

Central Information Commission
Room No. 305 B- Wing, August Kranti Bhawan,
Bhikaji Kama Place, New Delhi – 110066

Case No. CIC/SS/A/2012/003918

Dated: 10.7.2013

Name of the Appellant: Perarivalan (represented by K.Paari Vendhan,
(Adv), S. Gowthaman (Adv), S. Prabu,
Ranasubramanian (Adv)

Name of the Public Authority: Ministry of Home Affairs
Represented by: Girish Kumar (Director, U.S)

Date of hearing: 9.7.2013

ORDER

1. The appellant filed an application under RTI Act, dated 7.10.2011, addressed to CPIO, MHA seeking information on (8) points in relation to Justice M C Jain Commission of Inquiry and Justice J S Verma Commission of Inquiry reports. The appellant has sought the certified copies of all records and documents including file notings, minutes of meetings, correspondence relating to the Justice M C Jain Commission of Inquiry and Justice J S Verma Commission of Inquiry and further also sought the terms of reference relating to setting up of the said two Commissions of Inquiry. The appellant also seeks to have the certified copies of interim reports and final report along with the annexures in relation to above. Copies of action taken report prepared by Govt. of India on the recommendations of the said two Commissions of Inquiry is also sought.

The appellant also submits in his RTI application to treat his RTI application under the life and liberty provision of the RTI Act in view of the temporary stay of death sentence against the appellant.

2. The respondent transferred the said RTI application to the IS (Division)/PP Division vide letter dated 14.11.2011. The respondent vide letter dated 25.11.2011 transferred the RTI application to all the CPIO's of MHA under section 6 (3) with the reasoning that the information pertains to 20 years old case. Thereafter, every section of MHA replied to the appellant stating that the information does not pertain to their division and hence did not provide any information. Only the National Archives of India stated that though the said reports of the Commissions are not found available but some 918 files are available relating to other activities of Commissions.

3. Aggrieved by the said reply received from the respondent, the appellant filed first appeal dated 19.3.2012 before the First Appellate Authority of Judicial Division. The said first appeal was disposed off by the Judicial Division vide order dated 7.5.2012 wherein the appellate authority held that as the said information is not available with this division, Judicial Division is not required to be given any direction in this regard.

4. The appellant submits that the PIO should not have transferred endlessly to so many departments instead he should have collected the same and provided to the appellant. The appellant has relied on the decision of the Hon'ble Delhi High Court dated 02.09.2009 in the matter of **Supreme Court of India V Subhash Chandra Agarwal** (W.P. (C) 288/2009) part of it being reproduced below:

"23. In view of this, the question of transferring an application under Section 6(3) of the Right to Information Act by the CPIO of the Supreme Court cannot arise. It is the duty of the CPIO to obtain the information that is held by or available with the public authority. Each of the sections or department of a public Authority cannot be treated as a separate or distinct public authority. If any

information is available with one section or the department, it shall be deemed to be available with the Public Authority as one single entity CPIO cannot take a view contrary to this."

5. During the hearing the respondent submits that the concerned department of the MHA for the information sought is the VIP Security Unit. The respondent submits that the first appellate authority in respect of VIP, Security Unit did not get an opportunity to examine the contentions of the applicant.

6. Furthermore, with regards to the information, the respondent submits as under:

"(i) As indicated earlier, the records/information pertains to the period 1991 onwards and the subject matter had been handled in different Divisions/Sections in MHA. However, as a result of sustained efforts, it has now been possible to locate some records pertaining to Justice M.C Jain Commission of Inquiry. However, complete records pertaining to Justice J.S Verma Commission of Inquiry are still not traceable.

iii) So far as relevant files relating to setting up these Commissions of Inquiry and follow-up action thereon is concerned, as indicated earlier, it has not been able to locate all the relevant files and efforts are being made to locate the same in different divisions where the subject matter had been handled from time to time. However, it may also be indicated that these files contain inputs received from CBI and IB, which are exempt organisations, in terms of Section 24(1) of the RTI Act- 2005. In view of this, comments have been sought from these organisations to ascertain whether it would be possible to disclose the contents of these files. A final view in the matter would be taken only on receipt of comments/views of IB and CBI. "

7. There has been an inordinate delay on the part of the respondent MHA in providing information to the appellant. The VIP Security unit, which it is now established is the concerned unit, has responded only now, on receipt of hearing notice of the case. Instead of transferring the RTI application to all CPIOs of MHA, the nodal CPIO should have

identified the concerned CPIO and marked the RTI application to him. The respondent MHA may take steps to ensure that RTI applications are correctly marked to the concerned CPIO in future to avoid delay in reply to the appellant and penalty proceedings.

8. The respondent is hereby directed to provide the copies of the Justice M C Jain Commission of Inquiry and Justice J S Verma Commission of Inquiry reports and also the action taken reports thereon within one week from the receipt of the order. However, as far as information in relation to the file-notings/ correspondence/minutes are concerned, the appellant during the hearing presses for file-notings and correspondence exchanged between Commission of inquiry and minutes of only the Justice J.S Verma Commission of Inquiry and the terms of reference for setting up of the same is sought. The appeal is remitted back to the first appellate authority, VIP Security Unit to pass a speaking order on this issue within two weeks from the receipt of the order. The respondent may give an opportunity of hearing to the appellant before passing the said order. The appellant shall be at liberty to file a second appeal against the said order.

The appeal is disposed off accordingly.

Sushma Singh
Information Commissioner

Authenticated True Copy:

(DC Singh)
Deputy Registrar

Name & Address of Parties:

1. Appellant:

Periarivalan C/o K Parivendhan

103, Old Lawyers Chamber,

Supreme Court of India,
New Delhi 110001

2. Public Information Officer &
VIP Security Unit
Ministry of Home Affairs,
NDCC-II, Jaisingh Road,
Sansad Marg, New Delhi – 110001

3. First Appellate Authority &
VIP Security Unit
Ministry of Home Affairs,
NDCC-II, Jaisingh Road,
Sansad Marg, New Delhi – 110001