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Central Information Commission

Baba Gangnath Marg, Munirka

दिल्ली, New Delhi – 110067

File No : . CIC/MOSJE/A/2019/128270

Venkatesh Nayak

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/Appellant

VERSUS

CPIO,

Department of Social Justice
and Empowerment, RTI Cell,
Shastri Bhawan, New Delhi-110001

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/Respondent

Date of Hearing : 23/03/2021

Date of Decision : 23/03/2021

INFORMATION COMMISSIONER : Saroj Punhani

Relevant facts emerging from appeal:

RTI application filed on : 23/01/2019

CPIO replied on : 31/01/2019

First appeal filed on : 08/02/2019

First Appellate Authority order : NA

2nd Appeal/Complaint dated : 12/06/2019

Information sought and background of the case:

The Appellant filed RTI application dated 23.01.2019 seeking information on following four points;

1. *“Provide a clear photocopy of the Cabinet Note along with Annexures, if any, submitted to the Union Cabinet for securing its approval to table the draft Constitution amendment Bill in Parliament that eventually came to be duly enacted as The Constitution One Hundred and Third Amendment) Act, 2019 as published in the Gazette of India (Extraordinary) dated 12th January, 2019.*
2. *Provide a clear photocopy of all correspondence and file notings, pertaining to the subject matter of the said draft Constitution amendment bill.*
3. *Provide a clear Photocopy of any census or survey data or study or research report along with recommendations received from any committee or commission that constitutes the material which formed the basis of the said proposal to amend the Constitution.*
4. *Provide a clear photocopy of all correspondence or communication received from the office of the Prime Minister in relation to the said proposal to amend the Constitution.”*

The CPIO replied to the appellant on 31.01.2019 stating that information sought cannot be provided as per Section 8(1)(i) of RTI Act, 2005.

Being dissatisfied, the appellant filed a First Appeal dated 08.02.2019. FAA's order, if any, is not available on record.

Feeling aggrieved and dissatisfied, appellant approached the Commission with the instant Second Appeal.

Relevant Facts emerging during Hearing:

The following were present:-

Appellant: Present through audio conference.

Respondent: Hansraj, Section Officer & CPIO and Vinay Kumar, PA to Nodal Officer present through intra-video conference.

The Appellant stated that he has received an email from the CPIO on 23.03.2021 wherein 526 pages of documents are shown to have been attached as a Google

drive link but access to the same has been denied for want of access permission. He further stated that he has even sent a request for providing the access link but has not received any response from the CPIO thereafter.

The Commission based on a perusal of the facts on record observed that the same information sent by the CPIO to the registry attached with this bench via email is similarly blocked for access.

The CPIO was apprised of the technical glitch as he appeared to be not able to comprehend the contentions of the Appellant or the observations of the Commission. However, he agreed to abide with the order of the Commission.

The Appellant at the point brought the attention of the bench to one of its previous decisions regarding the *suo motu* disclosure of Cabinet Notes attached to Bills tabled in Parliament and stated that in the matter of *Venkatesh Nayak vs PIO & OSD (ER)*, Department of Atomic Energy, Decision No. CIC/SG/A/2012/001023/19365, dated 26 June, 2012, this Hon'ble Commission was pleased to issue the following direction to the Respondent Public Authority:

"The Secretary, Department of Atomic Energy is directed to ensure that the Cabinet Note mentioned above is displayed on the website of the Department before 20 July 2012 and all Cabinet Notes relating to proposals for new bills to be tabled in the Parliament should also be displayed on the website of the Department within 07 days of tabling the bill in the Parliament."

In light of the said decision, the Appellant prayed that a similar direction be issued to the Respondent office to place the relevant Cabinet Note in the public domain as it should have been disclosed *suo motu* by them, particularly because of the immense public interest nature of the decision of the Government of India to grant 10% reservation in public employment and public educational institutions to economically backward segments of society.

Decision

The Commission observes at the outset that the denial of the information in the initial reply of the CPIO under Section 8(1)(i) of the RTI Act was grossly inappropriate as no justification was provided for invoking the said exemption,

infact, the CPIO merely reproduced the provision of Section 8(1)(i) in his reply to the RTI Application. **The said conduct of the CPIO is viewed adversely by the Commission as it is suggestive of his non-application of mind in dealing with the matters under the RTI Act.**

Pertinently so, the Appellant has also validly challenged the decision of the CPIO to invoke Section 8(1)(i) of the RTI Act in his grounds of the Second Appeal in the following words:

“The CPIO has stated that none of the information sought can be supplied as Section 8(1)(i) of the RTI Act is attracted, in other words, the CPIO has implied that as the matter is not complete or over, the information cannot be disclosed. The Constitution (One Hundred and Third Amendment) Act, 2019- introduced as a Constitution amendment Bill in the Lok Sabha on 8th January, 2019 was debated and passed by that House the same day. On 9th January, the Rajya Sabha debated this Bill and gave its approval. The Honourable President of India gave his assent to the Bill and it was notified in the Official Gazette on the 12th of January, This Ministry caused another Gazette Notification to be published on 14th January to inform the public that this Act had come into force. This Appellant believes that the matter pertaining to the enactment of the Constitution Amendment Bill is complete. The implementation of the 10% quota for EWS sections of society is also underway.”

Adverting to the foregoing stance, it is clear beyond reasonable doubt that the CPIO denied the information to the Appellant without ascertaining the applicability of Section 8(1)(i) and has thus obstructed the right to information of the Appellant.

The CPIO is severely admonished for the inappropriate denial of the information to the Appellant and he is warned to ensure that due diligence is exercised while dealing with the RTI Applications in future.

Further, as brought out during the hearing that the information that has been provided now by the CPIO via email is not accessible to the Appellant or to the Commission, the CPIO is directed to resend the averred documents in a proper

manner by enabling access to the Google drive link. The CPIO shall also ensure that the complete available information is being sent to the Appellant, in other words, if there is any additional information that is available with respect to the instant RTI Application, the same should be also now incorporated in the CPIO's reply to the Appellant. The additional information, if any, should be provided free of cost through email or speed/registered post. The said directions should be complied with by the CPIO within 7 days from the date of receipt of this order under due intimation to the Commission.

In addition to the aforesaid, the Commission has noted the prayer of the Appellant regarding the *suo motu* disclosure of the Cabinet note pertaining to The Constitution (One Hundred and Third Amendment) Act, 2019 in light of the provisions of Section 4(1)(c) & 4(1)(d) of the RTI Act as well as Section 8(1)(i) of the RTI Act which prescribes that the material on the basis of which Cabinet Decisions are taken should be made public after the decision has been taken.

Having observed as above, a copy of this order is marked to the Secretary, MoSJ to look into the prayer of the Appellant.

The appeal is disposed of accordingly.

**Saroj Punhani ()
Information Commissioner (क्त)**

Authenticated true copy

(प्र त प्र)

(C.A. Joseph)

Dy. Registrar

011-26179548/ ca.joseph@nic.in

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Copy to:

Secretary,

Ministry of Social Justice

Shastri Bhawan,

New Delhi-110001

--(For appropriate action)

