

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/DIREN/A/2018/117760-BJ

Mr. Durga Prasad Choudhary

....अपीलकर्ता/Appellant

VERSUS

बनाम

CPIO & Dy. Director
Directorate of Enforcement
6th Floor, Loknayak Bhawan, Khan Market
New Delhi – 110003

....प्रतिवादीगण /Respondent

Date of Hearing : 03.10.2019
Date of Decision : 04.10.2019

Date of RTI application	10.11.2017
CPIO's response	28.12.2017
Date of the First Appeal	25.01.2018
First Appellate Authority's response	05.03.2018
Date of diarised receipt of Appeal by the Commission	20.03.2018

ORDER

FACTS:

The Appellant vide his RTI application sought information on 03 points regarding the list of people named in the Panama Papers along with the complete details thereof; action taken on Panama Paper Leak Case, till the date of filing of the RTI application; the details of the officers responsible for the delay in Panama Papers Leak Case investigation, etc.

The CPIO, vide its letter dated 28.12.2017, informed that their Organization was exempted under Section 24 read with Second Schedule of the RTI Act, 2005. Dissatisfied by the response, the Appellant approached the FAA. The FAA, vide its order dated 05.03.2018, upheld the CPIO's response.

HEARING:

Facts emerging during the hearing:

The following were present:

Appellant: Mr. Durga Prasad Choudhary through VC;

Respondent: Mr. Vipin, APIO and Mr. Rajesh Ridla, Assistant Legal Advisor;

The Appellant reiterated the contents of the RTI application and stated that the information sought by him had not been provided whereas this was a serious matter pertaining to corruption at higher levels. He drew the attention of the Commission to various media reports in National and International News Papers on the said subject of disclosure of names of individuals whose names appeared in Panama Papers. In its reply, the Respondent reiterated that their organization was exempted under Section 24 read with Second Schedule of the RTI Act, 2005 as also the matter being sub-judice, no further details could be disclosed at this stage. He further referred to the decision of the Hon'ble Delhi High Court in the matter of Bimal Kumar Bhattacharya dated 19.02.2018.

The Commission was also in receipt of a written submission from the Respondent dated 01.10.2019 wherein it was stated that the RTI application and First Appeal were rejected after due consideration since the requisite information / documents could not be provided in view of the exemption to the Directorate of Enforcement u/s 24 read with Second Schedule of the RTI Act. He also referred to the judgment of the Hon'ble Delhi High Court in the matter of Bimal Kumar Bhattacharya dated 19.02.2018 and prayed to dismiss the Appeal. The Respondent also enclosed a copy of the order of the Division Bench of the Hon'ble Delhi High Court in the matter of Bimal Kumar Bhattacharya vs. CPIO, Directorate of Enforcement and Anr (LPA 256/2018 and C.M. 18694-18695/2018 dated 07.05.2018) wherein the aforementioned order of the Single Bench was upheld.

The Commission referred to the definition of information u/s 2(f) of the RTI Act, 2005 which is reproduced below:

“information” means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, report, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force.”

Furthermore, a reference can also be made to the relevant extract of Section 2 (j) of the RTI Act, 2005 which reads as under:

“(j) right to information” means the right to information accessible under this Act which is held by or under the control of any public authority and includes”

In this context a reference was made to the Hon'ble Supreme Court decision in 2011 (8) SCC 497 (CBSE Vs. Aditya Bandopadhyay), wherein it was held as under:

35..... “It is also not required to provide ‘advice’ or ‘opinion’ to an applicant, nor required to obtain and furnish any ‘opinion’ or ‘advice’ to an applicant. The reference to ‘opinion’ or ‘advice’ in the definition of ‘information’ in section 2(f) of the Act, only refers to such material available in the records of the public authority. Many public authorities have, as a public relation exercise, provide advice, guidance and opinion to the citizens. But that is purely voluntary and should not be confused with any obligation under the RTI Act.”

Furthermore, the Hon'ble Supreme Court of India in Khanapuram Gandaiah Vs. Administrative Officer and Ors. Special Leave Petition (Civil) No.34868 OF 2009 (Decided on January 4, 2010) had held as under:

6. “...Under the RTI Act “information” is defined under Section 2(f) which provides:

“information” means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, report, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force.”

This definition shows that an applicant under Section 6 of the RTI Act can get any information which is already in existence and accessible to the public authority under law. Of course, under the RTI Act an applicant is entitled to get copy of the opinions, advices, circulars, orders, etc., but he cannot ask for any information as to why such opinions, advices, circulars, orders, etc. have been passed.”

7. *“....the Public Information Officer is not supposed to have any material which is not before him; or any information he could have obtained under law. Under Section 6 of the RTI Act, an applicant is entitled to get only such information which can be accessed by the “public authority” under any other law for the time being in force. The answers sought by the petitioner in the application could not have been with the public authority nor could he have had access to this information and Respondent No. 4 was not obliged to give any reasons as to why he had taken such a decision in the matter which was before him.”*

The Commission observed that the Enforcement Directorate was included in the list of organization exempted from the purview of the RTI Act, 2005 as per Section 24 r/w Second Schedule of the RTI Act, 2005. In the context of the information sought in the instant matter, a reference can be made to the decision of the Hon’ble High Court of Delhi in the matter of CPIO, Directorate of Enforcement vs. Mr. Bimal Kumar Bhattacharya WP (C) No. 345/ 2018 dated 19.02.2018 wherein it was held as under:

“6. Plainly, the impugned order cannot be sustained as it is contrary to the expressed language of Section 24(1) of the Act. Section 24(1) of the Act expressly excludes intelligence and security organizations specified in the Second Schedule of the Act from the purview of the Act. Admittedly, the Directorate of Enforcement is included in the Second Schedule to the Act and, thus, cannot be called upon to disclose information under the provisions of the Act. The only exception carved out from the exclusionary clause of Section 24(1) of the Act relates to information pertaining to allegations of corruption and human rights violation. Undisputedly, the information sought for by the petitioner cannot be categorized as such information.

7. The aforesaid question has also been considered by a Coordinate Bench of this Court in CPIO Intelligence Bureau v. Sanjiv Chaturvedi : 242 (2017) DLT 542, wherein this Court held that an organisation specified in the Second Schedule of the Act was excluded from the purview of the Act.

8. In view of the above, the petition and the pending application are allowed and the impugned order is set aside. However, it is clarified that this would not preclude the respondent from instituting any proceedings that he may be advised against M/s Thomas Cook (India) Limited, if so, entitled in law.”

Moreover, the Commission also observed that in similar such matters where information was sought from organizations exempted from the purview of the RTI Act, 2005 as per Section 24

r/w Second Schedule of the RTI Act, the Hon'ble High Courts had inter alia in several decisions held as under:

1. The Hon'ble High Court of Delhi in a similar matter in *Pr. DIT (Inv) (1) vs. Ashwani Kumar, W.P.(C) 11591/2017* dated 22.12.2017 stayed the decision of the Commission wherein a direction was issued to the Pr. DIT (Inv) (1) to inform the status of the Petition/Complaint dated 12.02.2016 addressed to PMO, within a period of 30 days from the date of receipt of this order. In the said matter, the Hon'ble High Court had also directed the Department to file an affidavit unequivocally stating that the complaint in question is a matter being investigated by the DGIT (Inv.) and not any other office of the IT Authority.
2. The Hon'ble High Court of Punjab and Haryana in its decision in *Palwinder Sondhi v. Central Information Commission and Ors.* WO (C) No. 13211 of 2010 dated 28.07.2010 had held as under:

“Be that as it may, in the context of information sought, I find no fault with the reasons given in the impugned order for not supplying the information as the provisions of Section 24(1) of the Act clearly provide that nothing contained in the Act shall apply to the DRI, it being an organization established by the Central Government. Surely the information sought does not relate to corruption and human right violations as is evident from the nature of information sought. The order under the circumstances does not suffer from arbitrariness.”

DECISION:

Keeping in view the facts of the case and the submissions made by both the parties and in the light of the decision of the Superior Courts granting protection to the Respondent Public Authority under Section 24 of the RTI Act, 2005, no further intervention of the Commission is required in the matter.

The Appeal stands disposed accordingly.

(Bimal Julka) (बिमल जुल्का)
(Information Commissioner) (सूचना आयुक्त)

Authenticated true copy
(अभिप्रमाणित सत्यापित प्रति)

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