

IN THE HIGH COURT OF DELHI AT NEW DELHI

MANMOHAN; SUDHIR KUMAR JAIN, JJ.

LPA 734/2018; 22nd March, 2022

UNION OF INDIA versus CENTRAL INFORMATION COMMISSION & ANR

Right to Information Act, 2005 - Enforcement Directorate being an intelligence and security organization as specified in Second Schedule is exempted from the purview of the Act except when the information pertains to allegation of corruption and human rights violation. (Para 14)

Appellant Through: Mr.Amit Mahajan, CGSC with Mr.Dhruv Pande, Advocate.

Respondents Through: Mr.Shiv Kumar, Advocate for R-2 with respondent no.2 in person.

JUDGMENT

MANMOHAN, J:

1. Present appeal had been received by way of transfer from the Court of Hon'ble the Chief Justice. The Apex Court vide order dated 1st October, 2021 had directed the High Court to decide the writ petition within eight weeks. Consequently, the matter was taken up for hearing on priority basis.
2. It is pertinent to mention that the present appeal has been filed challenging the order dated 07th December, 2018 passed by learned Single Judge in W.P.(C) No.13257/2018.

RELEVANT FACTS

3. Briefly stated, the relevant facts of the present case are that respondent No.2 is working as a Superintendent in Administration with Enforcement Directorate ('ED'). She had filed an application under Right to Information Act, 2005 (hereinafter referred to as 'RTI Act') seeking the following information.:-

(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.

4. The aforesaid information was directed to be furnished by the Appellant to respondent no.2 by CIC. Aggrieved by the said decision, the Appellant had filed writ petition, being W.P.(C) 13257/2018. However, the said writ petition was dismissed by learned Single Judge vide order dated 7th December, 2018, observing as under:

“Since the respondent was facing prejudices regarding the seniority, therefore, he sought information mentioned above, which information neither hamper with the Intelligence nor Security nor Secrecy of the petitioner organization. Though the petitioner organization is kept away from RTI Act, but that is not regarding the information to its employee, if any of his rights have been denied. The information sought by the respondent from the petitioner does not come under the Section 24 of the Act.

Accordingly, I find no illegality or perversity in the order of the CIC dated 09.10.2018.”

5. Upon the present Letter Patent Appeal being filed, learned predecessor Division Bench, vide order dated 21st December, 2018 had issued notices. However, the application for stay filed by the Appellant was disposed of observing as under:

.....“C.M.No.54608/2018

Subject to the outcome of the writ petition and taking note of the fact that the information sought for is only the service particulars of respondent No.2 like seniority list and DPC, the information sought for be provided to

respondent No.2. The legal objections with regard to the applicability of Right to Information Act shall be considered at the time of hearing.

The application is, accordingly, disposed of.”

6. The Appellant had filed a Special Leave Petition challenging the aforesaid order dated 21st December, 2018 refusing grant of stay. The Supreme Court disposed of the Special Leave Petition filed by the Appellant vide order dated 1st October, 2021 with a direction to this Court to decide the issue with respect to applicability of the RTI Act to the Appellant and thereafter decide the stay application. The order dated 1st October, 2021 passed by the Supreme Court is reproduced hereinbelow:

“O R D E R

Heard the learned counsel appearing for the parties.

By the impugned order, the High Court, by way of an interim order, has directed the Appellant to furnish the information sought for like Seniority List and DPC etc. which are sought under the provisions of the Right to Information Act (‘RTI Act’ for short). It was/is the specific case on behalf of the Department that the RTI Act was not applicable to the Organization/Department. Despite the above and without deciding such an objection, the High Court has directed the Appellant to furnish the documents sought under the RTI Act without deciding the applicability of the RTI Act. That will be putting the cart before the horse. The High Court ought to have decided the issue with respect to the applicability of the RTI Act to the Organization/Department first.

Under the circumstances, the impugned order passed by the High Court in C.M No. 54608 of 2018 in LPA No. 734 of 2018 is hereby quashed and set aside. We direct the High Court to decide first the issue with respect to the applicability of the RTI Act to the Appellant organization/department and thereafter decide the stay application/LPA. The aforesaid exercise shall be completed within a period of eight weeks from today.

Leave granted.

The present Appeal is partly allowed to the aforesaid extent.

No costs.”

ARGUMENTS ON BEHALF OF THE APPELLANT

7. Mr.Amit Mahajan, learned counsel for the Appellant, submits that the learned Single Judge while passing the impugned order has held that the information sought by respondent No.2 does not fall under the purview of Section 24 of the RTI Act. He submits that learned Single Judge has erred in holding that the information should be provided to respondent No.2 since it did not pertain to intelligence or security and secrecy of the Appellant organization.

8. Learned counsel for the Appellant contends that Section 24(1) of the RTI Act expressly excludes intelligence and security organizations specified in the Second Schedule of the Act from the purview of the Act. He submits that the Legislature has granted complete immunity to the organizations mentioned in the Second Schedule to the RTI Act and thus they cannot be called upon to disclose information under the provisions of the RTI Act. He further submits that the only exceptions as provided in the proviso to Section 24 are when the information so sought pertains to allegations of corruption and human rights violation [first proviso to Section 24 (1)].

9. He further submits that in relation to the organizations specified, providing information is an exception unlike others where withholding the information is an exception. According to him, it is of no consequence whether the information sought for is in relation to intelligence and security functions of the organization or not, because only information furnished by such organization to the Government pertaining to the allegations of corruption and human rights violation is allowed to be provided and everything else is barred. In support of his submission, he relies upon the judgment of this Court in Dr. Neelam Bhalla Vs. Union of India and Ors., LPA 229/2014 .

10. He lastly states that the present writ petition is infructuous, as the Central Administrative Tribunal, Principal Bench, New Delhi vide its order

dated 10th October, 2018 has already directed the Appellant to furnish the information sought for by the respondent. The order dated 10th October, 2018 passed by Central Administrative Tribunal is reproduced hereinbelow:-

“Heard Shri Avneesh Garg, learned counsel for the Appellant and Shri S.K.Tripathi for Shri Gyanendra Singh, learned counsel for the respondents and perused the pleadings on record.

M.A.No.753/2018

In the circumstances, the MA seeking condonation of delay is allowed.

O.A. 702/2018

The applicant, who is presently working as LDC in the 2nd respondent-Directorate of Enforcement, filed the OA seeking the following reliefs:-

(A) To direct the respondent No.2 to place on record the seniority list of LDCs purportedly prepared in the years 1996 and 1999.

(B) To direct the Respondent to place on record, the record pertaining to applicant under F.No.16/03/2006-Ad. E.D.

(C) Pass such further order or orders as this Hon’ble Tribunal may deem fit and proper.”

2. It is the short submission of the learned counsel for the applicant that the respondents have not issued any seniority list in the category of LDCs, in spite of repeated representations of the applicant and thereby the applicant’s rights for seniority and for further promotions are being affected.

3. In the circumstances, the OA is disposed of, without going into the merits of the case, by directing the respondents to furnish copies of the tentative of final seniority lists of LDCs, if any, issued by the respondents from time to time, i.e., from the date of appointment of the applicant to till date, within a period of 60 days from the date of receipt of a certified copy of this order.

If no tentative/final seniority lists in the category of LDCs, was in existence, the same may be informed to him, within the same time. No costs.'

ARGUMENTS ON BEHALF OF THE RESPONDENT

11. Per contra, learned counsel for the respondent states that in the absence of information sought for, the respondent is unable to enforce her fundamental and legal right to promotion. He specifically asserts that despite the order dated 10th October, 2018 passed by Central Administrative Tribunal, no information has been furnished by the Appellant to the respondent till date.

COURT'S REASONING

THE APPELLANT IS AN INTELLIGENCE AND SECURITY ORGANIZATION SPECIFIED IN SECOND SCHEDULE OF THE RTI ACT AND IS EXEMPT FROM THE PURVIEW OF THE RTI ACT EXCEPT WHEN THE INFORMATION PERTAINS TO ALLEGATION OF CORRUPTION AND HUMAN RIGHTS VIOLATION.

12. Since the present case primarily involves interpretation of Section 24 of the RTI Act, the said Section is reproduced hereinbelow:-

"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 fort-five days from the date of the receipt of request."

(emphasis supplied)

13. A Division Bench of this Court in *Esab India Limited v. Special Director of Enforcement & Ors.*, 2011 SCC OnLine Del 1212 has upheld the Constitutional validity of Section 24 of the RTI Act. The relevant portion of the said judgment is reproduced hereinbelow:

“27. In the case at hand, as far as Section 24 is concerned, it is evincible that the said provision excludes the intelligence and security organizations specified in the Second Schedule. We have already reproduced the Second Schedule. The Petitioner is concerned with the Directorate of Enforcement which comes at Serial No. 5 in the Second Schedule. What has been denied in first part of Section 24 is the intelligence and security organizations. The first proviso adds a rider by stating that an information pertaining to allegations of corruption and human right violations shall not be excluded under the Sub-section. Thus, it is understood that information relating to corruption and information pertaining to human rights are not protected. In our considered opinion, the restriction on security and intelligence aspect cannot be scuttled as the same has paramountcy as far as the sovereignty and economic order is concerned. Article 19(1)(2), which deals with reasonable restriction, mentions a reasonable restriction which pertains to security of the State, integrity of India and public order.

28. In our considered opinion, the restrictions imposed are absolutely reasonable and in the name of right to freedom of speech and expression and right to information, the same cannot be claimed as a matter of absolute right. Thus, the submissions advanced on this score are untenable and accordingly we repel the same.”

14. Undoubtedly, the Appellant is an intelligence and security organization specified in Second Schedule of RTI Act and is exempt from the purview of RTI Act except when the information pertains to allegation of corruption and human rights violation. Consequently, the submission made by Mr.Amit Mahajan is correct that the Appellant cannot be called upon to disclose information under the provisions of RTI Act except when the information sought pertains to the allegations of corruption and human rights violation.

THE EXPRESSION 'HUMAN RIGHTS' CANNOT BE GIVEN A NARROW OR PEDANTIC MEANING. HUMAN RIGHTS ARE BOTH PROGRESSIVE AND TRANSFORMATIVE.

15. Accordingly, the issue that arises for consideration in the present case is whether the information sought for by the respondent falls within the expression 'human rights'.

16. Though, the term 'human rights' has not been defined in the RTI Act, yet it has been defined in the Protection of Human Right Act, 1993 (in short '1993 Act'). Section 2(1)(d) of the 1993 Act provides for definition of the term 'human rights' which reads as under:

'2. Definitions – (1) In this Act, unless the context otherwise requires-

xxxx xxxx xxxx

(d) "human rights" means 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."

17. This Court is of the opinion that the expression 'human rights' cannot be given a narrow or pedantic meaning. It does not refer to the rights of the accused alone. Human rights have been used for a variety of purposes, from resisting torture and arbitrary incarceration to determining the end of hunger and of medial neglect. In fact, the human rights are both progressive and transformative.

IN THE PRESENT CASE, NON-SUPPLY OF THE INFORMATION/ DOCUMENTS IS A HUMAN RIGHTS VIOLATION AS IN THE ABSENCE OF THE SAME RESPONDENT NO.2 WOULD NOT BE ABLE TO AGITATE HER RIGHT TO PROMOTION.

18. It is settled law that employees have a legitimate expectation of promotion. It is not the case of the Appellant that its employees and officers cannot file legal proceedings to air their grievances with regard to service conditions and wrongful denial of promotions. The intent of service

jurisprudence at the level of any establishment/organization is to promote peace and harmony and at the level of the society, the objective is to promote human rights. If employees of an establishment cannot agitate their grievances before judicial forums, these organizations/establishments may become autocratic.

19. In fact, RTI Act is a tool which facilitates the employees and officers in airing their grievances systematically. According to Statement of Objects and Reasons, the intent and purpose of RTI Act is to secure access to information in order to promote transparency and accountability in the working of every public authority. It is said that 'Sunlight is the best disinfectant' and RTI Act promotes the said concept. Consequently, both service and RTI laws 'act like a safety valve in the society'.

20. In the opinion of this Court, the employees of a security establishment cannot be deprived of their fundamental and legal rights just because they work in an intelligence and security establishment. To hold so would amount to holding that those who serve in these organizations have no human rights.

21. Though, the Division Bench in Dr. Neelam Bhalla (supra) has stated that "...we agree with the view expressed by the learned Single Judge inasmuch as the information that was sought by the appellant/petitioner pertained to her service record which had nothing to do with any allegation of corruption or of human rights violations...", yet upon a perusal of the judgment passed by learned Single Judge (which was authored by one of us i.e., Manmohan, J), it is apparent that the Appellant- petitioner in that case had sought compensation and disciplinary action against certain Government officials for furnishing inaccurate and incomplete information.

Consequently, the observations in the said judgment have to be read in the light of the issue that arose for consideration. Further, in Dr. Neelam Bhalla (supra), the concept of human rights was neither argued nor dealt with. Accordingly, the aforesaid judgment offers no assistance to the Appellant.

22. This Court is also not in agreement with the submission of learned counsel for the Appellant that only such information that is furnished by the exempted organization to the Government pertaining to allegations of corruption and human rights violation is to be provided.

23. It is also pertinent to mention that the respondent by way of RTI application in question is not seeking information with regard to any investigation or intelligence or covert operations carried out nationally or internationally. This Court clarifies that the respondents may be well entitled to deny information under the RTI Act, if the facts of a case so warrant.

24. Consequently in the present case, non-supply of the information/documents is a human rights violation as in the absence of the same respondent No.2 would not be able to agitate her right to promotion.

INFORMATION PERTAINING TO PROPOSALS FOR PROMOTION OF THIRD PARTIES CANNOT BE PROVIDED TO THE RESPONDENT IN VIEW OF SECTION 11 OF THE RTI ACT.

25. However, this Court is of the view that information pertaining to proposals for promotion of third parties cannot be provided to the respondent in view of Sections 8(1)(j) and 11 of the RTI Act.

26. Consequently, this Court directs the Appellant to provide copies of all the seniority list in respect of LDCs for the period of 1991 till date as well as copies of the proposal for promotion of respondent (LDC) placed before the DPC together with copies of the Minutes of the Meetings and copy of the promotion/rejection order issued on the recommendations of DPC from time to time.

27. Accordingly, the present appeal stands disposed of with the above directions.