

CENTRAL INFORMATION COMMISSION

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F.No.CIC/AT/A/2009/000100
Dated, the 16th September, 2009.

PARTIES TO THE CASE:

Review-Petitioners : Shri Nihar Ranjan Banerjee
Chief Vigilance Officer
&
Shri Bidya Nand Mishra
Deputy General Manager (Vigilance) /
Tech. Secretary to CVO
Coal India Limited

Appellant : Shri M.N. Ghosh

Public authority : Coal India Limited

This second-appeal by Shri M.N. Ghosh was decided through Commission's order dated 25.05.2009. The third-party-respondents, viz. the Vigilance Officers of the Coal India Limited approached the Commission through a review-petition dated 25.06.2009 requesting that parts of the Commission's order needed to be reviewed as, according to the review-petitioners, there was an error manifest in the face of the order, i.e. it not incorporating some of the points made at the hearing on 05.05.2009 on behalf of the review-petitioners.

2. The review-petition was taken on record and through Commission's notice dated 25.06.2009, a hearing was held on 29.07.2009 through videoconferencing (VC). The review-petitioners and the appellant, Shri M.N.Ghosh were present at the NIC VC facility at Kolkata. Commission conducted the hearing from its New Delhi office.

3. The review-petition is in the matter of Commission's order dated 25.05.2009 in Appeal No.CIC/AT/A/2009/000100, relating to appellant's following queries:-

"ii) Copies of car hire bills since his joining till date.

iii) Copies of overtime bills for company owned car being used by CVO and

iv) *Copy of TA bills of Sri B N MISHRA Dy.GM (Vig) Coal India Limited for his tours to Delhi and Nagpur from 1.1.2007 till date."*

4. The review-petitioners have argued that while upholding the demand for disclosure of the information listed above on the basis of Commission's decision in G.R. Singh Vs. NPCC Limited; Appeal No.CIC/AT/A/2006/00479, dated 14.02.2007 and on the ground that such information could not be withheld from disclosure as it related to a charge made on the budget of the public authority, Commission failed to factor in the specific set of circumstances of the present review-petitioners and their colleagues. It is the review-petitioners' argument that if the specific averments made by the review-petitioners on their behalf and on behalf of their colleague were considered, the decision of the Commission would have been different.

5. These grounds, according to the review-petitioners, specific to the requested information are as follows:-

Subject: Copies of car hire bills since review-petitioner's (Shri Nihar Ranjan Banerjee's) joining in the present office, till date and of overtime bills for a company owned car being used by CVO IE the review petitioner.

The review petitioner has stated "..... that the disclosure of the information may endanger the physical safety of the concerned person. His location / movements cannot be revealed for which the State has assigned him security cover on advice of State police and CBI. Moreover, an investigation in the matter is also going on. Besides, this relates to personal information the disclosure of which would cause unwarranted invasion in the privacy of the concerned person and does not have any overriding public interest. As such providing the information is exempted under Section 8(1)(g), 8(1)(h) and 8(1)(j) of the RTI Act, 2005"

Subject: TA bills of Shri B.N. Mishra, Dy. GM (Vigilance), CIL, on his tours to Delhi and Nagpur from 01.01.2007 till date.

On this subject, review-petitioners have the following submissions to make:-

"..... the disclosure of the information may endanger the physical safety of the concerned person. As such providing the information is exempted under Sec. 8(1)(g) of the RTI Act, 2005."

6. Review-petitioners have further submitted the following for Commission's consideration:-

"(iv) Apart from filing the written submission it was respectfully apprised by the representing vigilance official of CIL, orally during hearing by the Hon'ble Vigilance Commissioner on 5th May, 2009 that the information sought for by the appellant was intended to intimidate and cause embarrassment to the CVO, CIL and Dy.GM (Vigilance), CIL who investigated a complaint against the appellant when he served as Chief Legal Manager in CIL and the investigation led to unearthing documentary evidence against him which led to the discovery that he (appellant) entered in the employment of CIL at the relevant period in 1974 without having requisite qualification of Bachelor's degree in law as per the then advertised norms and had thus secured employment in the Govt. PSE fraudulently as alleged in the complaint against him received and investigated by the above mentioned vigilance officials of CIL. It was also respectfully submitted that the tours undertaken by the CVO and Dy. GM (Vigilance) viz. Shri N.R. Banerjee and Shri B.N. Mishra during the period covered in the application under RTI Act were for the purpose of vigilance investigation and in relation to enforcement of law. The applicant being highly agitated of the on-going investigation against him, attempted to track the movement of investigating officials named above by seeking information about movement of said vigilance officials by raising aforesaid queries under RTI Act 2005 so that he may reach to the source of information and jeopardize / influence the evidence apart from creating an atmosphere which would endanger the life or physical safety of the said vigilance officials and source of information and assistance given in confidence for investigation and law enforcement. It was further submitted that as an outcome of the vigilance investigation, disciplinary proceedings was initiated as advised by Central Vigilance Commission by the Disciplinary Authority viz., Chairman, CIL against the appellant while he was in service at the post of Chief Legal Manager and that the appellant moved a writ petition at Hon'ble High Court, Calcutta to stall the disciplinary proceedings against him and the matter is sub-judice.

(v) *In view of the aforesaid facts it is quite apparent that the information sought for by the appellant was not intended to serve any public purpose and, therefore, merited, exemption under Sec. 8(1)(j) of the RTI Act 2005. Further providing of information about the local movements of CVO, CIL at Kolkata by asking for the logbook of vehicle and overtime bill of car driver and the tour performed by Dy. GM (Vigilance), CIL to out stations were in the course of investigation of complaints of corruption against employees including the appellant and for the allied issues related to investigation of all such complaints dealt during the relevant period which are still in process of investigation and has not reached to its logical end and revelation of which would expose the source of information which merits exemption under Sec. 8(1)(g), 8(1)(h) of RTI Act 2005.*

(3) *.....that the direction as contained under para-7 of the aforesaid decision dated 25th May, 2009 of the Hon'ble Information Commissioner to disclose the information concerning medical bills severing from it such details as may be considered personal and private to the officer has been complied with. Copy of information transmitted to the CPIO, CIL in compliance of the said direction of the Hon'ble Information Commissioner is marked as Annexure-6 [sic].*

(4) *.....that the citation of the Commission's decision in G.R. Singh Vs. NPCC Limited; Appeal No.CIC/AT/A/2006/00479; Date of Decision: 14.02.2007 as mentioned at para-8 of the decision dated 25th May, 2009 in the instant case is not relevant to the context in as much as that the grounds considered at para-6 & 7 of the said citation marked as Annexure-7 [sic] deal with disclosure of TA bills of public authority in general and which do not relate to tour performed by the investigating officer (in this case the said vigilance officials of CIL) in relation to investigation of complaints of corruption against the employees of PSE who are the alleged public authorities as per the complaints. Therefore, disclosure of tour performed by the investigating officer to unearth material evidence and collect source information in the interest of investigation would impede the process of investigation or apprehension or prosecution of offenders in the matter explained at para-5 above and, therefore, merits exemption under Sec. 8(1)(g) & (h) of RTI Act 2005.*

(5)that in view of the facts stated in paras above the direction mentioned at para-8 of the impugned decision in F.No.CIC/AT/A/2009/00100 dated 25th May, 2009 to allow disclosure of information sought as referred at 4(ii), Para-4(iii) & para-4(iv) of the said decision dated 25th May, 2009 stated above, merits reconsiderations and review by the Hon'ble Information Commissioner."

7. It is, therefore, the request of the review-petitioners that

"the Hon'ble Information Commissioner be pleased to review the decision as at para-8 in F.No.CIC/AT/A/2009/00100 dated 25th May, 2009 with regard to queries contained in appellant's RTI-application referred at para 4(ii), 4(iii) & 4(iv) of the said decision dated 25th May, 2009 and be pleased to grant exemption under Sec. 8(1)(g), 8(1)(h) & 8(1)(j) of the RTI Act 2005.

It is further prayed that the Hon'ble Information Commissioner be pleased to pass an interim order staying to provide the information sought for as per para 4(ii), 4(iii) & 4(iv) of the said decision dated 25th May, 2009 till the final disposal of the instant review application."

8. During the videoconferencing hearing, appellant, Shri M.N. Ghosh (in Appeal No.CIC/AT/A/2009/000100) countered the averments of the review-petitioners and stated that these were attempts to conceal information, whose disclosure the review-petitioners were aware, would show them in a false light and discomfit them. He stated that there was unmistakable public purpose in disclosing such information and a plea that this would somehow personally impact the review-petitioners or affect their capacity to work efficiently and purposefully, is nothing more than a convenient conjecture, and a facile argument unsubstantiated by any evidence.

9. Appellant also questioned the review-petitioners' right to seek the review of the Commission's order and the powers of the Commission as to initiate such review. He argued that the RTI Act gave no such powers to the Commission.

Decision:

10. I will first deal with appellant's case that review-petition should not be allowed on the ground that power of review of its order by the Commission is not provided in the RTI Act.

11. The question whether the Commission has the power to review its own decision was elaborately discussed in Appeal No.CIC/MA/A/2006/00622 (Rajnish Singh Chaudhary Vs. Union Public Service Commission). In this case, the Commission has relied on the decisions of the Apex Court in *Patel Narshi Thakershi & Ors. Vs. Pradyumanshighji Arjunsinghji* — (AIR 1970 SC 1273) and *Rajendra Singh Vs. Governor, Andaman & Nicobar Islands & Ors.* (AIR 2006 SC 75) and had observed as under:-

“The net upshot of these two decisions of the Hon’ble Apex Court is that while in substantive matters there may arguably be no review. In cases of procedural infirmities which may have led to or may be believed to have led to miscarriage of justice or where there is an error apparent on the face of it, the absence of a provision for review shall not be a bar on a given statutory authority assuming that power. In other words, silence of law in regard to review does not prohibit a statutory authority from undertaking review in specific given circumstances.”

12. As has been observed in the above case, the Central Information Commission has been assigned somewhat a unique role under the Right to Information Act, 2005. The Commission is the last court of appeal, has the exclusive power to impose penalties on defaulting Public Information Officers, and also has a role of superintendence and direction of the information regime. It can direct public authorities to take specific actions to promote the Right to Information. Given these facts, to argue that the power of review does not inhere in the nature of the CIC, itself would give scope to recurring miscarriage of justice wherever the CIC may be in error. The power to correct through review, therefore, is germane to promoting justice and to preventing its miscarriage.

The issue raised by the appellant is decided accordingly.

13. On the subject of review-petitioners’ claim that certain material facts urged by them and their colleagues as third-parties in the above second-appeal proceedings were omitted in the consideration of the material for decision by the Commission, I noticed that although there was an indirect reference to these facts in Commission’s order, they were not directly used for determining the disclosure obligation for the queries listed in paragraph 3 above.

14. During the hearing, it was submitted by the review-petitioners that the type of information which appellant had requested has always been held — insofar as it related to the officers of the Vigilance Department — as confidential within the meaning of Section 124 of the Indian Evidence Act. There were plausible reasons for this. Such officers perform sensitive duties and had to engage on a regular basis with their sources and witnesses sometimes at odd hours. This necessitated that records dealing with their movements and the movement of their vehicles were kept confidential — often overtly and always impliedly. This was done in public interest in order to ensure that such officers carried-out their sensitive assignments somewhat insulated from prying eyes of interested parties and those hostile towards the officers. Almost every single employee of the public authority these vigilance officers investigated, turned hostile towards them and quite a few of such employees attempted to inflict harm on them, either directly through physical threats and intimidation, or indirectly through innuendos and threats of besmirching their reputation by false propaganda. Tour details and use of vehicles frequently are tools in the hands of such employees to carry-out their vendetta against the officers of the Vigilance Department. The pressure of false propaganda is such that the officers may feel persecuted even if finally they come out fully vindicated. It is in public interest that ordinarily information relating to tour details of such officers is not allowed to pass into the hands of employees who may have reasons to be hostile — even inimical — towards these Vigilance Officers. Section 124 of the Indian Evidence Act was designed for such contingencies and is entirely consistent with the provisions of RTI Act (Section 11(1)).

15. Now, while the RTI Act, no-doubt, takes precedence over the Indian Evidence Act in a matter of inconsistency between their provisions, when the provisions of two Acts are consistent, the RTI Act and the Indian Evidence Act provisions should be harmoniously construed.

16. I find that there is ample consistency between Section 124 of the Indian Evidence Act and Section 11(1) of the RTI Act read with Section 2(n) of the same Act.

17. Section 11(1) of the RTI Act stipulates consultation with third-parties in matters where an information sought to be disclosed relates to that third-party and is treated by that third-party as confidential. Section 2(n) of the RTI Act states that a public authority

can itself be a third-party in respect of the information it holds and when such information is confidential information, that public authority acquires all entitlements guaranteed to a third-party under Section 11(1) of the Act, viz. the right to be consulted regarding disclosure of the information and the right to demand that the information may not be disclosed as "*public interest in disclosure*" does not "*outweigh in importance any possible harm or injury to the interests of such third-party*". In other words, an information coming within the scope of Section 11(1) should be authorized to be disclosed only in public interest.

18. In the context of the above, it needs to be examined whether the information now requested to be divulged by the appellant and contested by the review-petitioners should at-all be disclosed.

19. I agree with the review-petitioners, given the specific circumstances and conditions surrounding the set of information now requested by the appellant, viz. tour details, vehicle logbooks, purpose of visits, overtime payments, etc., no public interest is served by their disclosure. On the contrary, there is a distinct possibility that disclosure of this information will compromise the functioning of the Vigilance Officers — the review-petitioners — and not only expose them to physical risks and intimidations, but impair their ability to carry-out their sensitive assignments. Certain level of protection needs to be given to such officers even in respect of disclosure of ordinary looking information for, what is seemingly ordinary, assumes the characteristics of the extraordinary in specific circumstances and conditions, which according to me, are present in this case.

20. It is my view that the requested information should be declined within the meaning of Section 11(1) of the RTI Act.

21. I noticed that, apart from the above, the review-petitioners have also urged the Commission to examine the submissions made by them in terms of Section 8(1)(g) of the RTI Act. I find merit in the submission. As has been explained by the review-petitioners, in the circumstances and the atmosphere in which they work and the specificity of their sensitive assignment, the requested information had the potentiality of endangering the officers' life and their physical safety, apart from leading to identification of the source of information or assistance given in confidence for discharge of their law-enforcement functions as Vigilance Officers.

22. It is true that, as now urged by the review-petitioners, these points made by the review-petitioners' rep. during hearing on 05.05.2009, were not fully reflected on by the Commission in making its decision dated 25.05.2009. I agree that given the context of this case, there was an error on the face of the order made on 25.05.2009, which needed to be corrected in the interest of justice and in the interest of providing protection to officers who work in trying conditions in handling sensitive assignments such as vigilance duties.

23. I, therefore, order that in partial modification of my order dated 25.05.2009 in Appeal No.CIC/AT/A/2009/000100, information as listed at paragraph 3 above shall not be disclosed to the appellant.

24. Review-petition is disposed of accordingly.

25. Copy of this direction be sent to the parties.

(A.N. TIWARI)
INFORMATION COMMISSIONER