

CENTRAL INFORMATION COMMISSION
Club Building (Near Post Office)
Old JNU Campus, New Delhi - 110067
Tel: +91-11-26161796

**Decision No. CIC/SM/A/2011/000293/SG/12346Adjunct and
CIC/SM/C/2011/000783/SG/13313Penalty**

Relevant Facts emerging from the Appeal:

Appellant : Mr. Krishnanand Tripathi,
Sr. Correspondent, Live India,
Premnath Motors Complex,
1, Mandir Marg,
New Delhi- 110001.

Respondent : Mr. Anil Palta
CPIO & DIG of BS&FC Delhi
Central Bureau of Investigation
5th Floor, CBI HQ, Lodhi Road,
New Delhi

RTI application : 24/09 /2010 (two RTI applications were filed)
PIO reply : 18/10/2010
First appeal : 22/10/2010
FAA order : 19/11/2010
Second appeal : 20/12/2010

Information sought:

RTI application 1:

I am specifically looking for a copy each of the legal opinions expressed by the agency's director's of prosecution concerning the bank fraud cases filed by the agency against Mr. Sant Singh Chatwal.

Information sought: A copy each of the legal opinion (full report) given by the concerned director/s of prosecution (DOP) after the discharge of Mr. Sant Singh Chatwal from the two cases filed against him by the agency in connection with alleged bank fraud.

RTI application 2:

I am specifically looking for information on the two bank fraud cases filed by the agency wherein Mr. Sant Singh Chatwal was made accused by the agency: however, he was later exonerated by the concerned courts.

1. A copy each of the charge sheets wherein Mr. Sant Singh Chatwal was made accused by the agency in connection with the bank fraud case/s.
2. A copy each of the judgments delivered by the concerned court/s that exonerated Mr. Sant Singh Chatwal in both the cases filed by CBI.
3. A copy each of the recommendations made by the agency's then Special Public Prosecutor/s SSPs DIGs and any other RBI official (on deputation with the agency) dealing with either of the cases after Mr. Sant Singh Chatwal was exonerated.
4. A copy of the legal opinion of the then Director/s of Prosecution (DoP) in both the cases after he was exonerated by the concerned courts.
5. A copy the final orders passed/recommendations made by the former and present directors CBI in connection with either of the cases wherein Mr. Sant Singh Chatwal was made accused by the agency.

PIO's reply:**For both RTI applications:**

2. With regard to information sought under reference, it is informed that, apart from the two cases which were disposed off, two more cases, which are inter connected with the cases already disposed off, are pending under trial before the same court. Hence, the information cannot be supplied to you and exemption under section 8(1)(h) of the RTI Act is claimed.

Grounds for First appeal:

Wrong denial of information.

FAA order:

The undersigned upholds the grounds on which CPIO, BS&FC, CBI, New Delhi denied to provide the information sought by the appellant as it falls u/s 8(1)(h) of RTI Act,2005 because two more cases which are connected with the already disposed of ones are pending trial before the same court.

Grounds for Second appeal:

The case is very old and admittedly there is no investigation underway. It is clear from the response of the CPIO, BS&FC, CBI also, "With regard to information sought under reference, it is informed that, apart from the two cases which were disposed off, two more cases, which are interconnected with the cases already disposed off, are pending under trial before the same court. Hence the information can not be supplied to you and exemption under section 8 (1) (h) of the RTI Act is claimed." It reads 'two more cases.., are pending under trial before the same court.' It did not say that the investigation is under way.

A charge sheet by an investigative agency is a public document and same is true with orders of a court of law. I believe, if CBI wanted to uphold the spirit of the RTI Act and not suppress the information concerning a high profile NRI hotelier, ideally it should have provided me the copies of charge sheets and court orders regarding both the cases without any delay.

In this context, it is my view, that the agency has deliberately and wrong invoked the section 8 (1) h of the RTI Act as a pretext to deny me the information about a high profile non resident Indian.

Relevant Facts emerging during Hearing on 11 May 2011:

The following were present

Appellant: Mr. Krishnanand Tripathi,

Respondent: Mr. S. V. Raman, Superintendent of Police on behalf of Mr. Anil Palta, CPIO & HOB of BS&FC Delhi;

"The PIO has refused to give the information claiming exemptions under Section 8(1)(h) of the RTI Act. A very peculiar claim was made that though the two cases for which information was being sought have been discharged, there are two other fraud cases which are being pursued in which some of the Bank Officers are the same. No evidence has been given as to how giving the information would impede the prosecution of offenders. Section 8(1) (h) of the RTI Act exempts disclosure of, "*information which would impede the process of investigation or apprehension or prosecution of offenders.*" No claim has been made that any investigation is continuing, and the fact that some bank officers are being prosecuted in two other matters cannot justify refusal to give information in the matters relating to Mr. Sant Singh Chatwal. The Respondent states that some of the documents relied in both the case are the same. The Appellant has not sought documents relating to the case directly. The respondent was asked if documents sought at query-01 and 02 were not public documents. The Respondent agrees that what has been sought in query-01 & 02 are public documents.

Right to Information is a fundamental right of citizens and denial of information has to be based on definite reasons which can be explained.

Justice Ravindra Bhat has held in *Bhagatsingh vs. CIC WP (c) no. 3114/2007-* “13. Access to information, under Section 3 of the Act, is the rule and exemptions under Section 8, the exception. Section 8 being a restriction on this fundamental right, must therefore be strictly construed. It should not be interpreted in manner as to shadow the very right itself. Under Section 8, exemption from releasing information is granted if it would impede the process of investigation or the prosecution of the offenders. It is apparent that the mere existence of an investigation process cannot be a ground for refusal of the information; the authority withholding information must show satisfactory reasons as to why the release of such information would hamper the investigation process. Such reasons should be germane, and the opinion of the process being hampered should be reasonable and based on some material. Sans this consideration, Section 8(1)(h) and other such provisions would become the haven for dodging demands for information.

14. A rights based enactment is akin to a welfare measure, like the Act, should receive a liberal interpretation. The contextual background and history of the Act is such that the exemptions, outlined in Section 8, relieving the authorities from the obligation to provide information, constitute restrictions on the exercise of the rights provided by it. Therefore, such exemption provisions have to be construed in their terms; there is some authority supporting this view (See *Nathi Devi v. Radha Devi Gupta* 2005 (2) SCC 201; *B. R. Kapoor v. State of Tamil Nadu* 2001 (7) SCC 231 and *V. Tulasamma v. Sessa Reddy* 1977 (3) SCC 99). Adopting a different approach would result in narrowing the rights and approving a judicially mandated class of restriction on the rights under the Act, which is unwarranted.”

Frivolously refusing information by claiming one of the 10 exemptions in Section 8(1) without giving explanation is an unwarranted denial of citizens’ fundamental right. No proper explanation has been given for denying the information.”

Commission’s Decision dated 11 May 2011:

The Appeal was allowed.

“The PIO is directed to provide the complete information to the Appellant before 30 May 2011.

The issue before the Commission is of denying the information by the PIO without any justification in the law.

From the facts before the Commission it appears that the PIO is guilty of not furnishing information. It appears that the PIO’s actions attract the penal provisions of Section 20 (1). A showcause notice is being issued to him, and he is directed give his reasons to the Commission to show cause why penalty should not be levied on him.

The PIO Mr. Anil Palta will present himself before the Commission at the above address on **09 June 2011 at 4.00pm** alongwith his written submissions showing cause why penalty should not be imposed on him as mandated under Section 20 (1). **He will also submit proof of having given the information to the appellant.”**

Relevant Facts emerging during Hearing on 09 June 2011:

The following were present:

Appellant: Mr. Krishnanand Tripathi;

Respondent: Mr. Anil Palta, CPIO & DIG of BS&FC Delhi;

“The respondent has given a written submission in which he admits that denying the charge sheet and the copies of the judgment was an error of judgment and this information has now been provided to the Appellant. The Appellant acknowledges that he received these. As regards the following three:

- (i) “A copy of each of the recommendations made by the agency’s then Special Public Prosecutor/s, SSPs, DIGs and any other RBI official (on deputation with the agency) dealing with either of the cases after Shri Sant Singh Chatwal was exonerated.

- (ii) A copy of the legal opinion of the then Director/s of Prosecution (DoP) in both the cases after he was exonerated by the concerned court/s.
- (iii) A copy of the final orders passed/recommendations made by the former and present Directors of CBI in connection with either of the cases wherein Shri Sant Singh Chatwal was made accused by the agency.”

The respondent states that CBI intends challenging the decision of the Commission in a writ before the High Court. The Commission sought the view of the respondent on whether a statutory authority's order could be defied without the valid stay obtained from the appropriate forum. The Commission would like CBI to give its opinion on this matter before it takes a decision. It is felt that when public authorities or citizens do not implement orders given by the Statutory Authority without obtaining a stay as per the law this could create a very unhealthy situation. The respondent states that he would like to consult the prosecution cell of CBI before answering the query of the Commission.

The appellant has given his submissions on 06/06/2011 in which he has stated that the CBI has not followed the decision of the Commission. The appellant has pointed out the following:

- 1- As per Section 7(6) of the RTI Act (which was mentioned in the order given by the Commission) the PIO should have provided the information free of cost since the information was being provided after the period of 30 days. Instead he was asked to pay Rs.286/- to get part of the information which CBI was willing to give.
- 2- The Appellant states that he believes that since there was no stay on the order of the Commission the CBI should have implemented.
- 3- The Appellant believes that there must be some pressure on CBI because of which the Commission's order was not implemented.

The respondent states that once the information is parted with CBI would not be able to retrieve it and CBI believes that the decision of the Commission must be challenged in a writ since the information is covered under Section 8(1)(h) of the RTI Act.

The Commission is adjourning the matter until 29 June 2011. The PIO will then present his argument on whether the actions of CBI in not implementing the order is legally justifiable. The matter will be held on **29 June 2011 at 04.30PM.**”

Adjunct Decision dated 09 June 2011:

“The PIO will refund the amount of Rs.286/- charged illegally, to the Appellant before 15 June 2011. The Commission also directs the PIO Mr. Anil Palta to present himself before the Commission on **29 June 2011 at 04.30PM** to present his argument before the Commission.”

Relevant Facts emerging at the show cause hearing held on 29 June 2011:

The following were present:

Appellant: Mr. Krishnanand Tripathi;

Respondent: Mr. Anil Palta, CPIO & DIG of BS & FC, CBI.

The Appellant gave written submissions to the Commission. The Appellant has submitted *inter alia* that he had filed two RTI applications (including the one in the instant matter) seeking certain information. He was given a reply denying the information sought in both applications. However, the PIO clarified only subsequently that the said reply was in response to both RTI applications. The Appellant has also submitted that the PIO had defied the Commission's order dated 11/05/2011 by not fully complying with the same and providing incomplete information vide letter dated 30/05/2011. The Appellant further argued that the PIO returned the sum of Rs. 286 by cash to his cousin instead of cheque, as verbally instructed by the Commission at the hearing held on 09/06/2011. Moreover, he was not provided a copy of any document which showed that the amount of Rs. 286 given to him was booked as a refund by CBI. In view of the same, **the Commission hereby directs Mr. Anil Palta, CPIO to provide an attested**

photocopy of the document/ voucher showing that the payment of Rs. 286 in cash to the Appellant was booked as a refund. This should be sent to the Appellant before 25 July 2011.

The PIO submitted in writing to the Commission that a Writ Petition bearing number 4506 of 2011 had been filed in Delhi High Court in the instant matter, praying for stay/ setting aside the Commission's order dated 11/05/2011. The matter was heard on 29/06/2011 and M. L. Mehta, J. stayed the operation of the order dated 11/05/2011 and listed the matter for 28/07/2011 for further hearing. The Commission asked the PIO whether the Commission's order,- which is a statutory authority,- could be defied without a valid stay obtained from the appropriate forum. The Commission asked the PIO if he had any answer to this query which had been posed to him during the hearing on 09/06/2011. The Commission also asked the PIO why it should not penalize him under Section 20(1) of the RTI Act for defying the order of the Commission to provide information, from 01/06/2011 to 28/06/2011 without any legally valid stay on the Commission's order.

The PIO stated that the Respondent- public authority had intended to file a writ petition challenging the order of the Commission. However, due to departmental procedures and administrative hurdles/ exigencies, the writ petition could not be filed (and consequently, a stay order could not be obtained) before the compliance date mentioned in the Commission's order. The PIO also stated that the Commission should give a longer compliance date in its orders keeping departmental requirements and administrative hurdles/ exigencies in mind. If the same would have been done in the instant case, it is likely the Respondent- public authority would have been able to obtain a stay on the Commission's order.

It is pertinent to mention that the Commission received a letter dated 06/06/2011 from the Appellant alleging that the order of the Commission dated 11/05/2011 had not been complied with and the information provided by the PIO vide letter dated 30/05/2011 was incomplete. The Commission registered the same as a Complaint under Section 18 of the RTI Act bearing Complaint No. CIC/SM/C/2011/000783/SG. The Commission decided to initiate an enquiry under Section 18(2) of the RTI Act and by notice dated 23/06/2011 directed the PIO to appear before the Commission on 29/06/2011.

After hearing the arguments and perusing the submissions of the parties, the Commission reserved the order in CIC/SM/C/2011/000783/SG at the hearing held on 29/06/2011.

The Commission was provided a copy of the stay order dated 29/06/2011 on 05/07/2011. On perusal of the same, the Commission noted that its order dated 11/05/2011 was stayed till the next date of hearing. In view of the same, the Commission is not taking any further action in Appeal No. CIC/SM/A/2011/000293/SG.

Decision announced in Complaint CIC/SM/C/2011/000783/SG on July 7, 2011:

Section 20 (1) of the RTI Act states:

“20. Penalties.- Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause, refused to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall impose a penalty of two hundred and fifty rupees each day till application is received or information is furnished, so however, the total amount of such penalty shall not exceed twenty five thousand rupees:

Provided that the Central Public Information Officer or the State Public Information Officer, as the case may be, shall be given a reasonable opportunity of being heard before any penalty is imposed on him:

Provided further that the burden of proving that he acted reasonably and diligently shall be on the Central Public Information Officer or the State Public Information Officer, as the case may be.”

From a plain reading of Section 20(1) of the RTI Act, it appears that the Commission, at the time of deciding any Complaint or Appeal, must impose a penalty in the following circumstances:

- 1) Refusal to receive an application for information.
- 2) Not furnishing information within the time specified under Section 7(1) of the RTI Act.
- 3) Malafidely denying the request for information or knowingly giving incorrect, incomplete or misleading information or destroying information which was the subject of the request.
- 4) Obstructing in any manner in furnishing the information.

All the above are prefaced by the phrase, “without reasonable cause”.

Therefore, if complete information is not furnished without any reasonable cause, the Commission, at the time of deciding any Complaint or Appeal is duty bound to levy a penalty at the rate of Rs. 250 each day till the information is furnished. Once the Commission decides that there is no reasonable cause for the delay in providing the information, it has to impose a penalty at the rate specified in Section 20(1) of the RTI Act and the law gives no discretion in the matter. This principle has been relied on by Ravindra Bhat, J. of the High Court of Delhi in *Mujibur Rehman v. CIC* in C.W.P. 3845 of 2007 decided on 28/04/2009. Moreover, as per Section 20(1) of the RTI Act, the PIO shall have to discharge the burden of proving that he acted reasonably and diligently.

In the instant case, the order of the Commission dated 11/05/2011 clearly stipulated the date i.e. 30/05/2011 within which the complete information was required to be provided to the Complainant. However, despite its clear order, the Commission noted that the PIO did not provide the complete information to the Appellant within the said date. Stay on the Commission’s order dated 11/05/2011 was obtained only on 29/06/2011. Given the same, it *prima facie* appears that the PIO has flouted the order of the Commission and not provided the information from the period 01/06/2011 to 28/06/2011.

As mentioned above, the Commission asked the PIO whether the order of a statutory authority could be defied without a valid stay obtained from the appropriate forum. The Commission had raised the same issue with the PIO at the hearing held on 09/06/2011. The PIO had no written submissions in this matter. He stated that due to departmental procedures and administrative hurdles/ exigencies, the writ petition could not be filed (and consequently, a stay order could not be obtained) before the compliance date mentioned in the Commission’s order. The PIO also argued that he could not be held responsible for the procedures and delays involved in getting the requisite permissions to file a writ petition in the High Court. He submitted that the Commission should give a longer compliance date in its orders keeping departmental requirements and administrative hurdles/ exigencies in mind. If the same would have been done in the instant case, it is likely the Respondent- public authority would have been able to obtain a stay on the Commission’s order. The PIO felt that once he informed the Commission at the hearing held on 09/06/2011 that the Respondent- public authority intended to challenge the decision, the Commission must not insist on its order being implemented.

The Commission is not satisfied with the submissions of the PIO. The PIO is required to comply with the order of the Commission, unless a stay has been obtained on such order within the time limit mentioned in the order. Departmental procedures and administrative hurdles/ exigencies cannot be used as an excuse for disobeying the order of a statutory authority and consequently denying the citizen’s fundamental right to information. At the very least the PIO should have approached the Commission before 30/05/2011 and

requested for an extension in time giving reasons. Even at the hearing held on 09/06/2011, the PIO was given additional time to appear again on 29/06/2011 to give legal arguments as to whether the order of a statutory authority could be defied without a valid stay obtained from the appropriate forum. At the hearing held on 29/06/2011, the PIO merely referred to the stay order and did not give any justification for not complying with the order of the Commission before 30/05/2011.

In this regard, the Commission would like to place reliance on certain pronouncements of the Supreme Court of India. In Prithawi Nath Ram v. State of Jharkhand & Ors. Appeal (Civil) No. 5024 of 2000, the Supreme Court of India, in its judgment dated 24/08/2004 observed as follows:

“If any party concerned is aggrieved by the order which in its opinion is wrong or against rules or its implementation is neither practicable nor feasible, it should always either approach to the Court that passed the order or invoke jurisdiction of the Appellate Court. Rightness or wrongness of the order cannot be urged in contempt proceedings. Right or wrong the order has to be obeyed. Flouting an order of the Court would render the party liable for contempt. While dealing with an application for contempt the Court cannot traverse beyond the order, non-compliance of which is alleged. In other words, it cannot say what should not have been done or what should have been done. It cannot traverse beyond the order. It cannot test correctness or otherwise of the order or give additional direction or delete any direction. That would be exercising review jurisdiction while dealing with an application for initiation of contempt proceedings. The same would be impermissible and indefensible.” (Emphasis added)

Further, in Prakash Narain Sharma v. Burma Shell Cooperative Housing AIR 2002 SC 3062, the Supreme Court of India has observed that a judicial order, not invalid on its face, must be given effect entailing all consequences, till it is declared void in a duly constituted judicial proceedings. Reliance may also be placed on the observations of S.N. Variava, J. in Ghaziabad Development Authority v. Balbir Singh (2004)- (002)- CPJ- 0012- SC wherein he stated that unless there is a stay obtained from a higher forum, the mere fact of filing an appeal or revision will not entitle a person who is required to pay the penalty to not comply with the order of the lower forum. Even though the person may have filed an appeal or revision, if no stay is obtained or if stay is refused, the order must be complied with. In such cases, the higher forum should, before entertaining such appeal or revision, ensure that the order of the lower forum is first complied with. In the present case, the PIO had not even filed for a stay of the Commission’s order.

From the PIO’s submissions, it appears that a statutory body such as the Commission is required to provide a compliance date long enough so that the PIO can obtain a stay on the Commission’s order. This submission is not only unreasonable but also appears to be preposterous. Given that the Parliament itself mandated that information in relation to a RTI application must be provided within 30 days, it would be extremely absurd to expect the Commission to provide a compliance date of over 30 days. This is more so as the Commission is a second appellate authority which decides matters where delay in providing information has already ensued. The contention of the PIO is not acceptable to the Commission. It is completely wrong to expect that all statutory and judicial orders must take into account the delays of various organizations in deciding whether they wish to follow an order or not. All agencies have to gear themselves to challenge orders within the time in which an order has to be implemented. If they fail to obtain a vacation or stay on a legally valid order, they must comply.

If individuals or organizations do not follow orders of statutory authorities, it would lead to complete anarchy. The law laid down by the Supreme Court of India, as described above, is the law of the land and must be abided by all. The CBI is not above this law and in the absence of a stay, should have complied with the order of the Commission. Given that CBI is the premier investigation and law enforcement agency of the country, it is certainly expected of its officers to behave responsibly and abide by the mandate laid down by the Supreme Court of India. This may be contrasted to a situation when an order is promulgated under Section 144 of the IPC prohibiting citizens from demonstrating at Jantar Mantar or

Ram Lila Grounds. In such a situation the citizens are expected to abide by this and bear the consequences, if they fail to do so. They cannot disobey the order on the basis that a writ petition is proposed to be filed before the appropriate forum. If citizens were to disobey the prohibitory orders they would be arrested. This elementary principle of abiding by orders which have been given by statutory authorities or Courts cannot be defied by anyone. Just as Citizens are expected to follow this, government agencies and their officers are equally bound to abide by all orders which have the sanction of law. Without this discipline, no rule of law can prevail. And if a police agency cannot follow this simple principle, it loses the moral authority to ask citizens to abide by its orders.

The PIO's action is in clear violation of the principles laid down by the Supreme Court of India. The stay has been obtained on the order of the Commission dated 11/05/2011 only on 29/06/2011, whereas the PIO was required to comply with the order of the Commission before 30/05/2010. Since the PIO has failed to comply with the order of the Commission, without a valid stay, he is liable to be penalized under Section 20(1) of the RTI Act for the period between 01/06/2011 to 28/06/2011. Mr. Anil Palta, CPIO & DIG of BS & FC, CBI has given no reasonable cause for not providing information for 28 days, before a valid stay was obtained on the Commission's order. Since no reasonable cause has been offered by Mr. Anil Palta, CPIO & DIG of BS & FC, CBI for not providing the information from 01/06/2011 to 28/06/2011, i.e. for a period of 28 days, the Commission imposes a penalty on Mr. Anil Palta, CPIO & DIG of BS & FC, CBI under Section 20(1) of the RTI Act at the rate of Rs. 250 per day of delay, i.e. 28 X 250 = Rs. 7000/-.

The Director, CBI is directed to recover the amount of Rs. 7,000/- from the salary of Mr. Anil Palta and remit the same by a demand draft or a Banker's Cheque in the name of the **Pay & Accounts Officer, CAT, payable at New Delhi and send the same to Shri Pankaj K.P. Shreyaskar, Joint Registrar and Deputy Secretary of the Central Information Commission, 2nd Floor, August Kranti Bhawan, New Delhi – 110066**. The amount may be deducted at the rate of Rs. 3,500/- per month every month from the salary of Mr. Anil Palta and remitted by the 10th of every month starting from August 2011. The total amount of Rs. 7,000/- will be remitted by 10th of September, 2011.

Notice of this decision be given free of cost to the parties.

Any information in compliance with this Order will be provided free of cost as per Section 7(6) of RTI Act.

Shailesh Gandhi
Information Commissioner
July 7, 2011

(In any correspondence on this decision, mention the complete decision number.) (SG)

CC: Mr. Pankaj K. P. Shreyaskar,
Joint Registrar and Deputy Secretary,
Central Information Commission,
2nd Floor, August Kranti Bhawan,
New Delhi – 110066

Director, CBI,
5th Floor, CBI HQ,
Lodhi Road, New Delhi