CENTRAL INFORMATION COMMISSION

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Central Information Commissioner

CIC/POSTS/A/2017/131334

Manjit Singh Bali v. PIO, Department of Posts

RTI	:	18.02.2017
FAO	:	21.03.2017
Second Appeal	:	10.05.2017
Hearing	:	29.06.2017
Appellant	:	Present
Public Authority	:	Parveeta Dhawan, ADG(Vigilance)
Decided On	:	30.06.2017

FINAL ORDER

FACTS:

1. The appellant sought information on sanction for prosecution by the Central Government, signed by ADG (Vig.I) of Department of Posts on 03.03.2015 issued u/s. 19(1)(a) of the Prevention of Corruption Act, 1988 against the appellant to prosecute for offences u/s. 13(2) r/w section 13(1)(e) of the Prevention of Corruption Act, 1988 on the allegation that he held assets disproportionate to his known sources of income during the period 01.04.2000 to 25.02.2010 which he could not explain satisfactorily. On the strength of that prosecution sanction, the CBI filed a charge sheet in Special Court, Greater Bombay on 26.03.2015 in Special Case no. 41 of 2015. Specifically he sought for authenticated photocopy of the entire file wherein the said prosecution sanction against the appellant, the then Chief PMG was accorded and conveyed to the CBI; were any statements of Shri Manjit Singh Bali explaining his income and/or assets to CBI received from the CBI while seeking prosecution sanction, at any stage, details of that and authenticated copies of those statements and the copy of the draft prosecution sanction sent by the CBI. The CPIO on point no. 1 to 4 demanded a sum of Rs. 48/- by way of photocopying charges and with regard to other documents pertaining to CBI was not furnished by taking shelter of 8(1)(h) of RTI Act saying it would impede the process of

investigation. FAA ordered that information may be provided under section 11 of RTI Act. Being dissatisfied with the response, the appellant approached this Commission.

Decision:

2. According to Section 19(5) of RTI Act, 'the onus to prove that a denial of a request was justified shall be on the CPIO who denied the request'. The CPIO did not discharge that burden by showing that disclosure of the file notings of sanction of prosecution would **impede the process of investigation**. It is unimaginable that disclosure of file notings of sanctioning the prosecution would obstruct the prosecution. If the sanction is justified, it would strengthen the prosecution. Even if there is anything irregular in sanction of prosecution, that will not straight away result in acquittal of the accused. The conviction of charge-sheeted officer for corruption or disproportionate assets would solely depend on the strength of evidence, as per law. If the accused is caught red handed in a bribery case and his department sanctioned for prosecution, how can that create hurdles in the prosecution? The prosecution is happening because of sanction. How can details of that sanction obstruct the prosecution? A mere mention of provision of exemption the CPIO will not justify the denial.

3. Section 8(1)(h) is most contended issue. Whether disclosure will impede the prosecution is the question. There are several orders by different High Courts. The Delhi High Court in 2006, just within a few months of commencement of Right to Information Act. ***Surinder Pal Singh v UoI*** (2006), the High Court concluded that disclosure of information sought would 'impede' and should be denied. We need to examine the judgment of Justice Anil Kumar (Delhi High Court) in ***Surinder Pal Singh v UOI*** delivered on 10.11.2006, which was later agreed by Division Bench in LPA. In this case phones of petitioner were monitored, his alleged nexus with Capt IPS Malhotra was revealed and during a house search conducted at the residence of Capt Malhotra the bribe amount of Rs 3 lakhs allegedly belonging to petitioner Surinder Singh was seized by CBI. He demanded details about sanction of his prosecution. The public authority took the defence of 'sub-judice' and section 8(1)(h). Based on the facts and

evidence of the case, CPIO, First Appellate authority, CIC and the High Court were convinced that disclosure would impede the prosecution. Mr. Surinder Pal Singh preferred LPA to a division bench, which refused to intervene. The DB of Delhi High Court in this case observed: "The appellant in our considered opinion has sufficient scope and option to raise the issue of sanction in the trial. This cannot be a ground to direct furnishing of information contrary to section 8(1) (h) of the Right to Information Act. The authorities under the aforesaid Act cannot examine and hold that sanction is valid or bad in law". Careful reading of these two orders in ***Surinder Pal Singh*** reveal that none brought Section 22 of RTI Act to the notice of either single judge bench or division bench of the Honourable High Court of Delhi; had it been discussed, the result would have been different. It is correct that the authorities under RTI Act cannot examine validity or legality of 'sanction' but it is within their statutory jurisdiction to decide whether it could be disclosed or not. Information cannot be denied under RTI Act because the trial court is considered appropriate forum and appellant has sufficient scope and option to raise the issue of sanction in the trial. Question whether information should be disclosed or not need to be decided under the provisions of RTI Act only, because it overrides all the existing laws as per Section 22.

4. This being a division bench judgment surely has significance. Several cases that came on this subject before the Delhi High Court, this order was not followed because it was given without referring to Section 22 of RTI Act. The disapproval to this order began in 2007. DHC disapproved this conclusion in ***SM Lamba vs. SC Gupta*** **(2007)** case WP(C) no. 6226/2007,where the issue was again the demand for information on sanction of prosecution, which was declined by CBI, because it was treated as confidential. The bank has invoked section 11 of RTI Act to refuse the information. The petitioner submitted that after charge sheet has been filed and an order framing charges has also been passed, withholding the documents was no longer justified. Justice S. Muralidharan made a categorical observation that under the CrPC, once the stage of an order framing charges has been crossed it would be open to the accused to ask the court to summon the document of sanction for prosecution. ***The court also observed that it would not impede the***

trial which is already under progress. He finally held that there was no justification in withholding the information and modified CIC order directing the bank to provide information.

5. ***Proof of 'impeding' essential:*** In ***Bhagath Singh*** (2007) case the facts are totally different. Appellant wanted to defend the charges of dowry, for which he was probing the source of dowry, the income, tax etc. He apprehended tax evasion and filed TEP (Tax Evasion Petition). To know the investigation related details on TEP, he filed RTI request. The court went into the 'impede' question. The word 'impede' used in section 8(1)(h) holds the key to whether information requested by the appellant should be allowed to be disclosed. In Bhagath Singh it was held that disclosure would cause no prejudice to department (will not affect proceedings in TEP). Justice Ravinder Bhat's judgment in ***Bhagath Singh*** (2007) was upheld by the Hon'ble Division Bench of High Court of Delhi in LPA No. 1377 of 2007 dated 17.12.2007. In ***Sudhir Ranjan*** (2013), Justice Rajiv Shakdher referred to the conclusion in ***Bhagat Singh***, that provision of the Act to mean that in order to claim exemption under the said provision, the authority withholding the information must disclose satisfactory reasons as to why the release of information would hamper investigation. The reasons disclosed should be germane to the formation of opinion that the process of investigation would be hampered. The said opinion should be reasonable and based on material facts. He said: 'the learned single Judge, I may note, goes on to observe that sans this consideration'. Whether facts are different or same, the principle is that "impeding" or 'hampering' effect of disclosure on prosecution has to be established by the public authority to take advantage under s. 8(1)(h). When Commission asked the representing officer of CBI as to how the disclosure would impede the prosecution, he put forward only one point that accused would challenge the 'sanction' in the court of law, which would delay the prosecution. Except this he could not give any cogent reason to convince the Commission on this point.

6. ***Bhagath Singh confirmed in 2009:*** In ***Deputy Commissioner of Police v D K Sharma***, W.P.(C) 12428/2009 & CM APPL 12874/2009,Justice Muralidhar of Delhi High Court said: "*This Court is*

inclined to concur with the view expressed by the CIC that in order to deny the information under the RTI Act the authority concerned would have to show a justification with reference to one of the specific clauses under Section 8 (1) of the RTI Act. In the instant case, the Petitioner has been unable to discharge that burden".

7. ***B.S. Mathur v. Public Information Officer of Delhi High Court (2011)***: W.P.(C) 295/2011, decided on 03.06.2011 which said: *Whether the disclosure of the information sought by the Petitioner to the extent not supplied to him yet would "impede the investigation" in terms of Section 8 (1) (h) RTI Act? The scheme of the RTI Act, its objects and reasons indicate that disclosure of information is the rule and nondisclosure the exception. A public authority which seeks to withhold information available with it has to show that the information sought is of the nature specified in Section 8 RTI Act. As regards Section 8 (1) (h) RTI Act, which is the only provision invoked by the Respondent to deny the Petitioner the information sought by him, it will have to be shown by the public authority that the information sought "would impede the process of investigation." The mere reproducing of the wording of the statute would not be sufficient when recourse is had to Section 8 (1) (h) RTI Act. The burden lies on the public authority to show in what manner the disclosure of such information would 'impede' the investigation. Even if one went by the interpretation placed by this Court in W.P. (C) No.7930 of 2009 [**Additional Commissioner of Police (Crime) v. CIC, decision dated 30th November 2009**] that the word "impede" would "mean anything which would hamper and interfere with the procedure followed in the investigation and have the effect to hold back the progress of investigation", it has still to be demonstrated by the public authority that the information if disclosed would indeed "hamper" or "interfere" with the investigation, which in this case is the second enquiry". (Paragraph 19).*

8. This principle was reiterated in ***Union of India v O S Nahara (2012)***, W.P (C) 3616/2012, Delhi High Court held: A careful reading of the provision would show that the holder of the information can only withhold the information if, it is able to demonstrate that the information would

"**impede**" the process of investigation or apprehension or prosecution of the offenders.

9. ***Sudhir Ranjan Senapati, in 2013:*** Justice Rajiv Shakdher in his judgment on 5.3.2013 in ***Sudhir Ranjan Senapati, Addl Commissioner of IT vs Union of India,*** has dealt with an issue which is substantially same in this appeal, with utmost finality. In ***Sudhir Ranjan*** sanction accorded qua prosecution triggered the request for furnishing information with regard to the decision arrived at in that behalf. Appellant wanted certified true copies of all order sheet entries/note sheet entries/file notings of US, V & L etc, of Director, Admn. Member, Chairman, CBDT/Secretary, Revenue/MOS (R) if any, of Finance Minister, if any pertaining to prosecution sanction by the Central Government u/s 19(1)(a) of Prevention of Corruption Act, 1988 vide letter dated 9.4.2009 in F No C14011/8/2008 of Central Board of Direct Taxes, Department of Revenue, Ministry of Finance, GoI, New Delhi. The CBI told the Commission that trial of appellant (in Gulab Singh Rana) was at pre-charge stage. The CPIO denied on the grounds of Sec 8(1)(d),(g) and (h).
10. First appeal also supported denial saying 'no disclosure is allowed for the internal communications, office notes which dealt with and relevant to the disciplinary and appeal proceedings based on which the appellant who had been implicated as accused. The CPIO declined citing Section 8(1)(h) of RTI Act, without giving reasons. Appeal met the same fate at First Appellate Authority. In second appeal CIC also agreed with CPIO. The Court quoted Justice Ravinder Bhat (in ***Bhagath Singh v CIC*** 146 (2008) DLT 385 decided on 3rd Dec 2007), who explained: *"Access to information, under Section 3 of the Act, is the rule and exemptions under Section 8, the 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 shadow the very right itself. 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". (Para 13)

11. This is the most significant ratio that was reiterated many times. Delhi High Court also emphasized on liberal interpretation of RTI and strict construction of restriction clauses in Section 8. *"A rights based enactment is akin to a welfare measure, like the Act, should receive a liberal interpretation. The contextual background and history of the Act is such that the exemptions, outlined in Section 8, relieving the authorities from the obligation to provide information, constitute restrictions on the exercise of the rights provided by it. Therefore, such exemption provisions have to be construed in their terms; there is some authority supporting this view (See* ***Nathi Devi v. Radha Devi Gupta*** *2005 (2) SCC 201;* ***B. R. Kapoor v. State of Tamil Nadu V. Tulasamma v. Sesha Reddy)****. Adopting a different approach would result in narrowing the rights and approving a judicially mandated class of restriction on the rights under the Act, which is unwarranted". (Para 14).*

12. In ***Sudhir Ranjan***, Justice Rajiv Shakdher distinguished from the facts of Surinder Pal Singh case and held "that ratio of that judgment would not apply to the facts obtaining in the present (Sudhir Ranjan) case". Justice Shakdhar referred to the apex court's judgment in (2003) 5 SCC 568 paragraph 23 that 'a little difference in facts or additional facts may lead to a different conclusion".

13. It is relevant to consider what the Delhi High Court said on this aspect in ***Sudhir Ranjan*** quoting ***Bhagat Singh***: "*Undoubtedly petitioner herein is seeking information with regard to the sanction accorded for his own prosecution. It cannot be disputed, as is noticed by my predecessor, in this very matter, in the order dated 14.0.2011 that the accused during the course of his prosecution can impugn the sanction accorded for his prosecution, on the basis of which the prosecution is launched. For this proposition, the learned judge, in its order dated 14.10.2011 relies upon the following judgments: "****State Inspector of Police, Visakhapatnam vs. Surya Sankaran Karri*** *(2006) 7 SCC 172 and* ***Romesh Lal Jain v.***

Naginer Singh Rana *(2006) 1SCC 294.*Justice Rajiv Shakdherin ***Sudhir Ranjan*** agreed with ratio of ***Bhagath Singh,*** said: *I have no reason to differ with the view taken either in* ***Bhagath Singh*** *case or with the prima facie view taken in the order passed by my predecessor in his order dated 14102010. It is trite that an accused can challenge the order by which sanction is obtained to trigger a prosecution against the accused. If that be so, I do not see any good reason to withhold information which, in one sense, is the underlying material, which led to the final order according sanction for prosecution of the petitioner. As a matter of fact, the Trial Court is entitled to examine the underlying material on the basis of which sanction is accorded when a challenge is laid to it, to determine for itself as to whether the sanctioning authority had before it the requisite material to grant sanction in the matter. See observations in* ***Gokulchand Dwarkadas Morarka vs The King*** *AIR 1948 PC 82 and* ***State of Karnataka vs Ameerjan*** *(2007) 11 SCC 273. Therefore, the said underlying material would be crucial to the cause of the petitioner, who seeks to defend himself in criminal proceedings, which the State as the prosecutor cannot, in my opinion, withhold unless it can show that such information would hamper prosecution." (Paragraph 11.3)* In ***Sudhir Ranjan*** case Justice Rajiv Shakdher has set aside the order of CIC and has directed respondents to supply the information relating to sanction of prosecution after redacting names of officers, who wrote the notes or made entries in the concerned files.

14. ***In 2014 CBI was directed to disclose***: In ***Adesh Kumar v Union of India (2014)***, W.P.(C) 3543/2014 decided on 16.12.2014, the information sought was file notes, correspondence with CBI, and other details of sanction of prosecution, including initial recommendation of Ministry of Urban Development against sanction of prosecution of appellant Adesh Kumar etc. The PIO refused, which was confirmed by First Appellate Authority. The CIC also found the contention of public authority that under Section 8(1)(h), as disclosure would impede the prosecution. The CIC order was challenged before Delhi High Court. Justice Vibhu Bhakru allowed the writ and directed the information to be given. Court explained: *"….the word 'impede' would ' mean anything which could hamper and interfere with the procedure followed in the investigation and*

have the effect to hold back the progress of investigation", it has still to be demonstrated by the public authority that the information if disclosed would indeed 'hamper' or 'interfere' with the investigation…" He referred to judgment of a coordinate Bench of Delhi High Court in the case of **BS Mathur (2011)** on Section 8(1)(h), saying: "the mere reproducing of the wording of the statute would not be sufficient when recourse is had to Section 8 (1) (h) RTI Act. The burden lies on the public authority to show in what manner the disclosure of such information would 'impede' the investigation". Justice Bhakru explained: *"A bare perusal of the order passed by the FAA also indicates that the aspect as to how the disclosure of information would impede prosecution has not been considered. Merely, citing that the information is exempted under Section 8(1)(h) of the Act would not absolve the public authority from discharging its onus as required to claim such exemption. Thus, neither the FAA nor the CIC has questioned the Public Authority as to how the disclosure of information would impede the prosecution".*

15. Decision in ***Surinder Pal Singh*** (2007) case, was based on the facts that disclosure of details of sanction of prosecution would impede the prosecution. The Principle agreed upon in this case was also that disclosure could be ordered except when 'impeding' effect is proved. The judgment of ***Surinder Pal Singh*** was not reported and published. All these decisions the Delhi High Court was maintaining the same ratio that only when disclosure of information is proved to be impeding, it could be denied, otherwise, it has to be disclosed. Simply because result in ***Surinder Pal Singh*** was against disclosure, it is not correct to deny information regarding the sanction of prosecution though the impeding effect was not proved by the public authority. One cannot consider the result in Surinder Pal Singh as ratio and conclude that details of 'sanction of prosecution' could not be disclosed under any circumstance. The Learned Justice Anil Kumar in WPC 16712/2006 and the Division Bench in LPA in ***Surinder Pal Singh*** opined that the trial court would be appropriate forum to decide on validity and legality of the sanction and hence left it to be decided by the trial court. It did not lay down any rule to deny it under RTI Act. There is no possibility to infer any such ratio from this order, because of three reasons: 1) The Commission is only

deciding a limited aspect of disclosure and application of Section 8(1)(h) 2) It is not, as it cannot, going into the questions of validity or legality of 'sanction' which is totally left to the trial court. 3) Section 22 of RTI Act specifically prevents possible contention that appellant should avail alternative accesses to information. Surinder Pal Singh cannot guide the CIC. Surinder Pal Singh case dealt with alternative access to information under Cr P C.

16. This was answered by Justice Muralidhar in ***DK Sharma (2009):*** *"The mere fact that a criminal case is pending may not by itself be sufficient unless there is a specific power to deny disclosure of the information concerning such case..... It is required to be noticed that Section 22 of the RTI Act states that the RTI Act would prevail notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923 and any other law for the time being in force".*

17. One point to be noticed here is that Delhi High Court in ***Sudhir Ranjan*** discussed and analysed the order in ***Surinder Pal Singh***, explained how he distinguished his conclusions from that order in a very rational manner. There are seven judgments (***SK Lamba, Bhagath Singh, DK Sharma, BS Mathur, OS Nahara, Sudhir Ranjan and Adeshkumar***) on merits from Delhi High Court, which consistently differed from ***Surnider pal Singh*** and reiterated the principle that without proving how disclosure impedes prosecution, the exception under Section 8(1)(h) could not be invoked, and in at least two judgments (***Sudhir Ranjan and SK Lamba)*** held that details about sanction for prosecution are not so sacrosanct that it should not be disclosed under any circumstances. This chronology of Delhi High Court show that the result of Surinder Pal Singh was not followed by same Delhi High Court, but ratio was considered with Section 22 and disclosure was ordered, and CIC also did not ignore these reaffirmed principles which are more in conformity with the scheme, objective and stated principles of RTI Act, 2005. Important to be noted is that in ***BS Mathur***, the Delhi High Court Judge directed the **Delhi High Court** to give information ruling out objections raised by PIO, First Appellate Authority and orders of CIC.

18. ***Ratio:*** As far as the ratio is concerned there is no contradiction between the ***Sudhir Ranjan, SK Lamba*** and ***Bhagath Singh*** on one hand and ***Surinder Pal*** cases on the other, if former concluded that disclosure would not impede, the later thought otherwise. Reading this ratio coupled with Section 22 will facilitate disclosure of details of sanction of prosecution which will advance the public interest in securing principles of natural justice and basic tenets of criminal justice, hence facilitating accused appellant to challenge the legality of 'sanction'. In view of Section 22, the contention that decision on disclosing should be left to trial court is against the intention of Parliament expressed in unambiguous terms of Section 22, and Objectives & Preamble of RTI Act.

19. In ***SM Lamba v SC Gupta and Anr.***, WPC No. 6226/2007, decided on 4.5.2010 by Justice S. Muralidhar, the High Court saw no point in withholding information related to the 'sanction of prosecution' to the accused appellant, as the trial crossed the framing of charges stage also. The decision was based on the conclusion that there was no impeding effect. Supreme Court in ***State Bank of India v DC Agarwal and Anr.*** (on 13.10.1992) held that non-supply of CVC instructions which were prepared behind the back of the Respondent without his participation and one does not know on what material, which was not only sent to the disciplinary authority but was examined and relied, was certainly a violation of procedural safeguard and contrary to fair and just inquiry. Further the Hon'ble High Court of Karnataka in EP No 6558/1993 has also observed that if a copy of the report of CVC's advice was furnished to the delinquent official, he would have been in a position to demonstrate before the disciplinary authority either to drop the proceedings or to impose lesser punishment instead of following blindly the directions in the CVC's report.

20. ***CIC decisions in tune with RTI:*** I would like to mention some of the decisions of the learned Central Information Commissioners, who did not follow the CIC full bench directive or Surinder Pal Singh holding that internal communication within the office is 'information' as per Section 2(f) and can be disclosed subject to other provisions of RTI, which cannot be considered as third party information and access to it could not be denied. Learned Commissioner Sri Shailesh Gandhi on 30 December 2011

in ***Krishnalal Mittal v Ministry of External Affairs***, CIC/AD/C/2011/000793/SG/16694, complaint CIC/AD/C/2011/000793/SG, Learned Commissioner Sri Divya Prakash Sinha in ***Lt Col Shailendra Grover v Brigadier & CPIO, head quarters of Central Command***, CIC/CC/A/2014/903022/SD on 6.6.2016 rejected defence u/s 8(1)(h) and ordered disclosure of file notings regarding sanction of prosecution as sought after deleting the names of witnesses or sources as per Section 10 of RTI Act. In two similar cases where investigator was CBI, Learned Commissioner Shri Basanth Seth ordered disclosure of file notings and other details of sanction for prosecution on the strength of ratio of ***Sudhir Ranjan***. In ***S. K. Aggarwal v CPIO, Dept of Telecommunications***, CIC/BS/A/2013/000906/5166, dated 22 May 2014, and in ***Rajendra Prasad v BSNL***, CIC/BS/A/2012/001788/3927 on 13 November 2013 Learned Commissioner Shri Basanth Seth held that file notings generated by department cannot be treated as third party information and there is no valid ground to withhold the information about file notings regarding sanction of prosecution. In both of these cases CBI was involved in investigation. It is relevant to refer to the order of Ld CIC Mrs. Manjula Prasher, in ***Shri SudarshanKumar v Dept of Financial Services***, New Delhi, CIC/DS/A/2013/001619/MP dated 22nd September 2014, where the appellant sought sanction for prosecution related information. The Ld Commissioner referred to ***Sudhir Ranjan, Bhagath Singh*** and ***SM Lamba*** as contended by appellant and directed disclosure of information, rejecting the stand of CPIO on 8(1)(h).

21. ***Surinder Pal Singh case***, though confirmed by the division bench, is *per incurium* because it is against the existing binding authority and express provision of law. None brought Section 22 of RTI Act to the notice of single judge bench and division bench, which would have totally changed the result. Section 22 is a most significant provision of RTI Act which gives overriding power to it over past and contemporary practices and legislations in order to bring transparency. The Supreme Court in 2015 talked about practices that should fade out with this transparency legislation. It has pointed out the purpose and effect of Section 22 of RTI Act, in its landmark order in ***RBI v Jayantilal N Mistry***, Civil Appeals No. 91 to 101 of 2015 on December 16, 2015, as follows: The submission of

the RBI that exceptions be carved out of the RTI Act regime in order to accommodate provisions of RBI Act and Banking Regulation Act is clearly misconceived. RTI Act, 2005 contains a clear provision (Section 22) by virtue of which it overrides all other Acts including Official Secrets Act. Thus, notwithstanding anything to the contrary contained in any other law like RBI Act or Banking Regulation Act, the RTI Act, 2005 shall prevail insofar as transparency and access to information is concerned. Moreover, the RTI Act 2005, being a later law, specifically brought in to usher transparency and to transform the way official business is conducted, would have to override all earlier practices and laws in order to achieve its objective. The only exceptions to access to information are contained in RTI Act itself in Section 8. (Paragraph 43) The old mindset of holding back information somehow, should go. The practices referred by Supreme Court in above paragraph include the practices guided by the closed mindset. The right to information was available in its rudimentary form in Section 76 of Indian Evidence Act, 1875: Section 76 says: Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefore, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal; and such copies so certified shall be called certified copies. Section 74 of Evidence Act, defines "public documents":

(1) The following documents are public documents:

(i) of the sovereign authority, (ii) of official bodies and tribunals, and (iii) of public officers, legislative, judicial and executive, of any part of India or of the Commonwealth, or of a foreign country;

(2) public records kept in India or private documents." The CVC document on sanction for prosecution under Chapter VII "Prosecution" available on its official website says: "An order of sanction to prosecute a Government servant is a public document within the meaning of section

74 of the Indian Evidence Act. Under section 77 of the Evidence Act, it is permissible to produce in proof a certified copy of a public document and it should not be necessary to prove the signature of the officer who had signed or authenticated the order of sanction". (http://cvc.nic.in/vigman/chaptervii.pdf)

22. The right of an accused person to obtain copies of public documents which concern the offence, with which he is charged was recognised in ***ILR 20 Mad. 189 (FB)***. This was relied upon by the Madras High Court in ***State of Madras v G Krishnan*** on 22nd August, 1990. (AIR 1961 Mad 92). Three judges Bench held that if the documents were held to be public documents, the accused should be held to have an interest therein which would entitle them to copies thereof under Section 76 of the Indian Evidence Act. If the question of the respondent's right to grant of the copies has to be decided purely on Sections 74 and 76 of the Evidence Act, there can be no doubt that he would be entitled to it. This is subject to prohibition in any other law. If there is no prohibition, accused should get the copies. Purport of this principle is that if the sanction for prosecution is not prohibited by any statute, the accused is entitled to get it. With RTI Act in place, the information has to be given subject to Section 8 of that Act. Because of overriding effect of this Act, by Section 22, even if there is any prohibition in any law would have no effect. There is no statute which prohibited that document. Based on the principles of Evidence established by a Full Bench decision of Madras High Court, Sections 74, and 76, as explained by the CVC document on 'Prosecution", read with the Right to Information Act, with its Section 22, the order of the Division Bench of Delhi High Court in Surinder Pal Singh is *per incuriam. Per incuriam* is a Latin terms which means "through lack of care". A court decision made *per incuriam* is one which ignores a contradictory statute or binding authority, and is therefore wrongly decided and of no force. A judgment that's found to have been decided *per incuriam* does not then have to be followed as precedent by a lower court. In criminal cases a decision made *per incuriam* will usually result in the conviction being overturned. Thus the Delhi High Court single judge benches in seven cases have rightly refused to follow the order of Division Bench of Delhi High Court in ***Surinder Pal Singh.***

23. The CIC's order of majority [21, Learned CICs Shri A.N. Tiwari, S.N. Misra, Shailesh Gandhi (dissenting)] in ***C. Sitaramaiah v. CBI*** dated 762010 refusing sanction related information under Section 8(1)(h), RTI Act holds no water. The dissent judgement given by Learned Commissioner Shri Shailesh Gandhi in the above case, which in principle was confirmed by Hon'ble Delhi High Court in ***S.M. Lamba, Sudhir Ranjan, and Bhagath Singh (***both by single and division benches), ***Adesh Kumar, B S Mathur, OS Nahara*** has occupied the field with a strong precedential value besides being in accordance with the objectives and tenets of RTI Act. The public authority should be accountable and answerable regarding the sanction of prosecution, which is possible only when details are disclosed. *Hence placing whole reliance on Surinder Pal Singh (2006) which is per incuriam, and ignoring seven reasoned decisions of the same Delhi High Court from 2007 to 2014 as explained above is neither legal nor justified and against express provisions of RTI Act.*

24. ***Constitutional & Human Right of the Accused***: Basic tenet of Criminal Justice system tested over a period of time is that accused should be given every bit of information/evidence and nothing should be heard on his back. That is the reason behind open trial. In fact open trial is the original right to information of accused and people in general. Especially, when sanction of prosecution was basic requirement for launching prosecution, it cannot be withheld. Withholding such crucial information from the accused will result not only in breach of his right to information, but also his right to fair trial and access to justice, which are, undoubtedly, the human rights guaranteed by law. The respondent authority is expected to apply its judicious mind, exercise its own discretion and decide based on the provisions of RTI Act, especially the proviso to Section 24, 8(1)(h) and 8(2).

25. Section 22 says: 'The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923, and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act'. Endorsements as 'confidential' cannot make the material confidential

when enactment says it could be shared. The CPIO's contention that investigating agency endorsed the information as **confidential** is also not legally correct. The public authority is supposed to know that an Act of Parliament will override (Section 22) the endorsement of a department and the CPIO has to apply his mind before exercising discretion to deny in terms of Section 8.

26. The CPIO also stated that it is the **policy** of the Posts Department not to give file-notings of sanction for prosecution to accused. The public authority cannot evolve a policy which is against the enactment passed by Parliament. If there is such policy, that would be overridden by the RTI Act as per Section 22 of RTI Act.

27. It is sad that those who are awfully corrupt, caught red handed while taking bribes, and amassing huge property disproportionate to legal sources of income are trying to delay the prosecution or investigation. It is difficult to support their purpose. The accused cannot use the RTI Act for delaying tactics. It is a pain on the society to deal with such misuse of RTI by accused persons. However, the principle of transparency in criminal justice delivery system and proper application of section 8(1)(h) necessitates disclosure of information regarding sanction of prosecution, even if they are caught red handed while accepting bribe.

28. The Commission accordingly directs the public authority to provide the copies of file noting/correspondence relating to the sanction of prosecution of the appellant within 30 days from the date of receipt of this order. Disposed.

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,
   Department of Posts,
   Dak Bhawan, Sansad Marg,
   New Delhi-110001.

2. Shri Manjit Singh Bali,
   F-34, Galaxy Apartments,
   Sctor-43, Gurgaon,
   Haryana-122009.