

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 120/2010 and CM APPL 233/2010

UNION OF INDIA Petitioner

Through Mr. Abhinav Rao, Advocate for Mr. S.K. Dubey, Advocate

versus

BALENDRA KUMAR Respondent

Through Mr. Prashant Bhushan with Mr. Pranav Sachdeva, Advocate

CORAM: JUSTICE S.MURALIDHAR

ORDER

29.09.2010

1. The challenge in this petition is to an order dated 14th September 2009 passed by the Central Information Commission (CIC) allowing the appeal filed by the Respondent and directing the information sought by the Respondent to be provided to him by the Petitioner by 5th October 2009 by using the severance clause 10 (1) of the Right to Information Act, 2005 (RTI Act).

2. The Respondent filed an application with the Ministry of External Affairs (MEA) on 16th September 2008 about the action taken report (ATR) on a complaint made to the Central Vigilance Commission (CVC) on 13th April 2007. Apparently the said complaint was forwarded by the CVC to the Central Vigilance Officer (CVO), MEA. The CVO submitted the ATR to the CVC on 24th July 2007. In this connection, the Respondent requested certified copies of the following documents:

(a) copies of all departmental notings including recorded by CVO/Inquiry Officer/Cadre Controlling Authority/Disciplinary Authority/any other official(s), if any.

(b) copies of all correspondences between Department and alleged officer(s)/other officer(s) pertaining to the matter but excluding copies of complaint.

(c) copies of all notes recorded upon oral inquiry.

3. On 11th November 2008 the Central Public Information Officer (CPIO), MEA wrote to the Respondent declining the information under Section 8(i)(j) of the RTI Act. The first appeal filed by the Respondent was rejected by the Appellate Authority of the MEA on 5th October 2008, concurring with the reasoning of the CPIO. The Respondent then filed a second appeal before the CIC.

4. Before the CIC the Respondent explained that the complaint was about certain incidents of alleged misuse of government money in the Embassy of India, Ankara, Turkey in March 2007. The Respondent had come to know that the ATR submitted, the CPIO had held that most of the allegations were baseless and that some procedural error might have occurred but without any financial loss to the Government. The CPIO accordingly opined that the matter should be closed by the CVC. On the basis of the ATR, the CVC decided not to further proceed with the matter. The Respondent urged that it was a right of a citizen to know the action the concerned public authority had taken on the complaint made to it.

5. At the hearing on 18th May 2009, the CIC held that there was no merit in the CPIO`s denial of information as personal information by invoking Section 8 (1)(j) of the RTI Act since the public interest in this case far outweighs any harm done to protected interests. Accordingly, the CPIO was directed to provide all the information sought by the Respondent in his RTI application by 15th June 2009 under intimation to the Commission.

6. Thereafter, the CIC received a letter dated 15th June 2009 from the CPIO, MEA seeking review of its order 18th May 2009 in view of the objection raised by the Third Party i.e. the Ambassador of India at Turkey during the relevant time. The MEA invoked the provisions of Section 11 of the RTI Act. Notice was sent to the Ambassador for the hearing on 17th August 2009. On that hearing the CVO file containing the enquiry report and other relevant documents were brought in a sealed cover to the office of the CIC. These were inspected by the Commissioner and returned to the representative of the MEA. The Ambassador was heard by the CIC on 28th August 2009. She also produced a few documents before the CIC clarifying the complaint against her and about the outcome of the investigation.

7. It was contended before the CIC by the representative of the MEA that since the information sought related to a case which had been closed after completion of the enquiry, the disclosure of the information sought would indicate lack of confidence in the investigations conducted by the MEA and the CVC. The CIC rejected this contention on the ground that neither the RTI Act 2005 nor any other law in force in India states that information pertaining to a closed case cannot be disclosed.

8. Thereafter, the CIC in the impugned order has set out the observations upon the inspection of the enquiry report and the notings from the file of the CVO. Most of the allegations have been found to be baseless and therefore, with the approval of the Foreign Secretary, and in view of the categorical report from the CVO, the CVC concurred in not pursuing the matter further. According to the enquiry report, there were administrative procedural lapses, which however had not led to any loss to the government. Nevertheless, the same had been noted by the concerned officials for rectification and future compliance.

9. The impugned order of the CIC also notes that the CVO file was once again perused by the CIC on 28th August 2009. The observations of the CIC on the further examination are as under:

The contents of the CVO file inspected by the Commission clearly indicate that the information therein are not by any stretch of imagination personal information pertaining to the Ambassador. The allegations cast as well as the inquiry/investigation conducted were related to the Ambassador in her official capacity and dealt with alleged complaints about misappropriation of government money. The transactions with respect to government money is anyway liable for a government audit, which has been noted even during the investigation by various officials, so there can be no confidentiality and/or secrecy in divulging such information since the expenditure of government money by a government official in the official capacity as office expenses cannot be termed/categorized as personal information.

10. An apprehension was expressed by the MEA before the CIC that:

the disclosure of such classified information could adversely impact the morale of the members of the Ministry. The Respondent expressed his apprehension that the distortion and/or improper reporting of the order declaring such disclosure of information, by the media, in order to make the same sensational, may damage the image and reputation of such a senior official as well as the Ministry. Hence the Ministry, the Commission from disclosure of the information categorizing the said information as personal information.

11. The CIC negated this apprehension by observing that :

In the instant case the disclosure of information relating to alleged charges of corruption and misappropriation of government money, wherein after a detailed investigation/ inquiry, the name and reputation of the public official concerned, had been declared unblemished, is actually crucial in strengthening the public faith in the functioning of the Ministry and the CVC. Since the allegation and/or complaint, vigilance enquiry and the enquiry reports were in respect of the Ambassador in her official capacity and related to her office and acts/omissions therein and also because all the information sought by the Appellant exists in official records already, hence the information cannot be classified as personal nor exemption be sought on that ground.?

12. As far as the distortion of the CIC orders in the hands of the media is concerned, it was held that it could not be a ground for not disclosing the information. The CIC specifically dealt with the aspect of public interest in ordering disclosure of information pertaining to a third party under Section 11 of the RTI Act. The CIC observed as under:

In this contention it is important to remember that the public interest has to be established in case the information sought otherwise merits non-disclosure, falling within one of the exempted categories and not vice versa. It has amply been discussed in the foregoing paragraphs that since the information sought relates to allegations of misappropriation of government money, public money being at stake, the information cannot be considered as personal information and hence the information does not fall under provisions of Section 8 (1) (j) of the RTI Act 2005.?

13. Consequently, the CIC directed that:

the information as sought by the Appellant be provided by 5th October 2009, while using the severance clause 10 (1) of the RTI Act, if required, to sever parts exempted from disclosure in the enquiry report, under intimation to the Commission.

14. The submissions of Mr. Abhinav Rao, learned counsel appearing for the Petitioner and Mr. Prashant Bhushan, learned counsel for the Respondent have been heard.

15. Placing reliance upon the judgment of this Court in Arvind Kejriwal v. Central Information Commission 2010 VI AD (Delhi) 669 it was submitted by Mr. Rao that the defence of privacy in a case like the present one cannot be lightly brushed aside and that in the present case the rights of the Ambassador against whom the complaint was made outweighed the public interest in ordering disclosure.

16. This Court is unable to accept the above submission. The judgment in Arvind Kejriwal was in the context of the information seeker wanting copy of the ACRs of Government officers from the level of Joint Secretary and above. The CIC in this context directed disclosure without even considering the applicability of Section 11 of the RTI Act. It was in the above context that this Court observed that where the information sought related to a third party the procedure under Section 11 (1) of the RTI Act could not be dispensed with. Consequently, the appeals filed by Mr. Kejriwal were restored to the file of the CIC for compliance with the procedure outlined under Section 11 (1) of the RTI Act.

17. In the present case, as has been noticed hereinbefore, on a request of the MEA to review its order on the basis of Section 11 (1) of the RTI Act, the matter was heard on 25th August 2009 and 28th August 2009 and notice was issued to the Ambassador for personal hearing on 28h August 2009. The Ambassador was heard by the CIC. It was after carrying out this exercise under Section 11 (1) of the RTI Act that the CIC came to the conclusion that the public interest in disclosure of the information sought outweighed any right to privacy claimed by the Ambassador. Therefore, the decision in Arvind Kejriwal is of no assistance to the Petitioner.

18. It was then submitted that once on perusal of the records, the CIC itself came to the conclusion that most of the allegations made in the complaint were found to be baseless, there was no justification in directing disclosure of such report.

19. This Court would like to observe that where, upon enquiry, it has been found that the allegations made in the complaint were baseless and that the matter did not require to be enquired any further, such a report can hardly be said to be a document the disclosure of which would violate any privacy right of the person complained against. This Court concurs with the observations of the CIC that in the circumstances the information sought was not personal to the Ambassador. The complaint itself is about matters relating to her in an official capacity. The information on the expenditure of government money by a government official in an official capacity cannot be termed as personal information.

20. This Court is satisfied that after a detailed examination of the report of the CVO and notings on the file, the CIC has come to the correct conclusion that the public interest in ordering disclosure outweighed any claim to the contrary with reference to Section 11 (1) read with Section 8 (1)(j) of the RTI Act. This Court notices that the CIC has also exercised a degree of caution in permitting the MEA to use Section 10 (1) of the RTI Act and if so required, severe those parts which might compromise the sources of the MEA. The procedure followed by the CIC with reference to Section 11 (1) of the RTI Act and its reasoning cannot be faulted. The apprehension expressed before the CIC about the possible misuse of the information by the Respondent was also expressed before this Court. No authority can proceed on the assumption that an information ordered to be disclosed will be misused. The mere expression of an apprehension of possible misuse of information cannot justify non-disclosure of information.

21. This Court finds no ground having made out for interference with the impugned order of the CIC.

22. The writ petition and the pending application are dismissed.

**S. MURALIDHAR, J
SEPTEMBER 29, 2010**

