

CENTRAL INFORMATION COMMISSION
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Decision No. CIC/SM/A/2011/000249/SG/12387
Appeal No. CIC/SM/A/2011/000249/SG

Relevant Facts emerging from the Appeal:

Appellant : Mr. Lalit Kumar Jha
Partners Prime Legal, Office 108,
U-60A, Near Laxmi Nagar,
Metro Station, Shakarpur,
New Delhi

Respondent : Mr. Rajiv Verma
US & NODAL CPIO,
CENTRAL VIGILANCE COMMISSION,
Satarkta Bhawan,
GPO Complex, Block-A, INA,
New Delhi.

RTI application filed on : 16/07/2010
PIO replied : 11/08/2010.
First appeal filed on : 30/08/2010
First Appellate Authority order : Not received
Second Appeal received on : 06/10/2010

Information sought by the appellant:

Kindly provide the following information under RTI Act

1. Copies of the all complaints/file notings/documents/material evidence (if any) by Sh. A.K. Khanna, Proprietor A.K. Builders, K-III-20, Lajpat Nagar, New Delhi-I 10024 against Sh. P.K. Jam, In-charge Engineering/EB (C), Jawaharlal Nehru University, New Delhi-I 10067 and Commission's replies to the complainant at various stages from 2003 to till date.
2. Copies of all letters/documents sent by CVC to CVO, JNU after submission of CVO's preliminary investigation report to Commission.
3. The Commission must have its own investigation/observation on CVO, JNU's preliminary investigation report, copy of which may be provided.
4. The guidelines of the Commission relied upon while making opinion on the CVO's report, stating the omission a blatant violation of procedure may be provided.
5. Copies of all file notings from dealing hand level to secretary level may be provided, recorded on finding of the CVO report.
6. Please provide guidelines for prescribed procedure for conducting preliminary investigation at CVO's level. —
7. Has the Commission verified that the preliminary investigation conducted by CVO, JNU is in compliance to the prescribed procedure, which is in gross violation to the Commission's guidelines, lacking technical expertise, statement/version of facts of the officer concerned, written explanation, and the certificate by the Committee that any opportunity was given to officer concerned.
8. Kindly provide the guidelines/basis relied upon by the Commission while forming opinion on the basis of unilateral investigation report against the principles of natural justice and prescribed guidelines of the Commission.

9. Please state clearly whether the preliminary investigation report carries any authenticity to be relied upon for making an opinion for suggesting an action.

10. If the Commission agrees that the preliminary investigation report is constitutionally/fundamentally wrong, will review its earlier opinion to issue a charge sheet and advise the CVO, INU for clarification or give an opportunity to the officer concerned to submit his version of facts.

11. A copy of the Commission's guidelines on appropriate action/remedy for an act/lapse of omission carried out by an instrumental officer on orders and approval of the Competent Authority may be provided.

12. Please provide a copy of Commission's guidelines which have been relied upon by the Commission for suggesting major penalty for stated blatant violation of procedure while the Commission has already issued established guidelines on limited tendering from the panel contractors and also allowed circumventive deviances in procedures in compelling circumstances, whereas.

13. The Commission has already issued guidelines on restricted/limited tendering and not objected to same under extreme urgency subjected to all necessary compliances. Panel contractors registered with CPWD etc. were telephonically informed by the Section Clerk on orders of the Competent Authority/Vice Chancellor, without involvement of the concerned officer Sb. P.K. Jam, ER (C), JNU. The Commission may provided 5uidelincs on any [apse on part of the concerned officer in above circumstances.

14. The University has appointed Sh. P K. Jam, BE (C) as Presenting Officer against the various arbitration claims of about Ks. 40 lacs of the complainant Sh. A. K. Khanna, Proprietor Ms AK Builders, K-III-20 Lajpat Nagar, New Delhi-I 10024, which are under sub-judiced in Honorable High Court, Delhi and District Court, Delhi. The Commission may provide guidelines on handling such complaints by the Commission which may adversely affect the legal proceedings in the Honorable Courts only to provide financial benefits to the contractor/complainant. If the Commission desires, complete details on the subject matter may be provided.

Information provided by PIO:

The PIO denied information under Section 8(1) (h) of the RTI Act for information sought at point 1,2,3 and 5 on the grounds that the investigation is not over.

Grounds of the First Appeal:

Not satisfied with the order of the PIO.

Order of the FAA:

Not received

Ground for the Second Appeal:

No order from FAA and wrong denial of information under Section 8 (1) (h) of the RTI Act.

Relevant Facts emerging during Hearing on May 5, 2011:

The following were present:

Appellant : Mr. P. K. Jain representing Mr. Lalit Kumar Jha;

Respondent : Mr. Rajiv Verma, US & NODAL CPIO;

“The Commission noted that the respondent has provided some information to the Appellant. The respondent has refused to give information on queries 1, 2, 3 & 5 claiming exemption under Section-8(1)(h) of the RTI Act. Section-8(1)(h) of the RTI Act exempts, “*information which would impede the process of investigation or apprehension or prosecution of offenders;*”. The Commission asked the respondent to justify how disclosing the information on query-1, 2, 3 & 5 would impede the investigation. The respondent states that, “unless the preliminary investigation is over the element of confidentiality should be maintained to ensure a fair and speedy investigation without any attempt from the interested parties to interfere or jeopardize the investigation process.” The Appellant has produced a letter purportedly from Mr. Vinod Khadria CVO (JNU) addressed to Mr. Prabhat Kumar

Director (CVC) dated 18/02/2011 in which it has been stated, “ I therefore conclude that the complaint of M/s A. K. Builders mentioned above do not stand scrutiny of facts and therefore it be dismissed and the case closed. The CVC may however advise any further investigation or course of action as deemed appropriate.” The respondent states that if CVC has closed the case he would have no hesitation in providing all the information sought by the Appellant. The Commission adjourns the hearing to give an opportunity to the respondent to check if the information can be provided.

The Commission will hold next hearing on **13 May 2011 at 04.00PM.**

Both the parties are directed to appear before the Commission on 13 May 2011 at 04.00PM with relevant documents.”

Relevant Facts emerging during Hearing on May 13, 2011:

The following were present:

Appellant: Absent;

Respondent: Mr. Rajiv Verma, US & NODAL CPIO and Mr. Anirban Biswas, Section Officer.

The Respondent has stated that the case is not closed so far and is under examination. However, the Respondent has not been able to establish that disclosing the information would impede the process of investigation. The Respondent states that it has been about over 18 months since the investigation has been going on. 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.”

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. Most investigations and investigators in the country appear to take an enormous amount of time to decide or conclude anything. The Respondent admits that CVC’s guidelines for completing all investigations is three months. In the instant case, it is admitted that over 18 months have elapsed. If investigating agencies in the country were to diligently enforce the timelines laid down, they would not have to resort to Section 8(1)(h) to refuse information. In view of this, the Commission does not accept the denial of information under Section 8(1)(h) of the RTI Act.

Decision:

The Appeal is allowed. The PIO is directed to provide the information to the Appellant **before May 30, 2011.**

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
13 May 2011

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