

CENTRAL INFORMATION COMMISSION

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File No : CIC/RM /A/2014/001857-AB

In the matter of:

Shri Subhash Chandra Agrawal
1775 Kucha Lattushah Dariba, Chandni Chowk,
Delhi – 110006.

...Appellant

Vs.

Central Public Information Officer
M/o Defence
Captain-At-Arms, Integrated HQ,
Union Defence Ministry(Navy),
New Delhi – 110011.

..Respondent

Dates

RTI application	:	06.01.2014
CPIO reply	:	28.01.2014
First Appeal	:	30.01.2014
FAA Order	:	26.02.2014
Second Appeal	:	03.03.2014
Date of hearing	:	11.08.2016, 22.09.2016, 22.11.2016, 26.12.2016

Information sought:

The appellant had sought the following information:

1. Is it true that INS Vikramaditya is a renovated version of an old Russian warship Admiral Gorshkov.
2. Date of manufacture of Russian warship Admiral Gorshkov.
3. Date of Russian warship Admiral Gorshkov having been first commissioned by Russian Navy.
4. Date of Russian warship Admiral Gorshkov having been de-commissioned by Russian Navy.

5. Date of India having first signed deal for purchase of old Russian warship Admiral Gorshkov mentioning also (a) original settled price (b) cost settled for refurbishing/modification/renovation/re-modelling etc the old Russian warship Admiral Gorshkov.
6. Date-wise information on increase, if any, in (a) cost of the old Russian warship Admiral Gorshkov (b) cost for refurbishing/modification/renovation/re-modelling etc the old Russian warship Admiral Gorshkov
7. Initial delivery-date of Russian warship Admiral Gorshkov mentioning also all dates of revision of delivery- dates of Russian warship Admiral Gorshkov
8. Was consideration given for opting for a new warship before signing deal for old Russian warship Admiral Gorshkov.
9. Comparative approximate cost of a new warship as compared to total cost including also for refurbishing/modification/renovation/re-modelling etc the old Russian warship Admiral Gorshkov.
10. Net final cost including also for refurbishing/modification/renovation/re-modelling etc the old Russian warship Admiral Gorshkov mentioning also dates of payment by India.
11. Was any legal agreement drafted and signed with Russian authorities initially for purchase and refurbishing an old Russian warship Admiral Gorshkov.
12. If yes, was this legal document binding on Russia.
13. If yes, complete information on together with related file-notings/correspondence/documents etc on India accepting upward cost-revisions and time of acquirement the old Russian warship Admiral Gorshkov.
14. Complete information together with related file-notings/correspondence/documents etc on India accepting upward cost-revisions and time of acquirement the old Russian warship Admiral Gorshkov.
15. Is it true that Comptroller & Auditor General of India (CAG) had objected to purchase of an old warship rather than purchase of a new warship as it would have been less costly and better than an old renovated Russian warship Admiral Gorshkov
16. Complete information together with related file-notings/documents/correspondences etc on action taken on the said CAG report.
17. Complete information together with related file-notings/documents/correspondences etc on opting for an old warship Admiral Gorshkov rather than a new warship.

18. Life-span of Admiral Gorshkov after its acquirement by Indian Navy mentioning also comparative life-span of a new warship mentioning also approximate date by which Indian Navy may be using it.
19. Complete information together with related file-notings/documents/correspondences etc on renaming warship as INS Vikramaditya.
20. Any other related information.
21. File-notings on movement of this RTI petition.

Grounds for Second Appeal

The CPIO did not provide the desired information.

Interim Order

Appellant : Present
Respondent : Present CPIO, Cdr. I.N.Awasthi alongwith other officers.

During the hearing, the appellant submitted that information in respect of Paras 5 to 10 of the RTI application was denied by the Public authority by invoking Section 8(1)(d) of the RTI Act. He further stated that the information sought for is not that which can be exempted under the plea of commercial confidence. The appellant submitted that any information on the report of the CAG can be provided since it is held that the information which cannot be denied to the Parliament, can not be denied under the RTI Act. Hence it is disclosable. He further added that the said information had already been provided as per media report in the case of an earlier RTI petition.

The respondent stated that information relating to Paras 15 and 16 relates to IHQ(army). The appellant submitted that since the public authority is not holding the information, at the relevant time they should atleast have transferred the application u/s 6(3) of the RTI Act to the IHQ (Army).

The respondent denied the information on Paras 13 and 14 stating it to relate to Parliamentary privilege u/s 8(1)(c) of the RTI Act. In respect of Paras 17 and 19 the public authority stated that it is covered u/s 8(1)(a). The information in respect of Para 21 was denied u/s 8(1)(e) of the RTI Act.

The appellant stated that the required information can be provided after applying severability clause u/s 10 of the RTI Act.

The respondent at this stage stated that they wanted another date of hearing to plead the case more effectively as the information sought is voluminous in nature. The appellant did not object to it.

In the light of the above, the submission of the respondent is accepted and the case is adjourned. **The respondent is hereby directed to file its written submission before the next date of hearing with a copy to the appellant.**

The next date of hearing is fixed on 22.09.2016.

Interim Order 22.09.2016

The appellant prayed for adjournment as he is suffering from viral fever. Prayer granted. The next date will be fixed by the registry.

Interim Order 22.11.2016

Appellant : Present
Respondent : Rep. of CPIO, Shri Anoop Kumar

During the hearing it was observed that the interim order dated 11.08.16 was not complied with by the present CPIO. Moreover, the respondent CPIO was also not present and a representative of the concerned CPIO requested for adjournment of hearing as the CPIO was busy in a court case elsewhere.

Be that as it may, the present CPIO is given last opportunity to file written submission as indicated in the order of the Commission dated 11.08.2016 within a period of 15 days to the Commission, with copy to the appellant as ordered by the Commission in the earlier order dated 11.08.2016.

The registry is directed to fix another date of hearing after receipt of the abovestated written submission from the CPIO. The case is adjourned.

Interim Order 26.12.2016

Appellant : Present
Respondent : CPIO, I N Awasthi,
A Venugopal

At the outset the appellant submitted that he received a reply from the respondent in a tabular format and he is satisfied with the reply in respect of paras 1 to 9, 11, 12 and 15 of the RTI application. Further, he submitted that he was not satisfied with the reply in respect of paras 10 to 17 of the RTI application.

The appellant stated that in para 10 of his said RTI application he had sought net final cost and dates of payment in respect of which the CPIO, Navy had claimed exemption under Sec 8(1)(d) of the RTI Act, which is not proper. He contended that the disclosure of net final cost and date of payment would in no way harm the competitive position of a third party. The appellant also submitted that he only needed the breakup of the payments made to the supplier with dates.

In respect of paras 13 and 14 of the RTI application, the appellant stated that the cost revisions were strongly objected to by the CAG as the warship was said to be received free by the Government of India from . He further submitted that costs were revised several times. The entire information was based on a report of the CAG which has audited this purchase, as per extant procedure this CAG report was placed on the table in both the houses of the parliament. The appellant relied on proviso to Sec 8(1)(j) of the RTI Act which reads as follows:

“Provided that the information which cannot be denied to the parliament or a state legislature shall not be denied to any person.”

In respect of para 16 of the said RTI application, the appellant stated the action taken on CAG report is not an exempted information u/s 8 of the RTI Act. He also submitted that exemption claimed by the respondent u/s 8(1)(a) in respect of para 17 of the RTI application is misplaced.

Per contra the CPIO, IHQ Navy submitted that payment was made by the Government of India and not by the Indian Navy. Hence, MoD is the holder of information in respect of para 10. They also took the plea of Sec 8(1)(a) of the RTI Act stating that it is a classified top secret information. He stated that fractional or stage wise payment had been made and if this information is parted with, it has the potential to divulge how the warship was retrofitted etc, indirectly exposing data about the internal fittings, details of weapon system etc of the warship.

The CPIO, Navy also submitted that the entire RTI application was transferred u/s 6(3) of the RTI Act to the Navy and that such blanket transfer to the Navy by the MoD was not proper as many of the information sought for was actually held by the MoD itself. He also

submitted that further information in respect of paras 10, 13, 14, 16 and 17 should be obtained from CPIO MoD.

The appellant also submitted that the original RTI was addressed to MoD and it seems the MoD had mindlessly transferred the entire RTI application to the Navy without first checking as to whether any part of the information sought for in the said RTI application was held by them. He submitted that strict warning may be passed against the then CPIO, MoD for needless transfer u/s 6(3) of the RTI Act to the Navy. Further, comments of the present CPIO, MoD may be called for in respect of paras 10, 13, 14, 16 and 17 of the said RTI application.

Based on the submission of both of the parties, the Commission found it appropriate to direct the CPIO, MoD to submit his written submission in regard to the information sought for in paras 10, 13, 14, 16 and 17 of the RTI application dated 06.01.2014 on or before 31.03.2017 with a copy endorsed to the appellant for information.

The appellant is at liberty to file additional submission, if any, within the same time period.

Final Order: (Based on submission) 11.05.2017

The Commission received a written submission from CPIO, Shri Jagjeet Kumar, Deputy Secretary (Navy-Acq) on 23.03.2017. The CPIO submitted as follows:

*“ This has reference to CIC Interim order no. CIC/RM/A/2014/001857-AB of proceedings held on 26.12.2016 in respect of appeal filed by Shri Subhash Chandra Agarwal, wherein CPIO, MoD has been directed to submit written submission **with regard to the submission made by CPIO (Navy) in respect of information sought by the applicant in paras 10, 13, 14, 16 and 17 in the said RTI application.***

*2. The matter has been examined in MoD and it is to inform that for all Capital Acquisition cases single file system is followed between MoD and Navy as part of Integrated Headquarters, **wherein IHQ-MoD(N) initiates the files and after completion of action is also the repository of all the records and files.** All the files pertaining to Capital Acquisition of INS Vikramaditya are held by NHQ including records pertaining to information sought under Paras 10, 13, 14, 16 & 17. In view of the same, Naval Headquarters has been asked by Ministry of Defence to direct **CPIO (Navy) to respond to the information sought and to comply with the order of CIC within timelines as stipulated therein.***

3. In view of above it is prayed that reference to MoD and this CPIO in the appeal proceedings may be deleted as CPIO (Navy) has been directed by Ministry of Defence to respond to the remaining parts of the RTI application in which information has yet not been furnished.”

The above submission shows that the CPIO (Navy) tried to put the onus of reply in regard to the points 10, 13, 14, 16 and 17 of the said RTI application on the CPIO, MOD. However in view of the particular ministry’s categorical assertion that the said reply is to be furnished by the CPIO(Navy), the CPIO(Navy) is instructed to avoid delay in furnishing of the said information any longer.

The Commission finds that in the larger public interest, the information in respect of Paras 10, 13, 14, 16 and 17 of the RTI application dated 06.01.2014 should be provided to the appellant free of cost, u/s 7(6) of the RTI Act. The CPIO (Navy) is also directed to apply the severability clause u/s 10 of the RTI Act, to mask the names of the officers involved before providing the said information.

The CPIO (Navy) shall comply with the above order within 15 days from the date of receipt of this order. A compliance report with proof of despatch of the revised reply to the appellant shall be submitted thereafter to the Commission for record.

The Registry shall send copies of this order to CPIO (Navy) for compliance and the appellant for information, free of cost.

The appeal is disposed of .

Copies of the order may be provided to both the parties free of charge.

**[Amitava Bhattacharyya]
Information Commissioner**

Authenticated true copy

(A.K.Talapatra)
Dy. Registrar