

CENTRAL INFORMATION COMMISSION

(Room No.315, B-Wing, August Kranti Bhawan, Bhikaji Cama Place, New Delhi 110 066)

File No.CIC/SA/A/2014/000478

(Video-Conference)

Appellant : **Sh. S.N.Shukla, Lucknow**

Respondent : **Department of Justice
Government of India, New Delhi**

Date of hearing : **23-12-2014**

Date of decision : **07-01-2015**

Information Commissioner : **Prof. M. Sridhar Acharyulu
(Madabhushi Sridhar)**

Referred Sections : **Sections 19(3) of the RTI Act**

Result : **Appeal allowed/disposed of**

The appellant is present for video conference at Lucknow. The Public Authority is represented by Mr. Vijay Gopal, Under Secretary, Dept. of Justice.

FACTS:

2. The Appellant through his RTI application dated 26.08.2013 had sought for information on 2 Points viz i) Copy of the National Judicial Appointments Commissions Bill as cleared by the cabinet ii) copy of the note and order in the concerned file relating to the cabinet note about the setting up of the National Judicial Appointments Commissions.

3. PIO replied on 19.09.2013 stating that with regard to Point No. 1 the information sought was available in the website and with regard to Point No. 2 the information sought was exempted u/S 8 (1)(i) of RTI act.

4. Being unsatisfied, he filed First Appeal. FAA on 11.10.2013 upheld the PIO's response. The appellant approached the Commission in Second Appeal.

During Hearing :

5. The appellant submitted that the decision of the PIO and the FAA have completely ignored the first proviso to Sec 8 (1)(i) of the RTI Act i.e the information regarding the cabinet decision cannot be withheld after the decision has been taken. He pleaded that there was no justification in withholding the requisite information in respect of the Cabinet decision regarding the appointment of Judicial Appointments Commissions bill cleared by the Cabinet. He further explained that the words "and the matter is complete, or over" in the aforesaid proviso obviously relate to the cabinet decision and cannot be stretched to relate to subsequent action on the basis of the cabinet decision. Pendency of the Bill in Parliament, therefore, cannot be used as a ground to refuse to make public the information about cabinet decision.

6. It was also contended by the appellant, that for any meaningful public debate such disclosure of information about the Bill is highly essential in the interest of transparency and for taking proper. The rationale and purpose behind various provisions of the Bill should be made public. Refusal to disclose the requisite information is clearly against the letter and spirit of the RTI Act.

7. Respondent in his submission before the Commission stated that the initial note for the cabinet dated 15.03.2013 on the subject of making amendments to the relevant provisions of the Constitution for appointment of the judges of the Supreme Court and High Court and the establishment of the Judicial Appointments Commission was considered by the cabinet on 18.04.2013 and it was deferred. The Cabinet note of 15.03.2013 was later withdrawn. A revised note for the cabinet dated 01.08.2013 and supplementary note for the cabinet dated 03.08.2012 was sent to the cabinet. That the approval of the Cabinet was sought for the following :

- i) Amendments to Article 124, 217, 222 and 231 and insertion of Article 124 A in Chapter IV, Part V of the Constitution for the creation of Judicial Appointments Commission.
- ii) Formation of Judicial Appointments Commission as per the details in the draft Judicial Appointments Commission Bill, 2013.

8. Respondent further submitted that the Cabinet in its meeting held on 02.08.2013 approved the proposal for the establishment of Judicial Appointments Commission. Accordingly, two Bills were proposed for introduction in the Rajya Sabha namely the Constitution (120th Amendment) Bill, 2013 and Judicial Appointments Commission Bill, 2013. The Constitution (120th Amendment) Bill was considered and passed by the Rajya

Sabha as Constitution (99th Amendment) Bill on 05.09.2013. the JAC bill was referred to the Parliamentary Standing Committee, which submitted its report on 09.12.2013.

9. Respondent also submitted that after the new government assumed office at center, the cabinet re-looked into the Bill, and the revised Bill was subsequently passed by the Parliament. Respondent further submitted that reason for not providing the noting was that at the time of filling RTI , the bill had not attain the finality and in mean time the government had been changed so there was no substance in providing the same.

10. Appellant in reply to the above submitted that he was not seeking information with regard to the current form of the Bill, but the copy of the bill which was initially presented before the Rajya Sabha and stated that he was entitled to that information regarding the noting of the bill as soon as final decision was taken in this regard and for substantiating his arguments he relied on the decision of Hon'ble Delhi High Court in **UOI Vs CIC** [W.P(c) No. 8396/2009]

11. Appellant also stated that the conduct of the PIO in denying the information was against the letter and spirit of the RTI Act. This contention of the appellant was vehemently denied by the PIO, who stated that only reason for not providing the noting was that non-finalisation of the bill as explained by him.

Contention :

12. Heard the Submission of both the Parties. The main issue before the Commission is with regard to denial of Noting by the PIO by claiming the exception provided under Sec 8 (1)(i) of RTI Act.

13. Hon'ble Delhi High Court in **UOI Vs CIC [W.P(c) No. 8396/2009]** whererby with regard to Sec 8 (1)(i) of RTI Act it was stated that :

20. The said sub-clause protects Cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers. The first proviso however stipulates that the prohibition in respect of the decision of the Council of Ministers, the reasons thereof and the material on the basis of which decisions were taken shall be made public after the decision is taken and the matter is complete or over. Thus, a limited prohibition for a specified time is granted. **Prohibition is not for an unlimited duration or infinite period but lasts till a decision is taken by the Council of Ministers and the matter is complete or over.**

21. The main clause to Section 8(1)(i) uses the term Cabinet Papers which include records or deliberations, but the first proviso refers to the decision of the Council of Ministers, reasons thereof and the material on the basis of which the decisions were taken. The term —Council of Minsters is wider than and includes Cabinet Ministers. It is not possible to accept the contention of Mr. A.S. Chandhiok , Learned Addl. Solicitor General that cabinet papers are excluded from the operation of the first proviso. The legal position has been succulently expounded in the order dated 23.10.2008 passed by the CIC in Appeal No.CIC/WA/A/2008/00081:

1. “ The Constitution of India, per se, did not include the term —Cabinet, when it was drafted and later on adopted and enacted by the Constituent Assembly. The term —Cabinet was, however, not unknown at the time when the Constitution was drafted. Lot of literature was available during that period about —Cabinet, —Cabinet System and —Cabinet Government. Sir Ivor Jennings in his —'Cabinet Government', stated that the Cabinet is the supreme directing authority. It has to decide policy matters. It is a policy formulating body. When the Cabinet has determined on policy, the appropriate Department executes it either by administrative action within the law, or by drafting a Bill to be submitted to Parliament so as to change the law. The Cabinet is a general controlling body. It neither desires, nor is able to deal with all the

numerous details of the Government. It expects a Minister to take all decisions that are of political importance. Every Minister must, therefore, exercise his own discretion as to what matters arising in his department ought to receive Cabinet sanction.

2. In the Indian context, the Cabinet is an inner body within the Council of Ministers, which is responsible for formulating the policy of the Government. It is the Council of Ministers that is collectively responsible to the Lok Sabha. The Prime Minister heads the Council of Ministers and it is he, *primus inter pares* who determines which of the Ministers should be Members of the Cabinet.

14. It is a matter of common knowledge that the Council of Ministers consist of the Prime Minister, Cabinet Ministers, Ministers of State etc. The 44th Amendment to the Constitution of India for the first time not only used the term —Cabinet but also literally defined it. Clause 3 of Article 352, which was inserted by 44th Amendment, reads as under:- —The President shall not issue a Proclamation under clause (1) or a Proclamation varying such Proclamation unless the decision of the Union Cabinet (that is to say, the Council consisting of the Prime Minister and other Ministers of Cabinet rank appointed under Article 75) that such a Proclamation may be issued has been communicated to him in writing.

15. As per Section 8 of the Right to Information Act, 2005 a Public Authority is not obliged to disclose Cabinet papers including records of deliberations of the Council of Ministers, secretaries and other officers. Section 8(1) subjects this general exemption in regard to Cabinet papers to two provisos, which are as under:- *Provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be public after the decision has been taken, and the matter is complete, or over.*

16. Appellant contended: Every decision of the Council of Ministers is a decision of the Cabinet as all Cabinet Ministers are also a part of the Council of Ministers. The Ministers of State are also a part of the Council of Ministers, but they are not Cabinet Ministers. As we have observed above, the plea taken by the First Appellate Authority, the decision of the Council of Ministers are disclosable but Cabinet papers are not, is totally untenable. Every decision of the Council of Ministers is a decision of the Cabinet and, as such, all records concerning such decision or related thereto shall fall within the category of —Cabinet papers and, as such, disclosable under Section 8(1) sub-section (i) after the decision is taken and the matter is complete, and over.

“ 26. The second proviso to Section 8(1)(i) of the RTI Act explains and clarifies the first proviso. As held above, the first proviso removes the ban on disclosure of the material on the basis of which decisions were taken by the Council of Ministers, after the decision has been taken and the matter is complete or over. The second proviso clarifies that even when the first proviso applies, information which is protected under Clauses (a) to (h) and (j) of Section 8(1) of the RTI Act, is not required to be furnished. The second proviso is added as a matter of abundant caution *exabudent cautulia*. Sub-clauses (a) to (j) of Section 8(1) of the RTI Act are independent and information can be denied under Clauses 8(1)(a) to (h) and (j), even when the first proviso is applicable.”

17. The plea taken by the PIO that because the decision with regard to the introduction of the Bill had not reached the finality and hence the noting could not be disclosed, does not stand, in view of the plain reading of Sec 8 (1)(i) of RTI Act and the decision of the Hon'ble Delhi High Court.

18. The Commission is of the view that as soon as the final decision was taken with regard to the Bill, which is borne out of the fact by introduction of the same in

Rajya Sabha in 2013 itself, the matter was thus complete or over, the noting should have been disclosed. The Proviso to Sec 8(1)(i) clearly states that the reasons, material on the basis of which the decisions were taken **shall be** made public after the decision has been taken. The second proviso clarifies that even when the first proviso applies, information which is protected under Clauses (a) to (h) and (j) of Section 8(1) of the RTI Act, is not required to be furnished. That is not the case here. These restrictions donot apply in this case.

19. The respondent contended that the matter regarding Cabinet decision was not complete because it was put to public consultation in official website, seeking opinion from people, and consultation meetings were also held at different cities in country. He said that such discussion generated the need for re-look into the entire Bill and revised Bill was decided by the cabinet. The Commission would like to say that this contention establishes the need for making the noting public for the same reason. People would have got some more points to suggest reforms had the noting was made available. The Commission holds that the contention of the appellant that once the Bill was introduced in Rajya Sabha, the matter was complete, is reasonable, logical and legal as it is in tune with the Delhi High Court's interpretation in the above referred case of UOI v CIC.

20. The Commission holds that the with the passage of National Judicial Appointments Commission Bill, 2014 in Loksabha and Rajya Sabha, the protection afforded by Sec 8 (1)(i) does not apply in the present case and no other exemption as stated in Second proviso would also apply.

21. The Commission directs the respondent authority to provide the notings regarding the Cabinet decision as sought by the appellant, the cabinet noting for the decision taken thereafter regarding revised Bill which was passed by the Parliament in 2014 and the report of Parliamentary Standing Committee on this Bill and every other related paper on this subject to the appellant free of cost within 30 days from the date of receipt of this order.

22. The appeal is **disposed** of accordingly.

(M.Sridhar Acharyulu)
Information Commisisoner

Authenticated true copy

(Babu Lal)
Deputy Registrar

Addresses of the Parties

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