

CENTRAL INFORMATION COMMISSION
Club Building, Old JNU Campus,
Opposite Ber Sarai, New Delhi 110 067.
Tel: +91 11 26161796

Decision No. CIC/SG/C/2009/000702/4128Adjunct
Complaint No. CIC/SG/C/2009/000702

SHOW CAUSE HEARING

Complainant : Mr. Dharmender Kumar Garg,
Chamber No. 412, Delhi High Court,
New Delhi - 110003

Respondent : Mr. Raj Kumar Sah
PIO
Registrar of Companies & CAPIO
NCT Delhi and Haryana,
4th Floor, IFCI Tower,
Nehru Place, New Delhi - 110003

RTI application filed on : 28/05/2009
PIO replied : Not mentioned
First Appeal filed on : Not mentioned
First Appellate Authority order : Not mentioned
Complaint filed on : 02/06/2009

Information Sought:

The Complainant had sought information from PIO regarding M/s Bloom Financial Services Limited through following queries:

- 1- Who are the directors of this company? Please provide their name, address date of appointment and copies of consent filed at ROC.
- 2- After incorporation of above company, how many times directors were changed? Please provide the details of documents files and copies of Form 32 filed at ROC.
- 3- Please provide the copied of Annual Returns filed at ROC since incorporation to 1998.
- 4- On what ground prosecution has been filed please provide the details of prosecution and persons included for prosecution. Please provide the copies of Order Sheets and related documents.
- 5- On what ground the name of Dharmender Kumar Garg has been included for prosecution?
- 6- Please provide the copies of Form no.5 and other documents filed for increase of capital?
- 7- How much fee was paid for increase of Capital of above company? Please provide the details of payment of fee at ROC.
- 8- Please provide the copies of Statutory Report and SLP filed at ROC.

PIO's Reply:

Not mentioned.

Order of the First Appellate Authority:

Not mentioned.

Relevant facts emerging during hearing 1 July 2009:

The following were present:

Complainant: Mr. Dharmender Kumar Garg

Respondent: Mr. Raj Kumar Sah, PIO and Mr. Atma Sah

The respondent states that the information is available under the Section 610 of the Companies Act on payment of the prescribed fee. The respondent is also relying on the department circular of Ministry of Company Affairs dated 24/01/2006, a decision of the Commission CIC/MA/A/2006/00016 dated 29 March 2006 and CIC/AT/A/2007/00112 dated 12 April 2007 (particularly paras 8, 12 and 13).

The Complainant states, "their web site was inspected on 06 May 2009 on payment of Rs.50/- but no information was available. Thereafter after getting the reply under RTI, I went to Manesar office (Gurgaon) and file was inspected. It was mentioned in the file that past records had been weeded out. Only three four documents were available, I took the copies on payment of more than Rs.1200/- even then the information could not be collected from the record. The files are totally incomplete."

The Complainant's contention therefore is that prosecution has been launched against him inspite of the fact that the records are not up-to-date. The respondent's main contention is that since they offer inspection under Section 610 of the Companies Act on payment of the prescribed fee, they need not give information under the Right to Information Act.

The decision was reserved during the hearing.**Decision announced on 14 July 2009:**

The Commission had heard both the parties. The Respondent had submitted the following arguments before the Commission to deny the information:

1. Once the information is available in the public domain accessible to the citizens, the information is automatically excluded from purview of the RTI Act as held by Hon'ble Information Commissioner Shri A.N. Tiwari in the case of CIC/AT/A/2007/00112
2. Section 610 of the Companies Act, 1956 provides that any person may inspect any document kept by ROC and obtain copy of any document from the ROC concerned on payment of prescribed fee. Therefore, the Complainant need not seek information under RTI Act. This was held by Hon'ble Information Commissioner Shri M.M. Ansari in the case of CIC/MA/A/2006/0016.

For the first argument the Respondent relied on order number CIC/AT/A/2007/00112 where it was held by the Hon'ble Commission while interpreting Section 2(j) of the RTI Act that "...unless an information is exclusively held and controlled by a public authority that information cannot be said to be an information accessible under the RTI Act. Inferentially it would mean that once a certain information is placed in the public domain accessible to the citizens either freely or on payment of a pre-determined price that information cannot be said to be 'held' or 'under the control of the public authority' and thus would cease to be an information accessible under the RTI Act..." I would respectfully beg to differ from this decision. Even if the information is in public domain, an applicant can still ask a public authority to grant him the information if it is held by it. Even if some information is available at various places, it is the Citizen's choice from where he wishes to access it. The only exemptions from disclosure of information available in the RTI Act are provided under Section 8 and 9. The Commission would like to clarify that Section 2 of the RTI Act is the definitional provision and therefore Section 2(j) is not an exemption clause under RTI Act. It merely defines the 'right to information'. So the exemption from disclosing the information cannot be sought under Section 2(j). It is also the basic tenet of the law of statutory interpretation that no section should be interpreted in such a manner which would violate the basic objective of the statute. The basic objective of the Right to Information Act, 2005 is to provide the information sought by the Applicant from a public authority

and therefore the sections of the same act should be interpreted to further the objective of this Act. Also the information sought by the Complainant here has not been provided on the internet. The information asked for is very basic information and records related to this particular information are missing. This information is very important for the Complainant as he is facing a threat of arrest and needs the information to prove his innocence. Not granting such information clearly leads to violation of the fundamental right of the Complainant as provided under Article 21 of the Constitution.

With regard to the second argument of the Respondent about information to be sought only under Section 610 of the Companies Act, the Respondent has relied on order number CIC/MA/A/2006/0016 of the Commission where the Hon'ble Commissioner Shri M.M. Ansari upholding FAA's order stated that "There is already a provision for seeking information under Section 610 of The Companies Act, 1956. The Complainant may accordingly approach the ROC as advised by the Appellate Authority to obtain the relevant information." If the Complainant has more than one way of seeking remedy he has the freedom to opt for the way which is more convenient for him. No claim has been made by the PIO of any exemption under the RTI Act to deny the information. **If a Public Authority has a procedure of disclosing certain information which can also be accessed by a Citizen using the Right to Information Act, it is the Citizen's prerogative to decide which route he wishes to take.** The existence of another method of accessing information cannot be a justification to deny the Citizen his freedom to exercise his fundamental right codified under the Right to Information Act. If the Parliament wanted to restrict this right, it would have been stated expressly in the Act. Nobody else has the right to constrain or limit the rights of the Sovereign Citizen.

The Commission observed that there was no provision in the Right to Information Act which restrained the Citizen's right to use it if another route to access information has been offered. It was a Citizen's right to use the most convenient and efficacious means available to him.

It appeared to the Commission that information was being denied to the Complainant without any valid grounds and this delay had caused mental agony to the Complainant who was living under the constant fear of arrest.

The Complaint was allowed. The Commission directed that complete information was to be given to the Complainant before 25 July 2009. If records were not available for any of the queries, this would be stated categorically. The Commission issued a show cause notice to the PIO directing him to give his written submissions to show cause why penalty should not be imposed on him as mandated under Section 20 (1) before 5 August 2009. He was also directed to submit proof of having given the information to the Complainant.

Relevant facts emerging during hearing on 10/09/2009

The following persons were present:

Complainant: Mr. Dharmendra Kumar

Respondent: Mr. Raj Kumar Sah, CPIO; Mr. Pankaj Batra, Advocate

The PIO states that they have approached the Delhi High Court to stay the order of the Commission. The High Court in WP (C) 11271/2009 has ordered on 31/08/2009 that:

"Information will be supplied to the respondent No.1 in terms of the impugned order. Counsel appearing for the petitioner states that the Central Information Commission has initiated the proceedings under Section 20(1) of the Right to Information Act, 2005. He submits that the earlier view of the central Information Commission was contrary as has been noticed in the impugned order itself. Proceedings under Section 20(1) of the Right to Information Act, 2005 may continue and final order may be passed out the said final order will not be given effect to till the next date of hearing". The next date of hearing has been fixed for 04/12/2009.

Consequent to the order the PIO has supplied to the information to the Complainant on 08/09/2009. There are some additional points that need to be covered since many documents are missing. The PIO is directed to give the following information to the Complainant before 20/09/2009:

1. If there is evidence showing that the documents have been weeded out, copies of the documents showing the weeding out.
2. Copy of the Police Complaint showing theft/loss of these documents and a certificate from the Registrar of Companies to this effect.

The PIO was asked why he should not be penalized for the delay. They have explained that he was depending on advice from his own organization and also the fact that two orders of the Commission listed above appeared to support their contention. After the order of the Commission, the public authority wanted to avail the opportunity of challenging it in the High Court. However, subsequent to the High Court they have complied with the Commission's decision.

In view of this the Commission accepts that there was a reasonable cause for the denial of information by the PIO and drops the penalty proceedings.

This decision is announced in open chamber.

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

Shailesh Gandhi
Information Commissioner
10 September 2009

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

(R.K)