

Central Information Commission

Appeal No. CIC/AT/A/2006/00005

Dated the 8th March, 2006

Name of the Appellant : **Shri Ravinder Kumar (Advocate) from
37, Lawyer's Chamber, Supreme Court
Compound. New Delhi-110001**

Name of Public Authority : **Shri A.K. Sinha, Joint Commissioner of
Police (Vigilance), New Delhi**

This second appeal was filed by Shri Ravinder Kumar, hereinafter to be referred as the appellant, against the order of the first appellate authority Shri A.K. Sinha, Joint Commissioner of Police, Delhi. The appellant and the first appellate authority were both called and were present for the hearing.

2. Briefly, the facts of the case are as follows:-

The appellant had sought on 14.10.2005, the details of the full report along with its annexes I and II and other documents submitted to the Hon'ble High Court by the Joint Commissioner of Police (Vigilance), Shri A.K. Sinha in WP (CRL) 1288-9/2005, along with the complaint made by Shri Vijender Sethi and subsequent endorsements by the officials of the Special Cell. The application was filed by the appellant originally before the Public Information Officer, Shri R.C. Upadhyay. In his order dated 10.11.05, the Public Information Officer refused to provide the information to the appellant on the grounds that the enquiry report with annexes and other documents mentioned by the appellant were submitted to the Hon'ble High Court of Delhi on 29.9.05 as per the directions of the Court. Since all the records requested to be disclosed to the appellant were now the property of the High Court, the PIO was not at liberty to supply the same to the appellant.

The appellant filed an appeal before Shri Y.S. Dadwal against the order of the PIO. The PIO had informed the appellant that Shri Dadwal was the first appellate authority.

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While the matter was before Mr. Dadwal, the appellant was informed by the Asstt. PIO, Shri Vijay Manchanda on 7.12.2005 that the PIO's order dated 10.11.05 stood withdrawn due to "administrative reasons."

On 12.12.05, the PIO, Shri R.P. Upadhyay issued a fresh order to the appellant. This time the appellant's request for the above mentioned documents was turned down on the ground that it would impair the process of investigation in the case registered under FIR 370/2005 dated 30.7.2005, PS Kirti Nagar. The request for information of the appellant was construed to attract the bar under Section 8 (h) of the RTI act.

With this order, the PIO also mentioned that the appellant could file an appeal before Shri A.K. Sinha, Joint Commissioner of Police (Vig.) who had now become the appellate authority in place of Shri Dadwal.

The appellant preferred his first appeal before Shri A.K. Sinha on 15.12.2005.

Through his order dated 4.1.06, the first appellate authority, Shri A.K. Sinha dismissed the appeal filed by the appellant stating that he saw no reason to interfere with the order of the PIO.

The appellant has now come to this Commission with the plea that the information sought by him was wrongfully denied. He has urged the Commission to order that the information requested by him should be provided to him and the penalty as provided under law should be imposed upon PIO, Shri R.P. Upadhyay, Asstt. PIO, Shri V. Manchanda and Shri Y.S. Dadwal, Special Commissioner of Police and Shri A.K. Sinha, the appellate authority.

The grounds on which the appellant has made his prayer are –

- i) the information was sought "to know the correctness of working of the Delhi Police as police has filed a bogus report in the Hon'ble High Court of Delhi and misled the applicant deliberately;
- ii) that Shri A.K. Sinha was the officer who conducted the vigilance enquiry. He deliberately refused to supply annexes I and II to the applicant. The appellate authority's conduct was against 'proprietary and natural justice'. He should have transferred the matter to some other officer, but he decided his own case, which is "abortion of justice."
- iii) that the police deliberately refused the information and thus 'frustrated' the object of the RTI Act, 2005.

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The first appellate authority, Shri A.K. Sinha, Joint Commissioner of Police had the following to say in support of his position turning down the appellant's request for information.

It is admitted that the appellant had made a formal request for ".....full report along with annexures I & II along with documents submitted with Hon'ble Delhi High Court by Joint Commissioner of Police (Vig.) , Shri A.K. Sinha in the WP (CRL) 1288-9/2005 along with complaint made by Vijender Sethi and subsequent endorsement by the officials of the Special Cell."

On examining the application it was noted that the information requested could not be supplied to the appellant, because the enquiry report which the appellant wanted to have access to was submitted to the Hon'ble High Court of Delhi by Shri A.K. Sinha, Joint Commissioner of Police (Vig.) together with all its annexes, witness statements and documents. It has been contended by the first appellate authority that the enquiry to which the report pertained was conducted on orders of the Delhi High Court, and a copy of the enquiry report was duly supplied to the parties to the case in WP (CRL) 1288-9/2005. The first appellate authority was not at liberty to make these papers available to the appellant since the papers were now court property.

On the point made by the appellant regarding the withdrawal of the PIO's first order (dated 10.11.05), Shri A.K. Sinha has pointed out that it became necessary to withdraw that order as, due to internal changes in Delhi Police, a new appellate authority had taken over, which meant that Shri A.K. Sinha replaced Shri Y.S. Dadwal as the first appellate authority.

The first appellate authority, Shri A.K. Sinha has held that the request of the appellant was rightly turned down by the PIO as meeting with his request for information would have interfered with the investigation of the case No. 370/2005 / 30.7.2005 at PS, Kirti Nagar. He upheld the contention of the PIO that the appellant's case was hit by the exemption of the Section 8 (h) of the RTI Act..

The first appellate authority has also pointed out that the appellant was the writ petitioner's counsel before the Delhi High Court and the copy of the enquiry report was already supplied to him by the Hon'ble High Court.

This appeal before us raises certain interesting points. We will elucidate these in the following paragraphs as we go along.

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At first, we would like to dispose of the matter concerning the withdrawal of the PIO's order dated 10.11.05 on account of, what has been stated to be, the internal reshuffle in the Delhi Police which apparently have had its impact on the police vigilance set up. We concede the point that these abrupt changes did inconvenience the appellant. It would have been appropriate if the PIO had avoided withdrawing his first order. If there was change in the first appellate authority this could have been communicated to the appellant through a fresh communication rather than through withdrawal of the order itself. We, however, wish to add that these are early days in the evolution of the RTI regime and some marginal allowance should be allowed for the system to stabilize. As such, we will not dwell upon the subject any further.

Before us is the contention of the appellant that he must be allowed to receive the enquiry report and all connected documents of the enquiry conducted on court order by Shri A.K. Sinha (the then officiating Joint Commissioner, Delhi Police) The appellant has also questioned the propriety of Shri A.K. Sinha sitting in appeal in a matter which concerned his own enquiry report.

We are unable to appreciate appellant's point that merely because Shri Sinha was the custodian of a certain information, he was debarred by that reason alone to hear the appeal in regard to its disclosure. If the information was prima facie disclosable and did not attract any prohibition of the RTI Act, it had to be supplied to the appellant regardless of who was its custodian even if this custodian were to be the first appellate authority himself. We, therefore, do not find any violation of propriety or natural justice in the present case.

The main point for consideration is whether the appellant's plea for information was hit by any exemption under Section 8 of the RTI Act. The first appellate authority has contended that it was the subject matter of the WP (CRL) 1288-9/2005 and the case No. 370/2005 dated 30.7.05 at PS, Kirti Nagar, was common, and that there was an organic linkage between the two.

Therefore, the first appellate authority has argued, that the disclosure of the enquiry report along with its enclosures and other connected documents, submitted in connection with the WP to the Hon'ble High Court would have interfered with the investigation in FIR No. 370/05 of the Kirti Nagar PS.

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The first appellate authority has given no reasons for his above submission. We also find this reasoning rather curious because, as per the first appellate authority's own statement, the copy of the enquiry report ".....was duly supplied to counsel of the petitioner.....", in the writ petition before the Hon'ble High Court. It is very clear by the first appellant's own admission that the enquiry report with all annexes, statements and documents was already in the public domain. It is, therefore, unclear how its supply to the appellant will interfere with the investigation of the Kirti Nagar PS case. We find no coherent basis for the first appellant's contention that the request for information of the appellant was hit by the prohibition under Section 8(h) of the RTI Act. The first appellant has also mentioned to us that while submitting the enquiry report to the Hon'ble High Court he had retained its copy. In so far as he was in possession of the information which the appellant had requested, the first appellate authority was obliged to provide the same to the appellant. There was a manifest contradiction in the first appellate authority's argument that the enquiry report, its annexes, statements and connected documents were already supplied to the writ petitioner and yet its supply to the appellant would somehow attract the exemption of Section 8(h) of the RTI Act. Such reasoning is unacceptable as it is devoid of merit. We also note that the Hon'ble High Court did not impose any prohibition on the Joint Commissioner of Police (Vig), Shri Sinha to keep the documents confidential. If that had happened the appellant's case would have attracted the other exemption under RTI Act viz. Section 8 (b). Presently that is not the case.

According to our view the appellant is entitled to receive the information (the enquiry report), in its entirety viz. the enquiry report including its annexes, statements and other connected documents etc. submitted by Shri A.K. Sinha to the Hon'ble High Court of Delhi. The PIO and the first appellate authority are directed to furnish the entire information as requested by Shri Virendra Kumar (appellant in the case), within one week of the receipt of this order.

Sd/-
(A.N. TIWARI)
INFORMATION COMMISSIONER

Sd/-
(WAJAHAT HABIBULLAH)
CHIEF INFORMATION COMMISSIONER

Authenticated true copy:

(P.K. GERA)
REGISTRAR

Address of parties:

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2. Shri A.K. Sinha, Joint Commissioner of Police (Vigilance), Police HQ, New Delhi-110001.

