

CENTRAL INFORMATION COMMISSION
New CIC Building, Baba Gangnath Marg, Munirka,
New Delhi-110067,
website:cic.gov.in

Complaint No.:- CIC/RBIND/C/2017/123750

Complainant : Mr. Shailesh Gandhi

Respondent : The CPIO,
Reserve Bank of India,
Central Office Building,
Mumbai

Date of Hearing : 13.10.2017
Date of Decision : 20.11.2017

Date of filing of RTI application	Not on Record
CPIO's response	Not on Record
Date of filing the First Appeal	Not on Record
First Appellate Authority's response	Not on Record
Date of filing complaint in the Commission	16.12.2016

ORDER

FACTS:

1. The instant matter was previously heard by a Single Bench of the Commission on 16.05.2017. The facts of the matter based on which the Single Bench acted upon are reproduced hereunder for the sake of brevity:

"1.This matter concerns a complaint dated 16.12.2016 filed by the Complainant to the Commission under Section 18 (1) (f) of the RTI Act. He stated that the RBI had issued a 'Disclosure Policy' on its website, containing a list of information which shall not be given. The above policy had been justified by the Respondents by stating that while compiling the non-disclosure list it had been the Bank's endeavour to attain the objectives of the RTI Act. The Complainant stated that the RBI had thus arrogated to itself the right to lay down exemptions from disclosure of information, which is the sole prerogative of Parliament which has provided the exemptions under Section 8



and 9 of the RTI Act. He further submitted that the information listed in the disclosure policy also contained some information which was ordered to be disclosed by the Supreme Court. The Complainant maintains that the above action of the Respondents could cause complete disruption of the working of RTI, if other public authorities followed this example. In that case, PIOs of public authorities would, be following the "illegal proclamation of their organizations" instead of the RTI Act. The Complainant has prayed that the above action of the RBI be declared illegal. He also sought an urgent hearing in the matter as it impinged upon the fundamental rights of citizens.

[...]

4. The Respondents described the above complaint as "frivolous". They stated that the Complainant had filed a complaint without making a request for information through an RTI application and such a complaint was not sustainable. In this connection they cited Commission's order No. CIC/SS/C/2012/900014/KY dated 19.9.2016. The Complainant, on the other hand, stated that it was not obligatory to file an RTI application before filing a complaint under Section 18 (1) (f). The Respondents further submitted that the Disclosure Policy on their website was drawn up pursuant to the order No. CIC/SM/A/2010/000148 dated 28.10.2010 of the Commission in *Shri Kishan Lal Mittal vs. CPIO, Reserve Bank of India*. In para 6 of the above order, the Commission had directed the Respondents to prepare their disclosure policy in respect of not only the minutes of the board and other meetings but also in respect of all other information held by them in tune with the provisions of the RTI Act and post this policy on their website. Following issuance of the above order, the matter was discussed in the public authority and the disclosure policy was placed on their website on 29.4.2011 and was also intimated to the Commission vide their letter dated 4.5.2011."



2. Based on the submissions of both parties, the Single Bench issued a decision dated **05.07.2017** which reads as under:

"11. In the light of the foregoing, in the view of this bench, the disclosure policy as drawn up by the Respondents is contrary to the letter and spirit of the RTI Act. However, as pointed out by the Respondents, they drew up this policy on the basis of an earlier decision of another bench of the Commission. The Respondents have also raised the issue of maintainability of a complaint in the absence of an RTI Application having been filed and, as stated above, the Commission has taken different views on this issue also. Therefore, we would recommend the constitution of a larger bench to CIC/RBIND/C/2017/123750 consider and dispose of the above issues. The Registrar is directed to place this matter before the Chief Information Commissioner for constitution of a larger bench."

3. In view of the aforesaid decision, this bench of the Commission had been constituted by the CIC on 18.08.2017. The two primary issues that emanate from the previous proceedings are:

- I. Whether or not the instant Complaint is maintainable under Section 18 1(f) of the RTI Act.
- II. Second being the credence of Complainant's averments regarding the fallout of the disclosure policy of Respondent office.

4. The Dy. Registrar, Registry of IC (SH), vide its note dated 27.07.2016 transferred the file to the O/o the Registrar for further processing the case. It was also stated that incidentally an e-mail dated 23.07.2017 was received in the Registry on 26.07.2017 from Shri Gandhi stating that he would be away from India from 28th July to 20th September, 2017 and as such the hearing in the case should be fixed after 20th September, 2017.

HEARING:

Facts emerging during the hearing:

The following were present:



Complainant: Mr. Shailesh Gandhi through VC;

Respondent: Mr. Nanda Kumar, GM (HQ)/CPIO; Mr. A. Krishna Gopal, Jt. Legal Advisor; Mr. Chetan Balwir, DGM (RTI Div.)/CPIO and Mrs. Anjali Karyekar, Manager (RTI Div.)through VC;

SUBMISSION OF PARTIES DURING THE HEARING ON 13.10.2017

5. The Complainant reframed his contentions brought out during the hearing before the Single Bench on 16.05.2017 and in doing so, he asserted his belief that if RBI decides what information it will disclose and what it will not, and if commission were to allow this practice, it would lead to a situation where Commission will not be able to hold any PIO of RBI responsible for their acts of omission and commission, as the PIOs will take defence under this policy. During the course of hearing, the Complainant made it explicitly clear that prior to the hearing of this matter, he was not aware of the CIC order in the matter of **Shri Kishan Lal Mittal vs. CPIO, Reserve Bank of India**. Nonetheless, he contended that howsoever done in good faith, Commission had erred in giving such leverage to RBI to carve out its own disclosure policy.
6. In its response, the Respondent argued that until the year 2010, the said policy was not conceived or published by them on their website and that it had been made available only in compliance of the Commission's order in the matter of **Shri Kishan Lal Mittal vs. CPIO, Reserve Bank of India**. Thereafter, it was remarked that the Complainant had not thus far explained as to how his Complaint is maintainable under Section 18(1)(f) of the RTI Act. It was contended that there was no scope of application of Section 18 1(f) of the Act or Section 18 of the RTI Act as a whole in the instant matter, as there was no request made on the Complainant's part, which then could be said to have been refused or rejected by their CPIO. It was opined that Section 18 is primarily for instances where a request for information is rejected by the CPIO, while Section 18 1(f) could be invoked for matters which are outside the scope of Section 18 1(a) to 18(1)(e) of the Act, but a request for information has to precede a



Complaint under Section 18 of the RTI Act, 2005. It was asserted that a mere Complaint without any RTI Application could not be deemed as substantial for approaching the Commission. Further, it was submitted that the said policy is not even a part of their *suo moto* disclosure, since they complied with the mandate of Section 4(1)(b) of the RTI Act as early as in the year 2005 itself. It was reiterated that they did not put up this policy on their own volition but only as per the directions of the Commission. The Respondents further emphasised on the fact that the said policy did not surface overnight and had been in existence for around 06 years now and therefore they wanted the Complainant to state as to what was his cause of action for calling out on the said policy after all this time. Furthermore, in all these years, not even once has the policy become a subject matter for consideration before the Commission and if the CPIOs were at fault for following the said policy as a mandate, the Commission would have intervened much earlier as well, but that was not the case. The Respondent Public Authority again lamented that the Complainant has not explained the maintainability of the Complaint while also reasserting that for any Compliant under Section 18 (1)(f), a request for information was necessary as per the provisions of Section 6 of the Act. It was also their contention that the Complainant's arguments merely focussed on imaginary issues and that he was excessively harping on RBI's perceived exercise of power, when in fact, RBI had not exercised any power per se, but had only complied a Commission's direction in its order. The Respondents also believed that the Complainant should have withdrawn the instant Complaint at the very instance he learnt of the fact that this policy has been brought up on their website as per the Commission's directions itself.

7. The Commission raised certain questions to both the parties intermittently during the course of their submissions.
8. The Complainant was asked to explain his cause of action and whether he had approached RBI for any of the information listed in the policy as well as if RBI had obstructed his Right to Information in any manner. The Complainant stated that he



happened to see the said policy on the RBI website upon a reference made by someone and at that time he was not aware as to when was this policy published. He however insisted that it could not be ignored that the policy was summarily flawed and reflective of a wrong practice. About the maintainability of the Complaint, the Complainant read out the provision of Section 18 of the RTI Act and stated that said Section did not mention that filing a RTI Application was necessary with the Complaint and moreover the objective of the said provision was to look into any kind of issue related to accessing of records. In this context, he also relied on a decision of Maharashtra State Information Commission (SIC) dated 25.03.2017, whereby directions were issued for pro-active disclosure of various welfare schemes of the Govt. departments of State of Maharashtra on their websites as a part of Section 4 mandate of the RTI Act based on his Complaint under Section 18(1)(f).

9. The Representatives of the Respondent Public Authority spoke about the dynamics of the averred policy on the instance of the Commission stating that this policy was in the nature of a negative list of what information RBI could perhaps deny, since Commission in its order dated 28.10.2010 implied that RBI *makes it clear that which information it would not disclose under the exemption provisions of RTI Act.* Additionally, stating that the policy was at best indicative in nature and nowhere it was projected as a mandate for CPIOs to remain bound to. In addition, it was pointed out that the text of the policy adequately states that each application received under the Act would be examined in the light of provisions of RTI Act. Furthermore, they believed that the genesis for the disclosure policy although was the Commission's direction but the intention was only to let the people get a sense of the probability of denial of information for some categories of information. The Respondent further relied on a judgment of the Hon'ble Supreme Court in the matter of **Narendra Kumar Maheshwari vs Union Of India & Ors [1989 AIR SC 2138]** wherein it was held as under :

"1.6. Being non-statutory in character, the guidelines are not judicially enforceable. A policy is not law. A statement of policy



is not a prescription of binding criterion. The competent authority might depart from these guidelines where the proper exercise of his discretion so warrants."

10. The Complainant argued that the decision of the Commission dated 28.10.2010 on which RBI has been labouring was *per-incuriam* and he opined that the respective bench of the Commission did not think through the consequences of allowing RBI to exercise such a power. However, he agreed to the point that at the filing stage of the instant Complaint he was not aware of the said directions of Commission, but, at this stage he wanted this bench to look at the future implications of allowing such a policy to remain in public domain, as he believed that not only will the said policy mislead citizens who are desirous of seeking information but it could also result in a situation where all public authorities would follow suit and start dissemination of such disclosure policies, and CPIOs of each public authority will eventually quote the policy for wrongfully denying the information. The Complainant raised his concern on another issue regarding the disclosure policy which exhibited a long list of information that could not be provided, while he found himself confounded with the sheer number of information which RBI stated it could not provide but particularly referred to the failure of the policy in adhering to the ratio laid down by the Hon'ble Supreme Court in the landmark judgement of **Jayantilal N Mistry case**, wherein, for instance, in the policy, inspection reports of Urban Cooperative Banks was stated to be an exempt information under various clauses of Section 8 of the RTI Act, when in fact the Supreme Court upheld the decisions of the Commission for disclosure of information in the above category. Similarly, legal opinion furnished by legal department of central organisations and regional offices was also stated to be an exempt information under Section 8(1)(e), which he argued was against the Commission's take on the applicability of Section 8(1)(e) for opinions exchanged or remarks tendered by virtue of the public post held by the government servants. In this background, he desired that the Commission to direct the Respondents to strike down the policy from their website and



also made it clear that he did not want any penal action in the matter.

11. Moreover, the Respondent vide its written submission dated 16.10.2017 (received by the Commission after the hearing) also submitted that the Complainant had no *locus standi* to file the present complaint as none of his rights had been infringed. It was argued that the Complaint u/s 18(1)(f) would be maintainable provided (i) there shall be a request to the information and (ii) such request had to be denied by the PIO. Therefore, only on the fulfilment of the said condition precedent, a complaint could be received and inquired into. It was informed that in the present matter, no request u/s 6 of the RTI Act, 2005 was received from the Complainant and therefore the question for denial of such request did not arise. A reference was made to the decision of the Commission dated 19.09.2016 in CIC/SS/C/2012/900014/KY and CIC/SS/C/2012/000352/KY to substantiate their contention. In addition, it was explained that the Commission in its order dated 28.10.2010 in file no. CIC/SM/A/2010/000148 had in the earlier, directed the RBI to formulate a disclosure policy in respect of information it may not disclose under the exemption provision of the RTI Act, 2005 and post this policy on its website. Accordingly, the Public Authority had prepared a list of such information and posted on its official website. The disclosure policy explicitly stated that each application received under the RTI Act would be examined in the light of the provision of the RTI Act, 2005 and any decision with respect to non-disclosure by the Respondent bank would be supported by the citing the relevant exemption provisions of the RTI Act, 2005. Therefore, the disclosure policy of the RBI placed on its website was in compliance with the order of the CIC dated 28.10.2010. Thus, it was categorically emphasised that RBI had in compliance to this Commission's direction, prepared a "disclosure policy" and placed the same on its website. It was contended that the complainant had nothing but self induced, unnecessary unfounded fears and imagination and therefore the instant Complaint was frivolous, vexatious and bad in law. It was submitted that the Complainant was guilty of *suppressio*



vari and suggestio falis and for this reason the complaint deserved to be dismissed by the Commission.

OBSERVATIONS:

12. The Commission observed that by and large the premise of this Complaint is notional in nature, where the Complainant 'believes' that the disclosure policy of the Respondent Public Authority could disrupt the access to information under RTI Act, 2005. It is well established at this stage that at no point in time has the Complainant attempted to obtain or access the information from RBI or could cite any instance where RBI had denied the information to him. It was also pertinent to note that the relief that the Complainant had sought was direction from the Commission for striking down the policy from RBI website, he specifically stated that he was not seeking direction for imposition of penalty. Further, the contentions of the Respondent could not be ignored that this policy had been on their website for about 6 years and Complainant was raising doubts without any basis and was ignorant of the fact that the policy was a result of Commission's directions itself. The Complainant had accepted that he was not aware of the Commission's directions until the matter was heard by the Single Bench. Even further, the Complainant could not cite any cause of action except for vaguely stating that he learnt of this policy upon the insistence of some person. On a query from the Commission regarding the establishment of the cause of action in the matter and the maintainability of his Complaint under the RTI Act, 2005, the Complainant only read out the provision of Section 18 1(f). His arguments of compliance of Section 4(1)(b) of RTI Act being routinely pursued by the Commission under Section 18 of the Act could hold good only where this disclosure policy could be seen as a *suo moto* disclosure.
13. The Commission was convinced that the allegations of the Complainant were only speculative and hypothetical in nature.
14. Furthermore, as for the Respondent's action of framing and putting up the policy, their proposition was accepted that it was



done only in compliance of the Commission's directives. In this context, if we read the operative portion of the order of 28.10.2010, it clearly stated as under:

"6. Besides, we also direct the CPIO to bring it to the notice of the competent authority in the RBI to prepare its disclosure policy in respect of not only the minutes of the board and other meetings' but also in respect of all other information held by it in tune with the provisions of the Right to Information (RTI) Act and post this policy in its website. Once the RBI makes it clear which information it would not disclose under the exemption provisions of the Right to Information (RTI) Act, it would be clear to everyone what all information can be expected to be disclosed. Such clear enunciation of the negative list of items/classes of information in conformity with the exemption provisions of the RTI Act would remove all doubts in the minds of the officers of the Bank about what they must disclose and which they must not. This would minimise the use of the appellate mechanism and bring in much greater transparency in the functioning of the apex Bank. It will also set a trend for other banks to follow."

15. What could be deduced from the aforesaid direction was that the stipulation of how RBI would wield this authority of preparing the list had been left open by the Commission. While passing a direction in the context of a Section 4(1)(b) component, as pointed out by the Single Bench also, the Commission left it open to the Respondent Public Authority to devise its negative list. Further, the language therein was such, which was leaning more towards a category of information for the CPIOs/officers of RBI and for other banks to follow, and not for the public except where it was deemed that from this negative list, *'it would be clear to everyone what all information can be expected to be disclosed'*. The keyword in the said direction was what could be *expected* to be disclosed. This in no way seemed to be forming a



part of Section 4(1)(b) mandate, which sought dissemination of certain categories of information that formed a part of active record of the public authority. The policy being discussed here was clearly more in the nature of guidelines for CPIOs of RBI for dealing with an RTI Application. Arguably, the policy did not have any sanction of law and merely was made a reference point for CPIOs.

16. However, during the hearing, the Complainant stated that the order of, the Commission in *Shri Kishan Lal Mittal v. CPIO, Reserve Bank of India*, File No CIC/SM/A/2010/000148 dated 28.10.2010 was bad in law and did not have any precedential value. It was observed that re-visiting the said order would amount to reviewing the earlier decision of the Commission which was not envisaged within the provisions of RTI Act, 2005. In this context, the decision of the Hon'ble High Court of Delhi in the matter of *DDA vs. CIC and Anr WP (C) 12714/2009 Decided On: 21.05.2010* could be cited wherein it had been held as under:

*"35. Yet another instance of the complete transgression of the statutory powers is to be found in Regulation 23. The said regulation, inter alia, provides that an appellant or a complainant or a respondent may, notwithstanding that the decision or order of the Commission is final, make an application to the Chief Information Commissioner for special leave to appeal or review of a decision or order of the case and mention the grounds for such a request. It further seeks to empower the Chief Information Commissioner, to consider and decide such a request as he thinks fit. **Neither the RTI Act nor the rules framed thereunder grant the power of review to the Central Information Commission or the Chief Information Commissioner. Once the statute does not provide for the power of review, the Chief Information Commissioner cannot, without any authority of law, assume the power of review or even of a special leave to appeal. Clearly, the said regulation is beyond the contemplation of the Act. Such a regulation is ultra vires the provisions of the Act"***



The Hon'ble Delhi High Court in the matter of SUHAS CHAKMA UNION OF INDIA and ANOTHER W.P.(C) 5086/2010(date of decision: NOVEMBER 18, 2011 had also held as under:

"It is well settled that unless the power of review is vested statutorily, the Court/ authority has no inherent power of review. See Patel Narshi Thakershi and Others. v. Shri Pradyumansinghji Arjunsinghji, (1971)3SCC844.

Regulation 23 of The Central Information Commission (Management) Regulations, 2007, as amended vide notification No.CIC/Legal/2007/006 dated 20.10.2008 further exemplifies the position. Prior to this amendment, the aforesaid Regulation 23 read as follows:-

(1) A decision or an order once pronounced by the Commission shall be final.

(2) An appellant or a complainant or a respondent may, however, make an application to the Chief Information Commissioner for special leave to appeal or review of a decision or order of the case and mention the grounds for such a request.

(3) The Chief Information Commissioner, on receipt of such a request, may consider and decide the matter as he thinks fit.(emphasis supplied)

After the said aforesaid amendment carried out in the year 2008, Regulation 23 of the aforesaid Regulations now read as follows:-

A decision or an order once pronounced by the Commission shall be final. It is, therefore, even more clear that by amendment, the legislature has specifically withdrawn the power of review which earlier vested in the CIC."

17. As per the submissions made by both the parties and the facts available on record, it is clear that the impugned "Disclosure Policy" was prepared by the Respondents in compliance with the aforementioned decision and was not a suo moto



disclosure as per Section 4 of the RTI Act, 2005. In this regard a reference can be made to the submission by the Respondent that they had already complied with the obligation u/s 4 (1) (b) in 2005 after the promulgation of the RTI Act, 2005 which was not disputed or challenged by the Complainant. In this context, the Commission felt that the Complaint was without a cause of action since the Complainant was not aware of the earlier decision of the Commission and subsequent action by the Respondent in compliance with the decision. Thus, it was not the case of violation of Section 4 by the Respondent as claimed by the Complainant but was a matter of action taken in compliance of an earlier decision of the Commission.

18. Furthermore, the scope and ambit of Section 18(1)(f) should be construed in the manner the Act provides for. The said provision states that:

“(1) Subject to the provisions of this Act, it shall be the duty of the Central Information Commission or State Information Commission as the case may be to receive and inquire into a complaint from any person,—

(f) in respect of any other matter relating to requesting or obtaining access to records under this Act.”

19. In the instant matter, Complainant had clarified that there had been no such request for information made on his part to the RBI, or any attempt made at obtaining the access to the records. The contentions of the Complainant that Commission could not maintain a stand of not receiving complaints which were not accompanied by RTI Applications could not be acceded to, solely in the quest for according a ‘logical end’ to issues such as the present one. As observed in the order dated 16.07.2017 of the Single Bench regarding an instance where Commission adjudicated upon a Complaint without an RTI Application:

“However, in another order of the Commission (CIC/WB/C/2010/900031, CIC/WB/C/2010/900032-



SM, CIC/SM/C/2011/900894, CIC/SM/C/2011/901291, CIC/SM/C/2011/901292, CIC/SM/C/2011/901294, CIC/SM/C/2011/901296, CIC/SM/C/2011/901297, CIC/SM/C/2011/901298, CIC/SM/C/2011/901301 and CIC/WB/C/2010/000575-SM dated 12.1.2012), the Commission considered complaints filed against certain High Courts under Section 18 of the RTI Act on the ground that their websites did not carry suo-motu declarations as mandated under Section 4 (1) (b) of the RTI Act. **The complaints were not preceded by any RTI applications as the issue was one of suomotu disclosure and not request for information, not covered by Section 4 of the RTI Act.** [Emphasis Supplied]

20. Now, it is noteworthy that the single bench had itself made a remark that the issue raised in the abovementioned set of Complaints was one of *suo moto* disclosure and not a hypothetical or presumptive apprehension regarding an indicative guideline prepared while complying with a direction of the Commission. Even further, a perusal of the referred order dated 12.01.2012 revealed that the Commission nowhere talked about Section 18(1)(f) of the RTI Act or the absence of a RTI Application but merely proceeded under Section 18 of the Act for a matter pertaining to Section 4(1)(b) of the RTI Act. In view of this, it would not be appropriate to rely on the said judgement any further in the instant matter.
21. Moreover, if we look at the RTI Act, 2005 in particular, there is no stipulation of what the Commission could do after conducting an inquiry under Section 18(2) therein, the only enabling provision further in the RTI Act for action in a Complaint under Section 18 was inferred from the language of Section 20 of the Act which provides as under:



(1) Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any **complaint** or appeal is of the opinion that the Central Public Information Officer or the State

Public Information Officer, as the case may be, has, without any reasonable cause, refused to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall impose a penalty of two hundred and fifty rupees each day till application is received or information is furnished, so however, the total amount of such penalty shall not exceed twenty-five thousand rupees: Provided that the Central Public Information Officer or the State Public Information Officer, as the case may be, shall be given a reasonable opportunity of being heard before any penalty is imposed on him: Provided further that the burden of proving that he acted reasonably and diligently shall be on the Central Public Information Officer or the State Public Information Officer, as the case may be.

(2) Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any **complaint** or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause and persistently, failed to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall recommend for disciplinary action against the Central Public Information Officer or the State Public Information Officer, as the case may be, under the service rules applicable to him.



22. This power of imposing penalty is only to be exercised against a CPIO/SPIO and not the public authority. So when we accord an interpretation to the ambit of Section 18(1)(f) of the RTI Act, which was in the nature of a residuary power as recognised by Hon'ble Supreme Court in *CIC vs. State of Manipur*, [Civil Appeal Nos.10787-10788 Of 2011] it ought to be given such a construction which can be brought within the scope of adjudication of the Commission. The relevant extract of the aforesaid judgement of the Hon'ble Supreme Court of India is as under:

"29. If we look at Section 18 of the Act it appears that the powers under Section 18 have been categorized under clauses (a) to (f) of Section 18(1). Under clauses (a) to (f) of Section 18(1) of the Act the Central Information Commission or the State Information Commission, as the case may be, may receive and inquire into complaint of any person who has been refused access to any information requested under this Act (Section 18(1)(b)) or has been given incomplete, misleading or false information under the Act (Section 18(1)(e)) or has not been given a response to a request for information or access to information within time limits specified under the Act (Section 18(1)(c). We are not concerned with provision of Section 18(1)(a) or 18(1)(d) of the Act. Here we are concerned with the residuary provision under Section 18(1)(f) of the Act."



23. This scope was very well limited to an action against a CPIO/SPIO, when we bring this aspect within the context of the instant Complaint, we must not overlook the fact that the RBI's non-disclosure policy had been drawn on the direction of the Commission given to the public authority and not to the CPIO. It leads us to the question of who within the RBI was to be held responsible for adjudging the hypothesis of the Complainant, if it was the competent authority of RBI who could be held liable for approving and allowing publication of the policy, question remains under what authority the Commission could seek the presence of the competent

authority as the facts of the instant matter did not call for taking any evidence or producing any documents or affidavit. This was for the simple reason that this bench of the Commission could not hold RBI responsible for exercising the liberty of interpretation accorded to it by another bench of this very same Commission based on a mere apprehension of obstruction of right to information of the citizens by CPIOs of RBI as envisaged by the Complainant.

24. Furthermore, Section 18(1)(f) of the Act uses the phrases 'request'/'obtain' and we ought to render only a literal interpretation of these phrases. If we look at Section 6 of the RTI Act, 2005 it explains what a citizen should do if he/she desired to obtain information; which was to make a request, and this request had been stipulated as a request made in writing or electronic form with the CPIO/SPIO/CAPIO/SAPIO.

"6. Request for obtaining information.—

(1) A person, who desires to obtain any information under this Act, shall make a request in writing or through electronic means in English or Hindi in the official language of the area in which the application is being made, accompanying such fee as may be prescribed, to—

(a) the Central Public Information Officer or State Public Information Officer, as the case may be, of the concerned public authority;

(b) the Central Assistant Public Information Officer or State Assistant Public Information Officer, as the case may be, specifying the particulars of the information sought by him or her..."

25. It is pertinent to note that even in the matter of **CIC Vs. State of Manipur** (supra), it had been held as under:

"23. Right to Information has also been statutorily recognised under Section 3 of the Act as follows:



'3. Right to information.- Subject to the provisions of this Act, all citizens shall have the right to information.'

24. Section 6 in this connection is very crucial.

Under Section 6 a person, who desires to obtain any information under this Act, shall make a request in writing or through electronic means in English or Hindi or in the official language of the area in which the application is being made, accompanying such fee as may be prescribed. Such request may be made to the Central Public Information Officer or State Public Information Officer, as the case may be, or to the Central Assistant Public Information Officer or State Assistant Public Information Officer. In making the said request the applicant is not required to give any reason for obtaining the information or any other personal details excepting those which are necessary for contacting him.

25. It is quite interesting to note that even though under Section 3 of the Act right of all citizens, to receive information, is statutorily recognised but Section 6 gives the said right to any person."

26. It follows then this right to information had to be exercised by following the process of Section 6 and the phrase "request and obtain" was contained in this very enabling provision before it finds a mention in Section 18 1(f) of the RTI Act.
27. From the discussions above, the limited scope of Section 18 as a whole was quite predominant, and for this reason the Commission did not find it expedient to extend such dimensions to the meaning of Section 18(1)(f) of the Act so as to accommodate even the apprehensions of citizens being cited as a reason for not being able to request for information or obtain access to records or proceed on conjecture and speculations about the conduct of CPIO's of the Public Authority.



DEDUCTIONS:

28. In view of the above elucidations, the instant Complaint under Section 18(1)(f) of the Act which was based on assumptions and apprehensions of Complainant without any conclusive attempt at exercising the right to information was not maintainable. Moreover, on being queried by the Commission regarding the reasons for not approaching the Public Authority by filing an RTI Application, before filing the instant Complaint, no satisfactory and reasoned response was provided by the Complainant who re-iterated that as per the provisions of the RTI Act, 2005 it was not mandatory to file an RTI application prior to filing a complaint u/s 18 of the Act.

DECISION:

29. From the observations and deductions made above, the instant Complaint is not maintainable under Section 18(1)(f) of the RTI Act due to the absence of cause of action. Moreover, the Complainant could not substantiate the reasons for not filing an RTI application with the Public Authority before filing a Complaint with the Commission.

30. The Complaint is accordingly dismissed.

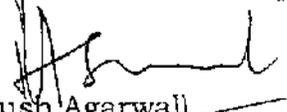
SD/-

(Divya Prakash Sinha)
Information Commissioner

SD/-

(Bimal Julka)
Information Commissioner

Authenticated True Copy:


(Piyush Agarwal)
Registrar

