

CENTRAL INFORMATION COMMISSION

Appeal No.ICPB/A-8/CIC/2006
May 18, 2006

In the matter of Right to Information Act, 2005 – Sections 6/18 & 19

Name of the Appellant : Ms. Navneet Kaur, Assistant Director, ESC

Name of Public Authority : CPIO, Department of Information Technology (DIT)/Electronics & Computer Software Export Promotion Council (ESC)

DECISION

1. On the appeal filed by the appellant, the Commission vide its decision No.ICPB/A-8/CIC/2006 dated 22.3.2006 directing the Public Authority to furnish “a copy of the enquiry report and also copies of minutes of the Working Committee relating only to the enquiry report and action taken thereon within 15 days of the receipt of this direction”.

2. The information sought was not given to the appellant, who complained to the Commission about non-compliance of the direction given by the Commission. In the meantime, a representation was also received by the ESC which has mentioned, among other things, that they are not a Public Authority under the definition of RTI Act. They have also mentioned that the ESC was not invited in the first hearing and therefore was deprived of the opportunity to present their case.

3. A second hearing was held on 17-5-2006 in which the DIT, ESC and the appellant were asked to be present. The DIT was represented by Sh. B.B. Bahl, Joint Director & CPIO and Sh. A.P. Kuriappan, Joint Director. The ESC was represented by Mr. S. Bhatia, Counsel for ESC and Sh. R. Prasad, OSD. The appellant Ms. Navneet Kaur was also present. The Commission’s bench comprised of the Chief Information Commissioner and the two Information Commissioners who had heard the case earlier.

4. During the course of hearing, the CPIO of DIT mentioned that the copy of the report in question is already with ECS, and the DIT has, in compliance with the Commission's direction, advised the ECS to pass on the copy of the report to the appellant, as directed in the decision. The onus of providing the information was thus on the ESC.

5. The representative of the ESC argued that they are not a Public Authority under the definition of RTI Act, because the ECS is neither controlled by the Govt. nor receives funds for meeting its operational expenditure. Hence, it was not required to act on the direction of the CIC and the DIT.

6. The Commission had earlier ruled that out of Rs.11.8 Crores of expenditure in 2004-05, Rs.6.8 Crores was received from the Govt. as grant in aid for specific programmes, which is a substantial funding under the definition of RTI Act. The Commission had therefore ruled that "the provisions of RTI Act are applicable to ESC".

7. The CPIO of DIT also contended that the ESC is under the administrative control of DIT as the following procedures are applicable to ESC:

1. CAG audits the accounts of ESC;
2. ESC's Annual Report is laid in the parliament through the DIT;
3. The name of ESC appears in the Annual Report of DIT for the year 2005; and
4. DIT assigned programmes and activities were undertaken by ESC, which are indicated in the ESC's annual report for the year 2004-05.

He therefore emphatically mentioned that ESC is a Public Authority.

8. In view of the administrative control of DIT on ESC and substantial funding by the Govt., the Commission is of the view that ESC is a Public Authority under the definition of RTI Act, which is consistent with its earlier decision.

9. Even though we have held that ESC is public authority in terms of the RTI Act and as such is bound to provide the information as directed in the Decision dated 22.3.2006, we note that the appellant had sought for similar information from both DIT and ESC, the first application being to DIT on 28th November 2005 and the second application to ESC on 20.12.2005. Since the application to DIT is prior in time, and it is the report of the enquiry commissioned by DIT that the appellant seeks, in modification of the Decision dated 22.3.2006 we direct DIT to furnish a copy of the enquiry report and also the information on the action

taken thereon, if necessary, by obtaining the same from ESC. The appellant has voiced a grievance that in the decision dated 22.3.2006 all the directions given during the hearing had not been incorporated and as she has sought that the same should now be incorporated. It is to be noted that this Commission could only enquire whether the information sought in the original application has been provided by the CPIO or not and cannot consider additional information sought during the hearing. In the applications as well as in the original appeals before the Commission, her request was for a copy of the enquiry report and information on action taken on the report. However during the hearing, she sought for certified copies of the complete file, all records and proceedings of the Sexual Harassment Committee of DIT, and minutes and agenda of all working committee meetings of ESC after receipt of the Sexual Harassment Committee of DIT. Since in the original applications, she had not sought for these documents, we did not direct supply of these documents and restricted our directions to furnishing of copies of the working committee minutes relating only to the enquiry report and action taken thereon. Therefore, there is no scope to enlarge the scope of the Decision dated 22.3.2006 as sought for by the appellant. If appellant wishes, she can now make application for this additional information.

10. CPIO, DIT will ensure that the information directed to be furnished to the appellant is furnished on or before 5th June 2006 failing which invoking the provisions of Section 20 would become inevitable.

The appeal is accordingly disposed of.

Sd/-

(Padma Balasubramanian)
Information Commissioner

Sd/-

(M.M. Ansari)
Information Commissioner

Sd/-

(Wajahat Habibullah)
Chief Information Commissioner

Authenticated true copy:

(Munish Kumar)
Asstt. Registrar

Address of parties:

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2. Mr. Nalin Kohli, Chairman, Electronics & Computer Software Export Promotion Council, PHD House, 3rd Floor, Ramakrishna Dalmia Wing, Opp. Asiad Village, New Delhi – 110 016
3. Ms. Navneet Kaur, Assistant Director, Electronics & Computer Software Export Promotion Council, PHD House, 3rd Floor, Ramakrishna Dalmia Wing, Opp. Asiad Village, New Delhi – 110 016.