

Legal Current affairs

The State Vigilance Department cannot be totally exempted from the provisions of the RTI Act, according to the Orissa High Court.

Recently in the case of *Subash Mohapatra & Ors. v. State of Odisha & Anr.* W.P.(C) No. 14286 of 2016, the Orissa High Court held that the State Vigilance Department cannot be totally exempted from the execution of the Right to Information Act, 2005 ('RTI'). It mandated that the relevant information to charges of corruption and civil rights breaches, as well as information pertaining to Department operations that are not critical or confidential, be made public under the RTI Act.

Chief Justice Dr. S. Muralidhar and Justice Radha Krishna Pattanaik of the Division Bench remarked, *"Thus, it is seen that what cannot be kept outside the purview of disclosure under the RTI Act as spelt out in the proviso to Section 24(4) of the RTI Act is information pertaining to "allegations of corruption and human rights violations" in both sub-categories of cases as noted hereinbefore viz., cases generally concerning allegations of corruption and human rights violations which are under investigation by or have been investigated by the concerned intelligence and security organisations established by the State Government' or cases concerning allegations of corruption and human rights violations involving those working for or employed by the said organisations established by the State Government."*

Facts of the case-

Three writ petitions, each filed as PIL, featured objections to the Commissioner-cum-Secretary, Information and Public Relations Department, Government of Odisha's notification dated August 11, 2016, issued under Section 24(4) of the RTI, 2005. The notification contained, *"nothing contained in the RTI Act shall apply to the General Administration (Vigilance) Department of the Government of Odisha and its organization."*

The impugned notification was challenged on the grounds that it violated Article 19(1)(a) of the Constitution, which gives all people the basic right to information. The argument was made that under the RTI Act, disclosure is the rule and rejection is the exception.

It was argued that the authority of exemption conferred to the State Government under Section 24(4) of the RTI Act, and in particular the proviso thereto, is not accessible even in the case of security and intelligence institutions where charges of corruption and human rights breaches are made.

As a result, regardless of the proviso to Section 24(4), the disputed notification aims to explicitly exclude the entire Vigilance Department in Odisha from the purview of the RTI Act, it is ultra vires Section 24(4).

It was further argued that by issuing the contested notification, the government aims to conceal cases of corruption and human rights breaches from being made public, notwithstanding the proviso to Section 24(4) of the RTI Act. It was also argued that a notice issued under Section 24(4) of the RTI Act, or even rules created under Section 28 of the RTI Act, could not go beyond the limits of the restriction imposed under Section 24 of the RTI Act.

The petitioners noted that the Rules and notifications are intended to carry out the terms of the RTI Act, not to whittle down or take away what the RTI Act promises. They further claimed that the contested notice imposes a restriction not contemplated by Sections 8 and 9 of the Act.

Contention of the Respondents-

Mr. Sailaza Nandan Das, Additional Standing Counsel for the State of Odisha, and Mr. Srimanta Das, Senior Standing Counsel for the Vigilance Department argued that if the Department was not exempted from the RTI Act, all types of information about its operations would become available to the general public, which would be detrimental to confidentiality and the public interest.

Information that is otherwise only to be made accessible under the court orders, such as information under Section 91 read with Section 311 of the Cr.P.C. or under Section 162 of the Indian Evidence Act read with Section 123 thereof, would become easily accessible to an applicant under Section 8(1)(h) of the RTI Act, which could inhibit the progress of the investigation or prosecution of the case and lag the trials.

The State Vigilance Department argued that disclosing confidential information under the RTI Act to an individual, an organisation, or even an aggrieved person at any time would obstruct the

entire corruption investigation process. It was contended that Section 8(1)(h) of the RTI Act does not sufficiently encompass the confidential procedure used to develop a case against a corrupt individual.

It was also emphasised that the first proviso to Section 24(4) of the RTI Act, which deals with claims of corruption and human rights violations, is in a totally different manner and should not be misunderstood as information about a corruption investigation. The judgement of the Madras High Court in *S. Vijayalakshmi v. Union of India*, AIR 2011 Mad 275, was cited.

They also pointed out that the Allahabad High Court, in *Saleem Baig v. State of U.P.*, on October 25, 2010, and the Madras High Court, in *Superintendent of Police v. M. Kannappan*, (2013) 1 MLJ 348, both adhered to the constitutional validity of equivalent notifications under Section 24(4) of the RTI Act, keeping their respective Vigilance Departments out of the RTI Act's purview and holding it not to be ultra vires the RTI Act. As a result, it was argued that excluding the Vigilance Department from the purview of the RTI Act would defeat the legislature's aim in enacting Section 8(b) of the RTI Act.

While stressing the potential consequences, it was said that an offender does not have a right to examine the Case Diary under Section 172 of the Cr.P.C., however in the absence of the challenged notification, such remarks may become readily available under the RTI Act.

It was argued, based on the judgement in *Girish Ramchandra Deshpande v. Central Information Commissioner*, (2013) 1 SCC 212, that vigilance officials should be protected from "probing eyes of outsiders" while executing their responsibilities. They noted that a performance of the employee in an institution is a subject between the employee and the employer that is controlled by service norms that fall within "personal information" under Section 8(1)(j) of the RTI Act.

Observations of the court-

The Court rejected the opposing parties' argument that, in the absence of the impugned notification under Section 24(4) of the RTI Act, information that is protected from disclosure under Section 8 of the RTI Act will become immediately available to an applicant. The RTI Act's Section 8 begins with a non-obstante provision, according to the Court. The non-obstante

provision in Section 8 of the RTI Act is another issue. The third issue is that the type of information indicated in the first proviso to Sections 24(1) and 24(4) of the RTI Act, namely *"information pertaining to allegations of corruption and human rights violations,"* is not listed in Section 8 of the RTI Act.

Therefore, information covered under Section 8 of the RTI Act would remain protected, and the proviso to Section 24(4) of the RTI Act would have to be considered if the information concerned charges of corruption or human rights breaches.

As a result, inasmuch as Section 8 of the RTI Act begins with a non-obstante clause, if the information sought is included thereunder, it can be revealed after meeting the requirements of Section 8 of the RTI Act with respect to the actual purport of the proviso Section 24(4), the Court observed. The Court issued a declaratory writ declaring that the impugned notification dated 11th August, 2016 issued by the Information and Public Relations Department of the Government of Odisha under Section 24(4) of the RTI Act will not allow the Government to reject data related to the Vigilance Department incorporating allegations of corruption and violations of human rights, as well as other information that does not reach upon any of the confidential and sensitive acts. It also ordered the government of Odisha to submit a further clarifying notification to this effect within four weeks.

Keywords- Orissa High Court, State Vigilance Commission, Right to Information Act, 2005