

CENTRAL INFORMATION COMMISSION

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Decision No. CIC /OK/A/2008/01303/SG/1145

Appeal No. CIC/OK/A/2008/01303/

Relevant Facts emerging from the Appeal

Appellant : Mr. Neeraj Kumar,
Saraswatipuram, J.N.U,
New Delhi-110067.

Respondent 1 : Mr. Jit Singh,
DR (SC/ST Cell) & PIO,
Jawaharlala Nehru University,
Room No. 133, SC/ST Cell (Admn. Block),
Jawaharlal Nehru University,
New Delhi-110067.

RTI filed on : 24/06/2008
PIO replied : 14/07/2008
First appeal filed on : 11/08/2008
First Appellate Authority order : 08/09/2008
Second Appeal filed on : 17/09/2008

Information Sought:

The Appellant had filed an application asking some information as under:

1. Copies of all the proceedings of the Inquiry Commission which was constitute to probe the defalcation of funds in S SP Programme, CSSP/SSS against the Prof. Ashok Parthasarthy.
2. A certified copies of all the documents tendered in evidence before the Inquiry Committee by Prof. Ashok Parthasarthy and J.N.U. Administration.
3. A certified copy of the final Inquiry Committee report.
4. Whether the finding of the Inquiry Committee have been implemented by the J.N.U Administrations, if yes, then provide complete records and documents.

The PIO's Reply:

"Since no final decision has been taken on the said inquiry report, the information pertaining to the inquiry, cannot be disclosed at this stage because it is barred in terms of Section 8(1)(h) read with 8(1)(g) of the RTI Act."

The First Appellate Authority Ordered:

"The information cannot be disclosed at this stage in view of Section 8(1) (h) read with 8(1) (g) of the RTI Act. The Appellant was also informed of the two decision of the Information Commission, which are enforcement or security purpose. The Appellant agreed that the necessary information regarding the date of constitution of the Inquiry Committee, the date of submission of report and the date on which the EC considered the report, may be provide to him. Accordingly, it is informed that:

1. The Inquiry Committee was constituted on 25-01-06.
2. The report was submitted on 21-08-07.
3. The report was placed before EC on 29-09-07.

The appeal accordingly stands disposed off."

Relevant Facts Emerging During the Hearing on 13 January 2009:

The case was taken up for hearing on 13/01/2009. Appellant Mr. Neeraj Kumar was present during the course of hearing and respondent was represented by PIO Mr. Jeet Singh and Deemed PIO Mr. Yashwant Singh.

The appellant contended before the Commission that the inquiry committee was constituted on 25/01/2006, to probe the defalcation of funds in Science and Policy program of SSS of JNU. The report was submitted by the Inquiry Committee on 1/08/2007. The report was placed before the E.C on 29.09.2007.

He further contended that for the last one year J.N.U Administration has failed to take any action against the finding to the Inquiry Report. Appellant emphasized on the fact that the object of the RTI Act is to prevent corruption, and increase the transparency in the functioning, decision making and governance of the Administration. Appellant highlighted the fact that large amount defalcation of public funds is involved.

On the other hand, respondent once again reiterated its stand taken in its reply dated 14/06/2008 and put before the Commission that the information was denied to the appellant on the exemption of Section 8 (1) (h) read with Section 8 (1) (g) of the RTI Act. He also relied on the earlier two decision of the Hon'ble Commission in the matter of Shri Govind Jha vs. DGW.E in C Branch Army HQS- in Appeal No. CIC/AT/A/2006/00039 dated 01/06/2006 and the matter of Shri Ravinder Kumar vs. Joint Commissioner of Police in Appeal No. CIC/AT/A/2006/00004 dated 30/07/2006.

The appellant further contended that even if the above two cited decisions support the stand taken by the respondent for denial of information but still in Govind Jha's case the Hon'ble Commission, asked the disciplinary committee to take a view within two months in respect of findings in the investigating report so that the appellant right to access the investigation report can be reactivated without any unconscionable delay.

The decision is reserved.

Decision given on 16 January 2009:

The Right to Information is one of the most fundamental Human Rights recognized by the world community and stands incorporated in the Universal Declaration of Human Rights and International Covenant on Civil and Political Rights (Art.19). This has always been a Fundamental Right of the citizens under Article 19 (1) (a) of the Constitution of India, and stands codified as the Right to information Act, 2005.

As per Section 3 of the RTI, citizens right to information, is the rule and exemptions under Section 8, is exception. Section 8 being a restriction on this fundamental right, must therefore is to be strictly construed. It should not be interpreted in manner as to take away the substantive right created by the Act.

The Public Information Officer and the First Appellate Authority have denied the information on the grounds of Section 8 (1) (g)& (h). Section 8 (1) (g)& (h) of the RTI Act 2005 exempt :

- (g) *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;*
- (h) *information which would impede the process of investigation or apprehension or prosecution of offenders; from disclosure.*

In the present case the commission finds that no reason is assigned by the PIO or the first appellate authority as to how the investigation or apprehension of any offenders will be impeded by disclosing this report. As a matter of fact since the report was submitted on 21-08-07, there can be no reason to deny this or all the other relevant information. Inquiries into various matters are conducted with Public money and Public has a right to know their findings. Keeping them under wraps for months and years serves no purpose except allowing wrongdoers to be protected. The PIO's use of Section 8 (1) (g) claiming that disclosure of the information would endanger the life or physical safety or identify the source of information appears to a flight of fancy, in the absence of any cogent reasoning.

The Hon'ble High Court of Delhi in the matter of Bhagat Singh vs. Chief Information Commissioner and Ors. dated 03/12/2007, at para 13 has held as follows:

“Under section 8, exemption from releasing information is granted if it would impede the process of investigation or the prosecution of the offenders. It is apparent that the mere existence of an investigation process cannot be a ground for refusal of the information; the authority withholding information must show satisfactory reasons as to why the release of such information would hamper the investigation process. Such reasons should be germane, and the opinion of the process being hampered should be reasonable and based on some material. Sans this consideration, Section 8(1) (h) and other such provisions would become the haven for dodging demands for information.”

Thus no reasonable ground exists for denial of the information and the PIO and the First appellate authority have erred in their decision. While parting we must also point out that even if the PIO and the First appellate authority had made the error of taking refuge in these two sections, they should have applied Section 8 (2) of the Act and realised that there is an overriding Public interest in disclosing this information since it relates to alleged defalcation of funds. If the inquiry report reveals defalcation there is a Public interest in knowing about it, if it reveals that no defalcation has occurred it will exonerate the alleged perpetrators.

The Commission finds the denial of information to be without the basis of law.

The appeal is allowed.

The PIO will give the complete information to the appellant free of cost before 5 February 2009.

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

Shailesh Gandhi
Information Commissioner
16th January, 09.

(For any further correspondence, mention the decision number given on top.)