

CENTRAL INFORMATION COMMISSION
Complaint No. CIC/WB/C/2008/00525 and
Appeal No. CIC/WB/A/2008/00953 both dated 30.5.2008
Right to Information Act 2005 – Section 18 & 19

Complainant / Appellant -Shri U. Ibrahim Ali

Respondent - Cabinet Secretariat

Decision announced : 4.2.2010

Facts:

This is a complaint and an appeal moved by Shri U. Ibrahim Ali a Social Worker of Madurai (TN), against information received from Cabinet Secretariat.

FILE No. CIC/WB/C/2008/00525

In his application of 18.1.08 Shri Ibrahim Ali applied to the CPIO, Cabinet Secretariat stating what in his view Right to Information read with other laws, with a particular reference to suo moto disclosure mandated u/s 4(1)(b) portends.

This series of statements concludes with the following request :

“In the circumstance stated above, I request that the Central govt. may be pleased to take a policy decision that unskilled works and skilled works of the Central PWD and National Highways dept in India should be entrusted to all the panchayats in India as per ceiling rates fixed by the respective superintending Engineer or other authorities and the same is to avoid corruption in the Central PWD as well as National Highways of the Union of India in the interest of public to avoid corruption.’

Having received the application on 23.1.08, CPIO Shri Sunil Kumar, Director, Cabinet Secretariat transferred this to the Ministry of Urban Development and Department of Road Transport & Highways on 25.1.08. Notwithstanding, on 23.2.08 Shri Ibrahim Ali moved an appeal before the Cabinet Secretary asserting that it was for the Cabinet Secretariat to provide a response since his request was regarding taking a policy decision, and pleading as follows:

“In the circumstances stated above, I request that the Cabinet Secretary may be pleased to withdraw the letter 2nd from the

CPIOs of the Ministry of Urban Development as well as Road Transport and National Highways and take policy decisions in accordance with under Para 9 and 54 (7) of the Central Secretariat Manual of Office procedure relating my letter dated 18.1.2008 in the interest of public throughout the territory of India.'

Upon this, Shri Rajeev Kumar, Jt. Secretary has passed the following decision:

- '6. The appellant in his RTI application had not specifically sought any information but had put forth a suggestion to take a policy decision. The CPIO, however, transferred the application u/s 6 (3) of the RTI Act to the Ministry of urban, Development and the Department of Road Transport & Highways on the consideration that information, if any, already existed on the subject, it should be available with the Ministries/ Departments concerned only.
7. After carefully considering grounds of your appeal dated 23.2.2008 and orders of CPIO dated 25.1.2008 and position stated in Paras 5 & 6 above, I have come to the conclusion that the decision of the CPIO cannot be faulted because the application was transferred in good faith to enable the applicant to get information, if any, available in regard to the request, from the Ministry/ Department concerned, who would actually hold it as the public authority concerned. Secondly, the appellant has failed to make out the relevance and connection of the provisions of the Manual of Office Procedure and the RTI Act quoted by him to his cause. Para 9 of MOP is not at all relevant and Para 54 (7) too does not connect to the grounds of appeal in the least. Similarly, S. 4 (2) (b) (vii) of the RTI Act, 2005 obligate the public authority to publish the particulars of existing arrangement that allows association of members of public with formulation of policy or its implementation. Such forums may exist in the Departments, which formulate the policies. The Cabinet Secretariat does not directly formulate the policies and does not have any such arrangement. The said section of RTI Act does not obligate the public authority to have one such arrangement.
8. The appeal is, therefore, decided in accordance with the provisions of the RTI Act, 2005 and rejected as devoid of merits."

Shri Ibrahim Ali has then moved a second appeal before us with the following prayer :

"I request that the Central Information Commission may be pleased to recommend the Central Govt. (Cabinet Secretariat) to publish policy decisions to entrust all the unskilled and skilled works of the National Highways and also the Central Public works Dept. To all the Panchayats in the territory of India as per section 25 (5) of the Right to Information Act to avoid unnecessary litigation of arbitration between the Central govt. and the Contractors the interest of Public."

This plea is grounded on the following basic contention:

"I state that the learned Joint Secretary failed to note that the first appeal under section 19 (1) of the Right to Information Act is a Quasi-Judicial function of my Appeal dated 23.2.2008 before the Central Govt. and hence as per the law made in AIR 1983 Bombay 356, the appeal ought to have heard by the Honourable Prime Minister that the subject matter of appeal is involved in the interest of Public of the territory of India to give employment opportunities to all the panchayat peoples through the unskilled and skilled works of the National Highways and the Central Public Works Dept."

The 2nd appeal was sought to be modified by a subsequent letter of 7.7.08, as follows:

"In the circumstances stated above, I request that your authority may be pleased to mention and modify the letters cited stating the impugned letters of the first appellate authorities instead of mentioning of the Central Information Commission file no. On Para one of the letters cited and consequently direct all the CPIOs and first appellate authority on my appeal to serve counter to me. So that I may be able to file reply on the counters at the time of hearing of appeals in the interest of public and justice."

FILE NO. CIC/WB/A/2008/00953

In this case, by a request of 29.2.08 Shri Ibrahim Ali, after making statements on the contents of RTI Act and pronouncement of judgments by the Hon'ble Supreme Court concludes as follows:

"In the circumstances stated above, I request that the Central Government may be pleased to insert a provisions as section 72 (3) in the Registration Act that any persons aggrieved against any registration of a document of sale etc by a registering authority appeal is lie to the Registrar/ Inspector General of Registration and also amend the Contract Act and also the Power of Attorney act

that the Registration of an agreement to sale and irrevocable power of attorney to transfer of immovable property unless the above said provisions are inserted in the Registration Act, the Contract Act and also the Power of Attorney Act, otherwise citizens fundamental rights under Articles 14, 21, 300 A of the Constitution of India will be violated.”

To this, Shri Ibrahim Ali received a response dated 4.3.08 from CPIO Shri Sunil Mishra, Director, Cabinet Secretariat, as follows:

- “(a) The request is not covered under the definition of information in terms of section 2 (f) of the RTI Act, 2005.
- (b) The CPIO is not supposed to create information or interpret information or to solve the issues raised by the applicant.
- (c) Only such information is required to be supplied under the Act, which already exists and is held by or held under the control of the public authority.
- (d) As the issue raised by you is not covered under the RTI Act, you are requested to take up take up the issue directly with administrative Ministry i.e. the Ministry of Corporate Affairs.’

Aggrieved Shri Ibrahim Ali moved an appeal before Shri Rajeev Kumar, Jt. Secretary on 14.3.08 concluding as below:

“In the circumstances stated above, I request that the subject matter is very importance of public of our nation, the Joint Secretary may be pleased to withdraw the letter 2nd cited of the Director, Cabinet Secretariat and arrange to hear before the Hon’ble Prime Minister of India or the concerned Hon’ble Minister and consequently direct the concerned Secretary to Govt. of India in the administrative / depts. to insert new provision under the Registration Act, the contract Act and also the Power of Attorney Act as stated in my letter first cited in the interest of nation. Otherwise the object of the Registration Act, the Contract Act and the Power of Attorney Act will be defeated and the citizens will be deprived of their life and properties.”

Appellant Shri Ibrahim Ali’s contention, on which he has based this plea, is as below:

“In the circumstances stated above, I request that the subject matter is very importance of public of our nation, the joint Secretary may be pleased to with draw the letter 2nd cited of the Director, Cabinet Secretariat and arrange to hear before the Honourable Prime Minister of India or the concerned Honourable Minister and

consequently direct the concerned Secretary to Govt. of India in the administrative/ dept to insert new provision under the Registration Act, the contract Act and also the Power of attorney Act as stated in my letter first cited in the interest of nation. Otherwise the object of the Registration Act, the Contract Act and the power of Attorney Act will be defeated and the citizens will be deprived of their life and properties.'

On not receiving a response from the Appellate Authority, Shri Ibrahim Ali has moved a second appeal before us with the following prayer:

"In the circumstances stated above, I humbly request that the Central Information Commission may be pleased to recommend the Union of India to take steps to amend and insert new provisions under the Registration Act, the Contract Act and also the Power of Attorney Act as prayed in my letter dated 29.2.2008 in the interest of Public as per section 25 (3) (g) of the Right to Information Act.'

The complaint and appeal was heard on 4.2.2010 with videoconference arrangement at Madurai. The following are present from the Cabinet Secretariat:

RESPONDENTS

Shri K. S. Achar, Director,
Shri B. B. Bhardwaj, Section Officer

We have received an Email from appellant Shri Ibrahim Ali on 3.3.10, submitting as follows:

"Your letter dated 22.1.2010 is received on 28th January, 2010 without enclosing any copies of counter reply from the respondents CPIOs and first appellate authorities. In the absence of the same I am unable to represent my views before the Commission in the interest of Public and justice of our Nation.

It is pertinent to note that it is seen from the letter received from you it is proved that the Commission is not functioning properly as per its regulations and guidance in force of law to get proper justice by the citizens of our Nation in other words the Commission is functioning only in the interest of the public authorities of Central government without following under section 4, 18 (1) (f) of the RTI Act."

Upon this he was informed that we have received no counter reply from the respondents, copies of which might be provided to him. Appellant Shri Ibrahim Ali has then opted not to be present in the hearing. Shri K. S. Achar, Director, Cabinet Secretariat submitted that in both cases there is no request for information. All these are instead suggestions for policy decisions by Government.

DECISION NOTICE

'Information' has been concisely defined in the Right to Information Act, 2005 u/s 2(f) as follows:

2(f) *"information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, 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 is to be read with sub sec. (j) of Sec. 2, defining 'right to information', which in turn reads as below:

2(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 the right to—*

- (i) inspection of work, documents, records;*
- (ii) taking notes, extracts or certified copies of documents or records;*
- (iii) taking certified samples of material;*
- (iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device;"*

What is required to enable access to information is that such information must be "held" & in "material" form. The manner of obtaining this information is also prescribed quite clearly in sub sec. (i) of Sec. 6, which lays down the procedure to obtain "any information" under this Act. Appellant's contention in

his grounds for the appeal preferred by him before Shri Rajeev Kumar Jt. Secretary on 14.3.08, that “*the citizens ought to know what their Government is doing*” is unimpeachable. The law now calls for full transparency and accountability. However, this can be only applied to such information as is held in the definitions clearly spelt out above. It is then not difficult to understand that neither of these applications of appellant Shri Ibrahim Ali are in fact requests for information. While on the one hand commending appellant Shri Ibrahim Ali for the research that he has done on the Right to Information Act and its possible relationship with judgments of the Hon’ble Supreme Court and other laws, both the complaint and the appeal being at best requests for taking policy decisions, are unsustainable under the Right to Information Act and are, therefore, dismissed.

Announced in the hearing. Notice of this decision be given free of cost to the parties.

(Wajahat Habibullah)
Chief Information Commissioner
4.2.2010

Authenticated true copy. Additional copies of orders shall be supplied against application and payment of the charges, prescribed under the Act, to the CPIO of this Commission.

(Pankaj Shreyaskar)
Joint Registrar
4.2.2010