

CENTRAL INFORMATION COMMISSION

(Room No.315, B-Wing, August Kranti Bhawan, Bhikaji Cama Place, New Delhi 110 066)

Prof. M. Sridhar Acharyulu (Madabhushi Sridhar)
Information Commissioner

CIC/SA/A/2015/000435
(Video Conference – Ahmednagar)

Hemant Dhage, Ahmednagar Vs. Department of Legal Affairs, GOI

Important Dates:

| | | |
|----------------------------|------------------------------------|--|
| RTI Application: 22-9-2014 | 1 st Appeal: 12-11-2014 | 2 nd Appeal: 27-3-2015 |
| Hearing: 29-02-2016 | Decision:12.3.2016 | Result: Minister is public authority under RTI |

1 . Both the parties are not present.

FACTS:

2. Appellant by his RTI application dated 20.11.2014 has addressed the additional private secretary of Hon'ble Minister for Law and Justice, seeking to know "Whether any time is scheduled for common people to meet the Cabinet Minister and Minister of State in the Minister's office in the Mantraalay (Secretariat)? If yes, please inform the timing of meeting the minister, both in English and Hindi". He claimed that he belonged to below the poverty line and hence the information could be given free of cost.

3. The PIO of Ministry of Law and Justice replied on 16.01.2015 citing information sent by office of the Hon'ble Minister, that no specific time was given for general public to meet the Minister. However, as and when requests are received appointments are given subject to the convenience of Hon'ble Minister. There is no order in first appeal. He approached this Commission.

4. The appellant wanted information from Minister's office. It is about process of meeting the Minister. Appellant approached office of Minister through RTI to know either general time of meeting or the procedure to have appointment as he could find any means for that.

Issues:

5. Though the parties were not present from either side, it is the duty of the Commission to examine the contents of the request and legal possibility of providing access to the information held by the Minister. A reading of RTI application, leads us to two issues. Whether he has a right to seek such information held by Minister or his office? If yes, whether Commission can direct the “Minister” to provide information, which depends on the question whether “Minister” is a ‘public authority’ under RTI Act? Thus, two questions before us are:

- a) *Is Minister or his office a ‘public authority’ under RTI Act?*
- b) *Whether a citizen has right to information sought, and does the minister has corresponding obligation to give?*

Is ‘Minister’ a ‘public authority’?

6. The term Public Authority is defined by Section 2(h) of Right to Information Act, 2005 as follows:

"public authority" means any **authority** or body or institution of self-government established or **constituted**—

- a) **by or under the Constitution;**
- b) by any other law made by Parliament;
- c) by any other law made by State Legislature;
- d) by notification issued or order made by the appropriate Government, and includes any— (i) body owned, controlled or substantially financed; (ii) non-Government organization substantially financed, directly or indirectly by funds provided by the appropriate Government

7. Both commonsense and Constitution suggests Minister is an authority constituted ‘by and under the Constitution’. There are many specific provisions which prove this statement. Minister is authority constituted by Constitution, because:

- a) **Article 74** says there shall be a Council of Ministers to aid and advise President
- b) **Article 75** says that Ministers shall be appointed by the President on the advice of Prime Minister. [Refer Section 2(h)(a) of RTI Act]
- c) **Article 75(2)** says that the Minister shall hold the office during the pleasure of the President. This signifies the pervasive control of government over their functioning, which is prerequisite to declare an authority as ‘public authority’ as ordained by Hon’ble Supreme Court in **Thallapalam Cooperative Bank case** in 2013.

d) Minister's salaries are determined by law made by Parliament from time to time by law- **the Salary, Allowances and Pension of Members of Parliament Act, 1954**. This is another characteristic that makes Minister a public authority. [Refer S 2(h)(b) of RTI Act, 2005]

e) Similarly, regarding the Council of Ministers in States, the **Articles 163 and 164** provided for the appointment and salaries of the Ministers. Each member of Council of Ministers both at State level and Union is provided with the office, sufficient staff and other resources and infrastructure. Some senior scale civil servants also serve them. Entire expenditure of provision and maintenance of the office along with salaries to the staff members is borne by the Government and paid from the tax-payers money. Thus state Minister is 'public authority' as per Section (h)(a) of RTI Act, 2005.

f) Without being an MP or MLA, one cannot hold office of the Minister in the Council of Ministers. The **Representation of People Act, 1950** which is enacted to provide the allocation of seats in, and the delimitation of constituencies for the purpose of election to, the House of the People and the Legislatures of States, the qualifications of voters at such elections, the preparation of electoral rolls, the manner of filling seats in the Council of States to be filled by representatives of Union territories. Thus this law made by Parliament explained how the office of MP or MLA has been instituted to become Minister, which also a public authority. **Representation of People Act, 1951** which was made to provide for the conduct of elections of the Houses of Parliament and to the House or Houses of the Legislature of each State, the qualifications and disqualifications for membership of those Houses, the corrupt practices and other offences at or in connection with such elections. Thus the Minister is constituted as public authority by 'law made by Parliament' as per Section 2(h)(b) of RTI Act.

g) The Member of Parliament or Legislature is declared as a public servant in **PV Narasimha Rao v State**, by the Supreme Court of India in 1998. The Ministers have *public duties* to perform and they too have certain privileges prescribed under the Constitution under Article 105. The Constitution in several other articles prescribed similar duties for MLAs in State legislatures. Tenth schedule explains the disqualification process for legislators, which means they have a duty not to defect to a party different from the party from which he was elected as a representative of people who voted for them. This reaffirms the position that MPs and MLAs are constituted by the Constitution of India [Refer Sec 2(h)(a) of RTI Act, 2005]

h) The **Salary, Allowances and Pension of Members of Parliament Act, 1954** provides for payment of salaries and pension throughout the life from the state exchequer besides several allowances. Representative of Peoples Act explains that 'member' includes "Minister". This Act also provides for Free Transit by Railway (S 6), Free Transit by Steamer (S 6A), Air travel facilities (S 6C) etc, besides travelling allowances, daily allowances, etc. They get free travel pass in A/C Train compartments

for accompanying person also. Under Section 8 they are entitled to Constituency allowance also. According to Section 8A, travel facilities are provided to ex-members also.

9. **Article 75(3)** says the Council of Ministers shall be collectively responsible for the House of the People. For the decisions taken in the Cabinet Meeting, whether good or bad, moved by one individual or two, it will become decision of the entire cabinet, once approved, and makes all together responsible. However it does not exclude individual minister's responsibility as overall in charge of a portfolio and independent decision maker in that area. The Minister's privileged issues if any are rightly excluded by the exceptions in RTI Act, such as Section 8(1)(a), (c), (f), (i). The proviso at the end of the section 8(1) which says "the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person" makes it clear wherever Minister is answerable to Legislators, he can also answerable to the ordinary citizen.

10. The expression "authority" would also include all persons or bodies that have been conferred a power to perform the functions entrusted to them under the constitution and merely because the Ministers are individuals, the same would not render the office of the Cabinet Minister any less authoritative than other constitutional functionaries. The expression "authority" as used in Section 2(h) cannot be read as a term to exclude bodies or entities which are, essentially, performing functions in their individual capacity. The expression "authority" as used in Section 2(h) of the Act would encompass any office that is conferred with any statutory or constitutional power. The office of the Cabinet Minister is an office established under the Constitution of India; the incumbent appointed to that office discharges functions as provided under the Constitution. Indisputably, the appointee to that office is, by virtue the constitution, vested with the authority to discharge those functions.

11. The probable claim that Cabinet Minister does not have the necessary infrastructure to support the applicability of the RTI Act in as much as, the Minister is a singular person office and, therefore, would have to act as a CPIO as well as the Appellate Authority and hence cannot be held as 'Public Authority' is not tenable. If lack of infrastructure is prescribed as the criteria for imposing transparency obligations, then none would be obliged to inform. That was never the intention of the RTI Act. It is quite relevant to quote the Judgment of Delhi High Court in W.P.(C) 1041/2013 in the case of **S.C. Agrawal Vs. Office of the Attorney General of India**, dated 10.03.2015 where court observed, "*it has been contended that there would be a practical difficulty as the office of the Attorney General is only a skeletal office which only consists of the appointee and the appointee's is personal staff. In my view, this cannot be considered as a reason for excluding the applicability of the Act on a public authority.*" Accordingly,

the Court directed the office of the AGI to reconsider the RTI application. The Commission considers it is the duty of both the Centre and States to provide required support to each minister, to ensure transparency in their functions.

12. Maharashtra State Chief Information Commissioner has declared on 25th September 2015 that each Minister of Maharashtra state as public authority and directed the Chief Secretary to appoint PIOs and First Appellate Authorities accordingly. As per the media reports the Chief Secretary agreed to implement the same. Prior to this decision the RTI requests made to the Ministers used to be diverted to concerned Ministry but was not being answered by the offices of the Ministers. The SCIC of Maharashtra Mr. Ratnakar Gaikwad reasoned the declaration saying "...offices of the ministers have been set up by the Government...these perform several duties, receiving files from various departments, applications from people and complaints from the public, and correspond with various authorities/offices.. sizable staff is also sanctioned by the Government to these offices, they, therefore, fall under the purview of section 2(h)(d)(i) of the RTI Act."

13. The Ministers debate the issues in the cabinet meetings and their collective opinion in the form of advice to the President or Governor is crucial in governance. President or Governor is a nominal head while executive head of each department is the Minister. They sanction for several state development activities and introduce people welfare schemes involving huge amounts. They are answerable to the Houses of Parliament and Legislature, being the representatives of the people. The Ministers are responsible individually to lead their departments/ministries and are also answerable to Legislature. They are expected to provide much needed leadership to the department taking assistance from the senior civil servants. The Constitution has entrusted the Ministers with higher powers and responsibilities over and above the IAS and IPS officers appointed through a rigorous examination process, only to facilitate the opinion of the people, their needs and duty and to keep in mind their welfare. They are all public duties, and Minister is a public body. Minister should not forget that he/she is elected by the people for the people on his request based on his promises and performances.

14. Thus there is no reason why Ministers should be kept beyond the purview of Right to Information, as their answerability is well established by the Constitution and Representation of People Act. Very title of the Act suggests that they are expected to represent the people who elected them and also because they administer them in their capacity as Ministers of a particular portfolio of the Government. No honest and sincere minister would refuse to inform the people who elected him/her.

15. Though the definition in Section 2(h) provides several conditions and circumstances to declare an authority as 'public authority', the first clause in that definition itself substantially covers each and every Minister of both Center and State

Governments. The 'Minister' is an institution within the scheme of the democratic Constitution. Being a Minister itself is public authority and as minister is associated with and assisted by an office, he cannot escape from the responsibilities under Right to Information Act. That office should facilitate access to people to the information held by it.

Whether a citizen has right to and minister has corresponding obligation to provide information?

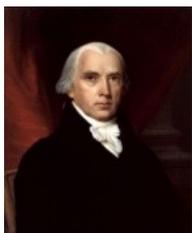
16. It is borne by epics that Emperor Maryada Purushottam Shri Ram used to have a bell in front of his palace, and whoever rings it he could come out of his residence to meet the citizen and hear him, reflecting grievance redressal mechanism in Ram Rajya. The history is replete with stories and Indian forts have built-in *darbar halls* where Emperors of Mughals, Rajputs and others used to meet the people to hear their submissions at a stipulated hour. Those are all dictatorial regimes. In democratic governance also people heard and saw that some of Prime Ministers, Chief Ministers and Ministers held *janata darbars* (public meetings) to receive people's representations/complaints etc in open. To meet or not, when and how to, etc are to be processed and informed by the concerned Minister, as that is totally prerogative of the Minister. Thus it may not be mandatory to have a fixed or prescribed timing for meeting the general public. Meeting by appointment is also difficult to be regulated or fixed with time schedules. Being an elected public representative, the Minister has a democratic duty to meet the common people and thus, citizens have a corresponding right to meet him. However this right should be subjected to limitations to ensure that it does not result in any form of chaos leading to a situation where he cannot perform his legal responsibilities as minister or public representative or bring Minister into physical security risk.

17. Subject to availability and convenience of the Minister at office in capital city or in Constituency, the minister owes a moral and democratic responsibility to meet his voters or people in the constituency. It will be in fitness of democratic requirements that every Minister makes it a regular practice once or twice or thrice in a week or month at any frequency of his choice, that he/she will be made available for meeting the people in a scheduled hour for a better people-oriented decision making or governance or hearing the grievances of public. Or, the Minister can publish dates of his meeting in coming month or fortnight, in a schedule as per his choice. It is the democratic right of voters to meet him and also it's his duty to meet voters which will go a long way in achieving the objectives of good governance through transparency as envisaged by the RTI Act.

18. Extending logically, this duty includes a genuine responsibility of the office of the Minister for Law & Justice/Minister of State (not the Ministry) to inform the people when they could meet him. This is a facility that they are expected to provide to the people who elected the Ministers. The information about such facility should be disclosed voluntarily by the office of Minister under section **4(1)(b)** within 120 days from the date of commencement of law. If there is no such facility of meeting, the Minister's office should declare that "there is no such facility" in a particular week/fortnight/month/year, as required under Section 4(1)(b).

19. Is Minister not obliged to make it easy for the citizen to meet through process of obtaining an appointment also? Why not the process or means of seeking appointment be announced by the officer of the Minister? For this they can use the Information Communication Technology and organizations like NIC, because the people have right to appointment with the Minister. Section 4(1)(b)(xv) says: '*the particulars of facilities available to citizens for obtaining information....*'

20. It is pitiful that a citizen has to file a RTI request to know the timings and process of meeting their chosen minister, which should have been ordinarily provided on their own. It is difficult for the PIO of the Ministry of Law, or Department of Legal Affairs to know and inform the people as to how and when the Cabinet Minister and Minister of State for Law will meet or what are the schedules or plans or processes for such meetings. It is not reasonable to ask the PIO of Ministry/Department of Legal Affairs to give that information. The Minister or his office alone is the appropriate authority to decide and inform about the facility of meeting the minister with details like days and timings, and also about the process of seeking appointment.



"A popular government without popular information or the means of acquiring it is but a prologue to a farce, or a tragedy or perhaps both".

- **James Madison**, Political theorist, American Statesman who served as the fourth President of United States (1809-17)

21. This American statesman explained further: "Knowledge will forever govern ignorance. And a people who mean to be their own governors must arm themselves with the power which knowledge gives". His most oft-quoted statement highlights the

'right to information' as a means to acquire that knowledge. Democracy is a popular government where there must be means of acquiring information. Right to Information Act is such a means provided by Parliament. If a democratically elected Minister does not provide time at least once in a month to meet his own voters and listens to their concern, there is no meaning to representative democracy.

An ideal representative of people



Mr. N. Yethiraja Rao, a Minister in N.T. Ramarao's Cabinet during 1984-89, used to carry two suitcases with him. When asked why two, he opened one containing nothing but 'representations' of village voters. He never threw them out or left in the guest houses, but used to address the officers and also visit public offices in Mandal, District and State Headquarters to resolve those grievances, besides giving feedback after meeting each of those who gave representations.

22. The admirable democratic quality of this people's representative was that he met each person twice; once to receive his representation and second to give result he secured. Its effect is obvious, he was elected seven times continuously, his wife and son also once each, from Chennur Assembly Constituency in Warangal district in Telangana. Being accessible to people is an essential representative character of democracy. Voter has a right to meet his representative, who has a corresponding duty. In mature democracy the people will reject and defeat a minister/legislator, who does not inform the means to meet his people.

23. No party lags behind in promising the people/voters that they will be within the reach or they will serve better etc. It is their moral duty to keep up their promises he made and programs forming part of manifesto of the political party. In a nation whose motto is 'satyamev jayathe', the Ministers under the leadership of the Prime Minister and respective Chief Ministers, have a moral responsibility to realize their promises truthfully.

24. It is pertinent to read the language of 'the oath of office and affirmations' made by each Minister when they were sworn in by the President or Governors:

...I will bear true faith and allegiance to the Constitution of India as by law established.... that I will faithfully and conscientiously discharge duties as a Minister for the Union/State and that I will do right to all manner of people in accordance with the Constitution and the law, without fear or favour, affection or ill-will. (The Constitution, Third Schedule, I).

The significant duty of the Minister is to be within the reach of people, answerable to them and keeping them posted with information as promised.

25. In addition, the Minister is asked to take oath of secrecy, as follows:

I will not directly or indirectly communicate or reveal to any person or persons any matter which shall be brought under my consideration or shall become known to me as a Minister except as may be required for the due discharge of my duties as such Minister. (Constitution of India, Third Schedule, II)

26. The National Commission to Review the Working of the Constitution (NCRWC) headed by Justice M N Venkatachalaiah, former Chief Justice of India, in 2002, referring to the Right to Information stated:

Government procedures and regulations shrouded in a veil of secrecy do not allow the clients to know how their cases are being handled. They shy away from questioning officers handling their cases.....In this regard, government must assume a major responsibility and mobilize skills to ensure flow of information to citizens. The traditional insistence on secrecy should be discarded. In fact, we should have an oath of transparency in place of an oath of secrecy.

27. Second Administrative Reforms Commission in its report on Right to Information in August 2006, under the chairmanship the then Union Minister Mr Veerappa Moily, recommended as follows:

A Minister is a bridge between the people and the Government and owes his primary allegiance to the people who elect him. The existence of this provision of oath of secrecy and its administration along with the oath of office appears to be a legacy of the colonial era where the public was subjugated to the

government. However, national security and larger public interest considerations of the country's integrity and sovereignty may require a Minister or a public servant with sufficient justification not to disclose information. But a very public oath of secrecy at the time of assumption of office is both unnecessary and repugnant to the principles of democratic accountability, representative government and popular sovereignty. Therefore, the obligation not to disclose official secrets may be built in through an appropriate insertion of a clause in the national security law dealing with official secrets. If required, such an undertaking may be taken in writing, thus avoiding public display of propensity to secrecy. The Commission is therefore of the view that the Oath of Secrecy may be dispensed with and substituted by a statutory arrangement and a written undertaking. Further, keeping in view the spirit of the Act to promote transparency and as recommended by the NCRWC it would be appropriate if Ministers on assumption of office are administered an oath of transparency alongwith the oath of office. (at Paragraph: 2.4.3)

The Second ARC recommended:

(a) As an affirmation of the importance of transparency in public affairs, Ministers on assumption of office may take an oath of transparency alongwith the oath of office and the requirement of administering the oath of secrecy should be dispensed with. Articles 75(4) and 164 (3), and the Third Schedule should be suitably amended. (b) Safeguard against disclosure of information against the national interest may be provided through written undertaking by incorporation of a clause in the national security law dealing with official secrets. (2.4.4)

28. It needs no mention that in a welfare state, Minister is a key functionary being in charge of a portfolio, or group of departments in a ministry. Instead of leaving it to the individual discretion, the law should mandate the transparency including the information about facilitating the 'meeting' with people. In this information age, the Right to Information Act has relegated the Official Secrets Act into irrelevance in many aspects except protecting security related secrets. It will be more appropriate to pledge for transparency rather than confining to oath of secrecy. The Right to Information Act has been deliberated and cleared by the Union Cabinet and passed by both the Houses of Parliament. Similarly several State Cabinet Ministers discussed and presented to their respective Legislative Assemblies who passed transparency laws. When Ministers wanted every other authority answerable, why should they also not be answerable under RTI Act?

29. Even if he takes oath of transparency, it will not oblige him to disclose various kinds of information, such as that prejudicially affect the sovereignty and integrity of India etc as delineated in 8(1)(a), information, the disclosure of which would cause a

breach of privilege of Parliament or State Legislature (c); information received in confidence from foreign government (f), and cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers (with a proviso) (i). Section 8(2) allows the public authority to provide access to papers notwithstanding anything contained in Official Secrets Act, 1923 in cases of public interest. In addition, Section 22 of RTI Act gives information law an overriding effect over the Official Secrets Act or any other law if that contradicts with RTI. Hence the Minister has to take an oath of transparency in place of obsolete 'oath of secrecy' or at least in addition to it.

30. Coming to facts of this RTI application, it is not proper for the Public Authority (Ministry of Law and Justice) to direct the appellant to check with the Minister himself and take the appointment. Such a task is a mere impossibility for a common man, in the absence of a published schedule of meeting time or process of securing appointment through transparent means. Giving such an advice to applicant is no information at all, or at least, it is incomplete information. However, the Commission cannot find fault with the CPIO of the Ministry, because he has sincerely attempted to obtain information from the concerned Minister's Office, and communicated whatever was received. The respondent authority should have transferred the request of the appellant to the Minister's office, which he might have not done thinking Minister is not public authority.

Declaration and Directions

31. In the light of above analysis, the Commission has no hesitation to declare **the Ministers in the Union Government and all State Governments as 'public authorities'** under Section 2(h). Thus the Commission holds that the Ministers have a statutory obligation to inform the people as mandated by the Right to Information Act, 2005.

32. The Commission strongly recommends the Centre and States to **provide necessary support to each minister, including designating some officers, or appointing as Public Information Officers and First Appellate Authorities**. They also shall be given an official-website for *suo moto* disclosure of the information with periodical updating as prescribed under Section 4 including the facility of meeting people since the Ministers deserve necessary assistance to receive, acknowledge and provide response to the representations given by the people and as Constitutional functionaries, the Ministers have a duty to inform the people about their efforts to fulfill the promises they have made, through Section 4(1)(b) of RTI Act and also to furnish the information as sought by their voters under other provisions of RTI Act. Exercising the

power given under Section 19(8)(a)(ii) the Commission requires the public authority, especially, the Cabinet Secretary of Union and all Chief Secretaries of States, to take such steps as may be necessary to secure compliance of the Right to Information Act and the directions in this order, including appointing a Public Information Officer within two months from the date of receipt of this order. The Commission directs its office to send this order to every Chief Secretary of State and Union Territory where the Council of Ministers are constituted for compliance.

33. With reference to this second appeal specifically, the Commission declares that the **office of the Minister for Law as public authority** under Section 2(h) of Right to Information Act, and under Section 19(8)(a)(ii) require the Government of India to appoint a Central Public Information Officer to answer the information requests of the citizen and publish the information as per Section 4(1)(b) including facility of meeting people.

34. The Commission strongly recommends to implement the recommendations of NCRWC, Second ARC and **replace the ‘oath of secrecy’ with ‘oath of transparency’** so that the Minister will respect the right to information of the citizen, which was passed by the Parliament and considered as fundamental right intrinsic in Article 19(1)(a) of the Constitution, and be answerable/accountable to the citizens.

35. The Commission directs the Cabinet Secretary, Union of India, Chief Secretaries of the States and Union Territories (with Legislative Assembly) and the Principal Secretary to the Minister for Law and Justice to file compliance report within three months from the date of receipt of this order.

36. The appeal is disposed of accordingly.

(M. Sridhar Acharyulu)
Information Commissioner

Authenticated true copy

(U. C. Joshi)

Deputy Secretary

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