



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

Date of decision: 05th OCTOBER, 2023

IN THE MATTER OF:

+ **W.P.(C) 606/2017**

BRIJ MOHAN

..... Petitioner

Through: Mr. Vidya Sagar and Mr. Amolak,
Advs.

versus

CENTRAL INFORMATION COMMISSION & ORS ... Respondents

Through: Mr. Rahul Sharma, CGSC with Mr.
Ayush Bhatt, Advs.

Mr. Anil Soni, CGSC with Mr.
Devvrat Yadav, Advs for UoI.

Mr. S. W. Haider and Mrs. Pooja
Dua, Advs for R-2, 4 & 5.

Mr. Avishkar Singhvi, Mr. Naved
Ahmed, Mr. Vivek Kr. Singh, Advs
for Delhi Police along with Insp.
Vikash Rana and SI Manoj Kumar,
Crime Branch.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. Aggrieved by the Order dated 11.11.2016 passed by the Central Information Commission (CIC) rejecting an appeal filed by the Petitioner which ultimately upheld the order passed by the Central Public Information Officer (CPIO), Ministry of Finance, Department of Economic Affairs, the Petitioner has approached this Court under Article 226 of the Constitution of India.

2. The facts of the present case reveal that the Petitioner is a retired officer of the Indian Audit & Accounts Service.



3. Material on record indicates that the Central Bureau of Investigation (CBI) was investigating a case relating to irregularities in the National Spot Exchange Limited (NSEL) where the Petitioner was working as Deputy Secretary/Director on deputation with the Department of Consumer Affairs.

4. It is stated that the Petitioner was examined by the CBI and his statement was recorded under Section 161 of the Code of Criminal Procedure, 1973 (CrPC). Material on record also reveals that the CBI recommended action against few officers in its report in July, 2015.

5. A Show Cause Notice (SCN) dated 04.04.2016 was issued against the Petitioner stating that the Petitioner acted in a perfunctory manner by facilitating the appointment of Forward Markets Commission (FMC) as a designated agency to oversee the functioning of the commodity spot exchanges.

6. The SCN also indicates that the action of the Petitioner amounted to showing undue favour to the NSEL by concealing the fact from the RBI that the NSEL had falsely claimed before the RBI that it was under regulatory control and the Petitioner was submitting monthly reports to ensure that the NSEL remained out of the purview of Payment and Settlement Systems Act, 2007.

7. The SCN further indicates that the Petitioner had shown undue favour to the NSEL by participating in the act of relaxing and diluting of the draft forwarded by FMC for appointment as designated agency for regulating spot exchanges and the action of the Petitioner had resulted in the FMC being appointed despite not being sufficiently empowered to take effective action against spot exchange. There are also other allegations with regard to the functioning of the NSEL.

8. The Petitioner, thereafter, filed an application under the Right to



Information Act, 2005 (RTI Act) seeking the following information:-

- "(i) Copy of the CBI's above cited report along with the copies of the Notings recorded at various levels in DEA in connection with the processing of the CBI's report;*
- (ii) Copy of the Action Taken Report (ATR) thereon, if any;*
- (iii) Copy of the comments of CVC on ATR of DEA, if any;*
- (iv) Copy of the comments of CBI thereon, if any;*
- (v) Copies of the Notes and correspondence relating to items (ii) to (iv) above; and*
- (vi) Copy of the final orders passed by the Hon'ble Minister/MOS of Finance on the action proposed by CBI against the officers of erstwhile Forward Markets Commission (FMC), Mumbai."*

9. The information sought by the Petitioner was denied on 03.06.2016 by the CPIO on the ground that the same is exempted under Section 8(1)(h) of the RTI Act. Aggrieved by the said denial of information, the Petitioner filed an appeal before the First Appellate Authority which was rejected by an Order dated 01.07.2016 wherein the First Appellate Authority also reiterated that the information sought for by the Petitioner is exempted under Section 8(1)(h) of the RTI Act.

10. The Petitioner thereafter approached the CIC by filing an appeal against the Order dated 01.07.2016 which was rejected by the CIC *vide* Order dated 11.11.2016 holding that the information sought by the Petitioner herein could not be provided under Section 8(1)(h) of the RTI Act. It was further held that as the CBI was an organisation exempted from the



operation of the RTI Act under Section 24, therefore, information sought for by the Petitioner could not be provided. It is this Order which is under challenge in the instant writ petition.

11. It is contention of learned Counsel for the Petitioner that Section 24 of the RTI Act does bestow complete impunity upon the CBI and that the CBI is bound to divulge information pertaining to allegations of corruption and human rights violations. It is further stated that only such of those information which will impede the process of investigation or apprehension or prosecution of offender alone cannot be divulged under Section 8(1)(h) of the RTI Act. It is stated that the Petitioner is seeking information so that he can furnish an effective reply to the SCN, and, therefore, there cannot be any impediment in revealing the information sought for by the Petitioner under the RTI Act.

12. Notice was issued on 23.01.2017. Respondents No.2 and 3 have filed their Counter Affidavits contending that the information sought for by the Petitioner cannot be revealed under Section 8(1)(h) of the RTI Act as the same is exempted.

13. Learned Counsel for the Petitioner places reliance on the judgment passed by a Coordinate Bench of this Court in Union of India v. Manjit Singh Bali, W.P.(C) 6341/2015, wherein this Court has held that merely stating that the information given to the applicant under the RTI Act would impede the investigation is not sufficient and there has to be specific disclosures as to how the information sought for would impede the investigation.

14. Learned Counsel for the Petitioner further places reliance on an Order dated 27.08.2018 passed by this Court in Delhi Subordinate Services Selection Board Govt. of NCT of Delhi v. Naveen Yadav, W.P.(C)



8960/2018. He further relies on the judgment of this Court in Adesh Kumar v. Union of India, 2014 SCC OnLine Del 7203 and Union of India v. O P Nahar, 2015 SCC OnLine Del 9197 to substantiate his contentions.

15. The admitted facts are that at the relevant point of time, the Petitioner, who is a member of the Indian Audit & Accounts Service, was working with NSEL as a member of the Department. An SCN was issued to the Petitioner on 04.04.2016. Material on record indicates that there have been complaints and the CBI is conducting investigation regarding the activities of NSEL which has resulted in loss of about Rs.5,600 crores in the year 2013, with around 13,000 investors being investigated by different investigating agencies. Investigation is yet to be completed.

16. In light of the foregoing, the question that arises is whether the information sought for by the Petitioner could have been given to the Petitioner or not. The Petitioner has sought for a copy of the report of the CBI given in July, 2015, along with the copies of notings at various levels in the Department of Economic Affairs in connection with the processing of the CBI report, the Action Taken Report (ATR) thereon. He has further sought the comments of the CVC on the ATR of Department of Economic Affairs. the copies of notes and correspondence as well as the final orders passed by the Hon'ble Minister/MOS of Finance on the action proposed by CBI against the officers of Forward Markets Commission (FMC).

17. This Court is of the opinion that the information that is being sought by the Petitioner would impede the investigation conducted by the CBI involving a large scale fraud, including many accused. Section 8(1)(h) of the RTI Act specifically exempts such information which will impede the process of investigation revealing a copy of the entire report of the CBI. Further, if such information falls in the hands of other offenders, it will



certainly impede an ongoing investigation process.

18. Most of the judgments on which the Petitioner has placed reliance are where the investigation is complete and chargesheet has been filed. In such cases, this Court has held that information which is contained in the chargesheet and which has been submitted in the Court can be disclosed to the third parties who are not an accused in the matter. Since the investigation in those cases is already over, the said judgments cannot be applied to the present case where the investigation is ongoing.

19. This Court has also examined as to whether the information sought for by the Petitioner would be relevant for answering the SCN issued to the Petitioner. The SCN dated 04.04.2016 reads as under:-

"In continuation of this Department's Memorandum of even number dated 01.04.2016 the undersigned is directed to state that the inquiry on allegations of irregularities in the operation of the National Spot Exchange Limited (NSEL) disclosed the following Specific acts of commission/omission on your part, while you were working as Director, Department of Consumer Affairs, Government of India:-

(i) That a DO letter was issued by Shri R.Gopalan, the then Secretary, . Department of Economic Affairs, in which serious regulatory concerns raised in the FSDC meeting dated 4.5.2011 were conveyed. The letter also conveyed the claim of NSEL before RBI that it was under regulation by FMC and that it was submitting monthly reports, which was false. You have failed to address these issues and instead, in a perfunctory manner facilitated appointment of FMC as a designated agency to oversee the functioning of the commodity spot exchanges without sufficiently empowering it. The said decision was not a natural decision emerging out of introspection in the Department of Consumer Affairs



and representation from FMC but rather the same was a deliberate ploy to ward off the queries from DEA, FSDC and RBI with a view to let the NSEL continue to function in an unregulated environment.

(ii) Your above skid action also amounted to showing of undue favour to NSEL by concealing the fact from RBI that NSEL had falsely claimed before it that it was under regulatory control and was submitting monthly reports. thereby getting them out of the review of Payment and Settlement Systems Act, 2007.

(iii) That you had shown undue favour to NSEL by way of participating in the act of relaxing and diluting of draft forwarded by FMC for appointment as designated agency for monitoring/regulating spot exchanges. Your action resulted in FMC not sufficiently empowered to take effective action against the exchange for violation of terms and conditions of the exemption granted.

(iv) That when the FMC made serious allegations in April 2012, with regard to irregularities on the exchange platform including short sale contracts exceeding 11 days, you failed to initiate remedial action also accepted the excuses offered by the NSEL and gave cover of prospective legislative changes which were not relevant at that point of time to condone' the regularities committed by the NSEL. You had thereby shown undue favour to NSEL which had eventually, resulted in continuation of fraudulent activities by the exchange, resulting in a loss of 5500 crores to the public and public sector entities such as MMTC and PEC.

*2. As the above allegations *prima facie* indicate your failure to maintain absolute integrity and devotion to duty and indulgence in a conduct unbecoming of a Government Servant, during your posting in the*



Department of Consumer Affairs as Director. You are requested to submit your preliminary explanation to reach the- undersigned before 10th April, 2016, as to why further steps not be taken for initiating regular departmental proceedings against you for imposing major penalty, under the relevant Rules. "

20. A perusal of the SCN reveals that answers to the action of the Petitioner is called for conducting a departmental inquiry. The CBI looking into the report would not be very relevant in answering the issues raised in the SCN issued against the Petitioner.

21. Despite this exercise not being necessary to answer the question raised in this writ petition, this Court has delved into the question only to satisfy its conscience that the Petitioner's rights, along with the principles of natural justice, are not being prejudiced by not providing him the information sought and whether lack of this information would have negatively impacted the Petitioner in making an effective reply to the allegations made in the SCN. Resultantly, the writ petition fails.

22. The writ petition is dismissed, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

OCTOBER 05, 2023
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