

CENTRAL INFORMATION COMMISSION

Room No. 305, 3rd Floor, CIC Bhavan, Baba Gangnath Marg, Munirka,
New Delhi-110067, website:cic.gov.in

Complaint No.: -CIC/GGVBP/C/2017/193569-BJ

Complainant : Mr. Harish Kumar
Respondent : CPIO,
Guru Ghasidas Vishwavidyalaya,
Bilaspur (Chhattisgarh), Koni,
Chhattisgarh 495005
Date of Hearing : 09.02.2018
Date of Decision : 13.02.2018

Date of RTI application	18.08.2016
CPIO's response	Not on record
Date of the First Appeal	19.09.2016
First Appellate Authority's letter	15.12.2016
Date of diarised receipt of Complaint by the Commission	24.12.2016

ORDER

FACTS:

The Complainant vide his RTI application sought information on 19 points regarding the copies of the minutes of the meeting of DRC along with his notes as DRC Member on the Register, notices/letters sent to all the DRC Members time to time to attend the meeting of DRC along with the notes/remarks/letters written to all the DRC members, copies of the notices/letters sent to him as a DRC member, papers containing the constitution of Admission Committees for admitting students in Ph.D Program/ Course in DMS since beginning, copies of all letters and notesheet written with regard to the action taken by DRC about the Ph.D program and issues related thereto.

Dissatisfied by non-receipt of any reply from the PIO, the Complainant approached the FAA. The FAA vide its letter dated 15.12.2016 provided an opportunity of personal hearing to the Complainant on 19.12.2016. However, the order of the FAA, if any, is not on the record of the Commission.

HEARING:

Facts emerging during the hearing:

The following were present:

Complainant: Dr. Harish Kumar (Professor) through VC;

Respondent: Dr. B. D. Mishra, HOD (Management Studies); Mr. T. P. Singh, PIO/AR through VC;

The Complainant reiterated the contents of his RTI application and stated that complete and satisfactory response had not been provided to him, till

date. It was informed that no information had been provided w.r.t Points 4 to 10, 16 and 19 and incomplete information supplied in respect of Points 2, 11, 12, 13, 17 and 18. Furthermore, objection was raised regarding the delay caused by the PIO in responding to the RTI application, which was violative of Section 7(1) of the RTI Act, 2005 and constituted the deemed denial of information. Similarly, it was alleged that the FAA had heard his First Appeal only after a lapse of 03 months which was yet another violation of the provisions of the RTI Act, 2005. It was further contended that only selective information/documents was furnished to him despite the order of the FAA. In addition, it was explained that the information though provided was not in the proper format and that the PIO did not provide a point wise response to the queries raised in his RTI application.

In its reply, the Respondent submitted that the information sought in the RTI application was not specific in nature since the Complainant had not mentioned the time period for which the information was sought by him. Therefore, it was difficult for them to collect such voluminous data in a short span of time from the concerned Section. Moreover, it was informed that the FAA vide its order dated 19.12.2016 had directed to provide the requisite information after inspection within a period of 10 days, and the same was complied by furnishing 172 pages of information to the Complainant. However, in the meantime, a Complaint was filed by the Complainant before the Commission. It was therefore categorically stated that information, as available on record, had been furnished to the Complainant. In addition, the Respondents expressed their inability in catering to the several RTI applications filed by the Complainant along with his wife on a daily basis seeking information on similar subject matters wherein voluminous information was sought by them. Moreover, it was informed that a disciplinary proceeding was initiated against the Complainant and all his RTI applications to seek information was with the intent to settle his personal scores with the officials of the Public Authority. It was therefore contended that the RTI Act was used by the Complainant as a tool to destabilise the normal working of the Public Authority. The Complainant strongly objected to the submission of the Respondent and stated that he was singly defamed for filing the RTI applications and that a decision on his alleged disciplinary proceedings was subjudice before the Hon'ble High Court.

The Complainant vide his written submission dated 31.01.2018 stated that the PIO did not comply with the order of the FAA. Moreover, it was alleged that the attitude of the PIO had been very non-cooperative in respect to providing requisite information/documents to him and explained that the PIO had provided only selective information as per their convenience. In addition it was stated that there was delay in providing certain information by the PIO which raised suspicion of the said information being tempered or manipulated. Therefore a request was made to provide remaining information and documents for inspection and receipt without any cost and to initiate penal action against the concerned officials. A list of dates was provided with regard to receipt of certain responses from the PIO, Academic, Examination & Confidential regarding inspection vide letter dated 22.12.2017, PIO, DMS regarding the FAA order dated 27.12.2017, letter

informing the inspection and receipt of documents vide letter dated 29.12.2017 and receipt of certain documents vide letter dated 04.01.2017.

In this context, the Commission referred to the decision of the Hon'ble Supreme Court in the matter of Civil Appeal no. 6454 of 2011 Central Board of Secondary Education and Anr. Vs. Aditya Bandopadhyay and Ors. which held as under:

"35..... the Act does not cast an obligation upon the public authority, to collect or collate such non-available information and then furnish it to an applicant. A public authority is also not required to furnish information which require drawing of inferences and/or making of assumptions..."

Similarly, the Hon'ble Delhi High Court in the case of *The Registrar Supreme Court of India v. Commodore Lokesh K. Batra & Ors* LPA 24/2015 & CM No. 965/2015 held as under:-

"15. On a combined reading of Section 4(1)(a) and Section 2(i), it appears to us that the requirement is only to maintain the records in a manner which facilitates the right to information under the Act. As already noticed above, 'right to information' under Section 2(j) means only the right to information which is held by any public authority. We do not find any other provision under the Act under which a direction can be issued to the public authority to collate the information in the manner in which is sought by the applicant".

A reference was drawn to the Hon'ble Supreme Court observation in *CBSE v. Aditya Bandopadhyay & Ors.(supra)*, wherein it has been held: *"35. At this juncture, it is necessary to clear some misconceptions about the RTI Act. The RTI Act provides access to all information that is available and existing. This is clear from a combined reading of Section 3 and the definitions of "information" and "right to information" under clauses (f) and (j) of Section 2 of the Act. If a public authority has any information in the form of data or analysed data, or abstracts, or statistics, an applicant may access such information, subject to the exemptions in Section 8 of the Act. But where the information sought is not a part of the record of a public authority, and where such information is not required to be maintained under any law or the rules or regulations of the public authority, the Act does not cast an obligation upon the public authority, to collect or collate such non-available information and then furnish it to an applicant....."*

The Commission also took note of the decision of the Hon'ble Supreme Court of India in *Central Board of Secondary Education and Anr. Vs. Aditya Bandopadhyay and Ors*, SLP(C) NO. 7526/2009 wherein it was held as under:

"Indiscriminate and impractical demands or directions under RTI Act for disclosure of all and sundry information (unrelated to transparency and accountability in the functioning of public authorities and eradication of corruption) would be counter-productive as it will adversely affect the efficiency of the administration and result in the executive getting bogged down with the non-productive work of collecting and furnishing information. [The Act](#) should not be allowed to be misused or abused, to become a tool to obstruct the national development and integration, or to destroy the peace, tranquility and harmony among its citizens. Nor should it be converted into a tool of oppression or intimidation of honest officials striving to do their duty. The nation does not want a scenario where 75% of the staff of public authorities spends 75% of their time in collecting and furnishing information to applicants instead of discharging their regular duties. The threat of penalties under the [RTI Act](#) and the pressure of the authorities under the [RTI Act](#) should not lead to employees of public authorities prioritising 'information furnishing' at the cost of their normal and regular duties."

Furthermore, the Hon'ble Supreme Court in the matter of ICAI vs. Shaunak H. Satya (2011) 8 SCC 781 dated 02.09.2011 had held as under:

"26. We however agree that it is necessary to make a distinction in regard to information intended to bring transparency, to improve accountability and to reduce corruption, falling under Section 4(1)(b) and (c) and other information which may not have a bearing on accountability or reducing corruption. The competent authorities under the RTI Act will have to maintain a proper balance so that while achieving transparency, the demand for information does not reach unmanageable proportions affecting other public interests, which include efficient operation of public authorities and government, preservation of confidentiality of sensitive information and optimum use of limited fiscal resources"

With regard to the imposition of penalty on the CPIO/PIO under Section 20 of the RTI Act, 2005, the Commission took note of the ruling of Hon'ble Delhi High Court in W.P.(C) 11271/2009 Registrar of Companies & Ors v. Dharmendra Kumar Garg & Anr. (delivered on: 01.06.2012) wherein it was held:

" 61. Even if it were to be assumed for the sake of argument, that the view taken by the learned Central Information Commissioner in the impugned order was correct, and that the PIOs were obliged to provide the information, which was otherwise retrievable by the querist by resort to Section 610 of the Companies Act, it could not be said that the information had been withheld malafide or deliberately without any reasonable cause. It can happen that the PIO may genuinely and bonafidely entertain the belief and hold the view that the information sought by the querist cannot be provided for one or the other reasons. Merely because the CIC eventually finds that the view taken by the PIO was not correct, it cannot automatically lead to issuance of a showcause notice under Section 20 of the RTI Act and the imposition of penalty. The legislature has cautiously provided that only in cases

of malafides or unreasonable conduct, i.e., where the PIO, without reasonable cause refuses to receive the application, or provide the information, or knowingly gives incorrect, incomplete or misleading information or destroys the information, that the personal penalty on the PIO can be imposed. This was certainly not one such case. If the CIC starts imposing penalty on the PIOs in every other case, without any justification, it would instill a sense of constant apprehension in those functioning as PIOs in the public authorities, and would put undue pressure on them. They would not be able to fulfil their statutory duties under the RTI Act with an independent mind and with objectivity. Such consequences would not auger well for the future development and growth of the regime that the RTI Act seeks to bring in, and may lead to skewed and imbalanced decisions by the PIOs Appellate Authorities and the CIC. It may even lead to unreasonable and absurd orders and bring the institutions created by the RTI Act in disrepute.”

Similarly, the following observation of the Hon'ble Delhi High Court in *Bhagat Singh v. CIC & Ors. WP(C) 3114/2007* are pertinent in this matter:

“17. This Court takes a serious note of the two year delay in releasing information, the lack of adequate reasoning in the orders of the Public Information Officer and the Appellate Authority and the lack of application of mind in relation to the nature of information sought. The materials on record clearly show the lackadaisical approach of the second and third respondent in releasing the information sought. However, the Petitioner has not been able to demonstrate that they malafidely denied the information sought. Therefore, a direction to the Central Information Commission to initiate action under [Section 20](#) of the Act, cannot be issued.”

Furthermore, the High Court of Delhi in the decision of Col. Rajendra Singh v. Central Information Commission and Anr. WP (C) 5469 of 2008 dated 20.03.2009 had held as under:

“Section 20, no doubt empowers the CIC to take penal action and direct payment of such compensation or penalty as is warranted. Yet the Commission has to be satisfied that the delay occurred was without reasonable cause or the request was denied malafidely.

.....The preceding discussion shows that at least in the opinion of this Court, there are no allegations to establish that the information was withheld malafide or unduly delayed so as to lead to an inference that petitioner was responsible for unreasonably withholding it.”

The Commission also observed that the Hon'ble High Court of Delhi in the matter of *R.K. Jain v. V.P. Pandey, CPIO, CESTAT, New Delhi* in W.P. (C) No. 4785/ 2017 dated 10.10.2017 adjudicated an order of the Commission dated 17.04.2017 whereby the Respondent was cautioned to exercise due care in future and to ensure that correct and complete information is furnished to the RTI applicants. It was decided that:

“2. The grievance of the petitioner is that although the CIC had accepted that there was a delay in providing the necessary information to the petitioner, the CIC had not imposed the penalty as required under Section 20(1) of the Right to Information Act, 2005. **It is well settled that imposing of the penalty is a discretionary measure.** In Anand Bhushan v. R.A. Haritash: ILR (2012) 4 Delhi 657 a division bench of this Court had considered the question whether the levy of penalty was discretionary and held as under.....

3. In this case it is apparent that the CIC had in its discretion considered that a order cautioning the CPIO would be sufficient. This Court is not inclined to interfere with such exercise of discretion.”

The Complainant could not substantiate his claims regarding malafide denial of information by the Respondent or for withholding it without any reasonable cause.

DECISION

Keeping in view the facts of the case and the submissions made by both the parties, it is evident that information, as available on record, had been furnished to the Complainant. No further intervention of the Commission is warranted in the matter.

The Respondent is however, cautioned to exercise due care in future to ensure that correct and complete information is furnished timely to the RTI applicant(s) as per provisions of the Act failing which penal proceedings under Section 20 shall be initiated.

The Commission also took a serious note that the FAA had also not acted in accordance with the provisions of the RTI Act, 2005 and therefore is advised to be alert and cautious in the implementation of the RTI Act, 2005 with due diligence and care.

The Complaint stands disposed accordingly.

(Bimal Julka)
Information Commissioner

Authenticated True Copy:

(K.L.Das)
Deputy Registrar