

(Reserved)

Writ Petition No. 6993 (M/B) of 2009 PIL

National Alliance of People's Movements and another

versus

State of U.P. and others

And

Writ Petition No. 10875 (M/B) of 2011 PIL

Awadesh Kumar Tripathi

versus

State of U.P.

Hon'ble Pradeep Kant, J. Hon'ble D.K.Upadhyaya, J.

(Delivered by Hon'ble Pradeep Kant, J.)

Heard Sri S.N.Shukla and Sri Amrendra Nath Tripathi, learned counsel for the petitioners and Sri J.N.Mathur, learned Additional Advocate General, for the State.

These petitions, in the nature of Public Interest Litigation, have been filed challenging the two notifications issued by the State Government, viz. notification no. 980/43-2-2009 dated 7th June, 2009 and 254/Chhappan-2008-15-05 dated 25th March, 2008.

By means of the notification dated 7.6.2009, his Excellency the Governor of U.P., in exercise of the powers under sub-section (4) of Section 24 of the Right to Information Act, 2005 (Act No. 22 of 2005), read with Section 10 of the General Clauses Act, 1897 (Act No. 10 of 1897) and in supersession of Government Notification No. 966/43-2-2009 dated June 02, 2009 excluded certain works allotted to Confidential Section-I of the Government of U.P from the purview of the Right to Information Act, 2005 (Act No. 22 of 2005), hereinafter referred to as the RTI Act, and by notification dated 25.3.2008, in exercise of powers under subsection (4) of Section 24 of 'The RTI Act' specified the operation Unit and the Maintenance, Security and General Administration Unit of the Civil Aviation Department of the State Government and excluded them from the applicability of 'The RTI Act'.

The aforesaid notification dated 25.3.2008 reads as under:

“No. 254/LVI-2008-15-05

Dated Lucknow, March 25, 2008

WHEREAS the operation Unit and the Maintenance, Security and 2 General Administration Unit of the Civil Aviation Department of the Government of Uttar Pradesh are the Security Organisations established by the State Government as it inter alia functions to operate and maintain the Government aircrafts for transport of the Ministers and high functionaries of the State, requiring special precautions of thereof:

Now, THEREFORE in exercise of powers under sub-section (4) of section 24 of the Right to Information Act, 2005 (Act no. 22 of 2005), the Governor is pleased to specify the said units i.e. the operation Unit and the Maintenance, Security and General Administration Unit of the Civil Aviation Department of the State Government to which the provisions of the said Act shall not apply.

By order,

SHAILESH KRISHNA,

Pramukh Sachiv.”

The notification dated 7.6.2009 reads as under:

“No. 980/43-2-2009

Lucknow: Dated: June 07, 2009

In exercise of the powers under sub-section (4) of section 24 of the Right to Information Act, 2005 (Act No. 22 of 2005), read with section 10 of the General Clauses Act, 1897 (Act No. 10 of 1897) and in supersession of Government Notification No. 966/43-2-2009, dated June 02, 2009, the Governor is pleased to direct that the following works allotted to Confidential Section-1 according to distribution of work between Sections/ Departments of Uttar Pradesh Secretariat shall be excluded from the purview of the said Act:-

1. Appointment of the Governor,
2. Appointment of Ministers/State Ministers/Deputy Ministers,
3. Code of Conduct for Ministers,
4. Providing materials for Monthly Demi Official letter to be sent to the President of India on behalf of the Governor,
5. Appointment of Hon'ble Judges of the High Court.

Notification No. 966/43-2-2009, dated 02 June, 2009 of Prashasanik

Sudhar Anubhag-2, U.P. Government is cancelled with immediate effect.

By order,

(K.K.Sinha)

Principal Secretary.”

In regard to the notification dated 7.6.2009, Sri J.N.Mathur, learned Additional Advocate General very fairly conceded that the same could not have been issued by the Governor in exercise of powers under sub-section (4) of Section 24 of 'The RTI Act' and is, therefore, bad in law. Sub-section (4) of Section 24 of the RTI Act is reproduced below:

“(4) Nothing contained in this Act shall apply to such intelligence and security organisations, 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 case the 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.”

The above provision does not give any authority to the State Government to issue such a notification which does not fall within the ambit of the aforesaid provision, that is to say, what can be excluded from operation of 'The RTI Act' is certain 'organizations', established by the State and not the 'works'. The notification dated 7.6.2009 is, therefore, per se illegal, without authority and void ab initio. So far as the notification dated 25.3.2008 is concerned, the same plea has been raised by the counsel for the petitioners that it transgresses the powers of the Governor conferred under sub-section (4) of Section 24 of the RTI Act as the operation Unit and the Maintenance, Security and General Administration Unit of the Civil Aviation Department of the State Government, neither being intelligence nor security organization established by the State Government nor having been notified as such, cannot be exempted from the provisions of 'The RTI Act'. To elaborate the aforesaid submission, attention of the Court was drawn to the Second Schedule under the RTI Act, where intelligence and security organizations have been named, which stand exempted from the operation of 'The RTI Act', but where also the proviso to sub-section (4) of Section 24 creates an exemption, namely, giving of information pertaining to the allegations of corruption and human rights violations, but the present notification does not prescribe even any such exemption and rather, it forbids any type of information being given by the aforesaid Units.

RTI Act itself excludes corruption and human rights violations from the exemptions granted under 'The RTI Act' even in the intelligence and security organizations, which have been named under the Second Schedule.

Further argument is that the Operation Unit and the Maintenance, Security and General Administration Unit of the Civil Aviation Department of the State Government, are not independent security

organizations, but they are units of Civil Aviation Department of the Government of U.P and that when the Civil Aviation Department itself is not a security organization, its units cannot be taken to be security organizations independently or as units of any security organization.

In response, Sri J.N.Mathur, learned Additional Advocate General submitted that it is not necessary that the entire organization should be a security organization for the purposes of exemption under 'The RTI Act', but there may be units in an organization itself which deal with such matters and perform such functions, which require strict security, therefore, can be exempted from the operation of 'The RTI Act' by issuing notification in exercise of powers under sub-section (4) of Section 24 of the Act. He submitted that the movements of the Ministers and high functionaries of the State require special precautions and security and giving information regarding their flight schedule etc. cannot be made known to the public in general as the same will put the security and safety of the high dignitaries to risk. Justifying the action of the State Government, he further submitted that by virtue of the Police (Uttar Pradesh Amendment) Act, 2001, the expression 'civil aviation personnel' has been defined as follows:

“The expression 'civil aviation personnel' shall mean such officers and employees of the Civil Aviation Department posted in the maintenance, security and general administration wing of the Civil Aviation Directorate, Uttar Pradesh immediately before the commencement of the Police (Uttar Pradesh Amendment) Act, 2001, as may be specified in this behalf by the State Government by notification, and shall include any person appointed as a civil aviation personnel after such commencement.”

The consequence of the aforesaid definition and the inclusion of the civil aviation personnel to the police force has been given in sub-section (2) of Section 2-A of the aforesaid Act, which reads as under:

“(2) On and from such date as the State Government may, by notification appoint in this behalf, the entire civil aviation personnel employed immediately before that date shall, for the purpose of this Act, become members of a police force and shall be formally enrolled in accordance with the provisions of section 8-A and any new such members shall, thereafter, be appointed in such manner, as shall from time to time, be ordered by the State Government:

Provided that any civil aviation personnel employed before the said date may, by notice addressed to the Director General, Civil Aviation, Uttar Pradesh served within a period of thirty days from the said date, intimate his option not to become a member of the said police force, and upon receipt of such notice, the post in the Civil Aviation Department held until then by him shall stand abolished and his services shall stand terminated and he shall be paid an amount equivalent to his three months salary as compensation.”

Sub-section (4) of Section 2-A, reads as under:

“(4) The civil aviation personnel shall discharge such duties as may be specified by general or special orders of the State Government from time to time pertaining to maintenance of aircraft belonging to, or hired by, the State Government, security at the Airport at Lucknow or at any other airport specified by a general or special order of the State Government and other duties incidental thereto or connected therewith.”

Sub-section (4) aforesaid makes it very clear that the civil aviation personnel shall discharge such duties as may be specified from time to time pertaining to maintenance of aircraft belonging to, or hired by, the State Government, security at the Airport at Lucknow or any other airport specified by a general or special order of the State Government and other duties incidental thereto or connected therewith. This means that the maintenance of aircraft and the security of the airport are the functions which are to be performed by the civil aviation personnel. There cannot be any exclusion from the applicability of the RTI Act otherwise by issuance of a notification under sub-section (4) of Section 24 unless the matter relates to the intelligence and security organizations, established by the State. Even if the civil aviation personnel has been included in the police force of the State, that will not be sufficient to exempt operation Unit and the Maintenance, Security and General Administration Unit of the Civil Aviation Department of the State Government, when the police department itself is not exempted.

The State Government exercises delegated powers under the aforesaid provisions of the Act; therefore, it cannot issue a notification which runs beyond the scope of such delegation. In the case of State of Bihar and another versus Bal Mukund Sah and others, (2000) 4 SCC 640, the Apex Court has held that no rule or law made by the delegatee can supersede or override the powers exercised or the law made by the delegator of power, the sovereign legislature.

'The RTI Act' has been enacted 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 Informations Commissions and for matters connected therewith or incidental thereto. The basic object of 'The RTI Act' is to empower the citizens, promote transparency and accountability in the working of the Government, contain corruption and make our democracy work for the people in real sense. It goes without saying that an informed citizen is better equipped to keep necessary vigil on the instruments of governance and make the government more accountable to the governed. The RTI Act is a big step towards making the citizens informed about the activities of the Government. Section 3 of 'The RTI Act' talks about right to information and reads as under:

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

The impugned notification has not even been placed before the State Legislature, which was the requirement under sub-section (5) of Section 24 of the RTI Act and which says that every notification issued under sub-section (4) shall be laid before the State Legislature, which enables only the intelligence and security organizations established by the State Government and specifically notified as such and none else for exemption from the applicability of the Act.

Right to information is a part and parcel of the Right to Freedom of Speech and Expression as contained in Article 19(1)(g) of the Constitution. 'The RTI Act' gives statutory safeguard to the Freedom of Speech and Expression guaranteed under Article 19(1)(g), which cannot be curtailed except with reasonable restrictions provided under Article 19(2) of the Constitution, in the interest of sovereignty and integrity of India, security of the State, friendly relations with foreign State, public order, decency or morality or

in relation to contempt of court, defamation or incitement to an offence only and the impugned notification does not fall in any of the categories enumerated under Article 19(2) of the Constitution.

The reasonable restrictions as envisaged under Article 19(2) of the Constitution cannot be imposed by executive action and can only be done by duly enacted law. (See *Express Newspaper Pvt. Ltd. and others versus Union of India (UOI) and others* (1986) 1 SCC 133 (para 76), *Bijoe Emmanuel and others versus State of Kerala and others* (1986) 3 SCC 615 (para 16), *Romesh Thapper versus The State of Madras* AIR 1950 SC 124 (para 10) and *Kharak Singh versus The State of U.P. and others* AIR 1963 SC 1295 (para 5). Therefore, the restriction imposed is excessive and beyond the powers of the State, which cannot be done by issuance of the impugned notifications.

Civil aviation department not being an intelligence or security organization, established by the State, its operation Unit and the Maintenance, Security and General Administration Unit cannot be taken to be intelligence and security organizations established by the State so as to bring them within the scope of subsection (4) of Section 24 of 'The RTI Act'.

For the aforesaid reasons, the notification dated 25.3.2008 also cannot be saved as it falls outside the scope of sub-section (4) of Section 24 of 'The RTI Act'. However, any information relation to security of airports or matters connected thereto, if stands exempted under Section 8 of the RTI Act, can be refused but the information, which is not covered by Section 8 of the RTI Act, cannot be denied.

It is also to be noticed that the impugned notification dated 25.3.2008 does not create any exemption with respect to information regarding corruption and human rights violations in either of the aforesaid units of the civil aviation department though under the proviso appended to sub-section (4) of Section 24 of the Act, even the intelligence and security organizations are not immune from giving information regarding corruption and human rights violations. The notification thus gives a blanket exemption with respect to information regarding corruption and human rights violations, which is in direct conflict with the provision contained in Section 24(4) of 'The RTI Act', hence cannot be saved.

The notification aforesaid exempts the operation Unit and the Maintenance, Security and General Administration Unit of the Civil Aviation Department of the State Government and does not say that this exemption shall not be applicable in the matters of corruption and human rights violations. This makes the notification bad and per se illegal being grossly in violation of the provisions of the Act.

For the aforesaid reasons, the writ petitions are allowed and both the notifications dated 7.6.2009 and 25.3.2008 (contained in Annexures 1 and 2 to Writ Petition No.6993 (M/B) of 2009) being invalid are hereby quashed.

January, 2012

LN/-

Judgment is pronounced under Chapter VII Rule 1(2) of the Allahabad High Court Rules, 1952.