

CENTRAL INFORMATION COMMISSION
Appeal No.CIC/WB/A/2008/00955 dated 30.5.2008
Right to Information Act 2005 – Section 19

Appellant - Shri U. Ibrahim Ali

Respondent - Department of Personnel & Training (DoPT)

Decision announced : 4.2.2010

Facts:

By an application of 20.2.08 Shri Ibrahim Ali of Sakkinangalam Post, Madurai (TN) applied to the Cabinet Secretary making a set of recommendations regarding guidelines issued under the RTI Act and their relationship with judgments of the Hon'ble Supreme Court and other High Courts. Although no information appears to have been sought in this application, CPIO Shri D. C. Sharma, Section Officer has been at pains to answer each question, as below:

- “2. Section 24 (2) has empowered Central Government to amend Schedule Second to the RTI Act, Schedule II incorporate organizations exempted from the purview of the Act.
- 3.&4. Section 5 of the RTI Act mandates for designation of Public Information by every public authority for supply of information sought under the Act. Information has been defined under section 2 (f) of the Act and includes in pre-existed authenticated form i.e., Government orders, circulars reports etc. Therefore, there appears to be no need for authentication of information again.
5. For hearing of appeals appellate authorities have been designated under the Act and appeal will be with reference to the information provided by a Public Information Officer and not with reference to any grievance of an individual.
6. The object of RTI Act, 2005 has been stated in the preamble to the Act. A copy of the same is enclosed. Its primary objective is to provide transparency and accountability in working of Government.
7. Provisions of the RTI Act mandates for supply of information held by a public authority. It simply provides for supply of information existing in forms as mentioned in section 2 (f) and inspection of records as defined under section 2 (j) of the Act.

8. As stated above, the Act provides for supply of information and not decision of the Public Information Officer and for this form of communication is letter.
9. The acts of the public information officer are to be based on the provisions of the Act. All information to the best knowledge of the CPIO has been given above. The Act provides for supply of information in the form as defined under the Act and in no other form. Moreover, the issues raised are in the form of suggestions and opinion which are not part of information under the Act. However, the applicant may raise their issues to the appropriate level to consider these issues.”

Nevertheless, appellant Shri Ibrahim Ali has contested the response of CPIO Shri Sharma in an appeal before Ms. Anuradha Chagti, OSD, DOPT, as follows:

- “(8) I state that the learned Section Officer of the Ministry failed to follow under section 25 (2) (3) (g) of the Right to Information Act relating to my letter dated 20.2.2008 in the interest of public.
- (9) I state that the learned Section Officer failed to enclose a copy of the object of RTI Act as stated on Para 6 of his letter 4th cited.
- (10) I further state that the learned Section Officer ought to not have stated on Paras 3 & 4 of his letter 4 cited that information is sought only under section 2 (f). As matter of fact other provisions are contained under section 4 (1) (b) (vii) and 25 (3) (g) of the Right to Information Act ought to have followed relating to my letter dated 20.2.2008.
- (11) I state that the learned Section Officer failed to note that in what authority under law the office Memorandums of guidelines in the reference first and second cited were issued by the Ministry. As a matter fact, as per the Law made in AIR 1988 SC 1681 of the Honourable Supreme Court, it is provided that guidelines and manuals are not issued under any of the Statute and the same are not legal force of law.
- (12) I state that the learned Section Officer error in saying that on Para 9 of his letter 4th cited that the issues raised are basically are in the form of suggestion and opinion which are not part of information under the Act. However, the applicant may raise these issues to the appropriate level to consider these issues.

- (13) I state that the learned Section Officer, failed to note that who is the appropriate level of authority to raised the issue relating to my letter dated 20.2.2008. besides on Para 9 of his letter 4th cited is contrary under section 4 (1) (b) (vii) and 25 (2) (3) (g) of the Right to Information Act.
- (14) I state that the learned Section Officer failed to arrange to implement the law made in AIR 1983 Bombay 356 at Para 11 & 12 of the Honorable High Court, Bombay as per Section 4 (1) (b) (vii) of the Right to Information Act which his provided to the Central govt. (Ministry/ Department) against any decisions of the CPIOs/ SPIOs of the Central Secretariat/ State Secretariats of all the territory of India.
- (15) I state that the learned Section Officer failed to note that as per law made in AIR 1988 SC 1681 of the Honourable Supreme Court, Manuals and guidelines are not legal force and as such the Central Govt. is decided to frame rule under section 27 of the Right to Information Act to the CPIOs/ SPIOs and also Appellate Authority under the Right to Information Act.”

In her order of 2.5.08, while attaching a copy of the documents stated by appellant in this appeal not to have been enclosed, has dismissed the appeal as follows:

“This appeal upholds the information provided by the CPIO. A copy of the RTI Act 2005 and IPO No. 57E114877 for Rs. 10/-. The IPO is dated 11.4.2008.

The appeal is disposed of accordingly.”

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

“In the circumstances stated above, I request that the Central Information Commission may be pleased to declare the letters dated 17.3.08 and also 8.5.08 made in letters No. 12/45/2008-IR of the Central Public Information Officer and also the officer on Special duty are all furnished incorrect and misleading information without taking into considerations of the spirit of under section 4(1)(b)(vii), 4(1)(c) and also 25(3)(g) of the Right to Information Act and consequently direct the Officer on Special Duty to circulate my letter dated 20.2.08 and Appeal dated 12.4.08 and to take decision from the concerned Hon'ble Minister in the interest of Justice.”

The appeal was heard on 4.2.2010 by videoconference arranged with Madurai. Only the following are present:

Respondents

Ms. Anuradha Chagti, DS, DOPT
Shri R. K. Girdhar, Under Secretary, DOPT

We have in the meantime received an Email from appellant Shri Ibrahim Ali on 3.3.08, 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) 9f) of the RTI Act.”

Appellant Shri Ibrahim Ali has then opted not to be present in the hearing. Ms. Anuradha Chagti, Dy. Secretary, DOPT submitted that 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 this application of appellant Shri Ibrahim Ali is in fact not a request 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, the appeal being at best a request for taking a policy decisions, is unsustainable under the Right to Information Act and is, 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