

Madras High Court
Madras High Court
S.Vijayalakshmi vs Union Of India on 9 September, 2011
DATED: 09.09.2011

CORAM:

The HONOURABLE MR.M.Y.EQBAL THE CHIEF JUSTICE

and

The HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

W.P.No.14788 of 2011 &

M.P.No.1 of 2011

S.Vijayalakshmi ... Petitioner

Vs.

1.Union of India,

Rep. by its Secretary to Government,

Ministry of Personnel, PG & Pensions,

North Block, New Delhi.

2.Director, Central Bureau of Investigation

Lodhi Road, CGO Complex, New Delhi. ... Respondents

Prayer :- Writ Petitions filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records and quash the 1st respondent's impugned notification No.GSR 442(E), dated 09.06.2011, cuccooning the second respondent from the purview of the RTI Act, as being ultra vires section 24 of the RTI Act, and violative of Article 14 of the Constitution.

For Petitioner :Mr.Manikandan Vathan Chettiar

For Respondents :Mr.Gouravah Banerji

Additional Solicitor General of India assisted by

Mr.P.Chandrasekaran SCGSC for R1

Mr.M.Ravindran

Additional Solicitor General of India assisted by

Mr.N.Chandrasekaran Spl. P.P. for R2

O R D E R

THE HON'BLE CHIEF JUSTICE &

T.S.SIVAGNANAM, J.

By way of this Public Interest Litigation, the notification issued by the Government of India in G.S.R.No. 442E, dated 09.06.2011, including the Central Bureau of Investigation (CBI) within the ambit of the second schedule to the Right to Information Act, 2000 (RTI Act) has been questioned as being ultra vires Section 24 of the RTI Act and Article 14 of the Constitution of India.

2. According to the petitioner, in the light of the various scams, the country has become rudderless in the war on corruption and at this juncture, the Government instead of becoming more transparent has become reactionary by resorting to Section 24 of the RTI Act by granting blanket exemption to the CBI. It is further contended that the respondents over looked the first proviso to Section 24(1) of the Act excluding information pertaining to allegations of corruption and human rights violation from being exempted under Section 24 of the Act. Further, Section 24 exempts only intelligence and security agencies and CBI is an investigating agency cannot be granted a blanket exemption. Further, it is contended that the plea that investigative data require confidentiality has been adequately taken care in Section 8(1)(g) and (h) of the RTI Act. It is further contended that Section 24(3) of the Act mandates that every notification issued under Section 24(2) shall be laid before each house of Parliament, which failure renders the exemption null and void. It is the further case of the petitioner that the exemption is bound to create a chaos as several writ petitions will be filed challenging the orders passed by the Central Information Commission in their decisions against the CBI, since the CIC has no power to set aside the notification.

3. The first respondent has filed the counter affidavit inter alia contending that the exemption granted to CBI under Section 24 is not a blanket exemption inasmuch as it is subject to the provisos to Section 24 of the Act. The exemption was granted after the Government received the representation from CBI stating that difficulty were being faced by them in their working due to the queries raised under the RTI Act and such exemption was granted on the basis of the legal opinion received that CBI qualifies as a security and intelligence organisation under Section 24 of the Act. In the representation made by CBI, it was stated that cases handled by them are very sensitive in nature where inputs are based on intelligence collected which may relate to the security of the State. It is further stated that collection of intelligence leads to registration of cases and then trial. In many sensitive cases the collection of intelligence and the process of investigation and trial are intertwined and cannot be separated. The list of important cases pertaining to National security dealt by CBI has been furnished. It was further submitted that intelligence plays a vital role in every aspect of the functioning of CBI. Many of the important and sensitive cases are registered on the basis of intelligence inputs, information with regard to modus operandi and sources, which are an essential part of investigation by CBI, are very important and any disclosure of such information may not only jeopardize the functioning of CBI in future investigations but also public safety and national security. It is further submitted that CBI represented it has developed its unique processes for functioning where each officer is given full freedom to express his/her views independently, this helps in bringing to the fore every facet of the issue under consideration, which helps in taking a balanced final decision in the matter. It was felt that disclosures under RTI may lead to targeting of officers which may ultimately affect the credibility of CBI which would not be in national interest. That CBI brought to the notice of the Government that entire investigation and trial of CBI cases is under close scrutiny of the courts and all relied upon documents are always made available to the accused. The CBI's proposal for exemption further merited acceptance because various other security agencies and police departments had been included in the Second Schedule to the RTI Act. It is further stated that the exemption has been granted bearing in mind the interest of the security of the State, which cannot be overlooked while protecting the right of the citizens to seek information. That the Right to Information is not an absolute right and there is a need to balance the right of the citizen against the need to ensure security of the Nation, which should not be jeopardised due to disclosure of information which has security implications.

That section 24 of the RTI Act represents this balance, and the legislature has left the discretion with the Executive to assess which organisation possesses information, the disclosure of which may cause threat to the security of the State. It is further stated that the Court in exercise of its power of judicial review may examine whether the discretion has been exercised based on some material, but not the adequacy of the material which forms the basic of the decision. The first respondent has further stated that the matter regarding inclusion of Central Public Authorities in the Second Schedule to the Act is exercised by the Central Government based on the recommendation of the Committee of a Secretary headed by the Cabinet Secretary and the matter was considered at length by the Government and it was felt that there was substance in the representation of CBI by virtue of the cases handled by them and the nature of its functioning and then a decision was taken to include CBI in the Second Schedule to the Act. That legal opinion was sought for and it was opined that CBI may be classified as Security and Intelligence Organisations for the purpose of section 24 of the RTI Act.

4.The various allegations made in the affidavit filed in support of the writ petitions were denied in the counter affidavit. It is further stated that earlier during 2007, the request of CBI for inclusion in the Second Schedule was considered by the Government and when the matter was placed before the Committee of Secretaries, they expressed a view that CBI could resort to exemption under section 8 of the RTI Act to deny disclosure of sensitive information. This view was accepted by the Government and it was not included in the Second Schedule. Subsequently, CBI again represented to the Government that in its experience since 2007, it had been found that the functioning of CBI was being affected due to various difficulties, due to exposure to queries under the RTI Act; that due to the RTI Act, queries being posed on the officers of CBI were deterred from recording their views in the files fearlessly and independently and therefore legal opinion was obtained as to whether CBI was a Security and Intelligence Organisation. The legal opinion confirmed that in view of the nature and functions of CBI it could be included in the Second Schedule as a Intelligence and Security Organisation.

5.It is further stated that if a person wishes to make a complaint, the Office address and contact details of the Offices of CBI in each State are easily accessible on the website of CBI and the allegations made by the petitioner are purely speculative. It is further stated that the Act does not provide that the impugned Notification would become operative only after it is laid before the Parliament, however, the Government would lay the Notification before both Houses of Parliament.

6.The CBI have filed a separate counter affidavit reiterating that the Right to Information as it is, with respect to other fundamental right recognized under Article 19(1) of the Constitution is not an unfettered right and subject to reasonable restrictions, on the ground of security of the State and Public Order etc. Ensuring the security of the State and Public Order are essential for the protection of democratical ideal of the country. The ever increasing degree of corruption in public life is a direct threat to maintenance of security of the State, Public Order and to the democratic State itself.

7.After setting out as to how the CBI was established, it is submitted that CBI has evolved as premier Investigating Agency of Government of India, which also investigates cases referred to by the State Governments, Constitutional Courts and cases reported from Union Territories and that the cases investigated/handled by CBI are of sensitive nature not only in terms of magnitude of corruption and economic crimes, but also in terms of polity as whole and also at times having bearing on security of the country. The CBI investigates offences covering wide spectrum including complex terrorists claims and big financial frauds involving functions relating to intelligence collection and security of the country. It is further stated that CBI has investigated and is investigating extremely sensitive cases having Inter-State and Inter National ramifications which have a direct bearing on the National/Internal Security. That apart, CBI has been entrusted with the task of investigating cases which threaten the financial security of the Country.

8.After setting out in paragraph 9 of the counter affidavit the important and sensitive cases handled by CBI, it is submitted that intelligence plays a very vital role at every stage of investigation by the CBI and some of the leads provide information about conspiracy, modus operandi, motive etc. and those inputs obtained during

information are further corroborated by collecting specific intelligence on the finding of the investigation leading to deduction of crime and identification and tracing of accused persons. Therefore, it is stated investigation and intelligence collections are inter twined activities. It is further stated that CBI has a inbuilt mechanism of transparency and accountability and documents which are relied on by the Agency in a case of prosecution, are given to the accused free of cost and there are several provisions in the Criminal Procedure Code and the accused can summon any document/record etc. under section 91 Cr.P.C. to defend himself. Further it is stated that CBI maintains and regularly updates its websites which contains information in public domain as envisaged under section 4 of the RTI Act. It is further stated that the subject matters of most of the RTI applications dealt by CBI relate to ongoing investigation or under trial cases or discreet verifications/enquiries, the disclosure whereof under the RTI Act would be prejudicial to the investigation itself. Though, exemptions have been provided under section 8 of RTI Act against disclosure of information relating to under investigation and under trial cases, which would impede the process of investigations or apprehensions or prosecution of offenders, these provisions are not adequate to provide protection from disclosure of information having bearing on national security. It is further stated that the information pertaining to activities prior to registration of case and also post conclusion of investigation/trial is not protected under RTI Act and that most of such information has a direct bearing on security of the country and thus needs to be kept confidential. Further, it is contended that many a time, innocuous/unobjectionable pieces of information might seem harmless but when they are placed in conjunction with each other and some times with seemingly unconnected information the mosaic of a dangerous picture affecting the security of the nation can emerge.

9.The second respondent further contend that the impugned notification was issued after appreciating and considering the proposals of CBI and after obtaining the opinion of the Attorney General of India and the Solicitor General of India and the Notification is not issued as reaction to any exposure, but, it is a well considered and reasoned decision after due consultation bearing in mind the interest of the security of the nation. It is further submitted that proviso to section 24 (1) of the RTI Act clearly mentions that the information pertaining to the allegations of corruption and human rights violations shall not be excluded under the section. Therefore, the apprehension of the petitioner that blanket exemption has been granted to CBI is not correct. In the counter affidavit the second respondent has denied the various allegations made in the affidavit filed in the writ petition including the contentions raised in the grounds. With the above facts, the second respondent prayed for dismissal of the writ petition.

10.We have heard Mr.Manikandan Vadhan Cherttiar, learned counsel for the petitioner, Mr.Gaurav Banerji and Mr.M.Raveendran, learned Additional Solicitors General of India for the respondents and perused the materials on record.

11.The issue which falls for consideration is as to whether the Government of India were justified in including CBI in the second schedule to the RTI Act thereby exempting CBI from the provisions of the RTI Act subject to the provisos contained in section 24(1) of the RTI Act. Before we examine the provisions of the RTI Act, it would be useful to look into the enactment which occupied field prior to coming into force of the RTI Act.

12.Freedom of Information Act 2002, was enacted by the Parliament as an Act to provide for freedom to every citizen to secure access to information under the control of the Public Authorities, consistence with public interest, in order to promote openness, transparency and accountability in administration and in relation to matters connected therewith or incidental thereto. This Act received the assent of the President on 6.1.2003. Section 2(d) of the Act defined information to mean any material in any form relating to the administration, operations or decisions of a public authority. Section 2(f) defined Public Authority to mean any authority or body established or constituted by or under the Constitution and by any law made by the appropriate Government and included any other body owned, controlled or substantially financed by funds provided directly or indirectly by the appropriate Government. Section 3 of the Act stated that subject to the provisions of the Act, all citizens shall have freedom of information. Section 4 dealt with obligation of public authorities, section 8 regarding exemption from disclosure of information, section 16 dealt with the organisations to

which the Act shall not apply. Section 16(1) states, nothing contained in the said Act shall apply to the Intelligence and Security Organisations specified in the schedule being organisations established by the Central Government or any information furnished by such organisation to that Government.

13. After a period of about two years, when the Freedom of Information Act, 2002, was in force, the National Advisory Council deliberated on the issue to ensure greater and more effective access to information and that the 2002 Act, needs to be made more progressive, participatory and meaningful and the Council suggested certain important changes to be incorporated in the 2002 Act to ensure smoother and greater access to information. The Government examined the suggestions made by the National Advisory Council and others and decided to make a number of changes in the law and decided to repeal the Freedom of Information Act 2002, and brought the Bill on the Right to Information Act, with the object that the proposed legislation will provide an effective frame work for effectuating the right of information recognised under Article 19 of the Constitution of India. The Bill contained 31 clauses of which clause 24 dealt with exempting certain Intelligence and Security Organisations from the purview of the legislation, but information pertaining to allegation of corruption, shall, without prejudice to the exemption, be provided. This Bill after much deliberation was enacted as the Right to Information Act, 2005, (RTI Act) and received the assent of the President on 15.6.2005 and published in the Gazette of the India on 21.6.2005. The RTI Act was to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commission and for matters connected therewith or incidental thereto. It further states that revelation of information in actual practice is likely to conflict with other public interest including efficient operation of the Governments, optimum use of limited physical resources and the preservation of confidentiality and sensitive information and it is necessary to harmonize these conflicting interest while preserving the paramoutcy of the democratic ideal. The RTI Act, is a concise enactment of 31 sections contained in 6 chapters. The First schedule deals with the form of oath or affirmation to be made by the Chief Information Commissioners and others and the Second Schedule lists out the Intelligence and Security Organisations established by the Central Government.

14. Some of the relevant sections of RTI Act which we shall be dealing with in this order are re-produced hereunder for easy reference:

2. Definitions. In this Act, unless the context otherwise requires,

(f) information means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force;

(h) public authority means any authority or body or institution of self-government established or constituted

(a) by or under the Constitution;

(b) by any other law made by Parliament;

(c) by any other law made by State Legislature;

(d) by notification issued or order made by the appropriate Government,

and includes any

(i) body owned, controlled or substantially financed;

(ii) non-Government organisation substantially financed,

directly or indirectly by funds provided by the appropriate Government;

(i) record includes

(a) any document, manuscript and file;

(b) any microfilm, microfiche and facsimile copy of a document;

(c) any reproduction of image or images embodied in such microfilm (whether enlarged or not); and

(d) any other material produced by a computer or any other device;

(j) right to information means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to

(i) inspection of work, documents, records;

(ii) taking notes, extracts or certified copies of documents or records;

(iii) taking certified samples of material;

(iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device;

3. Right to information. Subject to the provisions of this Act, all citizens shall have the right to information.

4. Obligations of public authorities. (1) Every public authority shall

(a) maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information under this Act and ensure that all records that are appropriate to be computerised are, within a reasonable time and subject to availability of resources, computerised and connected through a network all over the country on different systems so that access to such records is facilitated; (b) publish within one hundred and twenty days from the enactment of this Act

(i) the particulars of its organisation, functions and duties;

(ii) the powers and duties of its officers and employees;

(iii) the procedure followed in the decision-making process, including channels of supervision and accountability;

(iv) the norms set by it for the discharge of its functions;

(v) the rules, regulations instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions;

(vi) a statement of the categories of documents that are held by it or under its control;

(vii) the particulars of any arrangement that exists for consultation with, or representation by, the members of the public in relation to the formulation of its policy or implementation thereof;

(viii) a statement of the boards, councils, committees and other bodies consisting of two or more persons constituted as its part or for the purpose of its advice, and as to whether meetings of those boards, councils, committees and other bodies are open to the public, or the minutes of such meetings are accessible for public;

(ix) a directory of its officers and employees;

(x) the monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations;

(xi) the budget allocated to each of its agency, indicating the particulars of all plans, proposed expenditures and reports on disbursements made;

(xii) the manner of execution of subsidy programmes, including the amounts allocated and the details of beneficiaries of such programmes;

(xiii) particulars of recipients of concessions, permits or authorisations granted by it;

(xiv) details in respect of the information, available to or held by it, reduced in an electronic form;

(xv) the particulars of facilities available to citizens for obtaining information, including the working hours of a library or reading room, if maintained for public use;

(xvi) the names, designations and other particulars of the Public Information Officers;

(xvii) such other information as may be prescribed;

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

(a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;

(b) information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;

(c) information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;

(d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;

(e) information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;

(f) information received in confidence from foreign Government;

(g) information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;

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

(i) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers:

Provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over:

Provided further that those matters which come under the exemptions specified in this section shall not be disclosed;

(j) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the Appellate Authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information: Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.

(2) Notwithstanding anything in the Official Secrets Act, 1923 (19 of 1923) nor any of the exemptions permissible in accordance with sub-section (1), a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests.

(3) Subject to the provisions of clauses (a), (c) and (i) of sub-section (1), any information relating to any occurrence, event or matter which has taken place, occurred or happened twenty years before the date on which any request is made under Section 6 shall be provided to any person making a request under that section: Provided that where any question arises as to the date from which the said period of twenty years has to be computed, the decision of the Central Government shall be final, subject to the usual appeals

9. Grounds for rejection to access in certain cases. Without prejudice to the provisions of Section 8, a Central Public Information Officer or a State Public Information Officer, as the case may be, may reject a request for information where such a request for providing access would involve an infringement of copyright subsisting in a person other than the State.

24. Act not to apply to certain organisations. (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 (sic if) 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) The Central Government may, by notification in the Official Gazette, amend the Schedule by including therein any other intelligence or security organisation established by that Government or omitting therefrom any organisation already specified therein and on the publication of such notification, such organisation shall be deemed to be included in or, as the case may be, omitted from the Schedule. (3) Every notification issued under sub-section (2) shall be laid before each House of Parliament.

(4) Nothing contained in this Act shall apply to such intelligence and security organisation being organisations established by the State Government, as that Government may, from time to time, by notification in the Official Gazette, specify:

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 State 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) Every notification issued under sub-section (4) shall be laid before the State Legislature.

15.The learned counsel appearing for the petitioner submitted that intelligence aspect and investigations were covered under section 8 of the Act and therefore, it is unnecessary for the Government to notify CBI, in the Second schedule to the Act thereby granting blanket exemption. It was further contended that if a citizen lodges a complaint and if he does not know the fate of his complaint, he could apply under the RTI Act and seek for information which right has now been denied to the citizen by virtue of the impugned Notification. Further it is contended that CBI is not an Intelligence Organisation and therefore there is absolutely no justification for blanket exemption under section 24 of the Act. From 2005, when the RTI Act came into force, the CBI have been enjoying the exemptions, under section 8 of the Act as well as section 10 of the Act and there is no justifiable reason to include CBI in the Second Schedule after a period of more than five years after the Act came into force.

16.Per contra the learned Additional Solicitors General would contend that the phrase Security and Intelligence Agency must be understood in the light of what is meant by the Security in this context and Security refers to the Security of the State. It is further contended that this does not mean merely the Security of the entire country or the whole State and it is also not restricted to Armed Rebellion or Revolt.

17.Further from the information furnished it is seen that during 1941, the Government of India established an organisation known as the Special Police Establishment (SPE), which organisation was to investigate cases of bribery and corruption in transactions with the War and Supply Department of Government of India. During 1942, the activities of SPE were extended to investigate cases of corruption in Railways, as Railways were involved with movement and supply of War material. On 19.11.1946, the Delhi Special Police Establishment Act, Act 25 of 1946, came into force, which enabled the SPE to function in the provinces with the concurrence of the provisional Government for the purpose of investigating certain specific offences in which Central Government Employees were involved or Departments of the Government of India were concerned. The Ministry of Home affairs, Government of India, by Resolution dated 1.3.1963 established the CBI which is the successor organisation to the Delhi Special Police Establishment with an enlarged charter of functions.

18.In the counter affidavit filed by the respondents, the sensitive cases handed by CBI have been set out and it would be useful to refer to the list of cases handled by CBI which are stated to have a bearing on the National /internal security and on the financial and national security of the country viz. (i) Naval War Room Leak case (ii) Barak Anti Missile Defence System case (iii) Denel Anti Material Rifle case (iv) Fake Passport cases (vii) Assam Serial Bomb Blast cases (viii) Andaman Arms Haul case (ix) IC-814 Hijacking case (x) Rajiv Gandhi Assassination case (xi) Babri Masjid Demolition case, (xii) Fake Stamps/Stamp Paper Cases, (xiii) Fake Indian Currency Notes (FICNs) Cases, (xiv) Securities Scams (Harshad Mehta & Dalal Groups), (xv) Madhavpura Mercantile Co-operative Bank and erstwhile Global Bank Scams, (xvi) Satyam Corporate Fraud, (xvii) Illegal Mining Cases, (xviii) 2G Spectrum cases, etc.

19.From the list of cases, referred above, it cannot be denied that these cases are of very sensitive nature and may have a direct bearing on the national/ internal security apart from having direct bearing on the financial security of the country. The challenge to the impugned notification is primarily by contending that the Government was not justified in granting a blanket exemption to CBI under section 24 of the RTI Act when for the past over five years, the CBI enjoyed the exemptions provided for under section 8 of the Act.

20.As noticed above section 8 deals with exemptions from disclosure of information and section 8(1) enumerate the categories which are exempted from disclosure under the provisions of the RTI Act. The petitioner relies on section 8(1)(g) which states that information, the disclosure of which would endanger the life or physical safety of any person or identified the source of information or assistance given in confidence for law enforcement or security purposes and section 8(1)(h) which states that information which would impede the process of investigation or apprehension or prosecution of offenders need not be disclosed.

21.Before we proceed further, it has to be borne in mind that the Second Schedule enumerated Intelligence and Security Organisations being Organisations established by the Central Government. The exemption under section 24(1) was with regard to the organisations themselves and also with regard to any information furnished by such organisations to the Government. Therefore, there is a vital distinction between the exemption from disclosure of information contemplated under section 8(1) of the Act to that of the exemption of the organisation themselves and the information furnished by them to the Government under section 24(1) of the Act. Therefore, these two provisions are exclusive of each other and one cannot substitute for the other. Therefore, we are not persuaded to accept the submission of the learned counsel for the petitioner that in view of the exemptions contemplated under section 8(1) of the RTI Act there would be no necessity for a blanket exemption under section 24(1) of the Act. This contention, in our view, is wholly misconceived.

22.Repeated reference has been made by stating that the exemption under section 24(1) is a blanket exemption or in other words a whole sale exemption. In the preceding paragraphs we have reproduced section 24 of the Act. In terms of subsection (1) of section 24, nothing contained in the RTI Act shall apply to the Intelligence and Security organisation specified in the second schedule being organisations established by the Central Government or any information furnished by such organisations to that Government. As noticed above, first proviso to section 24(1) of the Act states that information pertaining to the allegations of corruption and human right violation shall not be excluded under section 24 (1) of the Act. In terms of the second proviso, to sub section (1) of section 24, that in case of information sought for is in respect of allegations of violation of human right, the information shall only be provided after the approval of the Central Information Commission and notwithstanding anything contained in section 7 (which deals with the disposal of requests), and such information shall be provided within 45 days from the date of receipt of request. Therefore, it can hardly be stated to be case of a whole sale exemption or a blanket exemption. If an RTI applicant comes with a query alleging corruption in any of the Agencies or Organisations, listed out in the Second Schedule to the RTI Act, such information sought for is bound to be provided and the protection under section 24(1) cannot be availed of. Similar is the case relating to violation of human rights. Therefore, the safeguard is inbuilt in the Statute so as to ensure that even in respect of the Agencies or Organisations listed out in the Second Schedule are not totally excluded from the purview of the RTI Act.

23.Having held so, we come to the next question as to whether CBI qualifies for such exemption and as to whether they are an Intelligence and Security Organisation or one of them.

24.The learned Additional Solicitor General circulated to us the opinion offered by the learned Attorney General of India with reference to examination of the issue of inclusion of CBI and two other organisations, in the Second Schedule of the RTI Act. One of the queries raised is that Would it be legally feasible to include the CBI in the Second Schedule of the RTI Act under the provisions of section 24 of the Act ?

25.The learned Attorney General after referring to the decisions of the Hon ble Supreme Court opined as follows:

Applying the tests mentioned above, at this stage one may see the latest note received from the CBI setting out the grounds justifying the inclusion of the CBI in the Second Schedule. In that note, it is stated that the CBI is the premier agency of the Central Government for prevention and investigation of offences covering a wide spectrum of offences. The CBI has now become involved in a wide range of cases, including cases referred at the instance of courts. These include cases where the economic security of the nation is at risk. A

bench of 9 Judges, in Attorney General for India v. Amratal Prajivandas, (1994) 5 SCC 54, elucidated on the distinction between security of State, security of India, and economic security. Justice Jeevan Reddy, speaking for the Court, observed, 3 .. In the modern world, the security of a State is ensured not so much by physical might but by economic strength at any rate, by economic strength as much as by armed might.

(C) Having regard to the aforesaid and the vast number of cases that the CBI is presently involved with, it cannot be disputed that the CBI does intelligence work which is directly related to the security agencies. One need not emphasize any particular case, but the Mecca Masjid Blast case, the Bombay Blast cases of 1993, the Assam Serial Blast Cases, the Andaman Arms Haul Case, the IC-814 Hijacking Case and the Ravij Gandhi Assassination case, to name a few, have a direct bearing on the security of the State. There is no doubt that the kind of cases which the CBI is concerned with and the impact of such cases directly affect the community. At this stage I may also point out that as observed by the Supreme Court in Union of India v. Tulsiram Patel, (1985) 3 SCC 398, there are various ways in which the security of the State can be affected. As per the majority opinion in the matter, 41 .. Danger to the security of the State may arise from without or within the state. The expression security of the State does not mean security of the entire country or a whole State. It includes security of a part of the State. It also cannot be confined to an armed rebellion or revolt. There are various ways in which security of the State can be affected. It can be affected by State secrets or information relating to defence production or similar matters being passed on to other countries, whether inimical or not to our country, or by secret links with terrorists. (D) Justice Alagiriswamy, in Giani Bakshish Singh v. Govt. of India (1973) 2 SCC 688, stated that:

Defence of a country or the security of a country is not a static concept. The days are gone by when one had to worry about the security of a country or its defence only during war time. A country has to be in a perpetual state of preparedness. Eternal vigilance is the price of liberty.

(E) These words of the Supreme Court in 1973 have much more relevance and resonance in 2011. In the circumstances, my answer to the first question is in the affirmative.

26. Thus it is seen that the learned Attorney General was of the opinion that CBI does intelligence work and the cases dealt by them directly related to the security agencies. The learned Attorney General further opined that the Mecca Masjid Blast Case, Bombay Blast Cases of 1993, Assam Serial Blast cases, the Andaman Arms Haul case, IC 814 Hijacking case, and the Rajiv Gandhi Assassination case have a direct bearing on the security of the State. The contention raised by the petitioner is that the CBI is not an intelligence and security organisation. After going through the encyclopedia and other like material, it is noticed that an intelligence agency is a Government Agency devoted for gathering information for purposes of National Security and Defence. The Agency may adopt various means for gathering information and assembly and propagation of this information is commonly known as intelligence analysis. An intelligence agency can provide varied services such as analysis relevant to the safety and security of the nation, early deduction of impending crises etc. Security Intelligence pertains to national security threats such as terrorism, espionage etc. It is stated that CBI is a Government Agency that serves as a Criminal Agency Body, National Security Agency and Intelligence Agency with its motto Industry, Impartiality, Integrity. The CBI is controlled by the Department of Personnel and Trainee in the Ministry of Personnel, Public Grievance and Pension of the Government of India. It is further stated that CBI is the official inter-pole unit of India. The CBI is stated to have handled the following broad category cases under several divisions such as Anti corruption division, Economic Crime Division and Special Crimes Division. The Anti Corruption Division is said to deal with cases of corruption and fraud committed by public servants of all Central Government Departments, public Sector Undertakings and Financial Institutions. The cases such as Bank frauds, Financial frauds, Foreign Exchange violations, large scale smuggling in Narcotics, Antiques etc. are being dealt with by the Economic Crimes Division. The Special Crimes Division deals with cases of terrorism, Bomb Blast etc. Thus it appears that cases which have inter-state and internal ramifications involving various Governmental Agencies are being taken up by CBI as there is a need for a single agency to be in charge of the investigation.

27. Prof. Lawrence W. Sherman, Wolfson, Professor of Criminology and Director of Police Executive Programme at Cambridge University while delivering a lecture on "Knowledge based Policing: India and the Global Revolution in Crime Prevention" dealt with the topic Evidence and Knowledge and observed as follows:

Such distinctions between evidence and knowledge will become increasingly important. Evidence is merely a set of facts, generally the most relevant facts available to help support a decision. Knowledge is an integration of diverse facts and evidence, an arguably better basis for understanding and action than evidence alone. Knowledge must be based on evidence, but evidence in isolation is not enough. Knowledge also requires a theory that integrates the evidence, a broader context in which to apply the theory, and a conceptual map of how different aspects of actions are connected.

Police may, for example, have evidence that stop-and-search tactic reduce gun crime. But if such stops also foster community hostility to the police, that could reduce public willingness to help police make arrests and remove dangerous offenders from communities. Most police actions have multiple consequences. Experiments may only measure few of those consequences, one study at a time. Knowledge-based policing must integrate what we know and what we don't know, trying to find the best ways to deal with problems about which the evidence is rarely complete or reliable.

It is also worth contrasting knowledge-based policing with intelligence-led policing. There is a great value to having criminal tips, quantitative forecasting, and other ways of predicting where and when crime is most likely to occur. There are even major advances in such analysis that can enable police to predict who will commit the next murder. Such predictions, which could be described as intelligence, are just as central to evidence-based policing as the identification of hot spots or repeat problems.

The uses intelligence can best serve, however, cannot be derived from the intelligence itself. What action police should take when they produce such forecasts is a decision that requires a broad range of knowledge. Such knowledge must integrate law, history, culture, psychology, and sociology more generally in order to develop a plan of action that anticipates everything that can possibly go wrong, and takes as many steps as possible to avoid those possibilities.

28. The principle deducible from the above is that there is great value to having criminal tips, quantitative forecasting and other ways of predicting the crime and such predictions could be described as intelligence. From the long list of cases, which have been entrusted to CBI, it cannot be denied that intelligence led approach has enabled CBI to make headway in the sensitive cases which have or had a direct bearing on the national and internal security. Therefore, we are convinced that the CBI could very well be termed as an intelligence agency of the Government of India. '

29. The next question would be whether it is a security organisation and whether it is both an intelligence and security organisation. The Hon'ble Supreme Court in RAM MANOHAR LOHIA Vs STATE OF BIHAR [1966 SC 740] while considering the scope of the phrase security of the State quoted the words of Subba Rao J, wherein his Lordships observed that public order is synonymous with public safety and tranquility; it is the absence of disorder involving breaches of local significance in contra distinction to national upheavals, such as a revolution, civil strife, war, affecting the security of the State. A more recent pronouncement of the Hon'ble Supreme in the case of C. ANITA & SANJAY PRATAP GUPTA, which have been referred to by the learned Attorney General, it has been held that public order, law and order and the security of the state fictionally draw three concentric circles and it was held that every infraction of law must necessarily affect order but an Act affecting law and order may not necessarily also affect public order. Likewise an Act may affect public order but not necessarily the security of the State. Therefore, the test evolved by their Lordship was that it is not the kind, but the potentiality of the Act in question. In the light of the various sensitive cases which are being handled by CBI, it cannot be denied that they have a direct bearing not only on the national security, but also on the financial security of the country. As rightly contended the Security of the State can be

affected in various ways and there can be no exact or exhaustive definition and security threats may be varied both internal and external and the Security of the State can be affected in various ways which would include the corruption of the Government officials, unauthorized disclosure of State secrets, Economic offences to destabilise the National Economy, and therefore, intelligence gathering is an inseparable part of the work of a Security Agency. Thus it can be safely concluded that the security of the State is a very broad concept. Therefore we are convinced that CBI would qualify to be defined as a Security Organisation as well. Therefore, we find no error in the decision of the Government of India to include the CBI in the Second Schedule to the RTI Act.

30. An argument was advanced, that there was no necessity to include the CBI in the Second Schedule since for the past over five years, the CBI had taken umbrage under section 8 of the Act. To examine this question it would be necessary to look into the relevant provisions of the RTI Act which we have reproduced in the earlier part of this order. As noticed above, the Act was enacted to provide for setting out the practical regime of Right to information for citizen to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority. The preamble further states that revelation of information in actual practice is likely to conflict with other public interest including efficient operation of Government, optimum use of limited fiscal resources and preservation of confidentiality of sensitive information. In the preamble it is further stated that it is necessary to harmonize these conflicting interest while preserving the paramountcy of democratic ideal. Therefore, the law makers were conscious of the fact that in actual practice while revealing information, there is a likelihood of conflict with other public interest which includes preservation of confidentiality of sensitive information. Therefore, a need was felt to harmonize this conflict and at the same time preserve the democratic ideal which is paramount.

31. If we look into section 3 of the RTI Act, it states that subject to the provision of the Act, all citizens shall have the right to information. Therefore, it cannot be stated that the right is a absolute and unfettered right but such right is subject to the provisions of the RTI Act. Section 8 of the Act deals with exemptions from disclosure of information. In a recent decision of the Hon'ble Supreme Court in *CENTRAL BORD OF SECONDARY EDUCATION Vs. ADITYA BANDOPADHYAH*, [2011 (8) SCALE 645], dealt with an issue in which the respondent therein appeared for secondary school examination conducted by the appellant CBSE. On receiving the mark sheet, he was disappointed to see the marks awarded and therefore, made an application for inspection and re-evaluation of the answer book. This request was rejected by the CBSE, which was challenged before the Calcutta High Court. CBSE took umbrage section 8(1)(e) of the RTI Act and further contended that the request was contrary to their Regulations. A Division Bench of the Calcutta High Court which dealt with the matter, directed CBSE to grant inspection of the Answer Book and rejected the prayer for re-evaluation. Challenging the said order, CBSE approached the Hon'ble Supreme Court.

32. Various questions were considered by their Lordships and for the purpose of this case, it would be relevant to take note of the law stated, more particularly on the aspect regarding section 8 of the Act, as well as the nature of right conferred on a citizen under the RTI Act. Their Lordships has held as follows:

“33. Some High Courts have held that section 8 of RTI Act is in the nature of an exception to section 3 which empowers the citizens with the right to information, which is a derivative from the freedom of speech; and that therefore section 8 should be construed strictly, literally and narrowly. This may not be the correct approach. The Act seeks to bring about a balance between two conflicting interests, as harmony between them is essential for preserving democracy. One is to bring about transparency and accountability by providing access to information under the control of public authorities. The other is to ensure that the revelation of information, in actual practice, does not conflict with other public interests which include efficient operation of the governments, optimum use of limited fiscal resources and preservation of confidentiality of sensitive information. The preamble to the Act specifically states that the object of the Act is to harmonise these two conflicting interests. While sections 3 and 4 seek to achieve the first objective, sections 8, 9, 10 and 11 seek to achieve the second objective. Therefore when section 8 exempts certain information from being disclosed, it

should not be considered to be a fetter on the right to information, but as an equally important provision protecting other public interests essential for the fulfilment and preservation of democratic ideals.

34. When trying to ensure that the right to information does not conflict with several other public interests (which includes efficient operations of the governments, preservation of confidentiality of sensitive information, optimum use of limited fiscal resources, etc.), it is difficult to visualise and enumerate all types of information which require to be exempted from disclosure in public interest. The legislature has however made an attempt to do so. The enumeration of exemptions is more exhaustive than the enumeration of exemptions attempted in the earlier Act that is section 8 of Freedom to Information Act, 2002. The Courts and Information Commissions enforcing the provisions of RTI Act have to adopt a purposive construction, involving a reasonable and balanced approach which harmonises the two objects of the Act, while interpreting section 8 and the other provisions of the Act.

35. At this juncture, it is necessary to clear some misconceptions about the RTI Act. The RTI Act provides access to all information that is available and existing. This is clear from a combined reading of section 3 and the definitions of 'information' and 'right to information' under clauses (f) and (j) of section 2 of the Act. If a public authority has any information in the form of data or analysed data, or abstracts, or statistics, an applicant may access such information, subject to the exemptions in section 8 of the Act. But where the information sought is not a part of the record of a public authority, and where such information is not required to be maintained under any law or the rules or regulations of the public authority, the Act does not cast an obligation upon the public authority, to collect or collate such non-available information and then furnish it to an applicant. A public authority is also not required to furnish information which require drawing of inferences and/or making of assumptions. It is also not required to provide 'advice' or 'opinion' to an applicant, nor required to obtain and furnish any 'opinion' or 'advice' to an applicant. The reference to 'opinion' or 'advice' in the definition of 'information' in section 2(f) of the Act, only refers to such material available in the records of the public authority. Many public authorities have, as a public relation exercise, provide advice, guidance and opinion to the citizens. But that is purely voluntary and should not be confused with any obligation under the RTI Act.

36. ...

37. The right to information is a cherished right. Information and right to information are intended to be formidable tools in the hands of responsible citizens to fight corruption and to bring in transparency and accountability. The provisions of RTI Act should be enforced strictly and all efforts should be made to bring to light the necessary information under clause (b) of section 4(1) of the Act which relates to securing transparency and accountability in the working of public authorities and in discouraging corruption. But in regard to other information, (that is information other than those enumerated in section 4(1)(b) and (c) of the Act), equal importance and emphasis are given to other public interests (like confidentiality of sensitive information, fidelity and fiduciary relationships, efficient operation of governments, etc.). Indiscriminate and impractical demands or directions under RTI Act for disclosure of all and sundry information (unrelated to transparency and accountability in the functioning of public authorities and eradication of corruption) would be counter-productive as it will adversely affect the efficiency of the administration and result in the executive getting bogged down with the non-productive work of collecting and furnishing information. The Act should not be allowed to be misused or abused, to become a tool to obstruct the national development and integration, or to destroy the peace, tranquility and harmony among its citizens. Nor should it be converted into a tool of oppression or intimidation of honest officials striving to do their duty. The nation does not want a scenario where 75% of the staff of public authorities spends 75% of their time in collecting and furnishing information to applicants instead of discharging their regular duties. The threat of penalties under the RTI Act and the pressure of the authorities under the RTI Act should not lead to employees of a public authorities prioritising 'information furnishing', at the cost of their normal and regular duties. "

33.Their Lordships held that the Act seeks to bring about a balance between two conflicting interest as harmony between them is essential for preserving democracy. After taking note of the preamble to the Act, their Lordships observed that sections 3 and 4 seeks to achieve the first objective i.e. to bring about transparency and accountability and sections 8, 9, 10 and 11 to achieve the second objective viz. to ensure that revelation of information does not conflict with other public interest which include preservation of confidentiality of sensitive information. Therefore it was held that section 8 should not be considered to be fetter on the right to information, but as an equally important provision protecting other public interest essential for the fulfillment and preservation of democratic ideals. Their Lordships also cleared the misconception about the RTI Act, and held that the RTI Act provides access to all information that is available and existing, subject to the exemptions in section 8 of the Act.

34.It has been further held that the provisions of the RTI Act should be enforced strictly and all efforts should be made to bring to light the necessary information under clause (b) of section 4(1) of the RTI Act, which relates to securing transparency and accountability in the working of public authorities and in discouraging corruption. In respect of information other than those enumerated in section 4(1)(b) & (c) of the Act, equal importance are given to other public interest like confidentiality and sensitive information. Further, that indiscriminate and impracticable demands for disclosure of all and sundry information could be counter productive as it will adversely affect the efficiency of the administration, and result in the executive getting bogged down with non productive work of collecting and furnishing information. Their Lordships have also sent a warning by observing that the Act should not be allowed to be misused or abused to become a tool to obstruct the national development and integration or to destroy the peace, tranquility and harmony among its citizens, or it should be converted into a tool of oppression of honest officials striving to do their duty. The learned Additional Solicitor General appearing for the India submitted that 90% of queries are from the accused themselves and if such sensitive information is furnished, it would seriously hamper and jeopardize the investigation. As we are informed that in the manner of functioning of CBI, the Officers concerned are required to record their independent opinion in the files during the course of gathering intelligence or during investigation and if RTI queries are made by the accused themselves or on their behalf, by any third party applicant, it would prevent the officers from freely recording their opinion. In our view, queries raised which would hamper or jeopardize the working of any intelligence and security agency should not be permitted and undoubtedly this was not the purport and intent of the RTI Act, as the preamble itself clearly states that it is necessary to harmonize the conflicting interest while preserving the paramountcy of the democratic ideal. Any investigation by such an Agency like CBI handling sensitive and sensational cases involving the internal security of the country and its financial stability, if allowed to be disclosed would be counter productive and it will adversely affect the efficiency of the functioning of the organisation itself. Undoubtedly, intelligence and security of the Government or any of its establishments has a definite linkage to the intelligence which is gathered and therefore, they appear to be inseparable.

35. Indisputably, CBI is dealing with so many cases of larger public interest and the disclosure of information shall have great impact not only within the country but abroad also, and it will jeopardise its works. Equally, the investigations done by CBI have a major impact on the political and economic life of the nation. There are sensitive cases being handled by the CBI which have direct nexus with the security of the nation. Once jurisdiction is conferred upon the CBI under Section 3 of the Act by notification made by the Central Government, the power of investigation should be governed by the statutory provisions, and cannot be interfered with or stopped or curtailed by any executive instructions, and shall not be subjected to any executive control.

36.In the case of Vineet Narain Vs. Union of India reported in (1998) 1 SCC 226 the Supreme Court observed as follows:-

9. There can be no doubt that the overall administration of the said force, i.e., CBI vests in the Central Government, which also includes, by virtue of Section 3, the power to specify the offences or class of offences which are to be investigated by it. The general superintendence over the functioning of the

Department and specification of the offences which are to be investigated by the agency is not the same as and would not include within it the control of the initiation and the actual process of investigation, i.e., direction. Once the CBI is empowered to investigate an offence generally by its specification under Section 3, the process of investigation, including its initiation, is to be governed by the statutory provisions which provide for the initiation and manner of investigation of the offence. This is not an area which can be included within the meaning of 'superintendence' in Section 4(1).

40. It is, therefore, the notification made by the Central Government under Section 3 which confers and determines the jurisdiction of the CBI to investigate an offence; and once that jurisdiction is attracted by virtue of the notification under Section 3, the actual investigation is to be governed by the statutory provisions under the general law applicable to such investigations. This appears to us the proper construction of Section 4(1) in the context, and it is in harmony with the scheme of the Act, and Section 3 in particular. The word 'superintendence' in Section 4(1) cannot be construed in a wider sense to permit supervision of the actual investigation of an offence by the CBI contrary to the manner provided by the statutory provisions. The broad proposition urged on behalf of the Union of India that it can issue any directive to the CBI to curtail or inhibit its jurisdiction to investigate an offence specified in the notification issued under Section 3 by a directive under Section 4(1) of the Act cannot be accepted. The jurisdiction of the CBI to investigate an offence is to be determined with reference to the notification issued under Section 3 and not by any separate order not having that character. ..

42. Once the jurisdiction is conferred on the CBI to investigate an offence by virtue of notification under Section 3 of the Act, the powers of investigation are governed by the statutory provisions and they cannot be estopped or curtailed by any executive instruction issued under Section 4(1) thereof. This result follows from the fact that conferment of jurisdiction is under Section 3 of the Act and exercise of powers of investigation is by virtue of the statutory provisions governing investigation of offences. It is settled that statutory jurisdiction cannot be subject to executive control.

37. The apprehension that the CBI by virtue of its inclusion in the Second Schedule has got a blanket exemption, cannot be countenanced for the simple reason that what has been contemplated under section 24 is no such blanket exemption. The Act was intended among other things to contain corruption and to hold Governments and their Instrumentalities accountable to the Government. This purpose and intent of the Act is sufficiently provided for in the two provisos to section 24(1) of the Act. The information pertaining to allegation of corruption and human rights violation are not excluded under sub-section (1) of section 24. Therefore, the exemption by virtue of inclusion of CBI in the Second Schedule to a RTI Act is not a wholesale or a blanket exemption as contended by the petitioner. After taking note of the facts placed before this Court and the law discussed above, it cannot be stated that every Police Thana is an intelligence Agency and should be treated on par with the CBI for the benefit of the exemption under section 24 of the Act.

38. The Government of Tamil Nadu by a Government Order in G.O.Ms.No.158, Personnel and Administrative Reforms Department dated 26.8.2008, in exercise of its powers under section 24(4) of the RTI Act ordered that the Act shall not apply to two organisations viz. Tamil Nadu State Vigilance Commission and Directorate of Vigilance and Anti Corruption. The said Government Order was challenged before this Court in a public interest writ petition in W.P.No. 4907 OF 2009 and was heard by the Hon'ble First Bench of this Court presided over by the then Hon'ble Chief Justice, Hon'ble Mr. Justice H.L. Gokhale. In the said Writ Petition it was contended that to qualify for exemption under section 24(4), such organisation must be both intelligence as well as Security Organisations. The Hon'ble First Bench after analysing the language employed in sub-section (4) of section 24 by Judgment dated 30.3.2009, held thus:

"5. As can be seen from the language used in the main part of sub section 4, it states that nothing contained in this Act shall apply to such intelligence and security organisation. Thus, in the first part, two entities are mentioned in singular as organisation. Subsequently, they are referred as 'organisations' established by the State Government. If intelligence and security organisation was only one, there was no need

to use the plural term 'organisations' subsequently. It clearly indicates that such an organisation can be for intelligence purpose or for security purpose. The word '"and' between the two words intelligence and security organisation will have to be read as '"or"'. Therefore, the second submission of Mr.Radhakrishnan cannot be accepted. "

39.Yet another contention was raised before the Hon'ble Division Bench that the said provision affects the fundamental rights envisaged under Article 19 (1)(a) of the Constitution of India. While considering the said question, the Hon'ble Division Bench held as follows:

"6....It is material to note that sub clause 2 of Article 19 of the Constitution of India provides that any such law insofar as it imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interest of [the sovereignty and integrity of India], particularly 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, its operation will not be affected by sub-clause 1(a). In our view, Section 24(4) of the Act provides for reasonable restriction in the interest of public order. "

40.Ultimately the Hon'ble Division Bench after going through the reasons assigned by the State Government, seeking to justify their decision under section 24(4), held that confidentiality and secrecy in certain cases are required to be maintained right from the initial stage upto filing of charge sheet on the one hand and upto issue of final orders in the case of disciplinary proceedings. In vigilance cases, giving information at the initial stage, investigation stage and even prosecution stage would lead to unnecessary embarrassment and would definitely hamper due process of investigation. Thus it was held that the State Government has given sufficient reasons as to why it was exercising power under section 24(4) of the Act and this exercise of discretionary power is also protected under Article 19(2) of the Constitution as it is a reasonable restriction in the interest of public order. The findings rendered by the Hon'ble Division Bench would apply with full force to the case on hand also.

41.At this stage, it would be useful to examine the reasons assigned by the Union Government to justify their action by exercising its power under section 24(1) of the Act. Reference may be made in this regard to certain averments made in the counter affidavit filed by the first respondent.

"6....It is further stated that collection of intelligence leads to registration of cases and then final. In many sensitive cases the collection of intelligence and the process of investigation and trial are intertwined and cannot be separated.

7.It is further stated that some of the important cases pertaining to national security that have been,or are being dealt with, by the CBI are as follows:-

a)Naval War Room Leak case

b)Barak Anti-Missile Defence System case

c) Denel Anti-Material Rifle case

d)Mecca-Masjid Blast Case

e)Bombay Blast Cases of 1993

f) Fake Passport cases

g)Assam Serial Bomb Blast cases

h) Andaman Arms Haul case

i) IC-814 Hijacking case

j) Rajiv Gandhi Assassination case

k) Fake Currency and fake stamp paper scam cases

i) Securities scam cases.

8. It was further submitted by the CBI that intelligence plays a vital role in every aspect of the functioning of CBI. Many of the important and sensitive cases are registered on the basis of intelligence inputs. Information with regard to modus operandi and sources, which are an essential part of investigation by CBI, are very important and any disclosure of such information may not only jeopardize the functioning of CBI in future investigations but also public safety and national security.

9. CBI further submitted that it has developed its unique processes for functioning where each officer is given full freedom to express his/her views independently. This helps in bringing to the fore every facet of the issue under consideration, which helps in taking a balanced final decision in the matter. It was felt that disclosures under RTI may lead to targeting of officers which may ultimately affect the credibility of CBI which would not be in national interest. CBI further submitted that entire investigation and trial of CBI cases is under close scrutiny of the courts and all relied upon documents are always made available to the accused. The CBI's proposal for exemption further merited acceptance because various other security agencies and police departments had been included in the Second Schedule to the RTI Act...

21....it has been found that the functioning of CBI was being affected due to various difficulties due to exposure to queries under the RTI Act. It was stated that due to RTI queries being posed, the officers of CBI would be deterred from recording their views on the files fearlessly and independently. In view of the fact that CBI handles cases affecting national security, legal opinion was obtained on the issue of whether CBI was a security and intelligence organisation and could be included in the 2nd Schedule to the RTI Act. The legal opinion confirmed that in view of the nature and functions of the CBI, it could be included in the 2nd Schedule as a security and intelligence organisation. The matter was thereafter considered by the Committee of Secretaries which recommended for inclusion of CBI in the 2nd Schedule of the RTI Act. Thereafter a decision was taken by the competent authority and a notification was issued in exercise of powers under section 24 of the RTI Act."

Thus from the averments referred to above, the matter was considered at all levels before a decision was arrived at and after analysing the materials placed by the CBI, the Union Government held that CBI was a security and intelligence organisation.

42. We find no justifiable reasons to depart from such findings which appears to have been arrived at after considering all materials placed before the Government, taken note of by the Committee of Secretaries and other authorities prior to issuance of the impugned Notification. Admittedly there is no allegation with regard to the decision making process or that there was any arbitrariness in the procedure adopted so as to offend Article 14 of the Constitution. It is submitted by the learned Additional Solicitor General appearing for the first respondent that Notification has been placed before both Houses of Parliament and would be taken up for consideration in the ensuing Session.

43. In view of the above, we hold that the impugned Notification is neither ultra vires section 24 of the RTI Act nor violative of the provisions of the Constitution of India.

43.In the result the Writ Petition fails and the same is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

pbn/rpa

To

1.Union of India,

Rep. by its Secretary to Government,

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2.Director, Central Bureau of Investigation

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