

केन्द्रीय सूचना आयोग
Central Information Commission
बाबागंगनाथमार्ग, मुनिरका
Baba Gangnath Marg, Munirka
नई दिल्ली, New Delhi – 110067

द्वितीय अपील संख्या / Second Appeal No. **CIC/PMOIN/A/2018/637159**

Shri Kuldeep Kumar Baranwal

... अपीलकर्ता / Appellant

VERSUS/बनाम

CPIO

...प्रतिवादीगण / Respondent

Prime Minister's Office,
South Block,
New Delhi-110011

Date of Hearing : 29.10.2020

Date of Decision : 30.10.2020

Information Commissioner : Shri Y. K. Sinha

Relevant facts emerging from appeal:

RTI application filed on : 08.10.2018

PIO replied on : 15.10.2018

First Appeal filed on : 22.10.2018

First Appellate Order on : 04.12.2018

2ndAppeal/complaint received on : 18.12.2018

Information sought and background of the case:

The Appellant filed an RTI application dated 08.10.2018 seeking information on following 4 points:-

1. महोदय आपकी फाइलो के अनुसार जब कोई जन सूचना अधिकारी 30 दिन के अन्दर भ्रामक सूचना या कोई सूचना नहीं देता है और वादी जब प्रथम अपील करता है तब प्रथम अपीलीय अधिकारी उपरोक्त वाद की स्वयं सुनवाई करता है या उसे जन सूचना अधिकारी के पास पुन भेज देता है
2. आपकी फाईल के अनुसार जन सूचना अधिकारी व प्रथम अपीलीय अधिकारी मांगी गई सूचना भ्रामक अस्पष्ट सूचना या कोई सूचना नहीं देता है ऐसी परिस्थिति में सूचना आयोग पहले 250 रुपये प्रतिदिन के हिसाब या 25000 रुपये तक का जुर्माना करेगा या प्रतिवादी जन सूचना अधिकारी व प्रथम अपीलीय अधिकारी को अपना पक्ष रखने के लिये समय देगा
3. आपकी फाईल के अनुसार जब जन सूचना अधिकारी व प्रथम अपीलीय अधिकारी मांगी गई सूचना भ्रामक सूचना या कोई सूचना नहीं देता है ऐसी परिस्थिति में सूचना आयोग में प्रस्तुत करता है उस समय वादी को सूचना प्राप्ति के लिये हुए भागदौड़ मानसिक परेशानी पर हुए व्यय के लिये धारा 19 8 ख के अंतर्गत आयोग क्षतिपूर्ति का आदेश देगा व इसकी जिम्मेदारी आयोग तय करेगा या वादी प्रमाणित कापी दे
4. आपकी फाईल के अनुसार सूचना आयुक्त की सख्या का सम्बन्ध राज्य की कुल आबादी से है या जिलो से है या मात्र राज्य से है
समस्त मांगी गई सूचना की हिंदी भाषा में प्रमाणित कापी दे

(Queries reproduced verbatim)

The CPIO vide letter dated 15.10.2018 furnished the following response to the Appellant:-

कृपया अपने दिनांक 8.10.2018 का आवेदन-पत्र (54731), जो इस कार्यालय में दिनांक 8.10.2018 को प्राप्त हुआ, का संदर्भ लें, जिसमें आपने सूचना का अधिकार अधिनियम, 2005 के अंतर्गत सूचना हेतु अनुरोध किया है। इस संबंध में आपको सूचित किया जाता है कि आरटीआई आवेदन पत्र और अपील पर कार्रवाई इस कार्यालय में सूचना का अधिकार अधिनियम, 2005 के प्रावधानों के तहत किया जाता है।

Dissatisfied with the response received from the PIO, the Appellant filed a First Appeal dated 22.10.2018. The FAA vide order dated 04.12.2018 upheld the reply of the PIO.

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

Facts emerging in Course of Hearing:

In order to ensure social distancing and prevent the spread of the pandemic, COVID-19, audio hearings were scheduled after giving prior notice to both the parties.

The Appellant participated in the hearing on being contacted on his telephone. He stated that misleading reply was provided by the Respondent without providing him point wise information.

The Respondent is represented by Shri Praveen Kumar, US and CPIO through audio conference. He stated that the queries of the Appellant are vague/generic/hypothetical/clarificatory in nature which did not fall within the purview of the right to information as per Section 2 (j) of the RTI Act, 2005. Therefore, the CPIO replied to the Appellant requesting him to refer to the provisions of the RTI Act, 2005 for his queries.

Decision:

Having heard both the parties and on perusal of the available records, the Commission at the outset observes that the Appellant instead of filing the RTI application with the PMO should have filed it with the concerned Public Authority being the custodian of information as any person of ordinary prudence would appreciate that the said information would not be available with the PMO. In this context, the Commission refers to the OM issued by the DoP&T in circular No. 10/2/2008-IR dated 12.06.2008, the relevant extract of which is as under:

“A careful reading of the provisions of sub-section (1) and sub-section (3) of Section 6, suggests that the Act requires an information seeker to address the application to the PIO of the 'concerned public authority'. However, there may be cases in which a person of ordinary prudence may believe that the piece of information sought by him/her would be available

with the public authority to which he/she has addressed the application, but is actually held by some another public authority. In such cases, the applicant makes a bonafide mistake of addressing the application to the PIO of a wrong public authority. On the other hand where an applicant addresses the application to the PIO of a public authority, which to a person of ordinary prudence, would not appear to be the 'concern of that public authority, the applicant does not fulfil his responsibility of addressing the application to the 'concerned public authority.'"

Perhaps with a view to addressing such a situation, at the very formative stage of the RTI Act, the entire scope of Section 6 of the Act had been discussed and interpreted threadbare by a Full Bench of this Commission, comprising Information Commissioners-Sh. Wajahat Habibullah, Sh. A N Tiwari and Sh. Shailesh Gandhi, in a decision dated 22.09.2009 while deciding case no. CIC/AT/A/2008/01280 titled Ketan Kantilal Modi vs Central Board of Excise and Customs holding:

"48.reasoning that an application for information will have to first stand the test of Section 6(1) in order to be validly accepted by the CPIO concerned for processing for disclosure of information. In case the application is not filed before the 'concerned public authority'/CPIO, it shall not qualify to be a valid request for information.

49. The expression "concerned public authority" implies that that public authority should be holding the information which the petitioner sought as per Section 2(j) of the RTI Act, which states that right to information means "the right to information accessible under this Act which is held by or under the control of any public authority...". Section 6(1) -its expression 'concerned public authority' -becomes clearer when read in conjunction with Section 2(j) of the Act.

.....

53. It follows from it that when a petitioner is aware of the location of a given information vis-à-vis a public authority, it is not open to him to file his RTI application before any other public authority in the expectation that this latter public authority would act under Section 6(3) to transfer his application to where the information was known to be held. As in this particular case, it is quite obvious that the appellant was fully cognizant of the fact about the information requested by him being held by Chief Commissionerates and Commissionerates of Central Excise. Yet, rather than approach those public authorities and all these where public authorities in their own rights for the information under Section 6(1), he chose the easy way out of filing his application under Section 6(1) read with Section 6(3) before the CPIO, CBEC, demanding simultaneously that the application be transferred to the Commissioners. Appellant's argument that CBEC was the Apex body or the nodal office, does not help him much because even if CBEC were to be all that appellant says it is nodal

office or Apexbody, etc. under the RTI Act it is a public authority and its rights and obligations flow from its status as that public authority under Section 2(h) of the Act. A public authority cannot be forced to accept obligations beyond the statutory limit in order to suit a petitioner's convenience.

.....
56. A public authority which does not hold or is not related to an information sought by a petitioner, will not be obliged to provide an answer to the petitioner only for the reason that that public authority was the Apex body or the nodal office of other subordinate public authorities. ..”

Emphasis supplied

Based on the above decision of a Full Bench of the Commission, it was held in the decision dated 29.07.2016 in a case titled R S Gupta vs. L G office that:

“.....The offices of President, Vice President, Prime Minister, Governors, Lt. Governors and Chief Ministers are not legally obliged under RTI Act to entertain RTI applications seeking information unrelated to it, or not held or controlled by these high offices....”

Emphasis supplied

Moreover, the queries of the Appellant are vague, hypothetical, clarificatory and interpretative in nature which do not fall within the definition of information/right to information as per Section 2 (f)/ (j) of the RTI Act, 2005. In the light of the above discussion, the instant second appeal is thus dismissed and the Appellant is advised to strictly refrain in future from seeking information under the RTI Act by filing such applications before offices which do not ordinarily possess the relevant information.

Y. K. Sinha (वाई. के. सिन्हा)
Information Commissioner (सूचना आयुक्त)

Authenticated true copy
(अभिप्रमाणित सत्यापित प्रति)

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