

\$~J

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

%

Pronounced on: 05.02.2021

+ **W.P.(C) 3701/2018**

AMIT KUMAR SHRIVASTAVA

..... Petitioner

Through Petitioner-in-person.

Versus

**CENTRAL INFORMATION
COMMISSION, NEW DELHI**

..... Respondent.

Through Mr.Amit Bansal, Sr. Standing counsel
with Ms. Manisha Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

1. This writ petition is filed seeking a writ, order or direction to impugn the order dated 15.01.2018 passed by the Central Information Commission (CIC).
2. The case of the petitioner is that he filed an RTI Application on 05.09.2016 under Rule 6 of the Right to Information Act, 2005 (*hereinafter referred to as 'the RTI Act'*) seeking disclosure of point wise information which was mentioned at serial No. 5(i) to 5(xxv) of the said application. It is claimed that the CPIO did not provide correct information in respect of point 5(i) of the RTI application. The CPIO hid the cases registered under IPC/PC Act. It is also claimed that the CPIO misled regarding the other issues.

Information was not disclosed under Section 8(1) (h) of the RTI Act.

3. The petitioner filed a first appeal on 10.10.2016 before the First Appellate Authority. It is stated that the Appellate Authority did not decide the appeal of the petitioner in the defined period. The petitioner filed a second appeal before the Second Appellate Authority CIC. It is the grievance of the petitioner that during the hearing, the respondent believed the verbal submissions of the CPIO instead of the written submissions of the petitioner and allowed them to sustain their stand for non-disclosure of the information in respect of all the points by claiming exemption under Section 8(1) (h) of the RTI Act. Hence, the present writ petition.

4. I have heard the petitioner in person and learned counsel for the respondent. Both the parties have also filed their written submissions which I have perused.

5. At the outset, I may point out that a close look at the writ petition shows that there is suppression of material and vital facts by the petitioner in the present writ petition. A perusal of the impugned order dated 15.01.2018 of the CIC shows that there are serious and grave allegations and proceedings including criminal proceedings and departmental proceedings pending against the petitioner. None of this has been mentioned in the present writ petition.

6. As per the impugned order, a case was registered against the petitioner by CBI, New Delhi on 05.05.2012 on the allegation of criminal conspiracy of cheating by impersonation, demand of illegal gratification and misuse of official position. The petitioner was taken into custody by CBI and was remanded to judicial custody by the CBI Special Court on 25.05.2012. The petitioner was released on bail vide order dated 23.08.2012

by the ACMM, Patiala House Court on a personal bond and surety bond of Rs. 50,000/-. The petitioner was under suspension w.e.f. 24.05.2012 under the relevant provisions of CCS Rules, 1965. A charge sheet was filed by CBI against the petitioner after due investigation. The concerned court is said to have taken cognizance of the offence on 16.08.2012. Further, the petitioner was placed under deemed suspension *suo moto* by the Department. The suspension was subsequently revoked on 10.03.2015 on the recommendations of the Suspension Review Committee. Further, as recommended by the Investigating Agency and DG (Vigilance), a charge sheet was issued to the petitioner on 13.08.2013 for major penalty under CCS (CCA) Act, 1956. The impugned order notes that the Departmental and CBI inquiry has not attained finality.

7. None of the above aspects has been mentioned in the present writ petition. These facts give the full background of the case and the RTI application filed. This suppression of facts itself, in my opinion, is sufficient to dismiss the writ petition. In this context reference may be had to the judgment of the Supreme Court in the case of ***Prestige Lights Limited vs. State Bank of India, (2007) 8 SCC 449*** where the Supreme Court held as follows:-

“33. It is thus clear that though the appellant Company had approached the High Court under Article 226 of the Constitution, it had not candidly stated all the facts to the Court. The High Court is exercising discretionary and extraordinary jurisdiction under Article 226 of the Constitution. Over and above, a court of law is also a court of equity. It is, therefore, of utmost necessity that when a party approaches a High Court, he must place all the facts before the Court without any reservation. If there is suppression of material facts on the part of the applicant or twisted facts have been placed before the

Court, the writ court may refuse to entertain the petition and dismiss it without entering into merits of the matter.”

8. However, I have examined the impugned order of the CIC on merits. In the interest of justice, I have chosen to decide the present case of its merits. The petitioner filed the RTI application on 05.09.2016 posing 25 queries which read as follows:-

“5. Particular of information required

A) Details of information required:

(i) Please provide me the list cases which were registered against officer/ staff of your office alongwith sections of IPC/ PC Act.

(ii) Please provide the Name of Officers who has been directed to support the investigation of investigating agency and copy of letter thereof.

(iii) Please provide the bill no. of four consecutive month of Pay of the officer after direction stated in clause (ii)

(iv) Please provide the date of joining and copy of joining report of the officer after compliance of direction given in clause (ii).

(v) Please provide the copy of all communication(letters) between department and investigating agency of above office mentioned in clause (ii)

(vi) Please provide the date of suspension of the officer mentioned in clause (ii)

(vii) Is the suspension mentioned in clause (vi) resulted to the direction of investigating agency?

(viii) If yes then provide me copy thereof.

(ix) Is suspension of officer Clause (vi) reviewed every three month?

(x) If yes provide me dates of all minutes of suspension review committee and legible copy all minutes of suspension review committee.

(xi) Is the officer suspended in clause (vi) have been revoked?

(xii) What is the total period of suspension of the officer who have been revoked clause (xi)

(xiii) Provide me copy fundamental rule by which pay officer clause (xi) is fixed.

(xiv) Is any order passed under rule clause (xiii)

(xv) If yes provide me copy thereof.

(xvi) If not provide me manner of treatment of pay as per rule clause (xiii)

(xvii) Is regular increment of officer mention in clause (ii) has been stopped.

(xviii) If yes provide me copy thereof.

(xix) If no provide me copy of all periodical increment sheet of the officer mentioned clause (ii) from 2012.

(xx) Is the officer mentioned in clause (ii) requested to revoke?

(xxi) If yes provide me dates when he requested to revoke and also provide me copy of reply thereof alongwith copy of note sheet.

(xxii) Is there any direction issued to stop payment of suspension period officer mentioned in clause (ii)

(xxiii) Provide copy of Rule and order to stop the increment suspension period.

(xxiv) Provide the list and amount of increments w.e.f. 2011 of officer mentioned in clause (ii) yearwise.

(xxv) Provide me copy of note sheet of file no. II-10(3)Cus/Vig./12 and II-10(3)Cus/Vig/12/pt/.”

9. A perusal of the above application shows that the same is vague and confusing. The entire focus of the application is on query 5(ii), namely, the name of the officer who has been directed to support the investigation of the investigating agency and copy of the letter thereof. Numerous queries are raised regarding the said alleged officer who has been directed to support the investigation of the investigating agency.

10. The impugned order of the CIC has dismissed the appeal of the petitioner holding that the proceedings initiated by CBI are pending in the appropriate criminal court. Disciplinary proceedings against the petitioner are pending before the concerned Disciplinary Authority and hence, the

matter is covered under Section 8(1) (h) of the RTI Act.

11. Section 8(1) (h) of the RTI Act, 2005 reads as follows:-

“Section 8. Exemption from disclosure of information.-(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen, -

xxx

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

xxx”

12. I may see how Section 8(1)(h) of the RTI Act has been interpreted by this court. A Division Bench of this Court in ***Director of Income Tax (Investigation) and Ors. vs. Bhagat Singh & Ors.*** MANU/DE/9178/2007 held as follows:

“8.Information sought for by the respondent No. 1 relates to fate of his complaint made in September, 2003, action taken thereon after recording of statement of Ms. Saroj Nirmal and whether Ms. Saroj Nirmal has any other source of income, other than teaching in a private school. This information can be supplied as necessary investigation on these aspects has been undertaken during last four years by the Director of Income Tax (Investigation). In fact proceedings before the said Director have drawn to a close and the matter is now with the ITO i.e. the Assessing Officer. Under Section 8(1)(h) information can be withheld if it would impede investigation, apprehension or prosecution of offenders. It is for the appellant to show how and why investigation will be impeded by disclosing information to the appellant. General statements are not enough. Apprehension should be based on some ground or reason. Information has been sought for by the complainant and not the assessed. Nature of information is not such which interferes with the investigation or helps the assessed. Information may help the

respondent No. 1 from absolving himself in the criminal trial. It appears that the appellant has held back information and delaying the proceedings for which the respondent No. 1 felt aggrieved and filed the aforesaid writ petition in this Court. We also find no reason as to why the aforesaid information should not be supplied to the respondent No. 1. In the grounds of appeal, it is stated that the appellant is ready and willing to disclose all the records once the same is summoned by the criminal court where proceedings under Section 498A of the Indian Penal Code are pending. If that is the stand of the appellant, we find no reason as to why the aforesaid information cannot be furnished at this stage as the investigation process is not going to be hampered in any manner and particularly in view of the fact that such information is being furnished only after the investigation process is complete as far as Director of Income Tax (Investigation) is concerned. It has not been explained in what manner and how information asked for and directed will hamper the assessment proceedings.”

13. In *Union of India vs. Manjit Singh Bali*, 2018 SCC OnLine Del. 10394, a Coordinate Bench of this court held as follows:-

“22. The next question to be examined is whether the denial of information sought for by the respondent is justified in terms of Section 8(1)(h) of the RTI Act. Section 8(1)(h) of the RTI Act is set out below for ready reference:—

“8. Exemption from disclosure of information. -
Notwithstanding anything contained in the Act, there shall be no obligation to give any citizen-

XXXXXX

XXXXXX

XXXXXX

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

23. A plain reading of the aforesaid provision indicates that in order to deny information under Clause (h) of Section 8(1) of the RTI Act, it must be established that the information sought is one which would impede the process of investigation or apprehension or prosecution of the offenders. In the facts of the present case, a charge sheet has already been filed and, therefore, the investigation stage is now over. Thus, in order for the petitioner to claim exemption from disclosure under Clause (h) of Section 8(1)(h) of the RTI Act, it would be essential for the petitioner to indicate as to how such information would impede the investigation or apprehension or prosecution of the offender. In *Director of Income Tax (Investigation) v. Bhagat Singh* (supra), a Division Bench of this Court had observed as under:—

“Under Section 8(1)(h) information can be withheld if it would impede investigation, apprehension or prosecution of offenders. It is for the appellant to show how and why investigation will be impeded by disclosing information to the appellant. General statements are not enough. Apprehension should be based on some ground or reason.”

24. In the present case, the petitioner has not indicated any possible reason or ground to establish that the disclosure of information as sought by the petitioner would impede prosecution of the offender. It is also relevant to observe that denial of any information available with a public authority, which could assist an alleged offender from establishing his innocence or for pursuing his defence may, in fact, impede the course of justice. After the investigations are complete, the information as sought by the respondent can be denied under Section 8(1)(h) of the RTI Act only if the public authority apprehends that such disclosure would interfere with the course of prosecution or in apprehending the offenders. It will not be open for the public authority to deny information on the ground that such information may assist the offender in pursuing his defence (and therefore impede his prosecution). This is clearly

not the import of Section 8(1)(h) of the RTI Act.

25. It is also necessary to bear in mind that the RTI Act is a statutory expression of one of the facets of Article 19(1)(a) of the Constitution of India and any exclusionary clause under the RTI Act must be construed keeping in view the object for providing such exclusion. By virtue of Article 19(2) of the Constitution of India, reasonable restrictions in exercise of rights under Article 19(1)(a) of the Constitution of India are sustainable if they are in the interest of the sovereignty and integrity of India, the security of the state, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence. The exclusion under Section 8(1)(h) of the RTI Act - information which would impede process of investigation or apprehension or prosecution of the offenders - has to be read in conjunction with Article 19(2) of the Constitution of India. Such denial must be reasonable and in the interest of public order.”

14. Reference may also be had to a judgment of another Coordinate Bench of this court in the case of **Bhagat Singh vs. Chief Information Commissioner & Ors.**, (2008) 100 DRJ 63 where the court held as follows:-

“13. Access to information, under Section 3 of the Act, is the rule and exemptions under Section 8, the exception. Section 8 being a restriction on this fundamental right, must therefore is to be strictly construed. It should not be interpreted in manner as to shadow the very right itself. Under Section 8, exemption from releasing information is granted if it would impede the process of investigation or the prosecution of the offenders. It is apparent that the mere existence of an investigation process cannot be a ground for refusal of the information; the authority withholding information must show satisfactory reasons as to why the release of such information would hamper the investigation process. Such reasons should be germane, and the opinion of the process being hampered should be reasonable

and based on some material. Sans this consideration, Section 8 (1) (h) and other such provisions would become the haven for dodging demands for information.

14. A rights based enactment is akin to a welfare measure, like the Act, should receive a liberal interpretation. The contextual background and history of the Act is such that the exemptions, outlined in Section 8, relieving the authorities from the obligation to provide information, constitute restrictions on the exercise of the rights provided by it. Therefore, such exemption provisions have to be construed in their terms; there is some authority supporting this view (See *Nathi Devi v. Radha Devi Gupta*, 2005 (2) SCC 201 : 2005 (80) DRJ 518[SC]; *B.R. Kapoor v. State of Tamil Nadu*, 2001 (7) SCC 231 and *V. Tulasamma v. Sesha Reddy*, 1977 (3) SCC 99). Adopting a different approach would result in narrowing the rights and approving a judicially mandated class of restriction on the rights under the Act, which is unwarranted.”

15. Similarly, in *B.S. Mathur vs. Public Information Officer of Delhi High Court*, (2011) 125 DRJ 508, the case pertained to the petitioner therein who was a member of the Delhi Higher Judicial Service. The Full Court decided to place him under suspension pending disciplinary action.

This court held as follows:-

“19. The question that arises for consideration has already been formulated in the Court's order dated 21st April 2011: Whether the disclosure of the information sought by the Petitioner to the extent not supplied to him yet would “impede the investigation” in terms of Section 8(1)(h) RTI Act” The scheme of the RTI Act, its objects and reasons indicate that disclosure of information is the rule and non-disclosure the exception. A public authority which seeks to withhold information available with it has to show that the information sought is of the nature specified in Section 8 RTI Act. As regards Section 8(1)(h) RTI Act, which is the only provision invoked by the Respondent to deny the Petitioner the information sought by him, it will have

to be shown by the public authority that the information sought “would impede the process of investigation.” The mere reproducing of the wording of the statute would not be sufficient when recourse is had to Section 8(1)(h) RTI Act. The burden is on the public authority to show in what manner the disclosure of such information would ‘impede’ the investigation. Even if one went by the interpretation placed by this Court in W.P.(C) No. 7930 of 2009 [*Additional Commissioner of Police (Crime) v. CIC*, decision dated 30th November 2009] that the word “impede” would “mean anything which would hamper and interfere with the procedure followed in the investigation and have the effect to hold back the progress of investigation”, it has still to be demonstrated by the public authority that the information if disclosed would indeed “hamper” or “interfere” with the investigation, which in this case is the second enquiry.”

16. What follows from the legal position is that where a public authority takes recourse to Section 8 (1) (h) of the RTI Act to withhold information, the burden is on the public authority to show that in what manner disclosure of such information could impede the investigation. The word ‘impede’ would mean anything that would hamper or interfere with the investigation or prosecution of the offender.

17. A perusal of the impugned order passed by the CIC shows that it relies upon the other orders passed by the Coordinate Benches of the CIC. It notes that in criminal law, an investigation is completed with the filing of the charge sheet in an appropriate court by an investigating agency but in cases of vigilance related inquiries and disciplinary matters, the word ‘investigation’ used in Section 8 (1) (h) of the Act should be construed rather broadly and should include all enquiries, verification of records, and assessments. In all such cases, the enquiry or the investigation should be taken as completed only after the competent authority makes a prima facie

determination about presence or absence of guilt on receipt of the investigation/enquiry report from the investigating/enquiry officer. Based on the said position, the impugned order has accepted the plea of the respondent and disallowed the information under Section 8 (1) (h) of the RTI Act.

18. As noted above, the legal position as settled by this court is that cogent reasons have to be given by the public authority as to how and why the investigation or prosecution will get impaired or hampered by giving the information in question. In the impugned order, there is no attempt made whatsoever to show as to how giving the information sought for would hamper the investigation and the on-going disciplinary proceedings. The impugned order concludes that a charge sheet has been filed in the criminal case by the CBI but in the disciplinary proceedings the matter is still pending. Based on this fact simplicitor the impugned order accepts the plea of the respondent and holds that the Section 8 (1) (h) is attracted and the respondents are justified in not giving information to the petitioner. No reasons are spelt out as to how the investigation or prosecution will be hampered.

19. Accordingly, in my opinion, the order has taken a stand which is contrary to the settled legal position by this court as noted above. I, accordingly, quash the impugned order of CIC and remand the matter back to CIC for consideration afresh in terms of the above noted legal position.

20. The petition stands disposed of accordingly.

JAYANT NATH, J

FEBRUARY 05, 2021

rb