

Central Information Commission, New Delhi

File No.CIC/SM/A/2012/000026 & CIC/SM/A/2012/000027
Second Appeal Under Section 19 of Right to Information Act 2005

Date of Hearing : **4 October 2012**

Date of Decision : **20 February 2012**

Name of the Appellant: **Shri Subhash Chandra Agarwal, 1775 Kucha
Lattushah Dariba, Chandni Chowk,
Delhi 110 006**

Name of the Public Authority: **CPIO, The Lok Sabha Secretariat,
Information Cell, Parliament House
Annexure, New Delhi-110001**

Both the parties were present at the hearing.

Facts of the Case

1. Appellant filed an RTI application dated 1 September 2011. The information sought related to the appointment of the Lok Sabha Secretary General, including the correspondence and rules in this regard, and the communication between the Leader of the Opposition of the Lok Sabha (henceforth Leader of the Opposition) and the Speaker. The context was the grant of a year's extension to the incumbent Lok Sabha Secretary General, Shri T. K. Vishwanathan.
2. There were 13 points in the RTI application on which the information was sought. These related to the letters written, file notings, documents,

etc., the rules for granting extension, the registration of opposition by the Leader of the Opposition, the particulars of the officers in the eligibility zone and the rules applicable for speaking in the zero-hour.

3. Vide CPIO order dated 1 November 2011, CPIO provided the information sought except for point no. (3) (8) and (9). The information given included the letter from the Leader of the Opposition to the Speaker under section 11 (1) of the RTI Act, 2005. Copies of file notings connected with the appointment of the Secretary General of Lok Sabha orders were also given. However, in respect of the points no. (3), (8) and (9) of the RTI Application, CPIO observed that the communication and consultation by the Speaker with the Leader of the House and the Leader of the Opposition is in discharge of constitutional duties which, if disclosed, may cause breach of parliamentary privilege and hence was exempted from disclosure under section 8 (1) (c) of the RTI Act, 2005 .

4. Not satisfied with the CPIO's reply, the appellant preferred appeal to the first appellate authority dated 8 November 2011 seeking information with respect to point number (3), (8) and (9) of the RTI application related to correspondence on action taken on the letter from the Leader of Opposition to the Speaker concerning further extension of the tenure of the Lok Sabha Secretary General beyond 31/08/2011. In his appeal, the appellant also submitted that the appointments in the Lok Sabha Secretariat are administrative in nature and not concerned with parliamentary privileges and that on an earlier occasion the CPIO has submitted similar information for the extension of the tenure of the Lok Sabha Secretary General from 1/10/2010 to 31/08/2011.

5. FAA vide order dated 22 December 2011 upheld CPIO's decision, observing that in the transaction of the business of the house, besides the presiding officers, the Leader of the House, the Leader of the Opposition and other parliamentary functionaries, the Secretary-General too has an important role as an officer of the House and thereby the privileges and immunities would extend to the Secretariat of the House for proper functioning of Parliament and safeguarding its freedom, authority and dignity. Thus FAA held that the communication and consultation by the Speaker with the Leader of the House and Leader of the Opposition is in discharge of constitutional duties which, if disclosed, may cause breach of parliamentary privilege and hence would be exempted under section 8 (1) (c) of the RTI Act, 2005.

6. Not satisfied by the public authority's response, the appellant preferred second appeal before the Commission seeking information on point number (3), (8) and (9) of the RTI application regarding extension of tenure of the Lok Sabha Secretary General beyond 31/08/2011.

Decision Notice

7. The Commission has heard the submissions made by both the parties on the matter. In this connection, the Commission should highlight the stand taken by itself in the past on the issue of parliamentary privilege. In appeal No.CIC/WB/A/2007/00518 dated 22/3/2007 it was stated:

“As observed by Dicey, Parliamentary Privilege has from the nature of things never been the subject of precise legal definition. Sir Thomas Erskine May has described Parliamentary privilege as “the sum of the peculiar rights enjoyed by each House collectively...and by members of each House individually,

without which they cannot discharge their functions and which exceed those possessed by other bodies or individuals.” The Constitution of India explicitly confers an absolute freedom of speech in Parliament and also provides complete immunity to the House and to the Members of the House in respect of anything said or done by them in Parliament or in Committee thereof. Several British Constitutional Authors have listed other privileges such as (1) Right of the House to regulate its own composition, (2) Exclusive right to regulate its own proceedings and (3) Power to punish for breach of Privilege or contempt. The Constitution recognizes all other parliamentary privileges but does not per se narrate those. There is no denying the fact that Article 105(3) and 194(3) make those privileges much wider and they extend to the right of Parliament not only against the Executive but also with regard to the public at large.” ...“Of course, the Commission does not have the jurisdiction and would not choose to pass a verdict as to whether it will actually amount to either breach of privilege or contempt of the Parliament because it is for the Parliament to decide and determine that. The Commission can only see and examine whether the concerned Public Authority denying the information has a prime facie apprehension as to whether disclosure of information in the given case may amount to commission of contempt or breach of privilege and if a prime facie case is so made out, the Commission has to uphold the same. Parliament may, however, examine the matter in the light of the provisions of the Right to Information Act and the objectives that this legislation intends to achieve of bringing transparency and accountability in the working of all public authorities. In this case, the Commission would like to make a reference, and to request the Hon’ble Speaker of the Lok Sabha, Shri Somnath Chatterjee to consider the issue and decide as to whether it would be a breach of privilege if the information, which has been refused to be disclosed to Parliament by the Executive at one point of time, is now disclosed to an applicant under the Right to Information Act, 2005.”

8. Further in appeal No.CIC/WB/A/2008/01330 dated 29/7/2008 The Central Information Commission again took the view:

“Let us reiterate at this stage our conclusion that the only viable grounds found by us on the basis of which the information sought can be exempted from disclosure is u/s 8(1) (c). To take recourse to such exemption, however, it has to be determined whether in fact a conscious decision was taken not to disclose the complete Phukan Commission report by the Home Ministry with the acquiescence of Parliament. The Ministry of Home Affairs has not been able to produce convincing evidence that such a recourse was taken. On the other hand, the third party, who is Speaker of the Lok Sabha has not been heard in the present case and would be the only authority in holding documentation to establish that such information had been exempted from being submitted to Parliament on any ground. The decision of Appellate Authority Shri Bimal Julka, Jt. Secretary, Govt. of India of 14.3.08 is, therefore, set aside and this appeal remanded to him to seek the advice of the Office of Speaker, Lok Sabha to determine whether any such conscious decision was indeed taken and if not, to provide to appellant Shri George Fernandes the complete information sought within twenty working days of the date of receipt of this Decision Notice.”

9. In the present case also, with reference to the information sought in point numbers (3), (8) and (9) of the second appeal, the Speaker will be the authority to determine the question of privileges. Though, it is noteworthy that the CPIO of the Lok Sabha Secretariat has already given some corresponding information for another year presumably because of a different format.
10. The point left for us to decide is about the manner of disposal of the letter written by the Leader of the Opposition to the Speaker on 30th August 2011 and the recording of objections, if any, in the year 2010. Therefore, the Commission recommends that the information sought at serial no. 3, 8 and 9 of the RTI Application along with the relevant file be placed before the Speaker of the Lok Sabha for instructions. Thereafter, if the

Secretariat claims privilege, it will clearly state the privileges claimed as per Article 105 of the Constitution of India.

11. Therefore, such information is denied under Sec 8 (1) (c) of the RTI Act.
12. Regarding the RTI application dated 26.09.2011 asking for the complete correspondence between the Speaker of the Lok Sabha and the Prime Minister during the last 3 years, the Commission upholds the stand of the FAA when he states “ *Further, deciding the applicability or otherwise of the parliamentary privileges on each and every document would require due diligence and would be a time consuming and complex process that would disproportionately divert the resources of the Secretariat and would accordingly attract the provisions of Section 7 (9) of the RTI Act.*”
13. The Commission also agrees with the contention that drawing a parallel between the correspondence made available by the ‘Election Commission of India’ or the ‘National Advisory Council’ and the correspondence between the Prime Minister and the Speaker is not appropriate, since there is a specific provision in the form of section 8(1) (c) of the RTI Act regarding breach of privilege of the Parliament or State Legislature. Therefore each piece of correspondence will require due diligence.
14. Hence it is desirable that either the subject matter of correspondence or date of correspondence be quoted in the RTI application by the appellant instead of an omnibus phrase like ‘last 3 years’ which would attract Section 7(9) of the RTI Act. This will entitle the appellant to inspect only those correspondences which do not attract Section 8(1) (c) of the Act.

15. The second appeal is allowed to the extent that the applicant can inspect the correspondence which does not attract section 8 (1) (c) of the Act

provided the appellant identifies specific set of document/s in terms of either or any of the indicative parameters suggested above.

16. The recommendations of this order should be acted upon within 4 weeks of its receipt.

(Satyananda Mishra)
Chief Information Commissioner

(Annapurna Dixit)
Information Commissioner

(Vijai Sharma)
Information Commissioner

Authenticated true copies

(Aakash Deep Chakravarti)
Joint Secretary (Law)