

CENTRAL INFORMATION COMMISSION

2nd Floor, August Kranti Bhawan

Bhikaji Cama Place, New Delhi-110066

website:cic.gov.in

Complaint No.: -CIC/BS/C/2016/000122-BJ

Complainant : Mr. Radha Raman Tripathy
F-9, City Centre, Sec-IV, Bokaro Steel City
Jharkhand-827004

Respondent : CPIO
Jt. Commissioner of Income Tax, Range-3
O/o. the Jt. Commissioner of Income Tax,
Range-3, Bokaro, Sector-1C/799-800, B S
City, Jharkhand

Date of Hearing : 08.06.2017
Date of Decision : 08.06.2017

Date of filing of RTI applications	23.12.2015
CPIO's response	04/05.01.2016
Date of filing the First appeal	12.01.2016
First Appellate Authority's response	12.02.2016
Date of diarised receipt of complaint by the Commission	12.03.2016

ORDER

FACTS:

The Complainant vide his RTI application sought information on 02 points regarding the total number of Wealth Tax Returns filed during the period from 01.04.2011 to 31.03.2015 and the number of assesses liable to file the Wealth Tax Returns for the above mentioned period.

The CPIO vide its letter dated 04/05.01.2016 treated the RTI application as frivolous and stated that the opinions/imaginings/ or hypothetical question formed against the department could not be deemed to be held by the public Authority under Section 2(j) of the RTI Act, 2005. Dissatisfied by the response of the CPIO, the Complainant approached the FAA. The FAA vide its order dated 12.02.2016 concurred with the reply of the CPIO and further denied disclosure of information as per Section 8(1)(j) of the RTI Act, 2005 on the ground that no larger public interest was involved in the matter.

HEARING:

Facts emerging during the hearing:

The following were present:

Complainant: Mr. Radha Raman Tripathy (M:7738263003) through VC;

Respondent: Mr. Sanjiv Kumar Roy, Joint Commissioner of Income Tax (M: 8902198358) through VC;

The Complainant reiterated the contents of his RTI application and stated that no satisfactory response was provided to him in the matter, till date. In its reply, the Respondent stated that the information sought was not held by the Public Authority and hence could not be provided under Section 2(j) of the RTI Act, 2005. The Complainant argued that the CPIO provided same response on several RTI application filed by him without any application of mind and that it was a cut and paste job done in order to deliberately deny him the information. It was further submitted that information sought could have been collated from the concerned officers and provided to him. On a query from the Commission regarding whether the information sought by the Complainant was collected, collated and maintained with them, the Respondent replied in the negative and submitted that the data was independently maintained by the Assessing Officer, only. In case such data was sought by the higher authorities, usually it is provided by the Assessing Officers only and that the office of the JCIT was not involved in this exercise. The Complainant prayed for imposition of penalty on CPIO for providing a wrong and misleading reply in the matter.

The Commission referred to the judgement of the Hon'ble Supreme Court decision in 2011 (8) SCC 497 (CBSE Vs. Aditya Bandopadhyay), wherein it was held as under:

35..... "It is also not required to provide 'advice' or 'opinion' to an applicant, nor required to obtain and furnish any 'opinion' or 'advice' to an applicant. The reference to 'opinion' or 'advice' in the definition of 'information' in section 2(f) of the Act, only refers to such material available in the records of the public authority. Many public authorities have, as a public relation exercise, provide advice, guidance and opinion to the citizens. But that is purely voluntary and should not be confused with any obligation under the RTI Act."

The respondent also drew attention of the OM No. 1/18/2011-IR dated 16.09.2011 of Ministry of Personnel, Public Grievance and Pension, Department of Personnel and Training wherein the observation of the Hon'ble Supreme Court of India in Central Board of Secondary Education and Anr. v. Aditya Bandopadhyay and Ors. (Civil Appeal No. 6454 of 2011) were referred.

The Commission observed that the Hon'ble Supreme Court of India in Khanapuram Gandaiah Vs. Administrative Officer and Ors. Special Leave Petition (Civil) No.34868 OF 2009 (Decided on January 4, 2010) had held as under:

6. "...Under the RTI Act "information" is defined under Section 2(f) which provides:

"information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, report, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force."

This definition shows that an applicant under Section 6 of the RTI Act can get any information which is already in existence and accessible to the public authority under law. Of course, under the RTI Act an applicant is entitled to get copy of the opinions, advices, circulars, orders, etc., but he cannot ask for any information as to why such opinions, advices, circulars, orders, etc. have been passed."

7. *“....the Public Information Officer is not supposed to have any material which is not before him; or any information he could have obtained under law. Under Section 6 of the RTI Act, an applicant is entitled to get only such information which can be accessed by the “public authority” under any other law for the time being in force. The answers sought by the petitioner in the application could not have been with the public authority nor could he have had access to this information and Respondent No. 4 was not obliged to give any reasons as to why he had taken such a decision in the matter which was before him.”*

The Commission however observed that the FAA while responding to the RTI First Appeal incorrectly applied Section 8 (1) (j) of the RTI Act, 2005 on the queries raised by the Complainant in his RTI application on the ground that no larger public interest was being served in the disclosure of information. While claiming exemption under Section 8 (1) (j) of the RTI Act, 2005, the preliminary requirement was to ascertain whether the information sought was personal in nature and the need to determine, if any larger public interest was involved in the matter. If the data was not maintained by the Respondent, the same could have been conveyed categorically rather than commenting on the personal conduct of the Complainant.

In this context, the Commission referred to the decision of the Hon'ble High Court of Kerala in *Treesha Irish v. The CPIO and Ors.* WP (C) No. 6532 of 2006 dated 30.08.2010 wherein it was held as under:

“23. There is no provision anywhere in the Act to the effect that information can be refused to be disclosed if no public interest is involved. Of course in a case of personal information, if it has no relationship with any public activity or interest, the information officer has discretion to refuse to disclose the same, if the larger

public interest does not justify disclosure of such information. But on the ground of lack of public interest involved alone, the public information officer cannot refuse to disclose the information, without a finding first that the information is personal information having no relationship to any public activity or interest.”

With regard to the imposition of penalty on the CPIO/PIO under Section 20 of the RTI Act, 2005, the Commission took note of the ruling of Hon'ble Delhi High Court in W.P.(C) 11271/2009 Registrar of Companies & Ors v. Dharmendra Kumar Garg & Anr. (delivered on: 01.06.2012) wherein it was held:

“ 61. Even if it were to be assumed for the sake of argument, that the view taken by the learned Central Information Commissioner in the impugned order was correct, and that the PIOs were obliged to provide the information, which was otherwise retrievable by the querist by resort to Section 610 of the Companies Act, it could not be said that the information had been withheld malafide or deliberately without any reasonable cause. It can happen that the PIO may genuinely and bonafidely entertain the belief and hold the view that the information sought by the querist cannot be provided for one or the other reasons. Merely because the CIC eventually finds that the view taken by the PIO was not correct, it cannot automatically lead to issuance of a showcause notice under Section 20 of the RTI Act and the imposition of penalty. The legislature has cautiously provided that only in cases of malafides or unreasonable conduct, i.e., where the PIO, without reasonable cause refuses to receive the application, or provide the information, or knowingly gives incorrect, incomplete or misleading information or destroys the information, that the personal penalty on the PIO can be imposed. This was certainly not one such case. If the CIC starts imposing penalty on the PIOs in every other case, without any justification, it would instill a sense of constant apprehension in those functioning as PIOs in the public authorities, and would put undue pressure on them. They would not be able to fulfil their statutory duties under the RTI Act with an independent mind and with objectivity. Such consequences would not auger well for the future development and growth of the regime that the RTI Act seeks to bring in, and may lead to skewed and imbalanced decisions by the PIOs Appellate Authorities and the CIC. It may even lead to unreasonable and absurd orders and bring the institutions created by the RTI Act in disrepute.”

Similarly, the following observation of the Hon'ble Delhi High Court in *Bhagat Singh v. CIC & Ors. WP(C) 3114/2007* are pertinent in this matter:

“17. This Court takes a serious note of the two year delay in releasing information, the lack of adequate reasoning in the orders of the Public Information Officer and the Appellate Authority and the lack of application of mind in relation to the nature of information sought. The materials on record clearly show the lackadaisical approach of the second and third respondent in releasing the information sought.

However, the Petitioner has not been able to demonstrate that they malafidely denied the information sought. Therefore, a direction to the Central Information Commission to initiate action under Section 20 of the Act, cannot be issued.”

Furthermore, the High Court of Delhi in the decision of Col. Rajendra Singh v. Central Information Commission and Anr. WP (C) 5469 of 2008 dated 20.03.2009 had held as under:

“Section 20, no doubt empowers the CIC to take penal action and direct payment of such compensation or penalty as is warranted. Yet the Commission has to be satisfied that the delay occurred was without reasonable cause or the request was denied malafidely.

.....The preceding discussion shows that at least in the opinion of this Court, there are no allegations to establish that the information was withheld malafide or unduly delayed so as to lead to an inference that petitioner was responsible for unreasonably withholding it.”

The Complainant was unable to substantiate his claims further regarding malafide denial of information by the respondent or for withholding it without any reasonable cause.

DECISION:

Keeping in view the facts of the case and the submissions made by the parties, no further intervention of the Commission is warranted in the matter.

The Commission also instructs the respondent to convene periodic conferences/seminars to sensitize, familiarize and educate the concerned officials about the relevant provisions of the RTI Act, 2005 for effective discharge of its duties and responsibilities.

The Complaint stands disposed accordingly.

(Bimal Julka)
Information Commissioner

Authenticated True Copy:

(K.L.Das)
Deputy Registrar