

CENTRAL INFORMATION COMMISSION
Club Building (Near Post Office)
Old JNU Campus, New Delhi - 110067
Tel: +91-11-26161796

Decision No. CIC/SM/A/2011/000294/SG/12297
Appeal No. CIC/SM/A/2011/000294/SG

Relevant Facts emerging from the Appeal:

Appellant : Mr. A.N. Gupta,
C-127, Sector-19, NOIDA
Distt. Gautambudh Nagar (LIP.)

Respondent : Mr. Pradip Kumar,
Superintendent of Police & CPIO
Central Bureau of Investigation (HQ)
Anti Corruption Cell— II, 8th Floor,
Lodhi Road, CGO Complex,
NEW DELHI

RTI application filed on : 23/08/2010
PIO replied : 29/09/2010
First appeal filed on : 04/10/2010
First Appellate Authority order : 19/10/2010
Second Appeal received on : 23/11/2010

Information sought by the appellant:

- i) Copies of the Complete Final Investigation Reports of the Investigating Officers and Law Officers in case of investment of:
- a. Rs.500 crore, Rs.200 crore and Rs.250 crore (aggregating Rs.950 crore in Bonds of West Bengal Infrastructure Development Finance Corporation Ltd.
 - b. Rs.200 crore in Himachal Pradesh Infrastructure Development Board and
 - c. Rs,150 crore in Vidharbha Irrigation Development Corporation.
- ii) Photocopies of all the Notesheets on which Investigation Reports in respect of West Bengal Infrastructure Development Finance Corporation Ltd., Himachal Pradesh Infrastructure Development Board and Vidharbha Irrigation Development Corporation were processed and finally approved/rejected by the Competent Authority.

Information provided by PIO:

“In this regard it is intimated that PE-1 (A)/2007/ACU-VI (relating to investment by HUDCO in West Bengal Infrastructure Development Finance Corporation (WBIDFC) Bonds), PE-2(A)/2007/ACU-VI (relating to investment by HUDGO in Vidarbha Irrigation Development Corporation (VIDC) and PE-3(A)/2007/ACU-VI (relating to investment by HUDCO in Himachal Pradesh Infrastructure Development Board (HPIDB) Bonds were registered by CBI, ACU-VI Branch. But the said PEs were closed after conclusion of the enquiry as per the orders of Competent Authority.

2. Copies of enquiry report in PE-1(A)/2007/ACU-VI and PE-3(A)/2007 containing pages 8 and 3 can be provided on deposit of the prescribed photocopying charge @ Rs. 2 per page.
3. Copies of the enquiry report/SP's Report in PE 2 (A)/2007-ACU-VI cannot be provided as the SP's Report is a privileged and confidential document, which cannot be disclosed either fully or in part. Moreover, SP's Report is submitted by the CBI to the department in fiduciary capacity, therefore exemption is claimed under sec 8 (1) (e) of RTI Act, Further, disclosure of the report even before a final decision by the competent authority would be inconsequential and the disciplinary/appointing

authority to chooses to disagree in such case besides being against the norms of equity would cause irretrievable injury to the officer/persons (who would have been the subject of investigation) standing and reputation. Disclosure of an investigation/enquiry report even before its acceptance/rejection by a given competent authority will expose that authority to competing pressure which may hamper and compromise objectivity of decision making. Thus, the SPs Report is a privileged and confidential document being exempted under Section 8 (1) (e) of RTI Act which cannot be disclosed either fully or in part. Reliance is also placed on the decision of CIC in Appeal No.CIC/AT/2008/01238 dated 19.09.2008 (Date of decision 07.06.2010).

4. As far as providing photocopies of Note sheet, it is to intimate that this is a document which contains comments of all officers of CBI and carries out the day to day investigation and the gist of the investigation recorded in the case diaries in order to prepare the decision of prosecution/departmental action. Since the involvement of number of officers is discussed based on the day to day investigation recorded in the case diaries therefore this document is held in confidence by the CBI. Thus exemption is sought u/s 8 (1) (g) of the RTI Act, 2005. Reliance is also placed on the decision of CIC passed in Appeal No.CIC/WB/2009/000503 dated 22.04.2009. (Date of Decision 27.07.2010).”

Grounds of the First Appeal:

Information not provided.

Order of the FAA:

Information had been provided on 29/09/2010, however information was again sent.

Ground for the Second Appeal:

a) The CPIO arbitrarily declined the disclosure of requested information.

b) The petition before the appellate authority has not been adjudicated upon.

The CPIO, CBI vide letter No.163/87/RTI/CBI/AC-II/2010 dated 2nd September, 2010 (Annexure-V) had agreed to provide the Enquiry Reports in case of PE-1/2007/ACU-V1 and PE-3(A)/2007, i.e. Investment by HUDCO in WBIDFC’ and HPIDB respectively. However, vide his letter No. 5777/87/RTI/C8I/AC-II/20 10 dated 26th October, 2010 (Annexure-VI), the CPIO, instead of providing the Enquiry Reports as sought for by the undersigned at i (a) (b) & (c) above, has simply provided Self contained Notes, in respect of PE-1. and PE-3 only AND NOT THE Enquiry Reports, as mentioned by him.

Relevant Facts emerging during Hearing:

The following were present

Appellant : Mr. A.N. Gupta;

Respondent : Mr. Pradip Kumar, Superintendent of Police & CPIO;

The Respondent has provided written submissions in which it is claimed that the disclosure of information sought by the Appellant would endanger the life or physical safety of certain persons and hence was exempted under Section 8(1)(g) of the RTI Act. The PIO had, in his original denial of information, claimed the exemptions under Sections 8(1)(e) and 8(1)(g) of the RTI Act. The PIO had stated that the SP’s report was a privileged and confidential document and hence exempted from disclosure under Section 8(1)(e) of the RTI Act. The Respondent stated that information about the investigation of CBI should not be revealed to people until a final decision was taken by the competent authority. The Respondent stated that all the inquiries were made in 2007 and inadequate evidence had been found to proceed with the matter.

The Appellant stated that he was seeking information about investment in various institutions totaling to Rs. 1300 crores. The CVC has, in its report of 27/03/2006, concluded “*in the four cases mentioned above there is adequate evidence to show that Commission’s (by whatever name called) were made by borrowing agencies to various private firms for mobilizing funds from HUDCO.....Thus in all these cases undue favours were caused to the private firms. It is also strongly suspected that part of these commissions may have been passed on to the officials of HUDCO.*”

The Appellant further stated that in all these cases the CBI had filed the closure report and sent it to the departments, which have in turn filed the closure report before the Supreme Court, asking for closure of the case. The Appellant states that Ministry of Housing and Urban Development has filed an affidavit in the Supreme Court stating that based on the CBI closure reports, all cases have been closed.

The PIO has denied the information claiming exemption under Section-8(1)(e) & (g) of the RTI Act. The Right to Information is a fundamental right of citizens and the denial of information can only be based on the exemptions under Section-8(1) of the RTI Act. When an exemption is claimed under Section-8(1), it is necessary that a public authority should be able to clearly justify its claim showing harm to a protected interest. The SP's report has been claimed to be protected by Section 8(1)(e) of the RTI Act. Section 8(1)(e) of the RTI Act exempts, "*information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;*".

The traditional definition of a **fiduciary** is a person who occupies a position of *trust* in relation to someone else, therefore requiring him to act for the latter's benefit within the scope of that relationship. In business or law, we generally mean someone who has specific duties, such as those that attend a particular profession or role, e.g. doctor, lawyer, financial analyst or trustee. Another important characteristic of such a relationship is that the information must be given by the holder of information who must have a choice,- as when a litigant goes to a particular lawyer, a customer chooses a particular bank, or a patient goes to particular doctor. An equally important characteristic for the relationship to qualify as a fiduciary relationship is that the provider of information gives the information for using it for the benefit of the one who is providing the information. All relationships usually have an element of trust, but all of them cannot be classified as fiduciary. Information provided in discharge of a statutory requirement, or to obtain a job, or to get a license, cannot be considered to have been given in a fiduciary relationship. In the instant case the SP's report is provided to the department in discharge of official duties and this certainly cannot qualify for information provided in the fiduciary capacity.

The PIO has also claimed exemption under Section 8(1)(g) which exempts, "*information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;*". The nature of investigations is about alleged bribery and no specific argument has been claimed as to who may face physical harm or threat to their lives on disclosure of such information. Mere fears without any justification cannot be a ground for denying the citizens' fundamental right. Further, the PIO did not raise any argument to the effect that disclosure of the information sought identify the source of information or assistance given in confidence for law enforcement or security purposes, as provided under Section 8(1)(g) of the RTI Act. Moreover, the Commission asked the Respondent whether he would like to sever the names of any individual before furnishing the information sought. However, the Respondent did not think it would serve any purpose.

Section -19(5) of the RTI Act clearly places the onus to prove the denial of request is justified on the PIO and the Commission does not feel any clear justification has been given. The Commission does not uphold the contention of the PIO that the information sought is exempted under Section-8(1)(e) and (g) of the RTI Act.

The preamble of the RTI Act states that "...AND WHEREAS democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed;" From the situation described by the Appellant, it appears that CVC found clear evidence showing bribes having been taken. However, now the CBI and the Ministry have come to the conclusion that there was no wrong doing. If corruption is to be curtailed and the Government and its instrumentalities are to be held accountable to the governed, citizens need to get information of this nature. This will ensure

that they will act as monitor and check on the government. In the absence of citizens being allowed to monitor their government and its large financial transactions, it is unlikely that the objective of containing corruption would be achieved by the RTI Act.

The Commission has come to the conclusion that none of the exemptions would apply to the information sought by the Appellant. Before parting with this matter the Commission is also convinced that even if any of the exemptions under Section 8(1) applied, this is a fit case where large public interest would outweigh the harm to any protected interest. Therefore, such information, as sought by the Appellant, would have to be disclosed in furtherance to Section 8(2) of the RTI Act.

Decision:

The Appeal is allowed.

The PIO is directed to provide the complete information as available on records to the Appellant before 30 May 2011.

This decision is announced in open chamber.

Notice of this decision be given free of cost to the parties.

Any information in compliance with this Order will be provided free of cost as per Section 7(6) of RTI Act.

Shailesh Gandhi
Information Commissioner
06 May 2011

(In any correspondence on this decision, mention the complete decision number.) (sg)