



2024 : DHC : 1777



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

Date of decision: 28th FEBRUARY, 2024

IN THE MATTER OF:

+ **W.P.(C) 930/2021**

EHTESHAM QUTUBUDDIN SIDDIQUE Petitioner

Through: Mr. Arpit Bhargava, Mr. Sarthak
Sharma & Mr. Pankaj, Advocates.

versus

CPIO, INTELLIGENCE BUREAU Respondent

Through: Mr. Rahul Sharma, Central, Senior
Panel Counsel with Mr. C. K. Bhatt,
Mr. Ayush Bhatt and Mr. Angad
Gautam, Advocates for Respondent/
CPIO, Intelligence Bureau.
Mr. Rakesh Kumar, CGSC with Mr.
Sunil, Advocate for UoI.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The Petitioner has been convicted and sentenced to death in the Mumbai Twin Blast known as 7/11 bomb blast case which took place in the year 2006. The Petitioner was Accused No.4. The Petitioner was sentenced to a punishment of death for an offence under Section 302 of the IPC, under Section 3(b) of the Explosive Substances Act, 1908 and under Section 3(1)(i) of the Maharashtra Control of Organized Crime Act, 1999 and apart from this, the Petitioner had also been sentenced for various offences under the provision of IPC.



2. The Petitioner in this Writ Petition had made an RTI application, on the 04.09.2017, to the CPIO Intelligence Bureau seeking a copy of an alleged Intelligence Bureau report, suggesting false implication and arrest of accused persons, placed before the Ministry of Home Affairs in the year 2009 for review of evidence in the bomb blast case. The information as sought for by the Petitioner was rejected by the CPIO, Ministry of Home Affairs, vide a letter dated 21.09.2017, on the ground that the agency from which the information was sought for by the Petitioner is exempted from the purview of the RTI Act under Section 24(1).

3. The Petitioner proceeded to file a first appeal under Section 19(1) of the RTI Act with the designated First Appellate Authority (FAA), on 23.10.2017. It is pertinent to mention here that the Petitioner before the authority, has pleaded that Section 24(1) of the RTI Act would not apply as his case is one of human rights violation and that is the information sought is respect of an alleged human right violation. The Petitioner further adds that the officers involved in the investigation of the Twin Blast case were awarded various medals and other monetary benefits for the arrest of innocent persons, an act of corruption that the Petitioner alleges pertains to allegations of corruption and hence cannot be excluded under Section 24(1) of the RTI Act. In its response dated 15.11.2017, the FAA, rejected the appeal of the Petitioner on the grounds that the order of the CPIO, Intelligence Bureau, was in according the provisions of the RTI Act.

4. Aggrieved, the Petitioner proceeded to file a second appeal with the Central Information Commission (CIC). In the appeal the Petitioner



reaffirmed the grounds mentioned in his first appeal. The CIC in its order upheld the decision of the CPIO and FAA and stated that the query raised by the Petitioner fails to satisfy two preconditions carved out under Section 24(1) of the RTI Act: that are, (i) the information being sought must relate to allegations of corruption / human right violations; and (ii) the same must be expressly barred under Section 8 of the RTI Act. The CIC found that the query raised by the Petitioner fails to satisfy either of the essential preconditions and hence is liable to be dismissed.

5. The Petitioner proceeded to challenge the order passed by CIC in way of W.P. (C) 9773/2018 in front of a Coordinate Bench of this Hon'ble Court on the grounds that the information sought by the Petitioner relates to allegations of violation of human rights. The Coordinate Bench *vide* Judgment dated 16.01.2019 held that the Petitioner's application does relate to violation of human rights and the CIC's conclusion was erroneous. The Coordinate Bench further remanded the matter back to the CIC to be considered afresh.

6. Subsequently, the CIC heard the matter afresh where the CPIO, Intelligence Bureau, contended that the no such report, as claimed by the Petitioner, was submitted to the Ministry of Home Affairs, hence no information can be provided in this regard. The CIC passed an order directing the CPIO to file an affidavit deposing that no such report was submitted to the Ministry of Home Affairs in the year 2009 and hence no such information can be provided to the appellant, disposing the appeal.



7. The aforesaid Order passed by the Ld CIC is under challenge in the instant writ petition.

8. The short question which arises for consideration before this Court is whether the Order passed by the CIC is so palpably erroneous or if the decision-making process has faltered in any way that this court should interfere under the powers vested in it under Article 226.

9. The information sought by the Petitioner is on the basis of a newspaper article, published in the year 2009, alleging the existence of an Intelligence Bureau report, suggesting false implication and arrest of accused persons, placed before the Ministry of Home Affairs for review of evidence in the bomb blast case. It has been well established, through various judgments of the apex court, that a report or an article published in a newspaper is considered only heresy evidence and such a newspaper report, or article, is not a document through which an allegation of fact can be proven.

10. In the present case it is the contention of the Respondent/CPIO, Intelligence Bureau that no such report as asked by the Petitioner, was sent to the Ministry of Home Affairs in the year 2009. To further bolster their stance the Respondents have furnished affidavits on directions of the CIC to the Petitioner as well as this Court on the 9th of July 2019. The affidavit reads as under:-

“I, Rajeev Kumar Gupta, aged about 50 years, S/o Shri Motilal Gupta, posted as Joint Deputy Director & CPIO, Intelligence Bureau, Ministry of Home Affairs (MHA), Government of India having office at 35, SP



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Marg, New Delhi-110021 do hereby solemnly affirm and state as under:

1. That I am the CPIO of the Respondent, Intelligence Bureau, Ministry of Home Affairs (MHA), Government of India, and as such I am fully competent and authorized to swear the contents of this affidavit.

2. I say that the present Affidavit has been prepared in compliance of the directions issued to the Respondent vide CIC order dated 10.06.2019 passed by this Hon'ble Commission.

3. I say that as per records, no such report of the Intelligence Bureau, as alleged/claimed by the appellant in his RTI Application dated 04.09.2017 was submitted to the Ministry of Home Affairs in the year 2009.

4. I say that the contents of the present affidavit are true and correct based on official records.”

(emphasis supplied)

11. This court is of the opinion that no such gross error has occurred by the CIC in their adjudication of the order. The premise on which the Petitioner is relying, the publishing of such newspaper article, cannot be taken as gospel truth. Affidavits have been filed by responsible officers in the Court stating that no such report exists. This Court has no reason to disbelieve the affidavit of the Respondent.



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12. In view of the above, this Court is not inclined to interfere with the Impugned Order passed by the Ld. CIC. Resultantly, the writ petition is dismissed, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

FEBRUARY 28, 2024

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

Date of decision: 28th FEBRUARY, 2024

IN THE MATTER OF:

+ **W.P.(C) 12932/2021**

EHTESHAM QUTUBUDDIN SIDDIQUE Petitioner

Through: Mr. Arpit Bhargava, Mr. Sarthak
Sharma & Mr. Pankaj, Advocates.

versus

CPIO, DEPARTMENT OF PERSONNEL AND TRAINING

..... Respondent

Through: Mr. Rakesh Kumar, CGSC with Mr.
Sunil, Advocate for UoI.

+ **W.P.(C) 12933/2021**

EHTESHAM QUTUBUDDIN SIDDIQUE Petitioner

Through: Mr. Arpit Bhargava, Mr. Sarthak
Sharma & Mr. Pankaj, Advocates.

versus

CPIO, MINISTRY OF HOME AFFAIRS

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The Petitioner has been convicted and sentenced to death penalty in the Mumbai Twin Blast known as 7/11 bomb blast case which took place in the year 2006. The Petitioner in W.P.(C) 12933/2021 had made an RTI



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application seeking copies of UPSC forms and other documents related to appointment of 12 IPS officers who had supervised the investigation relating to the bomb blasts in which the Petitioner had been arrested and convicted and in W.P.(C) 12932/2021, the Petitioner had made an RTI application seeking copies of UPSC form and other documents related to the appointment of 4 IAS officers who had accorded sanction to the prosecution related to the arrest and conviction of the Petitioner.

2. The information as sought by the Petitioner has been rejected by the CPIO, Ministry of Home Affairs in W.P.(C) 12933/2021 and the CPIO, Department of Personnel and Training in W.P.(C) 12932/2021 on the ground that the information as sought for by the Petitioner is exempted from disclosure under Section 8(1)(j) of the Right to Information Act, 2005. The appeals thereto were also rejected by the Appellate Authority on the very same ground.

3. It is pertinent to mention here that the Petitioner before both the CPIOs and the Appellate Authority had taken the ground that the information as sought could not be rejected on the ground that it relates to personal information of the officers as 20 years had passed since the appointment of the officers were made from the date on which the request for the information has been made.

4. The Ld. Central Information Commission (CIC) rejected the appeal by holding that the information sought would encroach upon the right of privacy of the officers concerned. The Ld. CIC held that the object of the RTI Act is to ensure transparency and accountability but since the right to privacy is a continuous process and such a right to privacy will continue even after 20 years. The relevant portion of the Order dated 29.11.2019 passed by the Ld. CIC reads as under:



"6. The Commission after adverting to the facts and circumstances of the easel, hearing both parties and perusal of records, feels that the right to privacy being a facet of fundamental right under Article 21 of the Constitution has to be protected in accordance with the three parameters laid down by the Supreme Court in the case of K.S.Puttaswamy (Supra) i.e. (i) there must be legal object, (ii) there must be legal framework and (iii) there must be nexus between the objective to be achieved and the privacy to be compromised. It appears that for meeting different treatment, there must be a reasonable classification and the classification must have a rational nexus with the objective to be achieved. If we take that the RTI Act contains provisions providing framework for disclosures outweighing right to privacy under Section 8(3) of the RTI Act which aims transparency and accountability, the appellant may be entitled for the information of the occurrence which took place 20 years before the RTI application. Thus the Right to Privacy of the 3rd party may not be absolute if the same is falling within the ambit of the aforementioned parameters. However, the respondent have claimed that the occurrence was not a onetime event i.e. the Right to Privacy is a continuous process and drawing a line of giving applications for appointment as such may not be a water tight compartment wherein the Right to Privacy was not existing or continuing after the lapse of 20 years."

5. The aforesaid Order dated 29.11.2019 passed by the Ld CIC is under challenge in the instant writ petitions.

6. The short question that arises for consideration before this Court is that since the information has been sought after 20 years from the date of appointment of the officers, would the bar under Section 8(1)(j) of the RTI Act, 2005 be still available to the officers concerned or not.



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7. Admittedly, the information as sought by the Petitioner is personal in nature [Refer: Girish Ramchandra Deshpande v. Central Information Commr., (2013) 1 SCC 212, R.K. Jain v. Union of India, (2013) 14 SCC 794 and Canara Bank v. C.S. Shyam, (2018) 11 SCC 426].

8. The Petitioner has been convicted and sentenced to death in the Mumbai Twin Blast known as the 7/11 bomb blast case which took place in the year 2006. The Petitioner was Accused No.4. The Petitioner was sentenced to the punishment of death for an offence under Section 302 of the IPC, under Section 3(b) of the Explosive Substances Act, 1908, and Section 3(1)(i) of the Maharashtra Control of Organised Crime Act, 1999 and apart from this, the Petitioner had also been sentenced for various offences under the provision of IPC.

9. The information as sought by the Petitioner is against the officers who were involved in the investigation and who were also involved in granting sanction to the prosecution relating to the arrest and conviction of the Petitioner. The information is of such a nature, if given to the Petitioner, may expose these officers to grave danger. The incident for which the Petitioner has been sentenced to the death penalty has occurred in the year 2006. Admittedly, 20 years have not passed after the date of the incident, and therefore, in any event, the benefit of Section 8(3) of the RTI Act is not available to the Petitioner in the facts of the present case. Even if it is assumed that 20 years have passed, in such cases the right of privacy for these officers, who can be exposed to grave risk, cannot be diverged to an accused and that too when the accused has been convicted and sentenced to death penalty.

10. The Petitioner has not brought out any case as to what public interest would be served by giving such information as sought for by the Petitioner



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which would outweigh the protected interest under Section 8(1)(j) of the RTI Act. Rather in the facts of this case, the protected interest is in the nature of danger to the life and property of the officers who were involved in the investigation relating to the Petitioner and that disclosing their information to the Petitioner would certainly outweigh the public interest that has been claimed.

11. The Petitioner claims that the personal information can be granted to him because the information has been sought after 20 years from the date of appointment of the officers concerned.

12. As rightly pointed out by the Ld. CIC, in the present case, the public interest would lie in not disclosing the names and details of the officers concerned to protect their life and property and there is no public interest in disclosing the details of the officers concerned regarding their appointment, which is sought for by the Petitioner.

13. In view of the above, this Court is not inclined to interfere with the Impugned Order passed by the Ld. CIC. Resultantly, the writ petitions are dismissed, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

FEBRUARY 28, 2024

S. Zakir