

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

Decision No. CIC/SM/A/2011/000300/SG/13252
Appeal No. CIC/SM/A/2011/000300/SG

Relevant Facts emerging from the Appeal:

Appellant : Mr. Anil Kumar Dhyani
207- B, Pocket- One, Mayur Vihar Phase- One,
Delhi-110091

Respondent : CPIO,
CBI/ ACB,
Block No- 4, 5- B, First Floor,
CBI Building, Lodhi Road,
New Delhi- 110003

RTI application filed on : 16/03/2010
PIO replied on : 23/04/2010; 30/07/2010; 13/09/2010
First Appeal filed on : 27/04/2010
Order of FAA : 06/07/2010; 03/11/2010
Second Appeal filed on : 07/12/2010

Information sought in RTI application dated 16/03/2010:

Inspection of documents/ records/ statement of witnesses recorded under Section 161, Cr. P. C. in CBI Case No. RC-DAI-2002-A-0033:

- (i) All the complete Original statements recorded u/s 161 Cr. P. C. by the Investigating Officer during investigation of those witnesses which are neither relied upon nor filed in the court along with the Charge Sheet by the CBI in above mentioned case.
- (ii) All the complete Original files/ documents/ letters/ records/ seizure memos and acknowledgment receipts etc which were seized by the CBI during investigation but the same was not filed in the court along with the charge sheet by them.
- (iii) Any other records/ files etc pertains to my case which was not filed by the CBI along with the charge sheet in the court and at present still lying in CBI custody.

Reply of Public Information Officer (PIO) dated 23/04/2010:

“In this connection it is intimated the case is under trial and the inspection of concerned files/ documents may impede the prosecution of the offenders. Exemption is claimed u/s 8(1)(h) of RTI Act, 2005 for denying the information sought.”

Grounds for First Appeal filed on 27/04/2010:

The PIO failed to consider the fact that when the Appellant had sought documents which were not relied upon by the CBI during the trial, then how it would impede the prosecution of offenders. The PIO also failed to consider the fact that the Appellant wanted to inspect all the records which were lying with the CBI as the same had not even been filed in the court by them. Section 8(1)(h) of the RTI Act was not applicable.

Order of the First Appellate Authority (FAA) dated 06/07/2010:

“There is no reason for the CPIO to claim exemption u/s 8(1)(h) of the RTI Act for copies of statements, which have been recorded u/s 161 Cr.PC, but have not been relied upon in the court. Copies of these statements should be given to the appellant subject to Section 8(1)(g) of the RTI Act. The CPIO should reconsider in this light.

As regards the seizures made by CBI, the same would have been done on the warrants given by the court and the result of the search and seizure would also have been submitted in the court. The CPIO should consider supplying these documents after obtaining orders from the concerned court.

As regards other files/documents, etc. which are not relied upon in the court, the applicant may be given an opportunity to examine the same and thereupon copies which are required by the appellant be provided to him subject to provisions of the RTI Act.”

Reply of the PIO dated 30/07/2010 (after the FAA’s order dated 06/07/2010):

“a) In this connection with respect to query (i), (ii) it is intimated that unrelayed upon statements/seizure memos will be supplied after the due permission of the Hon’ble Court.

b) With respect to query (iii) it is intimated that files/ documents which are not relied upon in the court can be inspected by you on any working day between 10:30 A. M. to 5 P. M. with prior intimation.”

In response to the PIO’s letter dated 30/07/2010, the Appellant, vide letter dated 12/08/2010, intimated the PIO that he had inspected one file on 12/08/2010 and that he required certified photocopies of all the documents mentioned in his letter. The PIO, vide letter dated 13/09/2010, replied that the statements cannot be provided as the information provided in confidence to law enforcement agencies may endanger the safety of the person. Therefore, the information sought was denied claiming Section 8(1)(g) of the RTI Act. Information sought regarding Case Diary No. 22 dated 05/04/2004 and 23 dated 06/04/2004 (2 pages), the PIO replied that the case was under trial and information was denied under Section 8(1)(g) of the RTI Act and the Appellant was asked to move the court for necessary information.

Thereafter, the Appellant, vide letter dated 04/10/2010, approached the FAA and stated that the order of the FAA had not been complied with and the denial of information by the PIO on the basis of Section 8(1)(g) of the RTI Act was not correct. The FAA, vide another order dated 03/11/2010 observed that the Appellant had sought information on points 2(a) and (e) as mentioned in his letter dated 12/08/2010. The FAA noted that as regards point 2(a), the PIO rightly denied the information on the basis of Section 8(1)(g) of the RTI Act. As regards point 2(e), the FAA noted that there was clear law as per Section 173(2) of the Cr. P. C. that neither the accused nor any of his agents could call for Case Diary of a particular case. Such denial of Case Diary by PIO was as per law. Moreover, the Commission in its decision dated 27/07/2010 in Appeal No. CIC/WB/A/2009/000503 had ruled accordingly.

Grounds for Second Appeal:

The information sought was not provided.

Relevant Facts emerging during Hearing held June 8, 2011:

The following were present:

Appellant: Mr. Anil Kumar Dhyani;

Respondent: Mr. V. P. Sharma, ASP on behalf of Mr. S. K. Palsania, CPIO & DIG.

The PIO stated that in the instant matter prosecution was pending and hence he could not part with the information. He stated, *“We cannot part with any information or documents or article without the permission of the Court obtained through due process of law. Whatsoever information/ document/ article*

obtained/ ceased/ collected during the investigation are being held by the agency on behalf of the court". The PIO also claimed exemption under Section 8(1)(g) of the RTI Act for documents not relied upon during the prosecution and stated that *"the information provided in confidence to the law enforcement agencies may endanger the spirit of the process and the safety of the persons"*.

The Appellant stated that the FAA had not upheld the exemption claimed by the PIO under Section 8(1)(h) of the RTI Act and he was allowed to inspect all the documents. The Appellant also pointed out that the FAA had ordered that as regards the seizures made by CBI, since these would have been done on warrants given by the Court, the CBI should consider supplying these documents after obtaining orders from the concerned Court. The Appellant asked whether the PIO had approached the concerned court as per the order of the FAA. The PIO stated that he had not approached any court and that the order of the FAA meant the Appellant would have to approach the Court.

The Commission asked the PIO if the names of witnesses/ informants were blanked out from the photocopies of records to be given to the Appellant, whether he could still justify the exemption under Section 8(1)(g) of the RTI Act. The PIO stated that if the names and addresses were blanked out, then he would not claim the exemption under Section 8(1)(g) of the RTI Act.

The Appellant stated that he was given inspection only of some documents since the FAA had stated that order should be obtained from the concerned Court, which has not been done so far. The PIO contended that the orders were required to be obtained by the Appellant, whereas the Appellant argued that the relevant order should be obtained by the PIO. The Respondent also relied on the judgment of the High Court of Delhi in *Surendar Pal Singh v. Union of India* W. P. (C) 16712/2006 and the decision of the Commission in Appeal No. CIC/AT/A/2008/01238 dated 07/06/2010.

The Commission reserved the order during the hearing held on 08/06/2011.

Decision announced on 4 July 2011:

The Commission has perused the relevant papers including the decisions cited before it by the Respondent at the hearing held on 08/06/2011. The Commission noted that post- inspection, the Appellant has primarily sought information on points (a) and (e) in his letter dated 12/08/2010. The PIO has denied the same on the basis of Section 8(1)(g) of the RTI Act, which has been upheld by the FAA. The PIO has claimed exemption under Section 8(1)(g) of the RTI Act for documents not relied upon during the prosecution and stated that disclosure of the information sought would identify the source of information or assistance given in confidence for law enforcement purposes. However, at the hearing held before the Commission on 08/06/2011, the PIO stated that if the names and addresses were blanked out from the relevant records, then he would not claim the exemption under Section 8(1)(g) of the RTI Act.

The Commission is of the opinion that there is some merit in the contention raised by the PIO and disclosure of the information sought may attract Section 8(1)(g) of the RTI Act. Section 10(1) of the RTI Act provides as follows:

"10. Severability.- (1) Where a request for access to information is rejected on the ground that it is in relation to information which is exempt from disclosure, then, notwithstanding anything contained in this Act, access may be provided to that part of the record which does not contain any information which is exempt from disclosure under the RTI Act and which can reasonably be severed from any part that contains exempt information."

Under Section 10 of the RTI Act, it is possible to sever certain portions of the information before disclosing it to an applicant to ensure that information that is exempt from disclosure under the RTI Act is not disclosed. Therefore, this Commission has decided to apply Section 10 of the RTI Act to the information sought by the Appellant on points (a) and (e) in his letter dated 12/08/2010. The PIO is directed to provide the complete information sought on points (a) and (e) of the Appellant's letter dated 12/08/2010 after severing the names and other particulars of persons, the disclosure of which would endanger their life or physical safety or identify the source of information or assistance given in confidence for law enforcement or security purposes.

In view of the reasoning given above, the decisions cited before the Commission by the PIO in Surendar Pal Singh v. Union of India W. P. (C) 16712/2006, CIC/WB/A/2009/000503 dated 27/07/2010 and CIC/AT/A/2008/01238 dated 07/06/2010 become irrelevant to the present matter.

Further, the FAA, in its order dated 06/07/2010, has observed that as regards the seizures made by CBI, the same would have been done on the warrants given by the Court and the result of the search and seizure would also have been submitted in the Court. The FAA, therefore, ordered that the CPIO should consider supplying these documents after obtaining orders from the concerned Court. The Commission noted that this information has not been provided to the Appellant till date. It is established that information under the RTI Act can be denied only on the basis of Sections 8 and 9 of the RTI Act. However, in the instant case, information regarding seizures made by CBI has been denied (as noted by the FAA) on the basis that such seizures would have been done on the warrants issued by the Court and the result of such search and seizures would have been submitted to the Court and therefore, orders must be obtained from the concerned Court before furnishing such information.

The Commission does not agree with these observations of the FAA. Merely because certain search and seizures have been made on the directions given by the Court and the results of the same have been submitted to the said Court, that in itself cannot be a ground for denial of information under the RTI Act. It must be clearly established that disclosure of such information has been expressly forbidden to be published by any Court of law or tribunal or may constitute a contempt of Court, as mandated under Section 8(1)(b) of the RTI Act. In the present matter, the PIO has failed to establish how disclosure of this information would attract the exemption contained in Section 8(1)(b) of the RTI Act.

The Appeal is allowed. The PIO is directed to provide the following information to the Appellant before 30 July 2011:

1. Information on points (a) and (e) in Appellant's letter dated 12/08/2010 after severing the names and other particulars of persons, the disclosure of which would endanger their life or physical safety or identify the source of information or assistance given in confidence for law enforcement or security purposes; and
2. Relevant documents/ records pertaining to seizures made by CBI during investigation, which have been filed in the Court

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
04 July 2011

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