

CENTRAL INFORMATION COMMISSION
4th Adjunct to Appeal No. CIC/WB/A/2008/00956 dated 27-5-2008
Right to Information Act 2005 – Section 19

Appellant: Shri Subhash Chandra Agarwal
Respondent: Dep't of Personnel & Training (DOPT)

FACTS

In our decision of 2-6-2009 we had decided as follows:-

- “9. Instead of receiving a report of compliance in response to our notice, the Commission received a curious communication on 2.1.2009 from Ms. Anuradha S. Chagti, Deputy Secretary, DoPT stating that the entire issue was placed before the Committee of Secretaries (COS) for its consideration and that the decision of the COS is still awaited. Ms. Chagti in her aforesaid letter also mentioned that the letter is being issued with the approval of Secretary, DoPT. Even though this appeared a case of defiance of orders of the Commission, giving DoPT the benefit of doubt, the Commission vide its letter dated 9.1.2009 asked for a compliance report from Dr. S. K. Sarkar, Jt. Secretary (AT&T), who had been made responsible for ensuring compliance with our directions by our order of 18.12.08 so as to reach this Commission on or before 27th January, 2009. Dr. S. K. Sarkar did not submit any compliance report within the time frame fixed by the Commission. Instead a letter was again received from Ms. Anuradha S. Chagti, Deputy Secretary, DoPT reiterating what was stated by her earlier in letter dated 2.1.2009, the relevant portion of which is reproduced below: - “Copies of file notings and compliance of the decision of the Commission- status in this regard has already been communicated to the CIC (copy of the letter enclosed).”
10. On perusal of this correspondence the Commission is constrained to conclude that Dr. S. K. Sarkar, Joint Secretary (AT&T) has obstructed, and Ms. Anuradha Chagti and the DoPT as a public authority have knowingly violated and disobeyed the orders passed by the Commission knowing that the directions given by this Commission under Section 19 (8) read with Section 19 (7) are binding under the law. By their conduct, they have, therefore, committed offences punishable under sections 166, 187 and 188 of the Indian Penal Code.
11. Dr. S. K. Sarkar and Ms. Anuradha S. Chagti of the DoPT are, therefore, called upon to appear before us in person on 17th June, 2009 at 11.00 AM and show cause as to why they be not prosecuted for the above offences. A written

explanation from each of them must reach this Commission within 10 days from the date of receipt of these orders. The Commission further directs issuance of summons for their appearance on the date and time first hereinbefore mentioned.

12. The facts of the case as aforesaid clearly reveal that the denial of information requested by the appellant is without any reasonable cause and that the officers named above in the preceding paragraph have knowingly obstructed furnishing the information and that they have thereby rendered themselves liable for penalty under section 20 (1) of the Right to Information Act, 2005. The Commission, therefore, directs each one of them to appear before this Commission on 17th June, 2009 at 11.00 AM and to show cause as to why each one of them be not held liable for a penalty up to Rs. 25,000/- as provided for under Section 20 (1) of the RTI Act. On receipt of their explanation, the Commission will also determine as to whether their conduct warrants any recommendation under section 20 (2) of the RTI Act.”

Upon this, however, we received representations dated 11.6.2009 from both respondents Ms. Anuradha S. Chagti, DS (RTI) and Dr. S. K. Sarkar, JS, DOPT pleading that the matter is being examined with the Department of Legal Affairs and therefore seeking time to 30th June, which was accepted. In the meantime we have received an OM from the DoPT dated 23-6-09 issued by Shri K.G. Verma, Director which reads as follows:

“The undersigned is directed to say that various Ministries/ Departments etc have been seeking clarification about disclosure of file noting under the Right to Information Act, 2005. it is hereby clarified that file noting can be disclosed except file noting containing information exempt from disclosure under section 8 of the Act.”

This OM is also widely reported in the Press notably the Indian Express of 24-6-09.

The appeal was heard on 30-6-2009. Following are present.

Appellants

Shri Subhash Chandra Agarwal.

Ms. Madhu Agarwal.

Respondents

Dr. S. K. Sarkar, JS, DoPT

Ms. Anuradha S. Chagti, DS (RTI), DoPT.

Shri R. K. Girdhar, US, (RTI) DoPT.

Shri S. K. Dubey, Advocate.

Learned counsel for respondents Shri S.K. Dubey submitted three sets of replies to the show cause notice issued by us to the following:

- i) Dr. S.K. Sarkar, JS, DOPT
- ii) Ms. Anuradha S. Chagti, DS, DOPT
- iii) Ms. Anuradha S. Chagti, representing DOPT.

In the last of these Ms. Anuradha Chagti has while referring to the OM dated 23-6-09 submitted as follows:

“That, the Government has now taken a decision with the approval of the Hon’ble Prime Minister. The fact that the decision has been taken at the level of the Prime Minister makes it clear that Dr. S. K. Sarkar at his own level could not modify the RTI Portal as directed by the Chief Information Commission in his order dated 18.12.2008.”

Shri S.K. Dubey, learned counsel submitted that if the issue of this OM is considered as closure of this case he has no further submissions to make. However, should the Commission so wish he would submit his arguments in defence of respondents. In that context he submitted that orders are against two officers mentioned. However, u/s 20 (1) of the RTI Act 2005 it is only the CPIO who is subject to penalty. Shri S.K. Dubey invited our attention specifically to sub Sections 4 and 5 of Section 19 which reads as follows:

- (4) *If the decision of the Central Public Information Officer or State Public Information Officer, as the case may be, against which an appeal is preferred relates to information of a third party, the Central Information Commission or State Information Commission, as the case may be, shall give a reasonable opportunity of being heard to that third party.*
- (5) *In any appeal proceedings, the onus to prove that a denial of a request was justified shall be on the Central Public Information Officer or State Public Information Officer, as the case may be, who denied the request.*

He also submitted that orders under Section 19 (8) (a) may be issued to any of the parties in an appeal but to the appropriate Government as defined in Section 2 of the Act, only recommendation may be given under Sub Section 5 of Section 25, not a direction u/s 19. It is for this reason that both sections referred to CPIO’s actions, in relation to exercise of its functions in the practice of public authorities under this Act, being in conformity with the provisos. In this context learned counsel referred to an earlier decision of this

Commission in Anil Agarwal vs. DOPT appeal No. **CIC/WB/A/2007/223** in which this Commission has on a similar issue given recommendations under Sub Section 5 of Section 25.

Besides, on the question of criminal action learned counsel Shri S.K. Dubey submitted that there is no mention in the RTI Act of prosecution under the IPC. Therefore, recourse cannot be taken to this law while disposing of matters under the RTI Act. In this context he specially invited our attention to Section 135 of the Customs Act which specifically allowed liability under the IPC. He also referred to FERA and Income Tax Act 1961. In his view, any other interpretation would lead to chaos in the administration of justice. There was in this case therefore, no legislative intent in the Act for prosecution under the IPC.

Appellant Shri S.C. Agrawal submitted a written petition in which he referred to part the information sought by him not having been decided upon. The original reply to the request of Shri S.C. Agrawal sent to him on 30-4-08 by Shri J.S. Meena is as follows:

- “1. Procedure of Holidays:- As per the existing policy the Central Government administrative offices observe 17 holidays in a year, 14 compulsory holidays as pre-notified including three national holidays viz Republic Day, Independence Day and Mahatma Gandhi's birthday. The remaining three holidays also require to be selected from another notified list of 12 occasions. The individual employees are also allowed to avail two restricted holidays in a year to be selected from the notified list of Restricted Holidays. Thus there is a ceiling on the number of holidays that can be declared in a year.
2. Criterion for declaring birthdays of departed leaders as holidays: There is a policy decision that no holiday should be declared on the birthday of any national leader other than that of Mahatma Gandhi.
3. Holiday on Dr. B. R. Ambedkar's birthday: It is not one of the regular annual holidays. However, since 1990 this occasion has been declared as a closed holiday for all Central Government Administrative offices.
4. Research on restricted holidays:- As per available information/ record in JCA Section, no such order has been issued to make any research on maximum availed restricted holiday/s on particular occasion/s (like Raksha

Bandhan in Delhi) to be converted in a gazetted holiday for practical reasons.”

However, on appeal Shri Mahinder Kumar, Director, JCA informed Shri S.C. Agrawal in his letter of 22-5-08 as follows:

- “1. As per RTI Act section 8 (l) 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, therefore, under the provisions of act, no information can be provided to the first para of your appeal.
2. It is a decision of the Government to declare closed holiday on Dr. B. R. Ambedkar’s birthday since 1990, with the due approval of the competent authority. As per the guidelines prescribed on the website (<http://www.persmin.nic.in>) of Ministry of Personnel, Public Grievances and pension under RTI- FAQ, information does not include ‘file noting’, hence no file noting can be provided.”

Shri S.C. Agrawal has challenged this response in his second appeal in the decision on which we have not decided on this issue but only on the issue of refusing file noting. This has finally culminated in the present adjunct. In light of the OM of 23-6-09 the question of disclosing file noting has now been resolved.

DECISION NOTICE

After having heard the parties and examined the records including submission made by all the three respondents including the DoPT itself we have come to the conclusion that the officers who had received the directions for rectifying the website of the DOPT have, in fact, pursued this matter to the fullest within office procedure. However, there had been time limits fixed for their submitting a response to this Commission, which they have complied with in summary fashion thus preventing us from identifying those from whom they had sought assistance, which of course they have the authority to do under sub Section 4 of Section 5 of the RTI Act. For this reason they had to bear the onus of responsibility under sub Section 5 of Section 19.

In light of Section 5 (4) we cannot also accept the plea of learned counsel for respondents that it is only the designated CPIO who is liable for penalty since sub Section 5 of Section 5 a person whose assistance has been sought, which is what has been done in the present case in the matter of responding are to be deemed CPIOs “*in the event of any contravention of the provisions of this Act*”.

Learned counsel has also offered his arguments questioning the Commission’s authority to act under Sections 166, 187 and 188 of the IPC which read as follows:

166 Public servant disobeying law, with intent to cause injury to any person.-- Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will, by such disobedience, cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

187. Omission to assist public servant when bound by law to give assistance.--Whoever, being bound by law to render or furnish assistance to any public servant in the execution of his public duty, intentionally omits to give such assistance, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both; and if such assistance be demanded of him by a public servant legally competent to make such demand for the purposes of executing any process lawfully issued by a Court of Justice, or of preventing the commission of an offence, or suppressing a riot, or affray, or of apprehending a person charged with or guilty of an offence, or of having escaped from lawful custody, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

188. Disobedience to order duly promulgated by public servant.-- Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management. disobeys such direction,

shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction,

annoyance or injury, to any persons lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both:

and if such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Explanation.-It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm.”

Clearly this Commission is not competent to try a case under any of these sections since. As mentioned by learned counsel for respondent Shri S.K. Dubey the RTI Act does not carry any authority under the IPC such as it does under the CPC on the strength of Section 18. However, any learned counsel appearing before a legal authority, even if the authority is quasi-judicial in nature as is this Commission, is expected to assist, not mislead that authority. Surely learned counsel Shri Dubey realises that to invoke the law is the right of every citizen. So the Commission would have the right to launch a prosecution under any of these sections in terms of defiance of lawful authority if established in any of the cases in which it is administering the RTI Act.

However, now that compliance has been completed in this matter, not only with the issue of the OM mentioned but also removal of the fallacious entry on the RTI Portal maintained by the DOPT website, there will now be no penalty since this had been proposed for knowingly obstructing furnishing of information. However, we caution the officers of DOPT which is the nodal authority of Government with regard to implementation of the RTI Act, particularly those manning the RTI Cell, to ensure maximum transparency in disposing of RTI applications so that misunderstanding such as those that arose in the present case are avoided.

This leaves the question of the disclosure of the file noting sought by Shri S.C. Agrawal and information related thereto with regard to public holidays the plea taken by the Appellate Authority was not the plea of the CPIO. Besides taking recourse to exemption under any sub-Section of Section 8 (1) is subject to decision of **Delhi High Court in W.P.(C) No.3114/2007 – Shri Bhagat Singh Vs. Chief Information Commissioner & Ors** specifically in adhering to the following, a copy of part of which has also been submitted by appellant for placing on record:

11. “The Universal Declaration of Human Rights, adopted by the United Nations in 1948, assured by Article 19, everyone the right “to seek, receive and impart information and ideas through any media, regardless of frontiers”. In Secretary Ministry of Information and Broadcasting, Govt. of India and others vs. Cricket Association of Bengal and others (1995 (2) SCC 161) the Supreme Court remarked about this right in the following terms:

“The right to freedom of speech and expression includes the right to receive and impart information. For ensuring the free speech right of the citizens of this country, it is necessary that the citizens have the benefit of plurality of views and a range of opinions on all public issues. A successful democracy posits an “aware” citizenry. Diversity of opinions, views, ideas and ideologies is essential to enable the citizen to arrive at informed judgment on all issues touching them.”

This right to information, was explicitly held to be our fundamental right under Article 19(1)(a) of the Constitution of India for the first time by Justice K.K. Mathew in the State of U.P. vs. Raj Narain, (1975) (4) SCC 428. This view was followed by the Supreme Court on a number of decisions and after public demand, the Right to Information Act, 2005 was enacted and brought into force.

12. The Act is an effectuation of the right to freedom of speech and expression. In an increasingly knowledge based society, information and access to information holds the key to resources, benefits, and distribution of power. Information, more than any other element, is of critical importance participatory democracy. By one fell stroke, under the Act, the make of procedures and official barriers that had previously impeded information, has been swept aside. The citizen and information seekers have, subject to a few exceptions, an overriding right to be given information on matters in the possession of the state and public agencies that are covered by the Act. As is reflected in its preambular paragraphs, the enactment seeks to promote

transparency, arrest corruption and to hold the government and its instrumentalities accountable to the governed. This spirit of the Act must be borne in mind while construing the provisions contained therein.

13. Access to information under Section 3 of the Act is the rule and exemptions under Section 8, the exception¹. Section 8 being a restriction on this fundamental right, must therefore be strictly construed. It should not be interpreted in manner as to shadow the very right itself. Under Section 8, exemption from releasing information is granted if it would impede the process of investigation process cannot be a ground for refusal of the information, the authority withholding information must show satisfactory reasons as to why the release of such information would hamper the investigation process. Such reasons should be germane, and the opinion of the process being hampered should be reasonable and based on some material.

The observations of Hon'ble Ravindra Bhat J with regard to Sec 8(1) (h) will apply mutatis mutandis to exemption under any other sub-section of Sec 8(1). Under the circumstances we can only find recourse to Sec 8(1) (h) in the present case as specious and this order of appeal Shri Mahinder Kumar, Director, JCA is therefore set aside. **We hereby direct CPIO, DoPT (JCA Divn) to provide the information to the extent held by the DOPT on the subject of the application to appellant Shri S.C. Agrawal within 10 working days of the date of issue of this decision notice.** This information will in accordance with sub Section 6 of Section 7 be provided free of cost.

The substance of this decision regarding penalty was announced in the hearing, the remainder has been announced in open court on 1st of July, 2009. Notice of this decision be given free of cost to the parties.

(Wajahat Habibullah)
Chief Information Commissioner
1-7-2009

¹ Emphasis added to invite reference

Authenticated true copy. Additional copies of orders shall be supplied against application and payment of the charges prescribed under the Act to the CPIO of this Commission.

(Pankaj K.P. Shreyaskar)
Joint Registrar
1-7-2009