

CENTRAL INFORMATION COMMISSION

(Room No.315, B-Wing, August Kranti Bhawan, Bhikaji Cama Place, New Delhi 110 066)

Prof. M. Sridhar Acharyulu (Madabhushi Sridhar)

Central Information Commissioner

CIC/CC/A/2014/001933-SA

Dewa Tashi v. PIO, Central Tibetan Schools Administration

Important Dates and time taken:

RTI: 10.07.2014	FAO: 15.09.2014	SA: 31.10.2014
Disposed of.	Hearing: 29.09.2016	Decided on: 05.10.2016

Parties Present:

1. Appellant: Absent.

Public authority: Mr. A. S. Rawat, CPIO and Mr. Khushal Snigh.

FACTS:

2. Appellant had sought to know when will he receive confirmation letter i.e substantive capacity letter as the employee of Central Tibetan Schools Administration (CTSA), when will he receive Children Education Allowance as per rule as the employee of CTSA etc. PIO replied on 12.08.2014 stating that the information cannot be furnished as he is Tibetan citizen. FAA disposed of the appeal confirming the reply of the CPIO. Appellant approached Commission. He requested the Commission to dispense with the requirement of his personal presence because it will be very hard for him to attend due to family problems and distance.

Decision:

3. The appellant is an employee of the Central School for Tibetans. He was given a Memorandum (Agreement) dated 5.9.1995 signed by Central Tibetan Schools Administration, an autonomous body set up by Government of India. Appellant is asking for confirmation letter, children education allowance, all India LTC benefit, to which he is entitled to as per the terms of Memorandum. He was

also asking for implementation of agreement of CTSA with Election Commission of India letter No. 30/ID/2010-ERS dated 7.02.2014, where CEOs of all states and UT were instructed not to deny voting rights to Tibetans like him, who were born between 26th January, 1950 and before 1st July, 1987. The letter also states "as per Section 3 (1) (a) of Citizenship Act, 1955, the children born to Tibetan Refugees in India shall be treated as Indian Citizens based on their birth in India, on or after 26th January, 1950 and before 1st July, 1987".

4. He raised similar points in RTI application before CBSE, which transferred that RTI application under Section 6(3) of RTI Act, to Mr. AS Rawat, CPIO of CTSA, to which he did not respond. The CPIO Mr. A. S. Rawat, Education Officer, wrote on 12.8.2014 denied the information saying that Mr Dawa Tashi was Tibetan national and not citizen of India. He has returned the IPO for Rs 10. Mr Vineet Joshi, Director and First Appellate Authority had confirmed the reply given by the CPIO on 15.9.2014. On 26.9.2014, the Appellate Authority Mr. Vineet Joshi wrote another letter to appellant Mr Dawa Tashi, that information sought by him under four points is not available in the material form, therefore, same is not provided under the Rule 2(f) of RTI Act, 2005.

5. The appellant stated in second appeal that most of his colleagues received job confirmation letters i.e., substantive capacity from the CTSA Delhi, while he was denied till this day. Though he was sanctioned Children Education Allowances, it was wrongfully recovered from him. In similar circumstances his colleagues were given that benefit. Similarly his LTC benefit also was denied, he alleged.

6. He specifically stated that he was Indian Citizen by birth, and should have all the rights as employee of CTSA like any other employee, having same format of appointment agreement.

7. It is most deplorable that Central Tibetan Schools Administration is denying the information to its employee working in a school established /administered under their control, on an excuse that the appellant was Tibetan national though he was born in India. They ignored a fundamental principle that a person born in India attains the citizenship of India, even if his parents are from Tibet. The organization CTSA, is meant for helping the Tibetans in Delhi. The CPIO, who is an Education officer and FA, who is none other than the

director of CTSA did not apply mind and ignored the basic objectives of their organization and aims of RTI Act, 2005. If they have a genuine doubt that appellant is not citizen of India, they should have enquired into that status, examined the birth certificate, etc. if the birth certificate shows he was born in Indian soil that could have answered their doubt. There is no record to show any such effort by public authority. The CPIO submitted to the Commission that he has collected the information to be given and if ordered by CIC it would be given. This reveals their intentions.

8. Article 5, Constitution of India states:

5. *Citizenship at the commencement of the Constitution:* At the commencement of this Constitution every person who has his domicile in the territory of India and

(a) who was born in the territory of India; or

(b) either of whose parents was born in the territory of India; or

(c) who has been ordinarily resident in the territory of India for not less than five years preceding such commencement, shall be a citizen of India.

9. The Election Commission of India, in its letter No. 30/ID/2010-ERS dated 7th February 2014 issued a clarification to all CEOs of all States/UTs, in the light of decision dated 7th August 2013 of Karnataka High Court in Writ Petition No 15437/2013 *Tenzin Choephag Ling Rinpoche vs Union of India and others*, the Election Commission has reconsidered its stand. As per Section 3(1)(a) of Citizenship Act, 1955, **the children born to Tibetan Refugees in India shall be treated as Indian citizens based on their birth in India**, on or after 26th January, 1950 and before 1st July 1987. Hence notwithstanding anything contained in Union Home Ministry letter dated 26th August 2011 conveyed to all CEOs vide ECI letter dated 27th September, 2011, the Commission clarifies that the EROs concerned should not deny enrolment to the children of Tibetan Refugees where they are satisfied that (1) the applicant was born in India (2) he/she was born on or after 26th January, 1950 but before 1st July 1987, and (3) he/she is ordinarily resident in the constituency in which the application for enrolment has been made.

10. This letter is very clear as to what the CTSA has to do. The CTSA knew this, and it has signed a Memorandum employing the appellant. It is within its full knowledge that appellant was citizen of India, working with them under an appointment after due interview and he raised some of the grievances. Still it tried to use the citizenship ground to reject the RTI request of the appellant.

11. There are two facts within Right to Information. One, it is a component of Right to Life as that includes an aspect of Right to Know, which is guaranteed to 'persons' and not confined to citizens only under Article 21 of Constitution of India. Two, it is part of freedom of expression under Section 19 (1) (a).

Article 21 states: Protection of life and personal liberty No person shall be deprived of his life or personal liberty except according to procedure established by law.

12. The Constitutional Courts of India held several times that RTI is a human right and thus belongs to all human beings. Also, the RTI is part of Freedom of Speech and Expression as guaranteed to citizens under Article 19(1)(a) of the Constitution which says that "all citizens shall have the right to freedom of speech and expression".

13. The public authority cannot deny information on the ground that applicant is not a citizen of India unless it has enquired and found prima facie that he was not citizen of India. The PIOs should study the RTI Act thoroughly to understand that though expression 'citizen' was used in Section 3, in several other sections, the Act specifically mentioned 'person' whose application it has to receive and respond as prescribed.

14. The RTI Act nowhere mentions that transparency and accountability in the working of every public authority, as envisaged by the preamble to RTI Act, cannot be extended to a non-citizen if he is affected by such action. Giving a restricted interpretation to deny to applicant on this ground will obliterate the purpose of the Act. Thus expression citizen is used in preamble; and Section 3, which is a declaration of right, the whole Act from section 6 onwards, a duty to give information to "person" is prescribed and in several provisions, Act specifically mentions the expression "person". It is a cautious and deliberate insertion of word "person", neither it is accidental not inadvertent. Moreso, usage of word "person" in proviso to section 7 can be construed to include

“person” and is reflective that information concerning life and liberty cannot be held to be applicable only to a citizen; had it been so, it would be constitutionally invalid in terms of Article 21 of constitution. Following is the text of Section – 7.

Section 7. Disposal of request.—(1) Subject to the proviso to sub-section (2) of section 5 or the proviso to sub-section (3) of section 6, the Central Public Information Officer or State Public Information Officer, as the case may be, on receipt of a request under section 6 shall, as expeditiously as possible, and in any case within thirty days of the receipt of the request. either provide the information on payment of such fee as may be prescribed or reject the request for any of the reasons specified in sections 8 and 9:

Provided that where the information sought for concerns the **life or liberty of a person**, the same shall be provided within forty-eight hours of the receipt of the request.

The word person also appears in following provisions of the RTI Act, 2005:

Section 4. Obligations of public authorities. — Every public authority shall— (d) provide reasons for its administrative or quasi-judicial decisions to affected **persons**.

Section 5. Designation of Public Information Officers.-(1) Every public authority shall, within one hundred days of the enactment of this Act, designate as many officers as the Central Public Information Officers or State Public Information Officers, as the case may be, in all administrative units or offices under it as may be necessary to provide information to **persons** requesting for the information under this Act.

Section 6. Request for obtaining information.—(1) A person, who desires to obtain any information under this Act, shall make a request in writing or through electronic means in English or Hindi or in the official language of the area in which the application is being made, accompanying such fee as may be prescribed.

Section 18. Powers and 'Functions of Information Commissions.—(1) Subject to the provisions of this Act, it shall be the duty of the Central Information Commission or State Information Commission, as the case may be, to receive and inquire into a complaint from any **person**.

15. If Section '3' declares that 'citizen' has right to information, other sections impose obligation/duty on public authority to give information to **persons**. This means that 'citizenship' alone cannot be considered as a ground to reject the RTI request. The public authority has to understand the RTI application to know its purpose and read with Section 3 along with section 6 of RTI Act besides referring

to aims & objectives of the RTI Application. Finally it has to be tested on the yardstick of section 8. If a non-resident Indian is asking any information from Public Authority, can it use the 'citizenship' as pocket pistol defence to shoot down the RTI request? No. Public authority should know that the non-resident Indians have dual citizenship.

16. Appellant penned his RTI application, first and second appeals in lucid manner explaining his grievance and sought information which is available with the public authority. From the records, it appears that appellant is singled out and harassed by the Education Officer and the Director, who also denied the information to him. The RTI Act mandated a senior officer to be the first appellate authority so that he would address the grievances if any, reflected in the information requests. Here Mr. Vineeth Joshi, (First Appellate Authority and Director) did not address the grievance which was his responsibility as the Director. He also did not go into the merits of information request which was his duty under RTI Act. It appears that Mr. Joshi realised his mistake only after confirming the denial order of CPIO on the ground that appellant was not citizen of India. In his second letter dated 26th September 2014, he took a different plea saying what appellant asked was not 'information' under Section 2(f), which plea also was untenable and unreasonable. Single line denial on wrongful ground by both the CPIO and First Appellate Authority gives rise to a suspicion about mala fide intentions. The Commission finds merit in the contention of the appellant and his grievance. His complaint appears to be prima facie genuine.

17. The RTI Act is meant for improving the systems and governance in public authority. It is a tool available to the citizens including employees to question the biased arbitrary and wrongful decisions of administrators. If an employee has raised an information request to know the reasons for biased decisions, it cannot be denied quoting Section 2(f). Rejection of his LTC benefit, Children Education Allowance, denial of confirmation letter are grievances of appellant. As there was no response he filed RTI request. Yet he was harassed by his officers.

18. The appellant has a right to this information in two capacities. First, as an employee of Public Authority; second, as a citizen/person under RTI Act. The Public Authority, more specially the Director has an obligation, in his capacity as employer to provide the information to his employee. The Public Authority also has duty to give information under Section 6 & 7 of RTI Act. Information sought

was relating to his employment and discrimination on governance caused by the Director and other officers. Appellant was a person affected by decisions of Director of Public Authority, and under Section 4 (1) (d), the Public Authority shall disclose the reasons for its decisions, to this affected person. Here, the question of his citizenship is irrelevant. By saying this Public Authority, Director and CPIO violated Section 4 (1)(d). By ignoring the fact that appellant was born in India and thus his citizenship was undisputed, PIO violated Section 3. If he used 'citizenship' issue as a lame excuse to harass the appellant by denying information. Under Section 6 & 7 of RTI Act, PIO should have performed his duty to "person" of appellant, without bothering whether he was citizen or not. As an employee, he was entitled to information, even if he was not citizenship. Thus, PIO and First Appellate Authority have breached their duties. Alleging him as not citizen, without any effort to ascertain whether he was citizen or not.

19. The Commission holds that Public Authority cannot deny information simply on the suspicion that appellant might not be a citizen of India. If it is baseless suspicion, PIO's action will be considered as malicious. Basically every person has right to information because Section 6 & 7 of RTI Act specifically mandated PIOs to give information to persons under RTI Act, Public Authority has to give information not only to citizen, but also to persons. Baseless doubting of 'citizenship' reflects malice. In these circumstances it cannot be a ground for denial of information. If PIO did not make any effort to examine his doubt about appellant's citizenship, he will be guilty of malicious denial of RTI.

20. The questions raised by appellant relates to biased administration in the CTSA where the appellant is allegedly denied his due benefits. The Commission directs the CPIO Mr. A. S. Rawat, Education Officer, and Director Mr. Vineet Joshi, FA considering him as deemed CPIO who obstructed the access to information, to show cause why maximum penalty should not be imposed against each of them and also why disciplinary action should not be recommended against them for this wrongful denial of information, within 21 days from date of receipt of this order. The Director Mr. Vineet Joshi is also directed to show-cause why public authority should not be directed to pay compensation to the appellant, for loss and other detriments caused to him due to unreasonable response of the officers as reflected in their replies and contentions.

21. The Commission directs respondent authority to provide point-wise information to the appellant, consider his grievance and give action taken report with detailed reasons on his complaints, and explain why letter referred in point 4 is not implemented, within 21 days from the date of receipt of this order. Second appeal is posted for penalty proceedings and compliance, to 26th October at 12 noon. If there is no response from the respondent officers by that date and if they are not present for explaining the show cause notices, the Commission will be compelled to decide penalty proceedings in their absence.

SD/-

(M. Sridhar Acharyulu)
Central Information Commissioner

Authenticated true copy

(Dinesh Kumar)
Deputy Registrar

Copy of decision given to the parties free of cost.

Addresses of the parties:

1. The CPIO under RTI,
Central Tibetan Schools Administration(CSTA),
ESS Plaza, Community Plaza, Sec-3,
Rohini, Delhi-110083.
2. Shri Dewa Tashi,
Central Tibetan Schools, Administration,
Bhanu Sarni, PO-Darjeeling-734101.