05.03.2014.

6. The said report indicates that there were allegations that the private company owned by M/s DLF had acquired a plot of land measuring approximately 23 acres near the Rashtrapati Bhavan and was proposing to build luxury apartments on the said plot. It was reported that the said property had been sold for an amount, which was allegedly less than the market price. It is further reported that there were allegations that the promoters of the private company were keen on increasing the current height of construction from the permitted four storeys (30 metres to eight storeys), despite the concerns of a possible security breach of the Rashtrapati Bhavan.

7. It was stated that initially permission to construct apartments on the said plot had been denied but the matter was subsequently agitated before a Division Bench of this Court and it was reported that this Court had held that the master plan permits residential use of the land and there were many other residential premises in the vicinity.

8. Mr Khemka, the learned counsel appearing for the respondent contended that a plain reading of the newspaper report indicated that the issues sought to be raised were related to allegations of corruption and therefore the information sought by the respondent fell outside the scope of Section 24(1) of the Act.

9. Mr Singh, the learned counsel for the petitioner contended that it was an admitted case that President Secretariat had raised security



concerns. However, the said concerns could not be shared with the respondent as it involved information received from the Intelligence Bureau (IB), which was an organization listed in the Second Schedule to the Act. He contended that in terms of Section 24(1) of the Act, any information received from an organization listed in the Second Schedule was outside the purview of the Act.

10. Mr Singh further contended that the allegation of corruption as discernable from the newspaper report in question, only pertained to sale of land below the market rate and did not relate to any security concerns.

11. I have heard the learned counsel for the parties.

12. A plain reading of the response of the PIO of the petitioner indicates that he had even declined to provide the information (which now Mr Singh states is admitted) that the President Secretariat had raised concerns regarding allowing of residential complex as mentioned in the newspaper report. Concededly, there was no plausible reason for the PIO of the petitioner to have declined providing this information in response to the information sought in query no.4 (quoted above).

13. The next question that arises is whether further information regarding the concerns raised by the petitioner could be shared with the respondent.

14. It is seen that the exclusionary clause of Section 24(1) of the Act has limited application insofar as the petition is concerned. In terms of Section 24(1) of the Act, information submitted by certain

intelligence and security organizations to the Government is exempt from disclosure. Therefore, the petitioner could claim exemption only with regard to information that it had received from a security organization - in this case the IB - and not in respect of any other information including the concerns raised by the President's Secretariat.

15. It is also relevant to state that even the information, which a Public Authority has received from security agencies is required to be disclosed to an information seeker if it pertains to allegations of corruption or violations of human rights.

16. In view of the above, the question that follows is whether the information sought by the respondent pertains to allegations of corruption.

17. It is seen that the impugned order does not reflect that this aspect was considered by the CIC. The impugned order is bereft of any reasoning as it merely states that the information is not exempt under Section 24(1) of the Act.

18. It does not appear that the petitioner had advanced any contention that the information regarding the security concerns did not pertain to the allegations of corruption and perhaps this is the reason why this issue has not been considered by the CIC.

19. In this view, the impugned order is set aside. The present petition and the pending application are disposed of with the following directions:-

a) The petitioner shall disclose the relevant information in response to the query nos.4 & 5 as submitted by the respondent except to the extent that such information has been received from security/intelligence agencies as included in the second schedule to the Act;

b) The CIC shall examine whether the information received by the petitioner from security agencies pertains to allegations of corruption as is contended by the respondent; and

c) The CIC shall pass a reasoned order as expeditiously as possible and preferably within a period of six months from today.

20. The parties are left to bear their own costs.

**JANUARY 31, 2018**  
**MK**

**VIBHU BAKHRU, J**

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

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**W.P.(C) 11092/2017 & CM Nos.45346/2017,  
45348/2017 & 2610/2018**

THE CENTRAL PUBLIC INFORMATION OFFICER, CENTRAL  
BUREAU OF INVESTIGATION, NEW DELHI ..... Petitioner

Through: Mr Rahul Sharma and Mr C. K.  
Bhatt, Advocates.

versus

CENTRAL INFORMATION COMMISSION  
AND ANR. .... Respondents

Through: Mr Anurag Pandey, Advocate for R-  
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**CORAM:**

**HON'BLE MR. JUSTICE VIBHU BAKHRU**

**ORDER**

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**02.02.2018**

**VIBHU BAKHRU, J**

1. The petitioner has filed the present petition impugning an order dated 09.06.2017 (hereafter 'the impugned order') passed by the Central Information Commission (hereafter 'the CIC') allowing the second appeal (Appeal No.CIC/SB/A/2016/001171/MP) preferred by respondent no.2 under Section 19(3) of the Right to Information Act, 2005 (hereafter 'the Act').

2. By the impugned order, the CIC rejected the petitioner's contention that the Central Bureau of Investigation (hereafter 'the CBI') was outside the purview of Section 24 of the Act and was therefore not obliged to disclose

the information as sought for by respondent no.2. Accordingly, the petitioner was directed to disclose the information as sought for by respondent no.2.

3. Briefly stated, the relevant facts necessary to address the controversy are as under:-

3.1 Respondent no.2 is an Officer with the CBI and is currently posted in STF, CBI (H.O.), New Delhi. Respondent no.2 was transferred from Imphal to Delhi on 12.09.2013. The CBI initiated departmental proceedings against respondent no.2 under Rule 14 of the CCA (CCS) Rules, 1965. The petitioner further claims that the allegations made against respondent no. 2 are grave as well as sensitive in nature.

3.2 Respondent no.2 filed an application dated 01.02.2016 under the Act seeking certain information relating to the disciplinary proceedings - Regular Departmental Action (RDA) for major penalty - initiated against him. The petitioner declined to disclose the information sought on the ground that the CBI was placed in the Second Schedule to the Act and thus was outside the purview of the Act.

3.3 Respondent no.2 filed an appeal under Section 19 of the Act before the First Appellate Authority which was also rejected by an order dated 17.03.2016.

3.4 Aggrieved by the same, the respondent no.2 preferred a second appeal (CIC/SB/A/2016/000656/MP) before the CIC which was also rejected by an order dated 16.03.2017.

3.5 Respondent no.2, thereafter, once again filed an application dated 29.04.2016 under the Act seeking certain information relating to the RDA for major penalty initiated against respondent no.2.

3.6 Respondent no.2's request for information was denied for the same reason as it was denied earlier; that is, the CBI was outside the purview of the Act by virtue of Section 24 of the Act. Respondent no.2's first appeal against the denial of information did not meet with any success and was rejected by the First Appellate Authority by an order dated 24.05.2016.

3.7 Respondent no.2 preferred the second appeal under Section 19(3) of the Act, which was allowed by the impugned order.

4. It is apparent from the plain reading of the impugned order that the CIC was of the view that the exclusionary clause of section 24(1) of the Act was not available in respect of information sought by its own officials regarding their service matters. The CIC held that since the matter involved the case of the CBI's official (respondent no.2), he had the right to know information regarding his case. The CIC further held that the petitioner had to prove that the information sought for by respondent no.2 was of the nature as specified under Section 24 of the Act. The relevant extract of the impugned order is set out below:-

“6. However, the mater at present involves the case of CBI's own official and the appellant has a right to know about his own case and a public authority which seeks to claim the exemption u/s 24 of the Act from disclosure of information, available with it and pertaining to its own employee/official, has to show/prove that the information sought is of the nature specified in Section24 of the Act, to the satisfaction of the

Commission. The CPIO has, without applying his mind and keeping in view the very object of the RTI Act, 2005 r/w Section 24, denied information to the appellant on no legal grounds. The decision of the Hon'ble Delhi High Court, in the case of B.S. Mathur vs. PIO, is relevant in this regard:

***“19. The scheme of the RTI Act, its objects and reasons indicate that disclosure of information is the rule and non-disclosure the exception”***

7. The Commission, therefore, directs the CPIO to revisit the appellant's RTI application and reply to him, point wise, keeping in view the provisions of the RTI Act, 2005. The appeal is disposed of.

5. Before proceeding further, it would be relevant to refer to Section 24(1) of the Act, which is set out below:

**“24. Act not to apply in certain organizations.—(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.”

6. A plain reading of Section 24(1) of the Act clearly indicates that it is an exclusionary clause and all intelligence and security organisations specified in the Second Schedule of the Act are excluded from the purview of the Act. The only exemption carved out is by the First Proviso to Section 24(1) of the Act. In terms of the said proviso, all information pertaining to the allegations of corruption and human rights violations are not within the exclusionary clause. Thus, notwithstanding, that CBI is excluded from the purview of the Act by virtue of Section 24(1) of the Act, it is nonetheless obliged to disclose the information pertaining to the allegations of corruption and human rights violation. Obviously, this is subject to the other provisions of the Act including Section 8(1) of the Act.

7. Mr Anurag Pandey, the learned counsel appearing for respondent no.2 contended that the information sought for by respondent no.2 pertains to the disciplinary proceedings, which had commenced in 2011 but were not being proceeded with. And, in the meanwhile, respondent no.2's promotion had been withheld solely due to pendency of the said proceedings. He earnestly contended that this was causing respondent no.2's immense distress and the same fell within the scope of the expression “human rights violations” as used in the first proviso to Section 24(1) of the Act.

8. The contention advanced on behalf of respondent no.2 is unmerited. The information sought for by respondent no.2 pertains to a service matter and the same cannot by any stretch be termed as “violation of human rights”.



9. The expression 'Human Rights' denotes certain inalienable rights which every individual has by virtue of being a member of the Human Family. In December, 1948, the U.N. General Assembly adopted the Universal Declaration of Human Rights. In December, 1965 the UN General Assembly adopted two covenants for observance of Human Rights: (i) The International Covenant on Civil and Political Rights; and (ii) Covenants on Economic, Social and Cultural Rights. India is a party to the said covenants.

10. India has also enacted The Protection of Human Rights Act, 1993 to provide for better protection of human rights and matters connected therewith or incidental thereto. The expression 'Human Rights' is defined under Section 2(1)(d) of the said Act to mean "the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India".

11. The expression 'Human Rights Violation' as used in proviso to Section 24(1) of the Act cannot be read to extend all matters where a person alleges violation of fundamental rights. Plainly, the said expression cannot be extended to include controversies relating to service matters. The grievances that the petitioner has in respect of the disciplinary proceedings in question do not fall under the ambit of human rights violations.

12. ***In Director General and Anr vs Harender: WP(C) 5959 of 2013 decided on 16.09.2013***, a co-ordinate bench of this Court had held that "No violation of human rights is involved in service matters, such as promotion, disciplinary actions, pay increments, retiral benefits, pension, gratuity, etc."

13. In view of the above, the impugned order directing the petitioner to

disclose the information sought for by respondent no.2 cannot be sustained.

14. It is also relevant to state that the CIC in the earlier round had rejected respondent no.2's second appeal against denial of information. The relevant extract of the order dated 16.03.2017 passed by CIC in Appeal No. CIC/SB/A/2016/000656/MP reads as under:-

“5. On hearing both the parties and going through the available record, the Commission finds that the appellant had not substantiated allegation regarding corruption and human right violations. Therefore, the respondent authority has appropriately claimed exemption. The Commission further notes that while there was no delay on the part of the CPIO, almost a month had been taken for placing the RTI application before the CPIO. The Commission, therefore, recommends to the competent authority to streamline the office processes relating to handling of RTI applications. The appeal is disposed of.”

15. Concededly, the nature of information sought, the denial of which was subject matter of the said appeal (Appeal No. CIC/SB/A/2016/000656/MP), is the same as the subject matter of respondent no.2's application dated 29.04.2016. Thus, clearly, the CIC fell in error in not referring to and following its earlier decision.

16. In view of the above, the petition is allowed and the impugned order is set aside. The pending applications are also disposed of with the aforesaid observations. The parties are left to bear their own costs.

**VIBHU BAKHRU, J**

**FEBRUARY 02, 2018/pkv**