

Central Information Commission
Central Information Commission
Mr. Ajit Kumar Singh vs Central Reserve Police Force on 20 July, 2010
CENTRAL INFORMATION COMMISSION

Appeal No. CIC/WB/A/2009/000531 dated 29-4-2009 Right to Information Act 2005 - Section 19

Appellant: Shri Ajit Kumar Singh

Respondent: Central Vigilance Commission (CVC) Heard & Decision announced: 20.7.2010

FACTS

By an application of 19-1-09 Shri Ajit Kumar Singh of Indraprastha Estate, New Delhi applied to the CPIO, Ms. Deepa Bajwa, CVC seeking the following information:

"1) Certified copy of the letter No. DGIT (V)/WZ/Com/115/02 dated 9.12.2005 along with enclosures which formed the basis of CVC's advice dated December 2005 (a copy of the VC's advice dated illegible December 2005 is enclosed for ready reference) in the matter of the applicant.

2) Certified copy of the CVC's advice in the matter of applicant i.e. Ajit Kumar Singh, tendered in the year 2002-2003 date of which is not known. In this advice an earlier reference to the CVC by the CBDT of the matter of applicant was turned down by the CVC after verification. 3) Certified copies of entire correspondence and reference by the CBDT to CVC in the matter of applicant. 4) Copies of basis on which CVC reviewed its earlier decision of turning down reference by CBDT and advised initiation of major penalty by letter date illegible December 2005.

5) Copy of correspondence with/ from the Disciplinary Authority in connection with applicant."

To this Shri Ajit Kumar Singh received a response dated 27-1-09 refusing information on any of the points u/s 8 (1) (h) as below: "i) Information is denied in terms of 8 (1) (h) of RTI Act, 2005 as the inquiry proceedings in the referred case are in progress.

ii) Information is denied in terms of 8 (1) (h) of RTI Act, 2005 as the inquiry proceedings in the referred case are in progress.

iii) Information is denied in terms of 8 (1) (h) of RTI Act, 2005 as the inquiry proceedings in the referred case are in progress.

iv) Information is denied in terms of 8 (1) (h) of RTI Act, 2005 as the inquiry proceedings in the referred case are in progress.

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(v) Information is denied in terms of 8 (1) (h) of RTI Act, 2005 as the inquiry proceedings in the referred case are in progress."

Shri Ajit Kr. Singh then moved an appeal before Addl. Secretary Shri Alok Bhatnagar, CVC pleading that the "order is illegal, arbitrary and unconstitutional." He has then put forth six points starting with the ruling of Delhi High Court in Bhagat Singh Vs. CIC & Ors. [2008 (169) Taxmann 492 Delhi]. Upon this through his order of 5-3-09 Appellate Authority Shri Alok Bhatnagar has decided as follows:

"I have gone through the relevant records and find that since the disciplinary proceedings against the appellant have not come to a logical conclusion, that is, the concerned authority has not yet issued final orders, the case is still to be considered as, 'under investigation'. I also, note that the appellant, in his appeal, has quoted from the 'Black's Law Dictionary' and has contended that it is 'Criminal Investigation' which is contemplated under section 8 (1) (h) of the RTI Act. I am of the opinion that the appellant's contention is not correct and the term 'process of investigation' as specified under section 8 (1) (h) of the RTI Act would mean the stage up to the issue of final orders by the competent authority. This view has been upheld by the Central Information Commission (CIC) also in the case of Shri Shankar Sharma and other vs. Income Tax Department in case No. CIC/AT/A/2007/00007/10/11 where CIC stated that 'we cannot import into RTI Act the technical definition of 'investigation', one finds in Criminal Law. Investigation would mean all actions of law enforcement, disciplinary proceedings, enquiries, adjudications and so on. Logically, no investigation could be said to be complete unless it has reached a point where the final decision on the basis of that investigation is taken. In that sense, an investigation can be an extended investigation'. I, therefore, uphold the decision of the CPIO to deny information under section 8 (1) (h) of the RTI Act."

This has brought Shri Ajit Kr. Singh in a second appeal before us with the following prayer:

"a) The information as requisitioned vide application dated 19.1.2009 may be directed to be provided at the earliest.

b) Penalty u/s 20 of the Act be imposed against the CPIO and FAA for wilful and malafide denial of information so much so that even opportunity of being heard was not granted by the FAA, despite a specific request being made in this regard."

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In his grounds of appeal Shri Ajit Kr. Singh has contended as follows: "9.1 The said orders are malafide, being contrary to the law laid down by the jurisdictional High Court in Bhagat Singh vs. CIC & others (2008 (169) Taxmann 492 Delhi) and unconstitutional in as much as it does not disclose reasons, much less germane reasons as to how and which investigation would be hampered.

9.2 The applicability of provisions of section 8 (1) (h) on the ground of pending disciplinary proceedings is manifestly contrary to the plain words of section 8 (1) (h) of the Act and is perverse.

9.3 Even otherwise, the very nature of information requisitioned, on the face of it, does not suggest that they would impede the process of investigation in any manner, as evident from the following item wise discussion to the information which was sought vide application dated 19.1.2009."

The appeal was heard on 20-7-2010. The following are present. Appellant

Shri Ajit Kumar Singh

Respondents

Shri Ashok Kumar, Director, CPIO, Central Vigilance Commission Shri Paritosh Sarkar, SO, Central Vigilance Commission

Respondent Shri Ashok Kumar, Director, CVC stated that it has been in the practice in the CVC not to disclose any matter which constitutes part of a case pending investigation. Appellant Shri Ajit Kr. Singh on the other hand contended that disciplinary proceedings do not fall within the exemption granted by Section 8 (1) (h) since in such a case there is no offender and there is no prosecution. He further argued that at any rate, a criminal investigation, even this were deemed to be so, closes with the issue of the charge-sheet. Finally,

Shri Ajit Singh submitted that CAT has already quashed the charge sheet which renders the entire argument of CVC infructuous. CPIO Shri Ashok Kumar admitted that he had not yet learned of any order of CAT of this nature.

DECISION NOTICE

In this case the judgment of the Delhi High Court in W.P. (C) No.3114/2007 - Shri Bhagat Singh Vs. Chief Information Commissioner & Ors is of relevance, since it deals with the application of sec. 8(1) (h):

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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. This view was followed by the Supreme Court 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**

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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."

In this 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"

On the question of whether information in disciplinary proceedings qualifies for exemption u/s 8 (1) (h) this Commission has ruled repeatedly that disciplinary proceedings fall squarely u/s 8 (1) (h) since Section 8 (1) (h) does not specify that it applies only to criminal proceedings. Although appellant Shri Ajit Singh has stoutly contended in his argument before us that he is accused of no criminal offence, it needs hardly be explained that disciplinary proceedings are always initiated in cases of alleged administrative offence. In such enquiries, the enquiry or investigation begins with the issue of a charge 1

Para 15 of the judgment.

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sheet whereas in the case of a criminal offence it concludes with the issue of charge sheet which in turn indicates initiation of prosecution. Section 8 (1) (h), therefore, will clearly apply in all cases of investigation whether criminal or administrative.

In the present case, however, we find that Appellate Authority Shri Alok Bhatnagar has concerned himself only with the single issue as to whether the matter before him was to be considered to be still under investigation and has held, relying on the decision of this Commission, that it is. However, the issue here is not whether the matter is still under investigation or not, but whether in a matter under investigation information can yet be disclosed. The ruling of Justice Ravindra Bhat cited above, therefore, applies directly in the present case. Because the present application has not been examined in light of the above ruling the decision of Shri Alok Bhatnagar is set aside and the appeal allowed. CPIO Shri Ashok Kumar will now re-examine the application in light of the ruling of Delhi High Court in Bhagat Singh vs. CIC taking into account the present circumstances in the context of the CAT proceedings cited by appellant Shri Ajit Kr. Singh in the hearing. There will be no cost.

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

(Wajahat Habibullah)

Chief Information Commissioner

20-7-2010

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.

(Pankaj K.P. Shreyaskar)

Joint Registrar

20-7-2010

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