

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

द्वितीय अपील संख्या / Second Appeal No.:- CIC/KVSAN/A/2017/164873-BJ

Mr. R. S. Rai

....अपीलकर्ता/Appellant

VERSUS

बनाम

CPIO & Assistant Commissioner  
Kendriya Vidyalaya Sangathan  
Jabalpur Region, GCF Estate  
Behind Science College  
Jabalpur – 482011

...प्रतिवादीगण /Respondent

Date of Hearing : 24.12.2018  
Date of Decision : 24.12.2018

Date of RTI application	07.03.2017
CPIO's response	30.03.2017/ 31.03.2017
Date of the First Appeal	17.04.2017
First Appellate Authority's response	09.05.2017
Date of diarised receipt of Appeal by the Commission	14.09.2017

**ORDER**

**FACTS:**

The Appellant vide his RTI application sought information on 02 points regarding the certified copy of the leave application, medical certificate and details of charge taken by Mr. R.S. Roy TGT for the period from 18.10.2016 to 21.10.2016, result analysis of Class X 'A' and 'B' for the period from 2007-2008, 2009-2010 to 2014-2015, etc.

The CPIO, vide its letter dated 30/31.03.2017 provided a point wise response to the Appellant. Dissatisfied by the response, the Appellant approached the FAA. The FAA, vide its order dated 09.05.2017 stated that the information sought related to 09 years result analysis which required diversion of resources hence the Appellant was permitted to inspect the documents subsequent to which the photocopy of the documents could be provided to the Appellant.

**HEARING:**

**Facts emerging during the hearing:**

The following were present:

**Appellant:** Mr. R. S. Rai, in person;

**Respondent:** Mr. Dharmendra Kumar, AO / CPIO through VC;

The Appellant reiterated the contents of his RTI application and stated that the information sought by him in the prescribed proforma was not made available. In his written submission to the Commission on 24.12.2018 he disagreed with the reply of the CPIO / FAA and sought imposition of penalty on them. In its reply, the Respondent while reiterating the submissions of the CPIO / FAA stated that the information regarding result analysis was available on their website and could be perused by the Appellant. Moreover, the Appellant was requested to inspect the records in his own school at a mutually convenient date and time.

The Commission referred to the definition of information u/s Section 2(f) of the RTI Act, 2005 which is reproduced below:

*“information” means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, report, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force.”*

Furthermore, a reference can also be made to the relevant extract of Section 2 (j) of the RTI Act, 2005 which reads as under:

*“(j) right to information” means the right to information accessible under this Act which is held by or under the control of any public authority and includes .....”*

In this context a reference was made to the Hon’ble Supreme Court decision in 2011 (8) SCC 497 (CBSE Vs. Aditya Bandopadhyay), wherein it was held as under:

*35..... “It is also not required to provide ‘advice’ or ‘opinion’ to an applicant, nor required to obtain and furnish any ‘opinion’ or ‘advice’ to an applicant. The reference to ‘opinion’ or ‘advice’ in the definition of ‘information’ in section 2(f) of the Act, only refers to such material available in the records of the public authority. Many public authorities have, as a public relation exercise, provide advice, guidance and opinion to the citizens. But that is purely voluntary and should not be confused with any obligation under the RTI Act.”*

Furthermore, the Hon’ble Supreme Court of India in Khanapuram Gandaiah Vs. Administrative Officer and Ors. Special Leave Petition (Civil) No.34868 OF 2009 (Decided on January 4, 2010) had held as under:

6. “...Under the RTI Act “information” is defined under Section 2(f) which provides:

*“information” means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, report, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force.”*

*This definition shows that an applicant under Section 6 of the RTI Act can get any information which is already in existence and accessible to the public authority under law. Of course, under the RTI Act an applicant is entitled to get copy of the opinions,*

*advices, circulars, orders, etc., but he cannot ask for any information as to why such opinions, advices, circulars, orders, etc. have been passed.”*

*7. “...the Public Information Officer is not supposed to have any material which is not before him; or any information he could have obtained under law. Under Section 6 of the RTI Act, an applicant is entitled to get only such information which can be accessed by the “public authority” under any other law for the time being in force. The answers sought by the petitioner in the application could not have been with the public authority nor could he have had access to this information and Respondent No. 4 was not obliged to give any reasons as to why he had taken such a decision in the matter which was before him.”*

With regard to the imposition of penalty on the CPIO/PIO under Section 20 of the RTI Act, 2005, the Commission took note of the ruling of Hon'ble Delhi High Court in W.P.(C) 11271/2009 Registrar of Companies & Ors v. Dharmendra Kumar Garg & Anr. (delivered on: 01.06.2012) wherein it was held:

*“ 61. Even if it were to be assumed for the sake of argument, that the view taken by the learned Central Information Commissioner in the impugned order was correct, and that the PIOs were obliged to provide the information, which was otherwise retrievable by the querist by resort to Section 610 of the Companies Act, it could not be said that the information had been withheld malafide or deliberately without any reasonable cause. It can happen that the PIO may genuinely and bonafidely entertain the belief and hold the view that the information sought by the querist cannot be provided for one or the other reasons. Merely because the CIC eventually finds that the view taken by the PIO was not correct, it cannot automatically lead to issuance of a showcause notice under Section 20 of the RTI Act and the imposition of penalty. The legislature has cautiously provided that only in cases of malafides or unreasonable conduct, i.e., where the PIO, without reasonable cause refuses to receive the application, or provide the information, or knowingly gives incorrect, incomplete or misleading information or destroys the information, that the personal penalty on the PIO can be imposed. This was certainly not one such case. If the CIC starts imposing penalty on the PIOs in every other case, without any justification, it would instill a sense of constant apprehension in those functioning as PIOs in the public authorities, and would put undue pressure on them. They would not be able to fulfill their statutory duties under the RTI Act with an independent mind and with objectivity. Such consequences would not auger well for the future development and growth of the regime that the RTI Act seeks to bring in, and may lead to skewed and imbalanced decisions by the PIOs Appellate Authorities and the CIC. It may even lead to unreasonable and absurd orders and bring the institutions created by the RTI Act in disrepute.”*

Similarly, the following observation of the Hon'ble Delhi High Court in *Bhagat Singh v. CIC & Ors*. WP(C) 3114/2007 are pertinent in this matter:

*“17. This Court takes a serious note of the two year delay in releasing information, the lack of adequate reasoning in the orders of the Public Information Officer and the Appellate Authority and the lack of application of mind in relation to the nature of information sought. The materials on record clearly show the lackadaisical approach of the second and third respondent in releasing the information sought. However, the*

*Petitioner has not been able to demonstrate that they malafidely denied the information sought. Therefore, a direction to the Central Information Commission to initiate action under [Section 20](#) of the Act, cannot be issued.”*

Furthermore, the High Court of Delhi in the decision of Col. Rajendra Singh v. Central Information Commission and Anr. WP (C) 5469 of 2008 dated 20.03.2009 had held as under:

*“Section 20, no doubt empowers the CIC to take penal action and direct payment of such compensation or penalty as is warranted. Yet the Commission has to be satisfied that the delay occurred was without reasonable cause or the request was denied malafidely.*

*.....The preceding discussion shows that at least in the opinion of this Court, there are no allegations to establish that the information was withheld malafide or unduly delayed so as to lead to an inference that petitioner was responsible for unreasonably withholding it.”*

The Appellant could not substantiate his claims regarding malafide denial of information by the Respondent or for withholding it without any reasonable cause.

#### **DECISION:**

Keeping in view the facts of the case and the submissions made by both the parties, no further intervention of the Commission is required in the matter.

The Appeal stands disposed accordingly.

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

Authenticated true copy  
(अभिप्रमाणित सत्यापित प्रति)

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