

CENTRAL INFORMATION COMMISSION
Appeal No. CICWB/A/2009/000958 dated 26.10.2009
Right to Information Act 2005 – Section 19

Appellant - Shri Vijendra Rana
Respondent - Central Bureau of Investigations (CBI)
Decision announced : 5.2.2010

Facts:

By application of 11.8.09 addressed to Shri Kamlesh Kumar, Addl. District & Session Judge, Tees Hazari Courts, Delhi, Shri Vijendra Rana, lodged in Central Jail No. 3, Tihar, sought the following information regarding information provided to him on a parallel RTI request by CBI:

“With this as a background ,the appellant set forth to seek information from CBI/ ACU-IX, vide the RTI query dated 5th Jan 2009, for the basis of its allegations especially in light of denials by the ‘naval Authorities’.”

This is in the context of the following:

- “2. Please refer to PIO, Tis Hazari Courts letter No. 72829 Admn. I/RTI/2009/1927 dated 03rd August 2009, stating that documents sought have already been supplied to me.
3. However, the undersigned appellant has not been provided the information/ documents as sought vide his RTI application dated 5th Jan 2009. The details of this appeal, against denial of information, is accordingly set forth in the succeeding paragraphs.”

Shri K.S. Rawat, PIO of the Administration Branch, Tees Hazari Courts, Delhi forwarded this application to Shri Sanjay Kumar Singh, SP, CBI as follows:

“The information sought under the RTI Act, 2005 is not available in the Judicial Record pending in the court of Shri Brijesh Sethi, Ld. Spl. Judge, CBI, Delhi. Thus the information sought by the applicant may be provided at your end.”

Consequently, in his letter of 14.9.09, Dr. M. M. Oberoi, DIG, AC-III, CBI has painstakingly provided a point wise reply, as below:

“This office has already examined your request in detail and conveyed the decision. The information sought for is again supplied as under;

- A) Information about search order/ documents in support of conduct of search of the residence of Cdr. Vijendra Rana, 7/73, Arjun Vihar, New Delhi-10 on 12.7.2005 by Naval Authorities.

Search Order

- i) It is intimated that after investigation of this case, two charge sheets and two complaints under the Official Secrets Act, 1923 have been filed in the Court of CMM, Delhi and presently the case is pending trial with Shri Brijesh Sethi, Ld. ASJ, Tis Hazari, Delhi, who is hearing the arguments on charge. He is in the process of forming a judicial opinion whether there is sufficient prima facie evidence or not to frame the charges against accused persons. CBI has placed all the material before the Ld. Judge, who is hearing the arguments.

Composition of Search Party

- ii) All documents related to search, seizure conducted by CBI has been provided to you under section 207 Cr. PC. This case was registered by CBI on 20.3.2006. For any other documents related to searches conducted by Navy prior to registration of this case, the reply may be sought from CPIO, Navy. A copy of your application has already been sent to naval authorities.

Details of Independent witness present during the search

- iii) All documents related to search seizure conducted by CBI has been provided to you under section 207 Cr. PC. This case was registered by CBI on 20.3.2006. For any other documents related to searches conducted by Navy prior to registration of this case, the reply may be sought from CPIO, Navy. A copy of your application has already been sent to naval authorities.

Report submitted on completion of Search

- iv) All documents related to search seizure conducted by CBI has been provided to you under section 207 Cr. PC. This case was registered by CBI on 20.3.2006. For any other documents related to searches conducted by Navy prior to registration of this case, the reply may be sought from CPIO, Navy. A copy of your application has already been sent to naval authorities.

v) Any other document/ evidence in support of conduct of this search.

It is intimated that after investigation of this case, two charge sheets and two complaints under the Official Secrets Act, 1923 have been filed in the Court of CMM, Delhi and presently the case is pending trial with Shri Brijesh Sethi, Ld. ASJ, Tis Hazari, Delhi who is hearing the arguments on charge. He is in the process of forming a judicial opinion whether there is sufficient prima facie evidence or not to frame the charges against accused persons. CBI has placed all the material before the Ld. Judge, who is hearing the arguments on charge.

B) Documents in support of seizure of articles/ items (including a computer) during the search of the residence of Cdr. Vijendra Rana, 7/73, Arjun Vihar, New Delhi-10 on 12.7.2005 by Naval Authorities.

i) Seizure memo/panchnama

It is intimated that after investigation of this case, two charge sheets and two complaints under the Official Secrets Act, 1923 have been filed in the Court of CMM, Delhi and presently the case is pending trial with Shri Brijesh Sethi, Ld. ASJ, Tis Hazari, Delhi who is hearing the arguments on charge. He is in the process of forming a judicial opinion whether there is sufficient prima facie evidence or not to frame the charges against accused persons. CBI has placed all the material before the Ld. Judge, who is hearing the arguments. This case was registered by CBI on 20.3.2006. For any other documents related to searches conducted by Navy prior to registration of this case, the reply may be sought from CPIO, Navy. A copy of your application has already been sent to naval authorities.

ii) Details of articles/ items seized.

It is intimated that after investigation of this case, two charge sheets and two complaints under the Official Secrets Act, 1923 have been filed in the Court of CMM, Delhi and presently the case is pending trial with Shri Brijesh Sethi, Ld. ASJ, Tis Hazari, Delhi who is hearing the arguments on charge. He is in the process of forming a judicial opinion whether there is sufficient prima facie evidence or not to frame the charges against accused persons. CBI has placed all the material before the Ld. Judge, who is hearing the arguments. This case was registered by CBI on 20.3.2006. For any other documents related to searches conducted by Navy prior to registration of this case, the reply may be sought from CPIO, Navy. A copy of your application has already been sent to naval authorities.

iii) Details of seizing officer and personnel present during the seizure.

It is intimated that after investigation of this case, two charge sheets and two complaints under the Official Secrets Act, 1923 have been filed in the Court of CMM, Delhi and presently the case is pending trial with Shri Brijesh Sethi, Ld. ASJ, Tis Hazari, Delhi who is hearing the arguments on charge. He is in the process of forming a judicial opinion whether there is sufficient prima facie evidence or not to frame the charges against accused persons. CBI has placed all the material before the Ld. Judge, who is hearing the arguments. This case was registered by CBI on 20.3.2006. For any other documents related to searches conducted by Navy prior to registration of this case, the reply may be sought from CPIO, Navy. A copy of your application has already been sent to naval authorities.

iv) Details of independent witnesses present during this seizure.

It is intimated that after investigation of this case, two charge sheets and two complaints under the Official Secrets Act, 1923 have been filed in the Court of CMM, Delhi and presently the case is pending trial with Shri Brijesh Sethi, Ld. ASJ, Tis Hazari, Delhi who is hearing the arguments on charge. He is in the process of forming a judicial opinion whether there is sufficient prima facie evidence or not to frame the charges against accused persons. CBI has placed all the material before the Ld. Judge, who is hearing the arguments. This case was registered by CBI on 20.3.2006. For any other documents related to searches conducted by Navy prior to registration of this case, the reply may be sought from CPIO, Navy. A copy of your application has already been sent to naval authorities.

v) Details of persons from whom these items were seized including his signature on seizure memo on handing over the items.

It is intimated that after investigation of this case, two charge sheets and two complaints under the Official Secrets Act, 1923 have been filed in the Court of CMM, Delhi and presently the case is pending trial with Shri Brijesh Sethi, Ld. ASJ, Tis Hazari, Delhi who is hearing the arguments on charge. He is in the process of forming a judicial opinion whether there is sufficient prima facie evidence or not to frame the charges against accused persons. CBI has placed all the material before the Ld. Judge, who is hearing the arguments. This case was registered by CBI on 20.3.2006. For any other documents related to searches conducted by Navy prior to registration of this case, the reply may be sought from CPIO, Navy.

A copy of your application has already been sent to naval authorities.

vi) Details of physical sealing of these items including description of seals used.

It is intimated that after investigation of this case, two charge sheets and two complaints under the Official Secrets Act, 1923 have been filed in the Court of CMM, Delhi and presently the case is pending trial with Shri Brijesh Sethi, Ld. ASJ, Tis Hazari, Delhi who is hearing the arguments on charge. He is in the process of forming a judicial opinion whether there is sufficient prima facie evidence or not to frame the charges against accused persons. CBI has placed all the material before the Ld. Judge, who is hearing the arguments. This case was registered by CBI on 20.3.2006. For any other documents related to searches conducted by Navy prior to registration of this case, the reply may be sought from CPIO, Navy. A copy of your application has already been sent to naval authorities.

vii) Details of Electronic forensic experts present during seizure of electronic items viz mobile phones, computers, pen drives etc.

It is intimated that after investigation of this case, two charge sheets and two complaints under the Official Secrets Act, 1923 have been filed in the Court of CMM, Delhi and presently the case is pending trial with Shri Brijesh Sethi, Ld. ASJ, Tis Hazari, Delhi who is hearing the arguments on charge. He is in the process of forming a judicial opinion whether there is sufficient prima facie evidence or not to frame the charges against accused persons. CBI has placed all the material before the Ld. Judge, who is hearing the arguments. This case was registered by CBI on 20.3.2006. For any other documents related to searches conducted by Navy prior to registration of this case, the reply may be sought from CPIO, Navy. A copy of your application has already been sent to naval authorities.

viii) Details of file structure of hard disk of computer seized (so as to rule out fabrication and tempering).

It is intimated that after investigation of this case, two charge sheets and two complaints under the Official Secrets Act, 1923 have been filed in the Court of CMM, Delhi and presently the case is pending trial with Shri Brijesh Sethi, Ld. ASJ, Tis Hazari, Delhi who is hearing the arguments on charge. He is in the process of forming a judicial opinion whether there is sufficient prima facie evidence or not to frame the charges against accused persons. CBI has placed all the material before the Ld. Judge, who is hearing the arguments. This case was registered by CBI on 20.3.2006. For any other

documents related to searches conducted by Navy prior to registration of this case, the reply may be sought from CPIO, Navy. A copy of your application has already been sent to naval authorities.

ix) Details of digital signatures and hash function value of electronic items seized.

It is intimated that after investigation of this case, two charge sheets and two complaints under the Official Secrets Act, 1923 have been filed in the Court of CMM, Delhi and presently the case is pending trial with Shri Brijesh Sethi, Ld. ASJ, Tis Hazari, Delhi who is hearing the arguments on charge. He is in the process of forming a judicial opinion whether there is sufficient prima facie evidence or not to frame the charges against accused persons. CBI has placed all the material before the Ld. Judge, who is hearing the arguments. This case was registered by CBI on 20.3.2006. For any other documents related to searches conducted by Navy prior to registration of this case, the reply may be sought from CPIO, Navy. A copy of your application has already been sent to naval authorities.

x) Any other documents/ evidence in support of seizure made.

It is intimated that after investigation of this case, two charge sheets and two complaints under the Official Secrets Act, 1923 have been filed in the Court of CMM, Delhi and presently the case is pending trial with Shri Brijesh Sethi, Ld. ASJ, Tis Hazari, Delhi who is hearing the arguments on charge. He is in the process of forming a judicial opinion whether there is sufficient prima facie evidence or not to frame the charges against accused persons. CBI has placed all the material before the Ld. Judge, who is hearing the arguments. This case was registered by CBI on 20.3.2006. For any other documents related to searches conducted by Navy prior to registration of this case, the reply may be sought from CPIO, Navy. A copy of your application has already been sent to naval authorities.”

Nevertheless, on 17.9.09, Shri Rana has moved an appeal before Shri Kamlesh Kumar, Addl. District & Session Judge complaining that “*In this case no reply has been received even after 35 days.*”

In response, PIO Shri K. S. Rawat, in his letter of 24.9.09 has informed appellent Shri Rana that the original application of 11.8.09 was treated as an

application and not an appeal and was forwarded to the SP, CBI under intimation to appellant. PIO Shri K. S. Rawat has then provided the following details:

“Vide your letter dated 11.8.2009, you have clearly revealed that all documents of the Judicial file have been received by you and no information is pending in the court, so the undersigned vide letter dated 13.8.2009 transferred the application to the PIO/ Superintendent of Police, CGO Complex, Lodhi Road, New Delhi for remaining information and you have been requested to contact the above said PIO for further correspondence. As no appeal is pending before the Ld. First Appellate Authority and so to dispose of the same within stipulated period does not arise.”

Shri Rana has then moved a second appeal before us in which both CBI and Tees Hazari Courts are impleaded as respondents, in which he has prayed as follows:

- “(a) Kindly direct CPIO-CBI; ACU-IX to provide information sought at para 9 (a) to (g) of the RTI application dated 5th Jan 2009.
- (b) In exercise of powers vested upon the Commission under section 18 (3) clause (a) of the RTI Act, kindly direct Superintendent, Central jail No. 3/ DG (Prisons), Tihar to ensure personal appearance of the undersigned at the Commission during the hearing of this appeal. It is most humbly submitted that the hearing may not be conducted through videoconferencing view complexities of the issue, no. Of documents to be referred and discussions held on 18th June 2009 during the earlier hearing at Tihar.
- (c) Kindly adjudicate the instant appeal expeditiously as the same concerns LIFE AND LIBERTY matters and also this being the second appeal to CIC concerning the same cause/ matter.”

Subsequently, in a letter of 19.10.09 Shri Rana has made the following request:

- “(a) Kindly hear and adjudicate my appeals against CBI dated 5th October, 2009 and 7th September, 2009 at the earliest.
- (b) Kindly accord me an opportunity to be personally present for the hearing (and not through Video Conference) for a meaningful adjudication of the appeals as also in the interest of justice.”

This request was acceded and a hearing scheduled. In the meantime, on 20.1.'10 we received a response to the hearing notice from Dr. M. M. Oberoi, DIG, CBI, New Delhi in which he has submitted as follows:

- a) It is submitted that CBI has already given a detailed reply to the Appeal No. CIC/WB/A/2009/000609. The same may be read as part of this reply also
- b) With regard to the averments made in Ground B, it is submitted that the direction given by Hon'ble High Court is to be complied with by Ld. Trial Court at the appropriate stage of trial. Ld. Trial Court is already seized of the matter. CBI is to give clarifications in the court as and when the matter is taken up for this cause.
- c) The averments made in Ground C are denied. CBI has filed two charge sheets and two complaints in this matter and also filed lists of documents and witnesses. Allegations as mentioned in the charge sheet will be proved in the Court of law, as per procedure, through the witnesses / documents cited.
- d) The averments made in Ground D are denied. The fact of the matter is CBI has filed two complaints and two charge sheets in this case and the case is pending further investigation. In support of the charge sheets filed, CBI has cited list of witnesses and relied upon documents. Copies of statements of these witnesses and relied upon documents, except some classified documents, have been provided to all accused persons including the present appellant. The matter regarding supply of copies of these classified documents is pending before Hon'ble Supreme Court. It is a matter of accepted criminal procedure that the prosecution proves the allegations of charge sheet with the help of relied upon documents / statements of witnesses. The appellant is asking documents to support particular paragraphs of charge sheet. The information in the form of paragraph wise / supporting document / statements of witnesses is not prepared by the prosecution but it is done for the charge sheet as a whole. As such, the information being sought by appellant does not come under the definition of information under RTI Act 2005. However, despite this, detailed information / replies to applications filed by the appellant from time to time have been provided."

The hearing scheduled for 21.1.10 was then adjourned on appellant's request to 5.2.2010, when it was heard. The following are present:

Appellant

Shri Vijendra Rana
Shri Trideep Pais, Advocate assisting appellant

Respondents

Shri K. S. Rawat, PIO, Tees Hazari Courts
Shri Saryu Kumar, LDC Tees Hazari Courts
Shri Ashok Sharma, APIO, Tees Hazari Courts
Shri S. K. Singh, SP, CBI
Shri D. S. Chauhan, Inspector, CBI

Shri K. S. Rana, PIL, Tees Hazari Courts submitted that all documents connected with charge-sheet that are held by the Court of Addl. District & Session Judge have been supplied to appellant Shri Rana who has also inspected the same.

Appellant Shri Rana, however, submitted that in Paras 27, 28 & 30 of the charge-sheet, there is specific reference to inspection conducted by Naval Authorities. However, the documents supplied to him do not give any support to this contention and the Naval Authorities when approached have informed him that there was no such action taken by the Naval Authorities. Shri S. K. Singh, SP, CBI on his part submitted that this matter already stands resolved in our decision announced on 24.6.09 in File No. **CIC/WB/A/2009/000609**, and there are no further records held by the CBI, which can be provided in this case.

We have therefore revisited our decision in Appeal Nos. **CIC/WB/A/2009/000417** & **CIC/WB/A/2009/000609**. In these two cases clubbed together, we have taken the following decision in the latter appeal:

“In the File No. **CIC/WB/A/2009/00609** again Appellate Authority Dr. Oberoi has submitted that all such information which could be provided has indeed been provided through issue of the charge sheet. In this case, however, he has admitted that some information being of sensitive nature is being protected by the OSA and has, therefore, not been disclosed but is in the possession of the trial Court.

On details of searches however Dr Oberoi has informed appellant Shri Rana, “*For searches conducted by Navy prior to registration of*

this case, the reply may be sought from CPIO, Navy.” This is a clear statement that CBI holds no information on the subject other than that provided by the Navy. Shri Rana has applied to and obtained a response from the Navy clearly stating, “*no search was conducted at the residence of Commander Vijendra Rana*” as quoted, which information he is assuredly free to use in his defence

From the above it is quite clear that the case now being under prosecution, all the information sought by appellant Shri Rana in both cases is either in the custody of the Court or if it is not so held, will be assumed to not exist. The Public Prosecutors advice to appellant Dr. Rana during the hearing that he may obtain information from the CBI is misplaced because that agency is no longer in control of information that has been submitted to the Court to support the prosecution even though it may retain physical possession. Access to such information has, therefore, to be through the authority by which it is held or in the control of, which in this case is the trial Court. This, therefore, is a fit case for transfer to the trial court under sub sec. (3) (ii) of Sec. 6 of the RTI Act of those questions that concern information no longer under the control of CBI and the CPIO of the Trial Court will be required to provide a response to appellant Shri Rana within the time mandated under the RTI Act 2005. However, in doing so, it is expected that the Court will adhere to the requirements of the RTI Act 2006, notwithstanding anything inconsistent therewith contained in the Official Secrets Act 1923, as clearly mandated by Sec 22 of the RTI Act. This is specifically clarified because the cases for which the information has been sought are being pursued under the OSA 1923

CPIO Shri Sanjay Kumar Singh, SP, CBI, ACU-IX will, therefore, now make this transfer within ten working days of the date of receipt of this Decision Notice with regard to any questions that have remained unanswered in this light, of the two applications of appellant Shri Rana”.

DECISION NOTICE

From the hearing in the present case, it is quite clear that in fact the orders of this Commission have been fully complied with, which would lead to the conclusion that there is no record in support of Paras 27, 28 & 30 of the charge-sheet. Appellant Shri Vijendra Rana invited our attention to his plea before CPIO, CBI that “*in case there is no document/evidence in support of conduct of*

this search, kindly specify so". His single plea before us in the present appeal is that this has not been so specified.

In this context, PIO Shri Rawat of Tees Hazari Courts clarified that if there are no records in support of any item of the charge-sheet, that item cannot be taken as proved. Similarly, SP, CBI Shri S. K. Singh has intimated that whatever information is held regarding the subject under discussion has been provided, which is implying that there is no other information held by the CBI on the subject. In our decision in appellant Shri Vijendra Rana's Appeal No. **CIC/WB/A/2009/000609**, this Commission has also held that the response of CPIO CBI "is a clear statement that CBI holds no information on the subject other than that provided by the Navy". With the response received from the Naval Authorities, which appellant Shri Vijendra Rana claims to have, it is not understood what further clarification of the fact that there are no documents in support of the conduct of the search is required by him, since the fullest information from all three major stakeholders among respondents stands provided. The appeal is, therefore, unsustainable and is hereby dismissed.

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

(Wajahat Habibullah)
Chief Information Commissioner
5.2.2010

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.

(DC Singh)
Asst. Registrar
5.2.2010