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

+ **W.P.(C) 7308/2009**

UOI

..... Petitioner

Through: Mr. Dev P Bhardwaj, Advocate (M:
9810118825).

versus

CENTRAL INFORMATION COMMISSION
AND ANR.

..... Respondents

Through: Mr. Hrishikesh Baruah, Advocate.

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WITH

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W.P.(C) 3167/2011

DINESH KUMAR MISHRA

..... Petitioner

Through: Mr. Hrishikesh Baruah, Advocate.

versus

UNION OF INDIA

..... Respondent

Through: Mr. Dev P Bhardwaj, Advocate (M:
9810118825).

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% **15.02.2023**

1. This hearing has been done through hybrid mode.
2. The present petitions arise out of the impugned order of the Central Information Commission (*hereinafter 'CIC'*) dated 11th February, 2009 whereby the CIC had partly directed disclosure of the information sought by the RTI Applicant. The RTI-Applicant had sought the following information:-

“(a) Opinion given by Justice Brijesh Kumar and Justice H.K. Sema, both judges of the Supreme Court of India at the relevant time who were once the Chief Justice and acting Chief Justice respectively of the Guwahati High Court.

(b) views expressed by the state of Nagaland.



(c) the recommendation made by the Supreme Court Collegium to the Government of India.”

3. In so far as (a) is concerned, the CIC held as under:-

“21. The opinion given by Justice Brijesh Kumar and Justice H.K. Sema, both judges of the Supreme Court of India may, however, be considered to be "information" provided by third party in confidence, as such, before disclosing the same, it would be necessary on the part of the CPIO to hear them or to take their views. This part of the information clearly attracts Section 11(1) of the Right to Information Act, 2005. There is every likelihood that information provided by them must be concerning the appellant as well as the other persons who may not be a party to this proceeding. This may also attract exemption under Section 8(1) (e) provided the exemption under this Section is claimed either by the CPIO or by the Hon'ble Judges. The disclosability of information, therefore, can be determined only if the competent authority is satisfied that larger public interest warrants such disclosure. At this stage, it will not be appropriate to comment about the applicability of Section 8(1)(e) to this set of information unless the concerned third parties are heard or their views are taken.”

4. In so far as (b) and (c) are concerned, the CIC directed disclosure in the following terms:-

“22. Insofar as the information asked for at (b) and (c) is concerned, in view of what has been held by the Commission in Subhash Chandra Agarwal. V. President Secretariat and Department of Justice’, the exemption from disclosure claimed under Section 8(1)(e) of the RTI Act cannot be held to be justified. The CPIO is, therefore, directed to disclose the information covered by (b) and (c) within a period of 10 working days from the date of receipt of this order.”



5. The Union of India challenged the CIC's order insofar as the directions of disclosure of (b) and (c) are concerned. The impugned Order was stayed by this court vide order dated 6th March, 2009.

6. Thereafter, the RTI-Applicant has also filed *WP(C)3167/2011* titled '*Dinesh Kumar Mishra v. Union of India*' challenging the CIC's order relating to point (a).

7. Both these petitions are ripe for hearing. However, this Court notices that there have been subsequent developments and collegium resolutions are now placed in the public domain. In addition, the judgment of the Id. Supreme Court in *Civil Appeal No.10044/2010* titled '*Central Public Information Officer, Supreme Court of India v. Subhash Chandra Agarwal*' has also been rendered by the Constitution Bench on 13th November, 2019.

8. Mr. Bhardwaj, Id. Counsel at this stage submits that he wishes to seek fresh instructions in this matter as to the stand of the Government. Mr. Barua, Id. Counsel submits that though collegium resolutions are now placed in the public domain, the information sought relates to the relevant point of time when the said resolutions were not placed in the public domain. Thus, the issue would still survive in these petitions.

9. List these matters for hearing on 12th April, 2023 on top of board. If the Petitioner- Union of India wishes to file its stand on record, it may do so within a period of four weeks by way of a specific affidavit.

PRATHIBA M. SINGH, J.

FEBRUARY 15, 2023

MR/rp