

CENTRAL INFORMATION COMMISSION

Appeal No.CIC/WB/A/2007/00903 dated 21.8.2007

Right to Information Act 2005 – Section 19

Appellant - Shri Rajiv Bali

Respondent - Deputy Commissioner of Police (D.C.P.) Nanakpura

Facts:

By an application of 28.2.07, Shri Rajiv Bali of Ashok Vihar made an application to DCP, CAW Cell, Nanakpura, seeking the following information:

“My wife Neera Bali had made a complaint against me in your office dated 13.7.2006. I had attended all dates. I want to request you that the certified copy of statement of both parties on all dates along with complete file notings may kindly be given to me.”

To this he received a response on 2.3.07 from APIO for PIO & DCP, CAW Cell, Nanakpura as follows:

“I am directed to inform you that your request has been considered and partly acceded to. The copy of proceedings & copy of file noting and copy of statement is not being provided in view of section 8 (1) (h) of RTI Act, 2005. However, copies of your statements may be collected from this office on any working day.”

Aggrieved, Shri Rajiv Bali moved his first appeal on 21.3.07 before Addl. Commissioner of Police, CAW Cell, Nanakpura, upon which through a speaking order of 20.4.07, Shri Tejinder Luthra Addl. Commissioner of Police, CAW Cell decided as follows:

“On the complaint of Smt. Neera Bali, W/o Shri Rajiv Bali, an enquiry into the matrimonial discord has been conducted in the Crime against Women Cell, Nanakpura, New Delhi. After the enquiry a case was recommended for registration in South Distt. and the same has been registered vide FIR NO. 183/07 u/s 498-A/406/34 IPC PS Mehrauli, Delhi and is pending investigation. The complaint is an FIR now and to supply the copy of the FIR and other record at this stage to the accused will jeopardize the investigation. Supply of the copy of the documents to the appellant at this stage is also not permissible as per the restrictions imposed by the section 8 (1) (h) of the RTI Act, 2005. Copy of the FIR can

only be supplied to the accused after the charge sheet is filed in the concerned Court for trial.

In view of the discussion above the copy of the documents pertaining to FIR No. 183/07 u/s 498-A/406/34 IPC PS Mehrauli, Delhi can not be supplied to the appellant as per the restrictions imposed u/s 8 (1) (h) of the RTI Act, 2005. As the case is pending investigation, the appeal is hereby disallowed.”

Before coming to this decision, however, the First Appellate Authority has erred in stating that the request of appellant Shri Rajiv Bali has been rejected by the PIO u/s 8(1) (g) when in actual fact it has been rejected u/s 8(1)(h). However, in his prayer before us Shri Rajiv Bali has repeated his request as follows:

“Certified copies of statement of both parties on all dates along with complete file noting should be given to me.”

The appeal was heard on 24.11.08. The following are present:

Appellant

Shri Rajiv Bali.

Respondent

Shri H.P.S. Virk, DCP, CWC

In answer to our question, respondent Sh. HPS Virk, DCP stated that the investigation is still in progress, upon which appellant asked when the investigation is still in process, why an FIR has already been registered against him. This point was clarified by CPIO. The issue before us, therefore, clearly is whether during pendency of an investigation statements of witnesses and complaints etc. are to be disclosed to the accused.

The recent history of the city of Delhi is not a happy one in terms of dowry harassment and even murders on this account. This city, despite its high literacy rates, per capita income and quality of life, does not have a favorable gender balance. These are all issues to be kept in mind in coming to a decision in matters of the nature of the present case before us.

DECISION NOTICE

In this case the judgment of the **Delhi High Court in W.P. (C) No.3114/2007 – Shri Bhagat Singh vs. Central Information Commission & Ors** is of relevance, since it deals with the application of sec. 8(1) (h):

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 in 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 exception. Section 8 being a restriction on this fundamental right, must therefore be strictly construed. It should not be interpreted in a 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.** Sans this consideration, Section 8(1) (h) and other such provisions would become the haven for dodging demands for information.

14. A rights based enactment is akin to a welfare measure, like the Act, should receive a liberal interpretation. The contextual background and history of the Act is such that the exemptions, outlined in Section 8, relieving the authorities from the obligation to provide information, constitute restrictions on the exercise of the rights provided by it. Therefore, such exemption provisions have to be construed in their terms, there is some authority supporting this view (See *Nathi Devi vs. Radha Devi Gupta* 2005(2) SCC201; *B. R. Kapoor vs. State of Tamil Nadu* 2001 (7) SCC 231 and *V. Tulasamma vs. Sesha Reddy* 1977(3) SCC 99). Adopting a different approach would result in narrowing the rights and approving a judicially mandated class of restrictions on the rights under the Act, which is unwarranted.”

The above will have to be read in light of our observations on the particular circumstances of the city of Delhi with regard to gender justice, specifically in light of the ruling highlighted by us at Para 13 of the judgement quoted above. In light of this, PIO Shri Virk, DCP is directed to reexamine the information held by him in the context of information sought and disclose such information which he cannot justify withholding on grounds of exemption u/s 8 (1) sub-section (h), but in withholding any part, providing full reasons of how disclosure of the same would impede the process of investigation. **This exercise will be completed within fifteen working days of this Decision Notice.** Appellant may ofcourse

bear in mind that much of the information that he has sought will be made available to him under law at the discretion of the trial if and when the case is taken up for prosecution. The appeal is thus allowed in part. There will be no costs.

Reserved in the hearing, this Decision is announced in open chamber on this, the twenty eighth day of November 2008. Notice of this decision be given free of cost to the parties.

(Wajahat Habibullah)
Chief Information Commissioner
28.11.2008

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 Shreyaskar)
Joint Registrar
28.11.2008