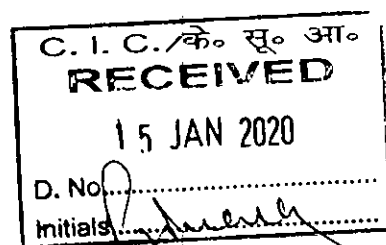


Central Information Commission  
Baba Gang Nath Marg,  
Munirka, New Delhi -110067.

CIC/AA/A/2020/14  
CICOM/A/E/20/00006  
CICOM/R/2019/50974

Name of the Appellant : Sh. S. Haja Najeemudeen  
AL Zamaal Udaya Nagar,  
Kathrikadavu,  
Cochin - 682017.



1.	Date of RTI application	11.12.2019
2.	Date of reply of the RTI application	01.01.2020
3.	CPIO(s) who furnished reply	Sh. A. K. Assija
4.	1 <sup>st</sup> Appeal Date	08.01.2020
5.	Date of Decision	15.01.2020

**Brief facts of the case:-**

In the RTI application, appellant has sought the information:-

"In its observation in decision no: CIC/CMFRI/A/2018/168175/02286, Hon'ble CIC has recorded under title "Observations" that "from a perusal of the relevant case records ,it is noted that the reply given by the CPIO on 06.07.2017 was not proper".In these circumstances, I most humbly request the CPIO, CIC, to kindly supply the following information along with certified copy of documents.1)Certified copy of documents/statement/written submission/explanation/clarification made by the CPIO-CMFRI, Cochin, FAA –CMFRI, Cochin, and the public authority (CMFRI, Cochin) to CIC in connection with the case File No. CIC/CMFRI/A/2018/168175.Information may be supplied on "Whether my Written Submission dt.25-11-2019filed online on 25-11-2019 (CIC diary No.657835 dt. 25-11-2019 )and also sent by e-mail to CIC sufficiently well in advance before hearing, was brought to the kind notice of the concerned Information Commissioner and kindly supply copy of documental proof for having submitted my Written Submission to the kind notice of the concerned Information Commissioner. 2)In case, CPIO/FAA/the public authority or both did not submitted any written submissions/explanation to CIC before the hearing held on 06-12-2019,then according to CIC what are the"relevant case records" contained. Information on the details of "relevant case records "may please be supplied.

Kindly supply information under Section 4(1)(d)and Section 5(3) of the RTI Act, about the reasons for not considering the Judgments of Hon'ble High Court, Delhi and the decisions of Hon'ble CIC mentioned in my "Written Submission"to which kind attention of the Hon'ble CIC had specifically been invited, before taking the decision CIC/CMFRI/A/2018/168175/02286. 4)CPIO, CMFRI, claimed before the Hon'ble CIC during the hearing held on 06-12-2019, that he has not supplied the personal information of the appellant to Shri. Mohanan. Whereas in his RTI reply dt. 06-07-2017 (Annexure –7), he categorically recorded that "the disclosure of the information (for sl. No. 1 to 3 of Annexure-6–RTI application) sought by the RTI applicant/appellant are exempted as per provision under Section 8(1)(j)of the RTI Act, 2005. It means that 'information' about the RTI application of Sri. Mohanan and others etc.. are personal

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information ...therefore the same cannot be disclosed as per Sec.8(1)(j) of the RTI Act. By this reply, CPIO, CMFRI, consciously admitted the 'presence of RTI applications 'asking personal information of the appellant. Hence the stands taken by the CPIO, CMFRI, in Annexure -7 and on 06-12-2019, are contradictory to each other. This 'aspect 'is not considered by the Hon'ble CIC and because of that the appellant has not been rendered justice. Reasons for ignoring the contradictory stands taken by the CPIO, CMFRI, Cochin, may be supplied under Section 4(1)(d) of the RTI Act. 5) Kindly supply reasons for not taking decision on my complaint dt. 10-07-2019 sent by Regd. Post to CIC. True copy of the first page of my complaint is enclosed for identifying my complaint.

2. Reply by CPIO :-

"Please refer to your online RTI application dated 11.12.2019 received in the registry of IC(VN) on 11.12.2019 seeking information/documents in regard to case File No. CIC/CMFRI/A/2018/168175.

The following information is provided to you:-

1. Certified copy of the submission made by the Assistant Administrative officer and CPIO, CMFRI, Kochi vide letter No. F.No.4(2)/14-RTI dated 26.11.2019 before the Commission is enclosed. 2. See(1) 3. It is informed that seeking answer to questions/clarifications /comments/ views on an issue are not covered under the definition of 'Information' given under Section 2(f) of the RTI Act. It is also brought to your notice that no such information as sought by you is available in the office records. Under the provisions of RTI Act, the CPIO is not supposed to create information that is not a part of the record. In this context, the decision of the Hon'ble Supreme Court of India in Khanapuram Gandiah v. Administrative Officer and Ors. in SLP (C).34868 of 2009 (Decided on January 4, 2010) can be cited where it was 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." 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." 4. It is informed you that seeking answer to questions/clarifications / comments /views on an issue are not covered under the definition of 'Information' given under Section 2(f) of the RTI Act. 5. It is informed you that seeking answer to questions /clarifications/comments/ views on an issue are not covered under the definition of 'Information' given under Section 2(f) of the RTI Act."

3. RTI applicant filed First Appeal as under : -

"Since I am not satisfied with the Reply No. CICOM/R/2019/50974 dt.01-01- 2020 of CPIO, CIC, I hereby submit my First Appeal before your goodself. 1) At the outset I submit that the case No. CIC/CMFRI/A/2018/168175 is about misuse of several personal information of the appellant by a third party. CPIO, CMFRI, or CIC have no case that my personal information are not in the possession of a third party. The grievance of the appellant is that 'how his personal information which are kept under safe custody of the public authority, landed in the hands of the third party. 2) I invite your kind attention to the procedure lapses on the part of CPIO, CMFRI and CIC. As per the CIC Notice of Hearing for Appeal/Complaint, in respect of CIC file no. CIC/CMFRI/A/2018/168175 dt.05-11-2019, it is clearly stipulated that "all the parties may submit their written submission, if any, to the Commission at least 7 days before the date of hearing. A copy of the same shall be served upon the opposite party." 3) As per the above CIC NOTICE, I submitted my written submission dt.25-11- 2019 (CIC diary No.657835 dt.25-11-2019) and a copy of the same was sent to the CPIO, CMFRI, Cochin, by e-mail. However, CPIO, CMFRI, has not sent me the copy of his submission No.4(2)/14-RTI dt.26-11-2019, made in response to the CIC Notice. CMFRI CPIO's contained incorrect information and baseless allegations against the appellant only to defame and tarnish me and to mislead the CIC. Therefore CPIO knowingly violated the instructions contained in the CIC NOTICE. On the hearing day (6 Dec 2019), though the Hon'ble IC mentioned about the CPIO's letter but did not ask me whether I (appellant) received the copy of the same or not. CIC also did not check with the CPIO, CMFRI, whether he supplied the copy of his submission to the appellant. There was no mention about my 'written submission' submitted to CIC, during the hearing and the decision as well. 4) Since the CPIO has prevented me from expressing my views and register objections against his baseless allegations intentionally made in his written submission dt.26-11-2019, the decision taken by the CIC is not proper. Unfortunately CIC also knowingly or unknowingly endorsed the action and inaction of the CPIO, CMFRI, of non-supply of his submission to this appellant. I was not given a chance/ an opportunity to refute or accept the allegations made against me by the CPIO, CMFRI. It is nothing but denial of natural justice. 5) Since the CPIO, CMFRI, Cochin, did not send his written submission (as instructed by the CIC Notice), to the appellant which contained incorrect and mere allegations, I was constrained to request the CPIO, CIC, to supply the true copy of the same and the reasons how the decision was taken without giving me a chance / an opportunity to defend my case under Section 4(1)(d) and Section 5(3) of the RTI Act. Written submission of the CPIO, CMFRI, Cochin, was purposefully and intentionally not supplied to me by the CPIO in spite of the strict instruction given in the CIC NOTICE. CIC also did not ascertained the same from the CPIO and appellant whether the written submission was supplied to the appellant or not. Because of this particular procedure lapse, miscarriage of justice crept in. 6) Appellant specifically sought the information on "Whether appellant's Written

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Submission dt.25-11-2019 (CIC diary No. 657835 dt. 25-11-2019) filed online on 25-11-2019 to CIC sufficiently well in advance before the date of hearing, was brought to the kind notice of the concerned Information Commissioner and kindly supply copy of documental proof for having submitted my Written Submission to the kind notice of the concerned Information Commissioner. No information is supplied by the CPIO, CIC, on this RTI query. It appears that my written submission is not considered by the CIC as the CPIO, CIC, did not supply any information on it despite my RTI query no.1). I feel justice is not done in my case. Hence, I am affected by the CIC decision No. CIC/CMFRI/A/2018/168175 dt. 09-12-2019 and the CPIO, CIC, is duty bound to provide reasons for its quasi-judicial decision to the affected person as per Section 4(1)(d) of the RTI Act. CPIO, CIC, is to publish/supply all relevant facts while announcing the decision which affect public, says Section 4(1)(c). Therefore Section 2(f) and Section 6 of the RTI Act are not applicable to my RTI application dt. 11-12-2019 and its queries. 7) By CIC letter dt.04-01-2018, Sri.R. L. Gupta, Dy. Registrar IC(MP) informed me that under RTI Act and as per Hon'ble High Court of Delhi judgment in WP (C) No.5086.2010 dt.18-11-2011, there is no provision for review of decision in an appeal/complaint. But however the issues once settled in case No.CIC/CMFRI/A/2017/110413 & 190145/MP on 11-12-2017 was re-heard on 27-07-2018 and a second decision was taken on 27-07-2018. This is in contrary to the CIC letter dt. 04-01-2018. When there is no provision for review of CIC decision by CIC, a second hearing was surprisingly ordered by another IC on a settled issue. In spite of two CIC decisions on one issue, CPIO, CMFRI, has not cared to comply with the decisions of the CIC. CPIO, CMFRI, supplied the approval/sanction/proposal for purchasing equipments for Rs.22 lakhs only. As per the CIC decision/s dt. 11-12-2017 & 27-07-2018, CPIO, CMFRI, has to supply proposal/approval/sanction for having purchased only one RAS equipment for Rs.144.86 lakhs. I have sent several complaints to CIC on the non-compliance of two CIC orders in a single issue. Last complaint was sent by Regd. Post on 10-07-2019. CIC did not take any action for the compliance of its own order. It is most unfortunate. If CIC is not intervening to make the CPIO, CMFRI, to comply with its decisions, who will take necessary action for complying with CIC decision. CIC did not give me a reply on the pendency of my complaint with CIC. I think that because of two decision on an issue, CIC is hesitating to take a decision and kept the issue in abeyance. Information on the details of action taken by the CIC on my complaint dt. 10-07-2019 for the compliance of the CIC decisions, may please be supplied. For this query also Sections 2(f) and 6 of RTI Act is not applicable. 8) In these circumstances, I most humbly pray to you Sir, to kindly supply the information I sought or persuade the CPIO to supply the relevant information at an early date."

4. CPIO, Sh A.K. Asijja replied vide letter No. CICOM/A/E/20/00006 dated 15.01.2020 mentioned that :-

"The appellant in his First Appeal has stated that he is not satisfied with the reply

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provided by the CPIO in regard to his RTI application. The appellant had sought reason / explanation/clarification in regard to the order passed by the Commission in case File No. CIC/CMFRI/A2018/168175".

In this connection, the comments of the CPIO as under:-

- (a). It has already been informed to the appellant that seeking answer to questions/clarifications/comments/views on an issue are not covered under the definition of 'Information' given under Section 2(f) of the RTI Act. It is also brought to the notice of the applicant that no such information as sought by him was available in the records. Under the provisions of RTI Act, the CPIO is not supposed to create information that is not a part of the record.
- (b). A copy the submissions made by the Respondent, viz. Assistant Administrative officer and CPIO, CMFRI, Kochi vide letter No.F.No.4(2)/14-RTI dated 26.11.2019 before the Commission has already been sent to the appellant in reply to his RTI application. It may be stated here that Commission cannot compel the Respondent Authority to send its submission to the appellant.
- (c). Further, the submissions received either from the respondent or from the appellant are linked to the E - Book of the case, and said E- Book is available for perusal to the Information Commissioner during the hearing.

#### Hearing of the Appeal

5. Appellant has been heard by FAA on 13.01.2020 over Mobile No. 09446534928 provided by appellant in Appeal application.

#### Decision

6. Considering the first appeal, comments of CPIO and hearing, it is observed that point wise replies provided by Sh A.K.Asijja, CPIO is factual and appropriate and no further intervention is required on the part of the FAA, in the matter.
7. The appeal is being disposed of accordingly.
8. In case the appellant is aggrieved by the decision, he is free to file second appeal, if he so desires, before the Central Information Commission, Baba Gang Nath Marg, Munirka, New Delhi-110067 against this order within 90 days.

Dated the 15 January 2020,



(Y. K. Singhal)  
First Appellate Authority  
Tel: 26162290

Copy to:-

- ✓ 1. CPIO, RTI Cell, CIC, New Delhi.
- ✓ 2. Sh A.K. Assija, CPIO & DR to IC (VN), CIC, New Delhi.

15/01/20  
15/1/20