

केन्द्रीय सूचना आयोग  
**Central Information Commission**  
बाबा गंगनाथ मार्ग, मुनिरका  
**Baba Gangnath Marg, Munirka**  
नई दिल्ली, New Delhi – 110067

शिकायत संख्या / Complaint No.:- CIC/CCUBL/C/2017/128442-BJ-Interim

Mr. Kriplani M.

.... शिकायतकर्ता /Complainant

VERSUS

बनाम

CPIO

Office of the Principal Commissioner of Customs  
Air Cargo Complex, Menzies Aviation Bobba Cargo Terminal  
Dev Anahalli, Bengaluru - 560300

...प्रतिवादीगण /Respondent

Date of Hearing : 30.10.2019/05.12.2019  
Date of Decision : 01.11.2019/20.12.2019

Date of filing of RTI application	17.06.2016
CPIO's response	25.07.2016
Date of filing the First appeal	Not on Record
First Appellate Authority's response	Not on Record
Date of diarised receipt of Complaint by the Commission	01.05.2017

**ORDER**

**FACTS:**

The Complainant vide his RTI application sought information on 05 points regarding Mr. Srinivas- Inspector of Customs, detailed list of Postings/ Departments served from the date of joining duty till the date of RTI application, address and ownership details of present Residential Premises, etc.

The CPIO and Dy. Commissioner (ACC), vide its letter dated 25.07.2016 stated that there was no person by the name of Mr. Srinivas- Inspector of Customs, Air Cargo Complex, Bangalore working at their office hence the information sought could be treated as 'Nil'. Dissatisfied by the response of the CPIO, the Complainant approached the Commission.

The matter was earlier heard by the Commission on 19.01.2018 wherein vide order dated 23.01.2018, the Commission had disposed the matter and held as under:

*"Keeping in view the facts of the case and the submissions made by both the parties and in the light of the aforesaid judgments, no further intervention of the Commission is warranted in the matter. For redressal of grievance, the Complainant is required to approach an appropriate forum."*

Aggrieved by the decision of the Commission, the Complainant approached the Hon'ble High Court of Karnataka in W.P. No. 8286/2018 which was decided by the Hon'ble High Court of Karnataka vide order dated 19.09.2019, the relevant extracts of which are as under:

*“Admittedly, the petitioner by way of communication dated 25.07.2016 was informed that no such person by name Sri. Srinivas, inspector of Customs, Air Cargo Complex, Bangalore is posted in the office. Being aggrieved, the petitioner filed a complaint under Section 18 (e) of the Act before the Central Information Commission on the ground that he has been supplied incorrect and misleading information. From perusal of the order dated 25.09.2017 passed by the Central Information Commission, I find substance in the submission made on behalf of the petitioner that the information which has been supplied to the petitioner prima facie appears to be incorrect and misleading. However, the aforesaid aspect of the matter has not been considered by the Central Information Commission while passing the impugned order dated 23.01.2018. The complaint submitted by the petitioner has been rejected on the ground that the Complainant could not substantiate regarding malafide denial of information by the respondent. The impugned order therefore suffers from the voice of information, application of mind and cannot be sustained in the eye of law. It is accordingly quashed. The Central Information Commission is directed to decide the issue, whether or not, the application of the petitioner is incorrect/ misleading, in the light of order dated 25.09.2017 passed by the Central Information Commission in complaint no. CIC/DOREV/C/2017/311926-BJ, by a speaking order, after affording an opportunity of hearing to the parties, within a period of one month from the date of receipt of certified copy of the order passed today. It is made clear that this Court has not expressed any opinion on the merits of the case.”*

In compliance with the aforesaid order of the Hon'ble High Court of Karnataka, the Legal Cell, Central Information Commission, inter alia placed the matter before Information Commissioner (IC)- Bimal Julka who vide his note dated 04.10.2019 proposed to schedule the hearing with another IC for the sake of objectivity / transparency, if the CIC so agreed. Thereafter, the Legal Cell, Central Information Commission vide another note dated 04.10.2019 inter alia placed the matter before Chief Information Commissioner (CIC) who vide his note dated 07.10.2019 stated that the matter be heard by IC (BJ) and IC (SC). Thereafter, vide notice of hearing dated 14.10.2019, the Registrar, CIC fixed 30.10.2019 as the date of hearing for the instant matter.

#### **HEARING:**

##### **Facts emerging during the hearing:**

The following were present:

Complainant: Mr. Kriplani M. along with Ms. Aishwarya (Adv.) through VC;

Respondent: Mr. K. V. Arvind, Sr. Standing Counsel (Customs) and Mr. Ashutosh Kumar, Dy. Commissioner of Customs and CPIO, Air Cargo Complex through VC;

In pursuance of the order of the Hon'ble High Court of Karnataka, the Commission heard both the parties. The Complainant re-iterated the contents of his RTI application and inter alia submitted that the CPIO while giving evasive reply stating that the information was nil misled the Commission. He referred to three charge-sheets arising out of three different acts of omission and commission i.e., Charge Order in Spl. CC No. 17/2017 dated 28.09.2017, CBI FIR No. RC 06(A)/ 2019 dated 10.04.2019 and FIR No. 0070/2016 registered on 12.04.2016. Thus, according to the Complainant documents and evidences including criminal cases which revealed that there was one person Mr. M. V. Srinivas who was working in the Customs Department had been

furnished and hence not advertent to that, the CPIO had perhaps evaded the disclosure of information. He further argued that the CPIO had not taken the plea that the RTI application was indefinite or unspecific while giving nil information and that Mr. Sujith Kumar P. Sompur, CPIO who was also the reporting officer of Mr. M.V. Srinivas deliberately misled the Commission despite being aware of the facts and the antecedents of the individual. In support of his contentions, the Complainant also referred to an earlier decision of the Commission in Complaint No. CIC/DOREV/C/2017/311926-BJ decided on 25.09.2017 wherein the Commission had issued a show cause notice against the CPIO since a contradictory response was provided by the Respondent present during the hearing vis a vis the response of the CPIO.

The Respondent while defending the reply given by the then CPIO inter alia argued that the information sought was not about the specific person (Mr. M. V. Srinivas) and that subsequently the Complainant had revealed the specific person i.e. Mr. M. V. Srinivas. Hence, based on the earlier application, the CPIO could not have ascertained about the information sought and the information given at that point of time was correct as there was no such person named 'Srinivas' in the O/o the Pr. Commissioner of Customs, Air Cargo Complex, Bengaluru. Thus, the CPIO in the absence of specific name could not have inferred or created information which was not in the custody of the CPIO and that there had been a plethora of judicial pronouncement and other precedents of the Central Information Commission supporting his view point that as CPIO he was not to invent or create information/ provide opinion/ advice or draw inference. He referred to the decision of the Commission in Complaint No CIC/CCUBL/C/2017/108697-BJ dated 12.12.2017 wherein it was articulated that the Complainant had prior knowledge of the presence of Mr. M.V. Srinivas, Customs Official whereas in the instant case he refrained to spell out the correct identity details.

The Commission was also in receipt of a written submission from the Complainant dated 28.10.2019 wherein it was inter alia stated that the RTI application was filed seeking information on one Mr. Srinivas, Inspector of Customs, Bangalore, Air Cargo Complex who was directly reporting to Mr. Sujith Kumar P. Sompur (CPIO) as Mr. Srinivas was with the CIU (Customs Intelligence Unit) department. Mr. Sujith Kumar P Sompur being the CIU head had only two inspectors allocated to him namely Mr. Srinivas and Mr. Niranjana Murthy. He thereafter alleged that Mr. Sujith Kumar P Sompur and Mr. Srinivas had jointly and severally committed several corrupt criminal acts and numerous FIRs and Charge Sheets had been filed by CBI, Local Police as well as by the CVC based on various complaints during the year 2015-16. When the RTI application was filed seeking information on Mr. Srinivas, Inspector of Customs, Mr. Sujith Sompur (CPIO) with a sinister view to exonerate and extricate themselves had intentionally filed a false and malicious statement that there exists "*No person by the name Shri Srinivas, Inspector of Customs, Air Cargo Complex, Bengaluru working at their office.*" However, two CBI cases were filed against Mr. Srinivas, Inspector of Customs which were charge sheeted/ registered during the year 2016 and he was also involved in Crime No. 0070/2016 registered at the Bangalore International Airport Police Station. Mr Sujith Kumar P Sompur was his partner in crime (accomplice) in all the above criminal cases. Hence, the CPIO indulged in such misleading mischief thereby misinterpreting the facts to exonerate and extricate themselves from the pending as well as impending cases. The Complainant also submitted that Mr Sujith Kumar P Sompur intentionally omitted mentioning his name below the signature in all the RTI replies/ correspondences to escape from the criminal misconduct. It was also submitted that the Commission in another Complaint u/s 18 of Mr. Vijey M. had proposed penal action against Mr. Sujith Kumar P Sompur wherein the RTI application as well as the reply of CPIO were verbatim copy of his application (CIC/DOREV/C/2017/311926-BJ). However, the Commission in his case

passed an order which was contrary to the order passed in the aforementioned case. Hence, the Hon'ble High Court of Karnataka in WP No. 8286/2018 had quashed the order of the Commission and remanded the matter for fresh reconsideration. Therefore, it was prayed to impose penalty u/s 20 of the RTI Act as well as disciplinary action/ proceeding against Mr Sujith Kumar P Sompur- Dy. Commissioner of Customs.

### **INTERIM DECISION:**

Hearing both the parties and on perusal of the records and advertent to the facts and circumstances of the case, the Commission feels that in order to ascertain more clarity and reasons, a show cause notice may be issued to the then CPIO and the present CPIO as to why penal action should not be initiated against them in accordance with the provisions of the RTI Act, 2005 for misleading the Commission with the correct identity of the Customs Official where information was sought by the Complainant. Therefore, the Commission instructs Mr. Sujith P. Sompur, the then CPIO and Dy. Commissioner, Air Cargo Complex and the present CPIO Mr. Ashutosh Kumar, Dy. Commissioner of Customs and CPIO, Air Cargo Complex to explain as to why penal action should not be initiated against them as per Section 20(1) of the RTI Act, 2005 within a period of 15 days from the date of receipt of this order. Mr. Ashutosh Kumar, Dy. Commissioner of Customs and CPIO, Air Cargo Complex is also directed to intimate Mr. Sujith P. Sompur, the then CPIO and Dy. Commissioner, Air Cargo Complex about the instant order and ensure his presence on the next date of hearing fixed by the Commission.

Since the Registrar, CIC is not in position as on date, the Dy. Registrar (IC-BJ) is instructed to fix another date of hearing in the matter under intimation to all the concerned parties.

**Note: Subsequently, the Dy. Registrar (IC-BJ) vide notice dated 20.11.2019 fixed 05.12.2019 as the next date of hearing in the matter.**

### **HEARING:**

#### **Facts emerging during the hearing:**

The following were present:

Complainant: Mr. Kriplani M. along with Ms. Aishwarya (Adv.) through VC;

Respondent: Mr. K. V. Arvind, Sr. Standing Counsel (Customs), Bangalore, Mr. Ashutosh Kumar, Dy. Commissioner of Customs and CPIO, Air Cargo Complex, Bangalore and Mr. Nirmal Joy, Dy. Commissioner, Air Cargo Complex, Bangalore and Mr. Sujith Kumar P Sompur, Jt. Director, Guwahati, through VC;

The Complainant at the outset denied the receipt of the reply to the Show cause notice sent by Mr. Sujith P. Sompur, the then CPIO and Mr. Ashutosh Kumar, CPIO and Dy. Commissioner of Customs, Bangalore. He thereafter re-iterated the submissions made in the last hearing and stated that the information was denied with a malafide intention since the CPIO had not taken the plea that the RTI application was indefinite or unspecific while giving nil information and that Mr. Sujith Kumar P. Sompur, CPIO who was also the reporting officer of Mr. M.V. Srinivas deliberately misled the Commission despite being aware of the facts and the antecedents of the individual. In order to substantiate his claims regarding malafide denial of information, the Complainant also submitted that Mr. Sujith Kumar P Sompur being the CIU head had only two inspectors allocated to him namely Mr. Srinivas and Mr. Niranjana Murthy hence a clear, cogent and precise response could have been provided and that Mr Sujith Kumar P Sompur intentionally

omitted mentioning his name below the signature in all the RTI replies/ correspondences to escape from the criminal misconduct.

In his reply, the Respondent (Mr. Sujith P. Sompur, the then CPIO) re-iterated his response to the show cause notice and primarily argued that no malafide intention existed on his part while replying to the RTI application since two similar RTI applications were filed by the Complainant on the same date i.e., 17.06.2017 wherein in one application he had sought information regarding "Mr. M.V. Srinivas, Inspector of Customs" while in the other application he had sought information regarding "Mr. Srinivas, Inspector of Customs" (Air Cargo Complex, Bangalore). Both the applications were replied on the same date i.e., 25.07.2016 denying information regarding "Mr. M.V. Srinivas" u/s 8 (1) (j) of the RTI Act, 2005 on the ground that the information sought was the personal information of a Third Party and no larger public interest warranting its disclosure was justified by the Appellant. However, since there existed no officer by the name "Mr. Srinivas" in their department, a response with the comment "Nil" was provided on the other RTI application. It was submitted that the CPIO was not competent to draw an inference or make an assumption that both the RTI applications related to the same person. The Complainant had prior knowledge of the presence of Mr. Srinivas M. V. Custom Official. Thus, the CPIO had no reason or basis or cause or even a belief to assume or to conclude that both of them were in respect of one and the same person/officer. It was therefore prayed that the Commission may appreciate the different facts and circumstances as presented by the Complainant in the two cases. In view of the above factual aspect, the contention of the applicant/complainant that information was provided to mislead or wrong information was provided was totally incorrect and baseless. The Respondent (Mr. Ashutosh Kumar, CPIO and Dy. Commissioner of Customs, Bangalore) at the outset handed over a copy of his reply to the show cause notice sent to the Commission to the Complainant as well and submitted that he has been transferred now and was not the incumbent CPIO anymore. While re-iterating the submissions of Mr. Sujith P. Sompur, the then CPIO, he submitted that in accordance with the directions of the Commission in the last hearing, he had conveyed that Mr. M.V. Srinivas, Inspector of Customs had worked in the O/o the Pr. Commissioner of Customs, Airport and Air Cargo Complex between 08.06.2015 and 23.08.2015 and that other than Mr. M.V. Srinivas, Inspector of Customs, no Mr. Srinivas, Inspector of Customs was working in the O/o the Pr. Commissioner of Customs, Air Cargo Complex and that no Mr. Srinivas, Inspector of Customs was reporting to the then CPIO in the relevant period. Mr. M. V. Srinivas was therefore identifiable Inspector of Customs whereas Mr. Srinivas could not be identified and no assumptions could be taken with regard to the identity of the said official.

On being queried by the Commission regarding the larger public interest in seeking information relating to list of postings from the date of joining duty, address and ownership details of present residential premises, etc pertaining to Mr. Srinivas, the Complainant submitted that the information was critical evidentiary proof in order to move a Vigilance/ Criminal Complaint against Mr. M.V. Srinivas and that the information sought should be suo motu disclosed on the website of the Public Authority. On a query to the Respondent regarding the reason why a clear, cogent and precise response cross referencing the other RTI application where information regarding Mr. M.V. Srinivas was sought was not made, the counsel for the Respondent while admitting that the CPIOs reply was not appropriately worded stated that the CPIO was not expected to give identical reply in both the matters assuming that Mr. M.V. Srinivas and Mr. Srinivas were one and the same. In this context, the Respondent referred to the judgment of the Apex Court in the matter of CBSE and Anr. Vs. Aditya Bandopadhyay and Ors 2011 (8) SCC 497. Furthermore, while referring to the judgement of the Hon'ble High Court of Delhi in

the matter of Registrar of Companies & Ors v. Dharmendra Kumar Garg & Anr. W.P.(C) 11271/2009 (delivered on: 01.06.2012) the Respondent's counsel submitted that merely because the view taken by the PIO was not found correct it cannot be treated as a malafide denial that may lead to imposition of penalty on the Respondent for furnishing information in a bonafide manner.

The Commission was in receipt of a reply to the show cause notice from the Respondent (Mr. Sujithkumar P Sompur, the then CPIO) dated 14.11.2019, wherein it was stated that the Complainant Sri Kriplani had filed an RTI application dated 17.06.2016 to the CPIO, Office of the Commissioner of Customs, Queens Road, Bangalore seeking the information in respect of "Mr. M. V. Srinivas" – Inspector of Customs (SHED Air Cargo Complex, Bangalore). The application was transferred to the CPIO at Air Cargo Complex and was received by the then CPIO on 27.06.2016 and was replied by the then CPIO by his response dated 25.07.2016. It was submitted that the said response in respect of "Mr. M. V. Srinivas" was the subject matter of a Second Appeal before the Commission in Appeal No. CIC/CCUBL/C/2017/108697/BJ which was decided on 12.12.2017 wherein the Commission recorded the finding that no further intervention of the Commission was warranted in the matter. It was submitted that the said "Mr. M. V. Srinivas" in respect of whom the applicant had sought information, had worked in the Office of the Commissioner of Customs, Airport and Air Cargo Complex between 08.06.2015 and 23.08.2018. The very same Complainant/Applicant had also filed another RTI application on the same date, viz. 17.06.2016, before the same CPIO, Office of the Commissioner of Customs, Queens Road, Bangalore seeking the information in respect of "Mr. Srinivas" – Inspector of Customs (Air Cargo Complex, Bangalore). It was submitted that the said second application was also transferred to the then CPIO and was received by him also on 27.06.2016. The then CPIO by his response also dated 25.07.2016 furnished the reply to the applicant informing that "There is no person by name Mr. Srinivas, Inspector of Customs, Air Cargo Complex, Bangalore working at this office and hence the information sought vide his application may be treated as Nil". Thus it was prayed to take note of the dates of both the applications. Both the RTI applications were filed by the same Applicant/Complainant on the same date viz. 17.06.2016. In both the applications the Applicant/Complainant had sought similar items of information but had used a different phraseology. Both the applications were made to the PIO, Office of the Principal Commissioner of Customs, Queens Road, Bengaluru and that PIO had transferred them under Sec. 6(3) of the RTI Act to the then CPIO under the same letter and were received by the then CPIO on 27.06.2016. It was submitted that both the applications were replied by the then CPIO on 25.07.2016. Thus, in view of two RTI applications having been filed by the same applicant on the same date and seeking almost similar items of information pertaining to one in respect of "Mr. M. V. Srinivas" (Inspector of Customs, SHED, Air Cargo Complex) and another in respect of "Mr. Srinivas" (Inspector of Customs, Air Cargo Complex), the then CPIO had no reason or basis or cause or even a belief to assume or to conclude that both of them were in respect of one and the same person/officer. In view of the above factual aspects, the contention of the applicant/complainant that information was provided to mislead or wrong information was provided was totally incorrect and baseless. The bonafides of the then CPIO was further justified in view of the response provided by him to the application filed by the applicant in respect of Mr. M. V. Srinivas, which response was upheld by the Commission in the Second Appeal. In fact the Complainant had sought information about 11 persons vide 11 separate RTI applications on the same date i.e. 17.06.2016. The CPIO had replied to all the 11 applications, which further demonstrates the bonafides of the then CPIO. It was further submitted that the CPIO was not competent to draw an inference and/or make an assumption that both the RTI applications related to the same person. In the above facts and circumstances, the response given by the then CPIO in

respect of the application relating to “Mr. Srinivas” could not be considered as denial of information or providing misleading information in view of the application filed by the same applicant in respect of Mr. M. V. Srinivas having been responded as it was possible to identify that officer on the basis of the records and that response had been confirmed by the Commission. The Complainant had prior knowledge of the presence of Mr. Srinivas M. V., Customs Official whereas in the instant case he refrained to spell out the correct details. It was also stated that the facts and circumstances of the decision of the Commission in Complaint No. CIC/DOREV/C/2017/311926-BJ dated 25.09.2017 was completely different from the instant case. However, on closer examination it was very clear that though the information sought pertained to Mr. Srinivas, the Commission took a view to issue a show cause notice to the CPIO on an earlier occasion who attended the VC as he provided a contradictory reply vis a vis the original reply by the CPIO. A reference was also made to the decision of the Hon’ble Delhi High Court in W P ( C ) 11271/2009 in the case of Registrar of Companies Vs. the Dharmendra Kumar Garg decided on 01.06.2012. Furthermore, the RTI application in question, which was the basis of the complaint, itself was not maintainable as it was hit by the principles of resjudicata. When the application itself was not maintainable, it could not be the basis of the complaint under Sec. 20 of the RTI Act. The Respondent also referred to the judgment of the Hon’ble Delhi High Court in its decision in W. P. (C) 845/2014-ShailSahini Vs. Sanjeev Kumar & others decided on 05.02.2014. It was also submitted that the Complainant was using the RTI Act for his self interest, without any public interest, for his personal vengeance against the Respondents PIOs and the Public Authority. Therefore, it was prayed to accept the above explanation and withdraw the show cause notice in the interest of justice and equity.

The Commission was also in receipt of a reply to the show cause notice from the Respondent (Mr. Ashutosh Kumar, CPIO and Dy. Commissioner of Customs) dated 13.11.2019 wherein he submitted that as per records available Mr. M.V. Srinivas, Inspector of Customs had worked in the O/o the Pr. Commissioner of Customs, Airport and Air Cargo Complex between 08.06.2015 and 23.08.2018 and that other than Mr. M.V. Srinivas, Inspector of Customs, no Mr. Srinivas, Inspector of Customs was working in the O/o the Pr. Commissioner of Customs, Air Cargo Complex and that no Mr. Srinivas, Inspector of Customs was reporting to the then CPIO in the relevant period. It was also stated that being the present CPIO he only attended the hearing on 30.10.2019 and represented the office based on available records. Furthermore, in view of the fact, that the applicant had filed two different RTI applications on the same date asking similar information in respect of Mr. M.V. Srinivas, Inspector of Customs (SHED, Air Cargo Complex) and Mr. Srinivas, Inspector of Customs (Air Cargo Complex) respectively from the same CPIO and that only Mr. M.V. Srinivas, Inspector of Customs was identifiable as working in the Air Cargo Complex as per the available records in the relevant period, had no reason or basis or cause or even a belief to assume or to conclude that both the applications were in respect of one and the same person/ officer. It was further stated that he had only put the correct factual position before the Commission and had no intention either to refuse information or to mislead the Commission hence the provisions of Section 20 were not applicable to the present CPIO.

## INTERIM DECISION:

Hearing both the parties and on perusal of the records and adverting to the facts and circumstances of the case, the Commission feels that in the interest of natural justice and fairness, a copy of the replies to the show cause notice submitted by both the CPIOs ought to be forwarded to the Complainant to enable him to submit his views by way of his written submission, if any. Therefore, the Commission while directing both the Respondents to submit their replies to the Complainant by way of e-mail instructs the Complainant to submit his written submission against the same, if any, within a period of 10 days from the date of receipt of this order under intimation to the Commission and the Respondents. Based on the written submissions of the Complainant, the Commission may either fix another date of hearing, if required, or decide the matter on merits.

Sd/-

(Suresh Chandra) (सुरेश चन्द्र)  
(Information Commissioner) (सूचना आयुक्त)

Sd/-

(Bimal Julka) (बिमल जुल्का)  
(Information Commissioner) (सूचना आयुक्त)

Authenticated true copy  
(अभिप्रमाणित सत्यापित प्रति)

(K.L. Das) (के.एल.दास)  
(Dy. Registrar) (उप-पंजीयक)  
011-26182598/ [kl.das@nic.in](mailto:kl.das@nic.in)  
दिनांक / Date: 20.12.2019

Copy to:

1. The Chief Commissioner of Customs, C. R. Buildings, Queens Road, Bangalore – 560 001