

Central Information Commission

Appeal No. CIC/MA/A/2008/1233/AD

Dated 5 August 2008

Name of the Appellant : **Mr. A. L. Motwani**
B-601, Celestial Greens
No. 6, Nagavarapalya,
Old Madras Road
C.V. Raman Nagar
Bengaluru -560093

Name of Public Authority : **ITI Limited**
ITI Bhavan
Doorvani Nagar
Bangalore- 560016

Date of hearing : **10.2.'09**

Background

1. Through an RTI request filed on 7.2.08 Appellant Shri Motwani of Bengaluru, Karnataka requested r the following information:

- i) Documents (Official, Demi official) statements of witnesses if any furnished by CBI for according sanction, the correspondence between CBI and ITI including record of discussion.
- ii) Documents (Official, Demi official) between ITI and Ministry of Communication(DoT) including record of discussion.
- iii) Correspondence (Official, Demi official) between ITI and CVC including the record of discussion.
- iv) Agenda papers along with minutes of Board meetings of ITI, reference to various letters, etc. indicated in the agenda/minutes, copies of these referred letters etc. to be included
- v) The documents referred to while framing the sanction order along with annexures eg. Instruction /manual on procurement of material followed in ITI and any other documents, copies of those references to be supplied.
- vi) Notes/letters (Official and Demi Official) sent by CVO(ITI) to CMD ITI, ITI Board, CVC, Ministry of Communications(DoT) or any other agency like CBI, Department of Personnel etc. along with replies received from them.
- vii) Any correspondence /communication/letters by ITI with any other agency like with CBI, CVC, Department of Personnel affairs in connection with the case RC ii(A)/94-CBI Bangalore

2. PIO's Order

Upon this, the PIO replied on 5.3.08 stating that the material sought cannot be disclosed by the ITI Company since it is exempted from disclosure under provisions Sec.8(1) sub-sections (e) and (h) of the RTI Act.

3. Grounds for first appeal

The first appeal was preferred by the Appellant on 23.3.08 before the First Appellate Authority (General Manager, Human Resource, ITI). The Appellant stated that a criminal case came to be registered by CBI for alleged acts of omission and commission against certain officials of ITI and that he was falsely implicated in it, and that the same is pending trial before the CBI court in Bengaluru, which is under progress. He stated that he has strong evidence to prove his innocence and that the copies of the information are the documents which were examined by the competent authority and based on which his prosecution was accorded sanction resulting in registration of the case. The Appellant argued that the impugned Order of the PIO does not state how the information available with the PIO is held in the capacity of fiduciary relationship as also the identity of the principal for whom the information sought is being held. Neither has the PIO explained how the information sought would impede the investigation or prosecution. The Appellant further stated that as far as the investigation or apprehension of an offender is concerned, the CBI has already completed the investigation and has submitted the Charge sheet to the court and the trial has also begun and some witnesses have already been examined in the case. He further pleaded that insofar as the impending prosecution is concerned, disclosure of documents will not impede or hamper prosecution but would help him to present a true picture to the CBI court. He mentioned that the same CPIO had, in fact, already given him certain documents related to the same case, which are also connected to the documents now being refused by the CPIO. He requested that the information sought in the RTI application be provided to him.

4. Appellate Authority's Order

The First Appellate Authority in his Order dated 23.04.08 stated that the information is being held by the Company's custodian in a fiduciary relationship and that the principal for whom it is being held is the State's investigative agency

i.e. CBI and that the information has been shared with the Company in confidence. In the absence of the Appellant's not invoking Section 8(1)(j) for seeking information in larger public interest, the CPIO has rightly refused access to the documents under Section 8 (1)(e) and 8(1)(h) of the RTI Act. The Appellate Authority further stated that the documents sought related to the CBI case and that their disclosure is likely to impede the prosecution of the accused. Also withholding the information from the Appellant will in no way jeopardize the Appellant's right to defense in the criminal case as the information can be provided to him by the court of law. The Appellate Authority also mentioned that the Appellant's contention that the CPIO had provided certain related documents earlier is not relevant as the documents given earlier were not covered under the exemption clauses under Sec.8(1) of the RTI Act.

5. **Grounds for second appeal**

The Appellant preferred his **second appeal** before the CIC on 10.7.08. He stated that he is trying to defend himself in a case in which he is falsely implicated.

The Appellant submitted the following grounds for his appeal:

- (i) The question of impeding investigation in the CBI case does not arise at all as the CBI has already completed its investigation and has also submitted a charge sheet to the Hon'ble CBI Court as far back as in the year 1998. He stated that the trial in the said case has already commenced and a few witnesses have also been examined in the case. The documents sought, if made available to him, will not impede or hamper the prosecution of offenders but, on the other hand, would help him to present a true and correct picture to the CBI Court. He questioned why, when under the law he is entitled to the documents, he should procure them from other sources.

- (ii) In the light of the paragraph 2 (given below in bold italics) of a communication dated 28.9.2000 from the Central Vigilance Commission, issuing guidelines to all Vigilance Officers of Ministries, Banks, PSUs, Autonomous bodies etc. with respect to inquiries of

delinquent officers, the Appellant argued that any Officer on whom an inquiry is being conducted, should be given a fair chance before contemplating any action against him.

***“The Commission has observed that the Hon’ble Supreme Court has held a view in the case of –State Bank of India v/s D.C. Agarwal and another (date of judgment – 13.10.1992) 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, Bangalore in E.P. 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.*”**

6. The Commission invited comments from CBI, Bengaluru on the appeal filed by the Appellant. The Superintendent of Police, CBI, Bangalore responded on 26.11.08 stating that on conclusion of the criminal case that was registered against the Appellant, a charge-sheet was filed against him and the same is pending for trial. As per the administrative arrangement for securing sanction for prosecution of public servants involved in criminal cases, a report giving details of investigation was placed before the Competent Authority through the Chief Vigilance Officer, ITI, Bangalore. The Competent Authority raised certain issues regarding the findings of the investigation and the matter was referred to the Central Vigilance Commission, New Delhi for its recommendations. The Competent Authority finally accorded sanction for prosecution of the Appellant on 1.5.98 based on which a charge sheet was filed against the Appellant on 4.6.98. The SP, CBI submitted that revealing of information sought by the Appellant at this stage would adversely affect the prosecution of the accused persons involved in the criminal case. He stated further that the Appellant is at liberty to cross-examine the sanctioning authority during the trial of the case. Therefore, no prejudice would be caused to the Appellant by denying information sought by him at this stage.

7. The Bench of Mrs. Annapurna Dixit, Information Commissioner, scheduled the hearing for December 3, 2008.

8. Mr. K.R. Shantaram, AGM-PR & CPIO and Mr. Chandan Datta, GM-HR represented the Public Authority.

9. The Appellant, Mr. A.L. Motwani was present in person at the hearing

10. The Respondent maintained that the information is exempt from disclosure under 8(1) (e) and 8(1) (h). The information is being held in a fiduciary relationship by the Company with the Principal for whom it is held being the CBI. He stated that the disclosure of information would impede the process of investigation and prosecution and therefore it should not be given to the Appellant.

11. The Appellant submitted that he has evidence to prove his innocence if he is provided with the documents sought. He said that the Section 8(1) (h) of the RTI Act has been wrongly invoked since the charge sheet against him has already been filed based on the investigation. He stated that the trial in the case has commenced and a few witnesses have already been examined. The documents, if handed over to him, will not hamper or impede the case but on the other hand will help him prove his innocence.

12. As is evident, the representative of CBI was not present on the first date of hearing viz. 03.12.2008, therefore their version, reasoning and rationale behind the denial of information could not be known which was essential given the peculiar facts of this case. Hence the matter was referred to a Division Bench consisting of Shri Wajahat Habibullah, Chief Information Commissioner and Mrs. Annapurna Dixit, Information Commissioner, for hearing the case on 10th February 2009 at 11.00 am, on which date Mr. Narasimha Komar, Superintendent of Police, CBI, ACB, Bengaluru was present during the hearing. The CPIO and the Appellate Authority in ITI Limited were not present at the hearing.

13. The Appellant, Mr. A.L. Motwani was present in person at the hearing

14. The issues before the Commission are

- 1. Whether the documents are held in a fiduciary capacity by the Respondents? and**
- 2. Do the documents, sought by the Appellant and which are related to his case pending prosecution in a CBI Court since 1998 as a result of a CBI investigation and charge sheeting of the Appellant, have the potential to impede the process of investigation, apprehension or prosecution of offenders, as maintained by the CBI and the Public Authority?**

15. During the hearing the Commission heard both the appellant and Mr. Narasimha Komar who represented the CBI. No one was present to represent the ITI, Bengaluru. Mr. Komar reiterated the stand that the information is being held in fiduciary capacity and the disclosure thereof will impede the process of prosecution. Moreover, Mr. Komar stated that the Appellant could have requested and procured these documents through the Hon'ble Court as per procedure provided in the Civil Procedure Code. The Appellant stated that he had also tried to obtain the documents through the Court and invoked the other alternative option which was available to him through RTI, but the public prosecutor in pleading for the prosecution had himself submitted under affidavit that the accused may seek the information from the Department.

DECISION NOTICE

16. The Commission, while considering the submission of the Respondent Public Authority about denial of disclosure of information since the same is held in fiduciary capacity; the meaning of the word "fiduciary relationship" was analysed from various perspectives and the following connotations could be summarised:

- Various decisions of the Commission indicate that fiduciary relationship is a relationship of trust, which may also be between an individual and a juristic person such as Government, University or a Bank.

The word “fiduciary” is derived from the Latin *fiducia* meaning “trust”, a person (including a juristic person such as Government, University or Bank) who has the power and obligation to act for another under circumstances, which require total trust, good faith and honesty.

- The fiduciary relationship can also be one of moral or personal responsibility due to the superior knowledge and training of the fiduciary as compared to the one whose affairs the fiduciary is handling. In short, it is a relationship wherein one person places complete confidence in another in regard to a particular transaction or one’s general affairs of business.
- The Black’s Law Dictionary also describes fiduciary relationship as “one founded on trust or confidence reposed by one person in the integrity and fidelity of another.” The meaning of the fiduciary relationship may, therefore, include the relationship between the authority and a person.
- Moreover, Section 16 of Indian Contract Act clarifies “fiduciary relationship” while defining “Undue Influence” and reads as follows:

“16(1) A contract is said to be induced by “undue influence” where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other;

(2) In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another;

(a) where he holds a real or apparent authority over the other, or where he stands in a **fiduciary relations** to the other; or

(b) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.

(3) Where a person, who is in a position to dominate the will of another, enters into contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue

influence shall lie upon the person in a position to dominate the will of the other.”.

- In Fiduciary Relationship, a person with the legal duty to act primarily for another’s benefit enjoys a position of trust, good faith and responsibility. Thus the word “Fiduciary” is often used as an alternative term for “trustee”.

17. In the light of the foregoing discussion, the Commission has arrived at the conclusion that CBI was not holding any document of the ITI Ltd. in confidence, but inquired into the whole incident and prepared an Inquiry Report and handed it over to ITI Ltd. Even the documents are not in the custody of the CBI as a “trustee”. Therefore, there cannot be a fiduciary relationship between ITI Ltd., Bengaluru and the CBI and hence the instant case does not fall within any of the categories of the definitions as stated hereinabove. Hence the plea of the Respondent/s [both the CBI and the company] seeking exemption under the garb of “fiduciary relation” is incongruous. Accordingly, the Commission decides that the documents in the custody of the ITI, Bengaluru have not been held in a fiduciary capacity since no “fiduciary relationship” existed between the Company and the CBI. Thus the denial of the Public Authority to furnish the information sought by the Appellant under the garb of the Section 8 (1) (e) is ruled out.

18. It is furthermore held by the Commission that disclosure of any information otherwise exempt under Sec 8 (1) is mandated if it is concluded that the larger public interest so demands and not denying information as it would adversely affect, or is not in the public interest. Besides, the onus for concluding that the information sought is personal with no relationship to public interest, which could justify refusal u/s 8(1) (j) lies on the concerned Public Authority. Thus the denial of the information as done by the Appellate Authority in the letter dated 23.04.2008 has to be reasoned while the onus of proving that the same is personal and has no relationship with public interest would lie on the Public Authority and not otherwise. The records of the case reveal that the information is sought by the Appellant in order to defend himself before the CBI Court and prove his innocence. A criminal trial is a public activity. Hence furnishing of the said information is a part of the

Fundamental Constitutional Right to Life and Liberty of the Appellant as granted under the Article 21 of the Constitution of India. Even on this count the information as sought by the Appellant should be supplied to him.

19. As for denial of disclosure of these documents to the Appellant, the Respondent represented by Mr. Komar stated that disclosure of these documents would hamper the process of prosecution without elaborating the reasons as to how it will impede the process of prosecution. It is admitted by the Respondent before the Bench that the documents do not form a part of the Court records, but the same are obviously available with the Company, ITI Ltd. In fact, it is further pertinent to note that there is no order of the CBI, Court restraining the disclosure of any document in this case. Hence, clearly the document can be sought from the Public Authority, which is at present in custody of the documents, and not the Court.

20. The denial of the information by the Public Authority repeatedly under Section 8 (1) (h) of the RTI Act 2005 in the orders dated 05.03.2008 and again on 23.04.2008 is misplaced. The judgment of the **Delhi High Court in W.P.(C) No.3114/2007 – Shri Bhagat Singh Vs. Chief Information Commissioner & Ors** on this aspect is of relevance, since it deals with the applicability of the Section 8(1)(h) of the RTI Act 2005:

11. “The Universal Declaration of Human Rights, adopted by the United Nations in 1948, assured by Article 19, everyone the right “to seek, receive and impart information and ideas through any media, regardless of frontiers”. In Secretary Ministry of Information and Broadcasting, Govt. of India and others vs. Cricket Association of Bengal and others (1995 (2) SCC 161) the Supreme Court remarked about this right in the following terms:

“The right to freedom of speech and expression includes the right to receive and impart information. For ensuring the free speech right of the citizens of this country, it is necessary that the citizens have the benefit of plurality of views and a range of opinions on all public issues. A successful democracy posits an “aware” citizenry. Diversity of opinions, views, ideas and ideologies is essential to enable the citizen to arrive at informed judgment on all issues touching them.”

This right to information, was explicitly held to be our fundamental right under Article 19(1)(a) of the Constitution of India for the first

time by Justice K.K. Mathew in the State of U.P. vs. Raj Narain, (1975) (4) SCC 428. The Supreme Court followed this view on a number of decisions and after public demand, the Right to Information Act, 2005 was enacted and brought into force.

12. The Act is an effectuation of the right to freedom of speech and expression. In an increasingly knowledge based society, information and access to information holds the key to resources, benefits, and distribution of power. Information, more than any other element, is of critical importance participatory democracy. By one fell stroke, under the Act, the make of procedures and official barriers that had previously impeded information, has been swept aside. The citizen and information seekers have, subject to a few exceptions, an overriding right to be given information on matters in the possession of the state and public agencies that are covered by the Act. As is reflected in its preambular paragraphs, the enactment seeks to promote transparency, arrest corruption and to hold the government and its instrumentalities accountable to the governed. This spirit of the Act must be borne in mind while construing the provisions contained therein.
13. 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 self. Under Section 8, exemption from releasing information is granted if it would impede the process of 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.
14. 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 vs. Radha Devi Gupta 2005(2) SCC201; B. R. Kapoor vs. State of Tamil Nadu 2001 (7) SCC 231 and V. Tulasamma vs. Sessa Reddy 1977(3) SCC 99). Adopting a different approach would result in narrowing the rights and approving a judicially mandated class of restrictions on the rights under the Act, which is unwarranted.”

21. Even in the aforementioned case the Court took serious notice of the two-year delay in releasing of information and the lack of adequate reasoning of the orders of PIO and appellate authority. S Ravinder Bhat J specifically notes, **“As held in the preceding part of the judgment, without a disclosure as to how the investigation process would be hampered by sharing the materials collected till the notices were issued to the assessee, the respondents could not have rejected the request for granting information. The CIC, even after overruling the objection, should not have imposed the condition that information could be disclosed only after recovery was made¹”**

22. In the light of the settled law as hereinabove and in view of the peculiar facts of this case, the Commission hereby directs the Respondents ITI, Bengaluru and CBI to disclose the information asked for by the Appellant within fifteen working days of the date of receipt of this Decision Notice. As inordinate delay has already been caused for no fault of the Appellant, providing of copies of the documents shall be free of cost in accordance with Sec 7 sub-section (6).

23. **The Appeal is therefore allowed in the above terms.** There will be no costs. Announced in the hearing this tenth day of February 2009.

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

(Annapurna Dixit)
Central Information Commissioner

(Wajahat Habibullah)
Chief Information Commissioner

Authenticated true copy. Additional copies of Orders shall be supplied against application and payment of the charges, prescribed under the Act, to the CPIO of this Commission.

(G. Subramanian)
Asstt. Registrar
10.2.'09

¹ Para 15 of the judgment.