

Central Information Commission
Central Information Commission
Mr. Sanjay Mourya vs Mcd, Gncd Delhi on 15 February, 2012
CENTRAL INFORMATION COMMISSION

Club Building (Near Post Office)

Old JNU Campus, New Delhi - 110067

Tel: +91-11-26161796

Decision No. CIC/SG/A/2011/003607/17371

Appeal No. CIC/SG/A/2011/003607

Relevant Facts emerging from the Appeal

Appellant : Mr. K.R.Ramesh 48/205F, Kalayath House,

Green Ripple Road,

Elamakkara. P. O.,

Kochi 682026. Kerala

Respondent : PIO & Deputy Zonal Manager Bank of India,

Kerala Zonal Office

Kaloor Towers, Kaloor-Kadavanthara Road

Kaloor, Kochi--682017, Kerala

RTI application filed on : 30/08/2011 PIO replied : 28/09/2011 First appeal filed on : 14/10/2011 First Appellate Authority order : 31/10/2011 Second Appeal received on : 15/12/2011

Information Sought:

01 In connection with the inquiry any memo/letter has been issued to the Inquiry Authority Mr.Kurian George, Inquiry Authority for delay in the inquiry proceedings.

02. If yes, provide me with a copy.

03. In connection with the inquiry any memo/letter has been issued to the Inquiry Authority Mr.Xavier James, Presenting Officer for delay in the inquiry proceedings.

04. If yes, provide me with a copy.

Reply of the Public Information Officer (PIO):

In this regard, we are unable to consider your request favorably as per provisions u/s 8 (Exemption from disclosure of information), (1) (d) and (h) of the Right to Information Act, 2005. In case you decide to file an

appeal against the above advice, you may prefer an appeal within 30 days of receipt of this order, before the Appellate Authority, whose address is given hereunder:

Grounds for the First Appeal:

Incomplete and unsatisfactory information provided by the PIO.

Order of the First Appellate Authority (FAA):

FAA upheld the decision given by PIO and disposed off the appeal.

Grounds for the Second Appeal:

Incomplete and unsatisfactory information provided by the PIO and unfair disposal by FAA.

Relevant Facts emerging during Hearing:

The following were present

Appellant: Mr. K.R.Ramesh on video conference from NIC-Kochi Studio; Respondent: Absent;

The PIO has refused to give information to the Appellant claiming that the information is exempt under Section 8(1)(d) &(h) of the RTI Act. No evidence has been given as to how the information sought by the Appellant constitutes commercial confidence trade secret or intellectual property. Unless this is established Section 8(1)(d) is not operative. Similarly no justification has been given for claiming exemption under Section 8(1)(h) of the RTI Act. The First appellate Authority (FAA) has stated that the investigation process was going on and hence the information is exempt under Section 8(1)(h). This argument is flawed.

The Respondent has not been able to establish that disclosing the information would impede the process of investigation. Section 8(1)(h) of the RTI Act exempts disclosure of "information which would impede the process of investigation or apprehension or prosecution of offenders".

Justice Ravindra Bhat has held in *Bhagatsingh vs. CIC WP (c) no. 3114/2007*- "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 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.

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 v. Radha Devi Gupta* 2005 (2) SCC 201; *B. R. Kapoor v. State of Tamil Nadu* 2001 (7) SCC 231 and *V. Tulasamma v. Sessa Reddy* 1977 (3) SCC 99). 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." As per Section 19(5) "In any appeal proceedings, the onus to prove that a denial of a request was justified shall be on the Central Public

Information Officer or State Public Information Officer, as the case may be, who denied the request."

Denial of a citizen's fundamental right must be justified and the mere act of continuing an investigation cannot be used to deny citizens' rights. In view of this, the Commission does not accept the denial of information under Section 8(1)(h) of the RTI Act.

In view of this the PIO's claim to exemption is not upheld by the Commission.

Decision:

The Appeal is allowed.

The PIO is directed to provide the information to the Appellant before 10 March 2012.

This decision is announced in open chamber.

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

15 February 2012

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