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

Date of Decision: **28.04.2026**

<u>IN THE MATTERS OF:</u>

\+ **<u>W.P.(C) 7217/2015 and CM APPL. 3362/2022</u>**

PAVAN SACHDEVA .....Petitioner

Through: Mr Pavan Sachdeva, Advocate.

versus

CENTRAL PUBLIC INFORMATION OFFICER(HUDCO) AND ORS. .....Respondents

Through: Mr. Rohit Sharma, Mr. Jatin Lalwani, and Mr. Nikhil Purohit, Advocates.

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\+ **<u>W.P.(C) 7577/2015</u>**

PAVAN SACHDEVA .....Petitioner

Through: Mr Pavan sachdeva, Advocate.

versus

THE CENTRAL PUBLIC INFORMATION OFFICER AND ORS. .....Respondents

Through: Mr. Rohit Sharma, Mr. Jatin Lalwani, and Mr. Nikhil Purohit, Advocates.

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\+ **<u>W.P.(C) 7645/2015</u>**

PAVAN SACHDEVA .....Petitioner

Through: Mr Pavan sachdeva, Advocate.

versus

THE CENTRAL PUBLIC INFORMATION OFFICER AND ORS. .....Respondents

Through: Mr. Rohit Sharma, Mr. Jatin Lalwani, and Mr. Nikhil Purohit, Advocates.

CORAM:
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

JUDGEMENT

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

These petitions arise out of applications preferred by the petitioner under the Right to Information Act, 2005 ("**RTI Act**"), seeking information in relation to a Community Centre at Andrewsganj, New Delhi. The subject matter of these three petitions is substantially connected, as the reasons assigned for denying the information overlap.

2. W.P.(C) 7217/2015 arises out of an application filed before the Central Public Information Officer ('**CPIO**') of the Housing Urban Development Corporation Ltd. ('**HUDCO**').

3. The facts as gleaned from the record appear to be that the Government of India ("**GoI**") had leased out the land in question to HUDCO. After development of the project, portions of the land were allotted to various private parties. The petitioner states that his company is one of the allottees of a portion of the said land. There seems to be litigation between the petitioner's Company and the HUDCO on account of cancellation of the

allotment.

4. During the relevant period, the GoI, intended to handover the project in question to NBCC. It is for this reason, correspondence took place between the GoI, HUDCO and NBCC. The petitioner sought copies of this correspondence, minutes of meetings and resolutions passed between the parties, and inspection of the files under the RTI Act.

5. In W.P.(C) 7217/2015, the petitioner filed an RTI application dated 16.03.2015 before CPIO, HUDCO/ respondent no.1, seeking the following information:

> "*a.* The *letters issued by Hudco to MOUD from 30.8.2011 onwards till the date of issue of the documents.*
> *b. The letters received from MOUD by Hudco from 30.8.2011 on wards till the date of issue of documents.*
> *c. The letters issued by Hudco to NBCC from 1.1.2014 onwards till the date of issue of the documents.*
> *d. The letters received from NBCC by Hudco from 1.1.2014 onwards till the date of issue of documents.*
> *e. Minutes & resolutions passed by board of directors meetings in respect of Andrewsganj project from 30.8.2011 onwards till the date of issue of documents.*"

6. The said application was rejected by the authority *vide* order dated 10.04.2015, by invoking Sections 8(1)(a), (d), (e), (h) and (i) of the RTI Act. The First appellate Authority *vide* order dated 11.05.2015 upheld the order of the CPIO. The Central Information Commission ('**CIC**') *vide* order dated 06.07.2015 dismissed the Second Appeal.

7. In W.P.(C) 7577/2015, the petitioner filed an RTI application dated 21.02.2015 before respondent no.1, requesting for the same information as sought in his application dated 16.03.2015. The said application was rejected by respondent no.1 *vide* order dated 24.03.2015 by invoking the same provisions, as in the order dated 10.04.2015 (in the lead matter). The

petitioner then preferred a First Appeal on 04.04.2015, to which the CIC proceeded to dispose of the appeal in terms of its earlier order dated 06.07.2015.

8. In W.P.(C) 7645/2015, the petitioner filed an RTI application dated 21.02.2015 before the CPIO, NBCC. Seeking the following information:

> "a. *letters issued by NBCC to MOUD from 01.01.2014 onward till date of issue till documents.*
>
> *b. letters received from MOUD by NBCC from 01.01.2014 onward till the date of issue of documents*
>
> *c. Letters issued by NBCC to Hudco from 01.01.2014 onward till date of issue of documents*
>
> *d. Letters received from Hudco by NBCC from 01.01.2014 on ward till the date of issue of documents*
>
> *e. Minutes and resolutions passed by the board of directors meeting in respect of Andrewsganj Project from 01.01.2014 onward till the date of issue of documents*
>
> *f. Minutes and resolutions passed by board of directors meeting in respect of Andrewganj project from 01.01.2014 onward till the date of issue of documents*
>
> g. *Opinion dated 28.09.2014 from Attorney General of India*".

9. Aforementioned application was also rejected by the CPIO *vide* order dated 18.03.2015 by invoking sections 8(1)(d), (e) and 11(1) of the RTI Act. The same was upheld by the First Appellate Authority *vide* order dated 27.04.2015. The petitioner, on preferring a Second Appeal to the CIC , the order passed by the First Appellate Authority and the CPIO was upheld *vide* 21.07.2015.

10. The broad reasons assigned by the concerned CPIO for denying information sought by the petitioner was that the matter was at the stage of discussion between HUDCO, Ministry of Urban Development and NBCC, and that disclosure of the same was available to the parties in a fiduciary

capacity, and disclosure of the said information would be against the economic interests of the State. The CPIO also seems to have apprehended that, information disclosed would be used by the petitioner in the pending litigation in relation to the Andrewsganj project.

11. NBCC, while denying information has also invoked Section 11(1), taking the stand that the information sought by the petitioner relates to third parties, and contains confidential information; the disclosure of which would harm the competitive position of the third party.

12. I have heard the learned counsel for the parties and perused the material on record.

13. The Court at the threshold finds that Section 11(1) of the RTI Act is the procedure to be followed for the disclosure of third party information, and the same is not an exemption to deny disclosure of information.

14. The primary issue, that, thus, arises for consideration is whether the respondents were justified in rejecting the applications made by the petitioner by making a general reference to exemptions under Section 8 of the RTI Act, without applying its mind explaining how those exemptions applied to the documents sought.

15. A bare perusal of Section 2(f) of the RTI Act would show that information means any material, including records, documents, memos, e-mails, opinions, advices etc.

16. It is, therefore, the case that correspondence, minutes, resolutions and records maintained by the public authority would ordinarily fall within the expression "*information*" or "*record*". If the material sought for is already within the control of the public authority, a request for access to the same shall be considered within the framework of the Act.

17. It has been pointed out during the course of hearing that the Regular First Appeals which were pending between the petitioner's company and the respondent stand reserved by the Division Bench of this Court. It is also submitted that one of the litigations has attained finality from the Supreme Court. The apprehension of the respondents that furnishing of the information would adversely affect the rights of the respondents in pending litigation also, would not sustain in view of the fact that the appeals between the parties have already been reserved.

18. A perusal of the impugned orders show that the respondents have mechanically invoked the exemptions under Sections 8(1)(a), (d), (e), (h) and (i) of the RTI Act, without going through the information sought through an application of mind. The orders do not indicate as to how the disclosure of the entire class of information sought would fall within each of the exemptions invoked.

19. *In arguendo*, each of the exemptions invoked may be considered separately.

20. Section 8(1)(a) exempts disclosure of information, where such disclosure would be prejudicial to the sovereignty and integrity of India with respect to its security, strategic, or economic interest of the State. The respondents have merely stated that HUDCO falls within the definition of a "*State*", and that disclosure of the requested information "*may*" jeopardize the interest of HUDCO, MOUD and NBCC.

21. This Court is of the opinion that a public authority claiming such an exemption is required to go through the documents sought for by applying its mind, and then come to the conclusion that disclosure of the requested documents would be sensitive with respect to such interests.

22. The exemption under Section 8(1)(d) is available only in regard to such information, the disclosure of which would harm the competitive position of any third party. The public authority invoking this exemption is required to specifically identify as to how the disclosure of the information sought would harm the competitive position of the third party. Information which may at one point harm the competitive position of a third party may not continue to do so at a later point in time. It is not the case that an exemption under Section 8(1)(d), once granted, would continue to apply perpetually. The exemption itself, is contingent on the effect such disclosure has on the third party, which is subject to change with time. Reference may be made to the decision of the Supreme Court in ***ICAI v. Shaunak H. Satya***.[1] The respondents herein have in an overbroad fashion merely stated that the disclosure of the information sought by the petitioner "*may jeopardize the interest of HUDCO, MOUD and NBCC*" without making any reference as to how or what competitive position is affected.

23. While considering the exemption under Section 8(1)(e), it is important to note that the term "*fiduciary*" is used to describe a situation or transaction where one person places complete confidence in another person in regard to his affairs , business or transactions. The term may also be used to refer to a person who holds a thing in trust for another. The fiduciary is expected to act in confidence, for the advantage of the beneficiary. Reference may be made to the decision of the Supreme Court in the decision of ***CBSE v. Aditya Bandopadhyay***,[2] wherein the Supreme Court has extensively dealt with the concept of fiduciary duty in light of the RTI Act. The relevant

[1] (2011) 8 SCC 781
[2] (2011) 8 SCC 497

portion of the judgement is reproduced for better clarity:

> "***39.** The term "fiduciary" refers to a person having a duty to act for the benefit of another, showing good faith and candour, where such other person reposes trust and special confidence in the person owing or discharging the duty. The term "fiduciary relationship" is used to describe a situation or transaction where one person (beneficiary) places complete confidence in another person (fiduciary) in regard to his affairs, business or transaction(s). The term also refers to a person who holds a thing in trust for another (beneficiary). The fiduciary is expected to act in confidence and for the benefit and advantage of the beneficiary, and use good faith and fairness in dealing with the beneficiary or the things belonging to the beneficiary. If the beneficiary has entrusted anything to the fiduciary, to hold the thing in trust or to execute certain acts in regard to or with reference to the entrusted thing, the fiduciary has to act in confidence and is expected not to disclose the thing or information to any third party.*"

24. The respondents herein have failed to show, how ordinary correspondence, exchanged between public authorities in relation to the Andrewsganj project is held in a fiduciary capacity. Moreover, the impugned orders have failed to identify the fiduciary, the beneficiary, or in what capacity the information sought is being held. To this extent, a blanket invocation of Section 8(1)(e) cannot be accepted by this Court.

25. The opinion dated 28.09.2014 received from the Attorney General for India, however stands on a different footing. A legal opinion obtained by a public authority from the Attorney General of India, cannot be placed within the same category as correspondence in relation to a project. Such an opinion involves confidence and trust placed in the fiduciary by the benefactor. The distinct nature of such an advice rightfully falls within the exemption of Section 8(1)(e) of the Act. Further, the petitioner has not demonstrated a public interest that warrants such disclosure in the present case. Therefore, no disclosure with regard to the same is required for in this case.

26. In the context of the opinion of Solicitor General of India, this Court has held that exemption under Section 8(1)(e) is fully attracted. For the same reasoning, the exemption under Section 8(1)(e) is also applicable to the opinion of Attorney General of India. Reference may be made to the decision of this Court in ***Union of India & Anr v Subhash Chandra Agrawal***.[3] The relevant portion of the said decision is reproduced as under:

> "***26.*** *On the perusal of the Rules for engagement of Law Officers, it is seen that it is the duty of the Law Officers to give advice to the Government of India on legal matters. A Law Officer is not allowed to hold brief for any party except with the permission of the Government of India. The Law Officer is also restricted from advising any party against the Government of India or a Public Sector Undertaking.*
>
> ***27.*** *What can be seen from the Rules as well as the judgments of the Supreme Court is that the relationship between the Solicitor General of India and the Government of India is that of a fiduciary and a beneficiary. The Solicitor General of India is duty bound to work for the benefit of the Union and other departments in good faith, where there exists trust and reliance by the beneficiary upon the Ld. Solicitor General. This Court finds no infirmity with the argument put forth by the Ld. Counsel for the Petitioner that the advice tendered by the Ld. Solicitor General to the Union of India and other various government departments is done in the nature of a fiduciary, and hence the exception of Section 8(1)(e) of the RTI Act has been invoked.*"

27. Section 8(1)(i) relates to Cabinet papers, including records of deliberations of the Council of Ministers, Secretaries and other officers. The respondents in the present case has sought to avail this exemption in an overbroad fashion. The exemption under section 8(1)(i) is subject to the proviso therein, all letters exchanged between HUDCO, NBCC and MOUD concerning to the project in question cannot be treated as cabinet papers merely because a government decision may be contemplated.

[3] 2023 SCC OnLine Del 8352

28. Further, this Court in ***Bachan Singh Rana v Central Public Information Officer & Ors***[4] has held that if part of the record is exempt from disclosure, and the rest can reasonably be severed from the part which does not warrant disclosure. The public authority is bound to consider disclosing the part that is not exempted after such severance.

29. Under Section 8(1)(h) of the Act, this exemption applies where the disclosure of information would impede the process of investigation or apprehension of prosecution of offenders. The apprehension of the respondents that furnishing of the information would adversely affect the rights of the respondents in pending litigation also would not sustain in view of the fact that the appeals between the parties have already been reserved.

30. The nature of the information which are required by the petitioner seems to be necessary in order to maintain the transparency in the Government's functioning. Apart from the exemption invoked with respect to the opinion of the Attorney General of India, none of the aforesaid provisions would have any application to most of the information sought herein. A bare perusal of the preamble of the RTI Act would indicate that the said Act, is enacted to secure access to information which is under the control of public authorities to facilitate better functioning of the democracy through transparency of information.

31. In order to effectively deal with the petitioner's grievance which remains pending for more than 10 years, it is found appropriate to issue the following directions:

a. The petitioner to specifically ask the respondents regarding the inspection of the relevant files.

[4] WP(C)6420/2022

b. Let the respondent to forthwith fix a time for the inspection and send to the petitioner an intimation for the aforesaid inspection.

c. The petitioner, thereafter, shall furnish the list of the documents which he seeks to obtain.

d. Once the said list is furnished, the respondent to furnish the documents within 30 days from the date of receipt of the application.

32. With the aforesaid directions, the present petition stands disposed of.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

APRIL 28, 2026/aks/ns