

CENTRAL INFORMATION COMMISSION

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CIC/SA/C/2016/000164

H N Pathak v. PIO, BCI

<i>Date of RTI application:</i>	<i>29.02.2016</i>
<i>First appellate order:</i>	<i>Nil</i>
<i>Date of Second Appeal:</i>	<i>25.04.2016</i>
<i>Date of hearing:</i>	<i>28.12.2016</i>
<i>Date of Decision:</i>	<i>02.01.2017</i>
<i>Result:</i>	<i>Show-cause notice issued</i>

FINAL ORDER

Parties Present:

1. Complainant: Absent

Public authority: Mr. Ashok Kumar Pandey, Joint Secretary.

FACTS:

2. Mr. H. N. Pathak, appellant-advocate has sought information about (a) foreign tours of the members of BCI Committees, their purpose etc, (b) how many law colleges were recognized based on inspection done by Hon'ble member of BCI Mr. Vijay Bhatt in the state of Uttarakhand, and (c) the amount paid from January, 2009 - December, 2015 to Mr Vijay Bhatt for the inspections, etc. The CPIO of BCI responded on 16.03.2016 denying the information under Sec 8(i)(j). Then Mr Pathak filed this complaint before the Commission.

3. The CPIO/ Secretary claimed that he denied the information of TA/DA of the member apprehending that it would cause unwarranted invasion of privacy of the Hon'ble Member (Advocate). The complainant did not agree with this and complained that his RTI request would not attract sec 8(1)(j) exception at all and the disclosure would not infringe the privacy of any individual. He also pointed out that as per Section 4 of the Advocates act, 1961, the BCI is a

statutory body and every member of the Council (the Complainant being an Advocate) has the right to know about its policies and expenditure.

4. Mr. Nalin Raj Chaturvedi and Ms. Archana Gupta, CPIO/Asst. Secretary filed written submission dated 27.12.2016 in response to hearing notice/complaint filed before the Commission.

ISSUES EMERGING OUT OF HEARING

5. A perusal of record shows that there is no response from BCI on three points of RTI request. This is the first ground of complaint. The CPIO denied the information under point (c) on the ground of privacy, and there is total silence on points (a) and (b), another ground for this Complaint. There is an incomplete response by BCI to point (a) that too, after complaint is filed before CIC, in their reply to notice of hearing/complaint.

6. Surprisingly the BCI did not mention anything about point (b) wherein he was asking for the Law colleges which were granted recognition based on the inspection report given by a member Mr. Vijay Bhatt. The BCI chose to deny the information stating that visit of members to the universities was 'confidential' in nature.

7. The CPIOs informed that BCI members have never visited any foreign country during 2009–2015 on the expenses of BCI. It is not known what stopped the BCI from giving this information within 30 days. The CPIOs stated:

However, the team consisting of Hon'ble Members of the BCI used to visit foreign Universities for the purpose of considering the question of granting recognition of their Law Degree awarded by the University for the purpose of enrolment of students as an advocate in India. It is to inform you that each and every expense with regard to the said visit is borne by the respective host foreign universities.

8. If no member has visited any foreign country during years 2000- 2015, the BCI should have stated the same within statutory period of 30 days from the date of RTI application (29.02.2016). The details of foreign visits of members, expenditure, purpose and consequent recognition accorded to degree awarded

by foreign university for purpose of enrolment as an advocate in India, should have been disclosed under Section 4(1)(b) voluntarily or furnished to complainant in response to his RTI application. The BCI further stated:

The details and information of the member's visit of the country/ Universities is confidential information in nature of the respective university & of the information visit of the Universities/ Colleges in Uttarakhand and/or foreign universities is confidential information and the team members might affect adversely in case report is not given favourably. Therefore, it cannot be shared and is protected under section 8(1)(j) of RTI, 2005.the information required by you at last point regarding TA/DA put cause unwarranted invasion of privacy of an individual hence it denied as per the RTI act under section 8(1)(j).

9. The RTI Act under section 8(1)(d) provided an exemption to information of commercial confidence that would harm the competitive position of third party. It also provided an exception that the competent authority could disclose such information also, if satisfied that larger public interest warrants the disclosure.

10. The CPIOs of BCI appears to have not applied their mind to these aspects of Section 8(1)(d). At the first instance they have rejected all points flatly and next they put forward an excuse of "confidential information", which is not legally recognized ground at all under RTI Act, and quoted Sec 8(1)(j) to reject the same.

11. Section 7(1)(h) of the Advocates Act, 1961, explains functions of BCI: "...to promote legal education and to lay down standards of such education in consultation with the Universities in India imparting such education and the State Bar Councils"; ...(i) to recognise Universities whose degree in law shall be a qualification for enrolment as an advocate and for that purpose to visit and inspect Universities or cause the State Bar Councils to visit and inspect Universities in accordance with such directions as it may give in this behalf;

12. The inspection of the colleges before granting recognition is an important function of the Bar Council of India. The Part -IV Rules of Legal Education under

section 2(xii) explained what inspection is: "Inspection of the University" means inspection by the Bar Council of India for recognizing its degree in law for the purpose of enrolment in the rolls of advocates and includes (A) calling for all relevant records, documents, and correspondence to evaluate the competence of the University to run professional courses, (B) visiting places of the Centres of Legal Education including building housing classes, library of the Institution, halls of residence and all other places as may be required by the inspection team inspecting the University and its affiliated Centres of Legal Education where the courses of degrees in law are conducted or proposed to be conducted. Provided that as and when the Bar Council India communicates to the University for the purpose of inspection, the University shall also direct the concerned officer in charge of Inspection of Centre of Legal Education to instruct all persons concerned for facilitating the Inspection by the inspection team of the Bar Council of India.

13. The BCI Inspection Manual 2010 Guideline for Inspection of Bar Council of India of University/Institution, under Chapter I states that inspection of Universities is one of the most important function and a very critical one for the Bar Council of India. Inspection is the job of specialists. Therefore, it is necessary for the Bar Council of India to properly and adequately inspect a University for the purpose of recognizing its degree in law as 'the qualification for enrolment as an advocate'. The profession is distinguished from service in its special education for making professionals.

BCI Rules of Legal Education, Rule 2 (xvi) says: "Legal Education Committee or LEC" means the Legal Education Committee constituted by the Bar Council of India under the Act, composed of five members of the Bar Council of India nominated by the Bar Council of India and five co-opted members comprising the Chairman who has to be a former Judge of the Supreme Court of India, a sitting Hon'ble Chief Justice of a High Court, distinguished Professor of Law, the Law Secretary and the UGC Chairman. The Committee may also have some permanent invitees proposed by the Bar Council of India.

Rule 22 explains contents of Inspection Report. The Committee shall inspect the University, examine the documents and reports, visit the institution to assess the infrastructure, curriculum design, teaching and learning process, library and technical facilities and the feasibility of standard clinical education. The Committee shall then submit its report in the prescribed Form together with all relevant documents.

Rule 24 deals with the adverse report: (a) In case of an adverse report received by the Secretary from the Inspection Committee he shall forthwith inform the Chairman of the Bar Council of India and on his instruction seek further clarification, if necessary. (b) The Secretary shall cause a copy of the report to be sent to the Registrar of the University concerned and also to the Head of the Institution for further comments and explanations, if any. Such comments and explanations on the report shall be sent by the Registrar of the University within a period of six weeks from the date of the receipt of the communication. (c) The Secretary shall cause the report and the comments/explanation of Registrar of the University and the head of the institution concerned to be placed before the next meeting of the Legal Education Committee of the Bar Council of India for its consideration.

The rules also provided for the recognition of foreign universities to validate their degree for enrolment in India.

Rule 33 of the Manual also mandates transparency:

33. Transparency in the Report: The Report must be exhaustive with all supportive documentary evidences, comparative statements with standard prescribed and variations, and local feasibility and importance, access to internship facilities, relation with local Bar and justifiability of the Institution in the environment. The report shall also contain timebased requirements to be fulfilled. In case the recommendation is denied, all the parties must be given chances of representation to the LEC meeting on the grounds communicated to the authorities for not recommending the approval. The Institutional head, Society proposing the Institution, and the University authority may address the issue of deficiencies and explain as to why such an Institution is required to be affiliated and approved. A copy of the institution is to be made available to the authority of the institution and the University.

IV. SELF ASSESSMENT REPORTS

The LEC/BCI would like to have an objective, honest and transparent assessment of the academic performance and potential of the college/department from each member of the teaching staff including Principal and of the management independently when they can frankly express the strengths and weaknesses of the institution as they perceive it. If any member wants to keep that information confidential the LEC of BCI will make every effort to keep it so. The Individual reports may also be directly sent to the Chairman, LEC if they so desire.

14. Almost every study and report expressed serious concern at the decline in standards of legal education generally among the law colleges in India. Though the National Law Schools have shown how higher standards could be maintained, their methods could not be replicated in traditional law schools because the special patronage National Law Schools enjoyed were not made available to them. The State Governments were enthusiastic to allocate necessary funds to the National Law School, which is headed by the Chief Justice of High Court as the Chancellor. The traditional Universities could have increased their performance if they also had same powers and funds as that of

National Law Schools, with necessary facilities to fill all the posts of faculty, and build required infrastructure. The better practices of learning and infrastructure in the national law schools could not spread to traditional universities and thus the NLUs remained islands of excellence. On the other hand several law colleges in private were allowed to run with thousands of students without required number of faculty in the same ratio. The University Law Colleges suffered because contract lecturers replaced the posts vacated by retirement of senior professors. The existing standards in some of the colleges raise suspicions about integrity and demand transparency in the process of their recognition. It is in this context the RTI systems assume importance. As the "sun is best disinfectant", the transparency will be the best antidote to the invisible corruption that allowed dilution of standards of legal education, which ultimately affect the functioning of judiciary and deteriorate the rule of law as a whole. This is the larger public interest that demands disclosure of information sought by the applicant in this case.

15. These guideline make it imperative for the Legal Education Committee (LEC) to ensure the transparency in the process of assessment and approval of a Law College. It is also significant to note that if at all any member of staff of such college wants to keep his assessment/report about the applicant college as confidential the LEC has to make all efforts to secure that confidentiality. This rule helps the faculty members of the college to express freely without fear of vindictive action by the management. Except this, there is no other provision for keeping any part of the process confidential. Nowhere the BCI Rules or Regulations speak that the name of the inspecting member, number of colleges he visited, his recommendations for recognition or otherwise are to be kept secret.

16. The report given after inspection is the 'information' according to the definition under Section 2(f), and cannot be denied unless any exception under Sections 8 & 9 is attracted. The BCI in this case totally relied upon the excuse of 'confidential' nature of information, but it did not explain how section 8(1)(d) could be invoked. They have not put forward any evidence or justification to claim that the competitive position will be adversely affected. This defence cannot be accepted. Even if the inspection report by the LEC is adverse to the

institution, it cannot be considered confidential or secret. If the report is positive it will naturally get publicity by the fact of recognition.

17. There is no basis for considering information about tours and inspection reports/recommendations by the member of LEC as personal information of that member, because the members are public servants of this public authority and their TA and DA are paid from public authority, not by any private body, and thus information about expenditure from the public authority cannot be denied.

18. The Supreme Court in **Bar Council of India v. Bonnie Foi Law College & Others** has explicitly mentioned that the function of the Bar Council of India may make rules relating to the standards of Legal Education to be maintained by the Universities in India and strict inspection of institutions is essential to achieve that purpose. Hence in a way BCI is responsible for maintenance of the legal education in the country. The honourable Supreme Court referred to innumerable affiliated law colleges and university colleges with questionable standards.

19. In the 184th Report, the Law Commission of India undertook a comprehensive *suo motu* review of the structure and regulation of the professional legal education system in India wherein it recorded the dissatisfaction with the inspections carried out by BCI for the purpose of granting permission or recognition to law colleges. It is noted that in many cases, the inspection undertaken was merely perfunctory. It was further recommended that the BCI Rules governing inspections be suitably amended to provide that at least one academican from a State different from the one where the law college in question is located also forms part of the inspection team. National Knowledge Commission suggested thorough reform of the process of inspection and recognition of law colleges.

20. The reports after inspection of foreign universities and law colleges within India are basically official reports generated by public authority out of their public activity. There is no legal basis for considering such reports as confidential or secret. It is part of 'information' held by the public authority, which does not attract any exception under Section 8 or 9 of RTI Act. The CPIOs could not advance anything to justify the denial on any aspect. They could not show any

security issue to reveal the names of the inspecting member. While agreeing that the members undertook foreign trips, the CPIOs failed even to give those details. They are supposed to give details of expenditure borne by the foreign universities, and the remuneration paid or TA/DA paid to the member for the inspection and the colleges which were inspected by the named member and the details of approval or disapproval if any. It appears that the CPIOs have no inclination to respond to the RTI request. It is surprising that on this vital aspect, the BCI is not transparent.

21. In fact, the BCI is under an obligation under section 4(1)(b) to voluntarily disclose every inspection report on their official website. The parents and students or any other person has a right to know the reasons for recommending to accord the recognition. They should get an opportunity to verify the claims made by the legal educational institute which entitled them the recognition. It is not proper and legal on the part of the BCI to deny the information sought. Hence the complaint sustains. The transparency in the process of recognizing law colleges, voluntary disclosure of inspection reports explaining inadequacies in faculty and infrastructure in law colleges will go a long way in removing the scope of corruption. The information so disclosed will help students and their parents to exercise the choice of law colleges in very effective manner. The aims and objectives of Advocates Act 1961 could be achieved if the provisions of transparency in RTI Act are properly complied with by the Bar Council of India.

22. The Commission directs the CPIOs Mr. Nalin Raj Chaturvedi and Ms. Archana Gupta to show cause why maximum penalty should not be imposed against each of them for denying information, and why the BCI should not be directed to pay compensation to the complainant, before 30th January 2017. The legal consultant of the Commission could not find in the official website any lists of law colleges recommended or rejected and the inspection committee reports. Considering the larger public interest in the transparency, the Commission finds it necessary for the BCI to comply with the provisions of Section 4(1)(b) of the RTI Act by updating these disclosures periodically. The Commission also require BCI to give on their own the details of the foreign tours undertaken by the members of LEC or others and the details of expenditure whether borne by BCI or sponsoring institutions.

23. The Commission finds no specific disclosure under the category of Section 4(1(b), which it has to introduce in the official website and file compliance report before 30th January 2017, with an undertaking that BCI would update the information periodically.

Sd/-

(M. Sridhar Acharyulu)
Central Information Commissioner

Authenticated true copy

(Dinesh Kumar)
Deputy Registrar

Copy of decision given to the parties free of cost.

Addresses of the parties:

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