

केन्द्रीय सूचना आयोग
Central Information Commission
बाबा गंगनाथ मार्ग, मुनिरका
Baba Gangnath Marg, Munirka
नई दिल्ली, New Delhi – 110067

द्वितीय अपील संख्या / Second Appeal No.:- CIC/JUSTC/A/2018/153653-BJ

Mr. Venkatesh Nayak
Email: venkateshnayak.ss@gmail.com

....अपीलकर्ता/Appellant

VERSUS

बनाम

1. CPIO & Under Secretary (D-I0029)
Ministry of Law & Justice
Department Of Justice
Jaisalmer House, 26, Man Singh Road
New Delhi -110011
2. CPIO & Under Secretary (D-II)
Ministry of Law & Justice
Department Of Justice
Jaisalmer House, 26, Man Singh Road
New Delhi – 110011
3. CPIO & Section Officer
Ministry of Law & Justice
Department Of Justice
Jaisalmer House, 26, Man Singh Road
New Delhi – 110011

...प्रतिवादीगण /Respondent

Date of Hearing : 23.07.2020
Date of Decision : 24.07.2020

Date of RTI application	03.03.2018
CPIO's response	Not on Record
Date of the First Appeal	04.06.2018
First Appellate Authority's response	Not on Record
Date of diarised receipt of Appeal by the Commission	30.08.2018

ORDER

FACTS:

The Appellant vide his RTI application sought information on 05 points regarding the unstarred question no 2187 replied by the Hon'ble Minister for State for Law and Justice and Corporate Affairs, on 05/01/2018, in the Rajya Sabha; photocopy of the request sent by the Government of India to Chief Justices of High Courts for ensuring due consideration to be given to suitable candidates belonging to SCs, STs, OBCs, Minorities and Women while sending proposals for appointment as Judges of those High Courts; photocopy of all replies received from Chief Justices, if any, till the date of RTI application, relating to the request mentioned above and issues related thereto.

Dissatisfied due to non – receipt of any response from the CPIO, the Appellant approached the FAA. The reply of the CPIO/ Order of the FAA, if any, is not on the record of the Commission.

HEARING:

Facts emerging during the hearing:

The following were present:

Appellant: Mr. Venkatesh Nayak in person;

Respondent: Absent;

The Appellant re-iterated the contents of his RTI application and stated that no reply was received by him till the filing of the instant Appeal before the Commission. While stating that the CPIO replied to him vide letter dated 27.08.2018, the Appellant submitted that the First Appeal was not replied, till date. During the hearing the Appellant referred to the reply of the CPIO and stated that points 01 and 02 of the RTI application were not answered to his satisfaction since no clear and cogent reason was provided regarding non-disclosure of information apart from mentioning that communication/ letter between the Chief Justice and the Government as sought by the Appellant are not disclosed. As regards point no 03, the Appellant stated that although a reference was made to the Memorandum of Procedures regarding appointment of judges, the same did not address the issue of due consideration given to candidates belonging to SCs, STs, OBCs, Minorities and Women while sending proposals for appointment as Judges. While expressing his satisfaction on the reply provided on point no 04 of RTI application, the Appellant submitted that with regard to point no 05, the reference made by the Respondent to the order of the Hon'ble Supreme Court in SLP (C) No 32855/2009 dated 04.12.2009 in CPIO and Anr vs Subhash Chandra Agrawal to deny information u/s 8 (1)(b) of the RTI Act, 2005 was not tenable at this stage since the said matter had been finally decided by the Apex Court in Civil Appeal No 10044/10045/2683 of 2010 vide judgement dated 13.11.2019 wherein the CPIO, Supreme Court of India was directed to re-examine the matter after following the procedure under Section 11(1) of the RTI Act as the information related to third parties. During the hearing, the Appellant stated that at this stage he would be satisfied if the total number of proposals relating to SC, ST, OBC, Minorities and Women candidates is provided to him.

The Commission observed that the RTI Act, 2005 stipulates time limits in its various provisions relating to responding to RTI Applications, transfer of applications, filing and disposing of first appeal to ensure that a culture of information dissemination is strengthened so that a robust functioning of the democracy gets established. This was recognised by the Hon'ble High Court

of Delhi in Mujibur Rehman vs Central Information Commission (W.P. (C) 3845/2007)(Dated 28 April, 2009) wherein it was held as under:

"14.....The court cannot be unmindful of the circumstances under which the Act was framed, and brought into force. It seeks to foster an "openness culture" among state agencies, and a wider section of "public authorities" whose actions have a significant or lasting impact on the people and their lives. Information seekers are to be furnished what they ask for, unless the Act prohibits disclosure; they are not to be driven away through sheer inaction or filibustering tactics of the public authorities or their officers. It is to ensure these ends that time limits have been prescribed, in absolute terms, as well as penalty provisions. These are meant to ensure a culture of information disclosure so necessary for a robust and functioning democracy."

Furthermore, the Hon'ble Delhi High Court in the matter of J P Aggarwal v. Union of India (WP (C) no. 7232/2009 clearly stated that the PIO acts as the Pivot for enforcing the implementation of the Act. The relevant extracts of the decision are as under:

" 7"it is the PIO to whom the application is submitted and it is who is responsible for ensuring that the information as sought is provided to the applicant within the statutory requirements of the Act. Section 5(4) is simply to strengthen the authority of the PIO within the department; if the PIO finds a default by those from whom he has sought information. The PIO is expected to recommend a remedial action to be taken".
The RTI Act makes the PIO the pivot for enforcing the implementation of the Act.

8.....The PIO is expected to apply his / her mind, duly analyse the material before him / her and then either disclose the information sought or give grounds for non-disclosure."

Furthermore, the Hon'ble Delhi High Court in the case of Shri Vivek Mittal v. B.P. Srivastava, W.P.(C) 19122/2006 dated 24.08.2009 had upheld the view of the CIC and observed that

".....The Act as framed, casts obligation upon the CPIOs and fixes responsibility in case there is failure or delay in supply of information. It is the duty of the CPIOs to ensure that the provisions of the Act are fully complied with and in case of default, necessary consequences follow".

Furthermore, the Hon'ble High Court of Delhi in the matter of R.K. Jain vs Union of India, LPA No. 369/2018, dated 29.08.2018, held as under:

"9..... That apart, the CPIO being custodian of the information or the documents sought for, is primarily responsible under the scheme of the RTI Act to supply the information and in case of default or dereliction on his part, the penal action is to be invoked against him only."

The Commission also noted that it should be the endeavour of the CPIO to ensure that maximum assistance should be provided to the RTI applicants to ensure the flow of information. In this context, the Commission referred to the OM No.4/9/2008-IR dated 24.06.2008 issued by the DoP&T on the Subject "Courteous behavior with the persons seeking information under the RTI Act, 2005" wherein it was stated as under:

"The undersigned is directed to say that the responsibility of a public authority and its public information officers (PIO) is not confined to furnish information but also to provide necessary help to the information seeker, wherever necessary."

Furthermore, in OM No. 20/10/23/2007-IR dated 09.07.2009, issued by the M/o Personnel, Public Grievances and Pensions, D/o Personnel and Training, while elaborating on the duties and responsibilities of the FAA, it was stated that:

"3. Deciding appeals under the RTI Act is a quasi judicial function. It is, therefore, necessary that the appellate authority should see that the justice is not only done but it should also appear to have been done. In order to do so, the order passed by the appellate authority should be a speaking order giving justification for the decision arrived at.

5.....The Act provides that the first appellate authority would be an officer senior in rank to the CPIO. Thus, the appellate authority, as per provisions of the Act, would be an officer in a commanding position vis a vis' the CPIO. Nevertheless, if, in any case, the CPIO does not implement the order passed by the appellate authority and the appellate authority feels that intervention of higher authority is required to get his order implemented, he should bring the matter to the notice of the officer in the public authority competent to take against the CPIO. Such competent officer shall take necessary action so as to ensure implementation of the RTI Act. "

DECISION:

Keeping in view the facts of the case and the submissions made by the Appellant and in the light of the decisions cited above as also the provisions of the Act as per which a clear, cogent and timely response ought to be provided by the CPIO/ FAA, the Commission instructs the Respondent to FAA, D/o Justice, M/o Law and Justice to examine the RTI Application/ First Appeal and provide a clear, cogent and precise response to the Appellant within a period of 30 days from the date of receipt of this order depending upon the condition for containment of the Corona Virus Pandemic in the Country.

The Commission also instructs the Respondent Public Authority to convene periodic conferences/seminars to sensitize, familiarize and educate the concerned officials about the relevant provisions of the RTI Act, 2005 for effective discharge of its duties and responsibilities.

The Appeal stands disposed accordingly.

(The order will be posted on the website of the Commission)

(Bimal Julka) (बिमल जुल्का)

(Chief Information Commissioner) (मुख्य सूचना आयुक्त)

Authenticated true copy

(अभिप्रमाणित सत्यापित प्रति)

(K.L. Das) (के.एन.दास)

(Dy. Registrar) (उप-पंजीयक)

011-26186535/ kl.das@nic.in

दिनांक / Date: 24.07.2020

Copy to:

1. **Secretary (Justice), Ministry of Law & Justice, Jaisalmer House, 26, Man Singh Road, New Delhi – 110011**
2. **FAA, Department of Justice, Ministry of Law & Justice, Jaisalmer House, 26, Man Singh Road, New Delhi – 110011**

