

CENTRAL INFORMATION COMMISSION

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**F.No. CIC/AT/A/2006/00195
Dated, the 25th September, 2006.**

**Appellant : Shri B.R. Manhas, S/o Late Thakur Lal Manhas, R/o 164,
Janipur Housing Colony, Jammu – 180 007.**

**Respondents: Shri Mukesh Mittal, PIO, Director(IS.III), Ministry of Home
Affairs, North Block, New Delhi-110001.**

**Shri L.C. Goal, Appellate Authority, Joint Secretary (IS),
Ministry of Home Affairs, North Block, New Delhi-110001.**

The appellant, Shri B.R. Manhas has come before the Commission with a plea to over-turn the order dated 23.6.2006 of the Appellate Authority (AA), Shri L.C. Goel, Joint Secretary (IS), MHA, upholding the order dated 18.4.2006 of the PIO, Shri Mukesh Mittal, Director (IS.III), MHA.

The matter came up for a hearing today (i.e. 22.9.2006). The appellant was present in person and the respondents were represented by Shri N.S. Samant, Director(IS), who informed the Commission that he was appointed as PIO as he had succeeded Shri Mukesh Mittal, who had been transferred.

The appellant challenged Shri Samant's competence to represent the respondents. After hearing both the appellant and Shri N.S. Samant, it was decided that Shri Samant shall be allowed to represent the respondents as the incumbent PIO. The Commission decided to accept Shri N.S. Samant's oral submission that he was now the PIO. It has been in practice in the Commission to allow the PIO to represent the AA. The Commission does not follow a highly strict regime about the appearance of the AAs, specially so, when the Commission separately obtains the AA's comments and thus has a chance to study the AA's contention.

The facts of the case are, that through his request dated 27.3.2006 to the PIO, Shri Mukesh Mittal, the appellant requested for the following information:

- “(1) Photocopy of the “Message No.R-16609/S.S.(ISP)/95” dated 26-12-1995” sent by Sh. V.K. Jain the then Special Secretary (ISP) Ministry of Home Affairs, Govt. of India, North Block, New Delhi to the Principal Secretary Home, West Bengal Govt. on the

subject of the handing over the investigation in the Purulia Arms Drop Case to CBI.

- (2) The reasons for handing over the case to the CBI and whether the handing over of the case was at the initiative of the State Govt. or the Central Govt.
- (3) Photocopy of the report submitted by the Ministry of Home Affairs to the Parliamentary Committee formed to probe the Purulia Arms Drop Case.”

The appellant has argued that the reason cited by the AA for rejection of his request for information were “misconceived” and “in contravention of the Right to Information Act besides being against public interest”.

He urged that the documents which were open for inspection by the Members of Parliament and had been disclosed in the criminal case which is currently being heard by a Court in Kolkata, cannot be said to be so security-sensitive as to attract exemption under Section 8(1)(a) nor can it be held to cause breach of the privilege of Parliament, thus attracting exemption under Section 8(1)(c) of the RTI Act.

During hearing of the case, the respondent was asked as to how a mere communication between a Department of the Central Government and a State Government about entrusting a certain matter to be probed by the Central Bureau of Investigation (CBI) can be so sensitive as to prejudicially affect the security and the strategic interests of the country, and thus attract the exemption under Section 8(1)(a). He replied that since the entire Purulia Arms Drop Case was highly sensitive from the security point of view, it was not possible to separate any part of it and classify that part as non-sensitive. The communication between the State Government of West Bengal and the Home Ministry, Government of India about entrustment of the case to the CBI was not severable from the Purulia Arms Drop Case itself. Though seemingly non-sensitive, the matter regarding entrustment of the case to the CBI assumed a different hue seen in the backdrop of its link to the main case.

The Commission decided to inspect the documents connected with entrustment of the Purulia Arms Drop Case for investigation to the CBI in order to appreciate its implications for national security. Shri Samant showed a fax-message, which was sent by the Special Secretary in the Ministry of Home Affairs to the Government of West Bengal, which was followed by a

notification issued by the Government of West Bengal entrusting the matter for investigation to the CBI.

It is important to note that neither the fax-message addressed to the Government of West Bengal by the Special Secretary, Ministry of Home Affairs, nor the notification of the West Bengal Government was classified under the Official Secrets Act. The mere fact that the Special Secretary, Ministry of Home Affairs chose to send his communication to the State Government of West Bengal through an open fax proves the point that the communication was not treated as 'sensitive' by the sender. The notification of the West Bengal Government was also an open notification.

On the face of it, these two documents answer the queries made by the appellant at item (1) and (2) in his request for information dated 27.3.2006.

In appreciating the material which came up before the Commission, it has been the convention to allow a lot of leeway to the Government agencies in matters of claim of national security and strategic interests as stated in exemption under Section 8(1)(a) of the RTI Act. At the same time, it is also expected that the public authorities, who make these claims, do so after carefully studying the documents, through proper application of mind and then coming to an irrefutable conclusion about the matter being sensitive from the point of view of country's security interests. The Commission does not expect such public authorities to invoke the exemption under Section 8(1)(a) lightly or frivolously. In the present case, it is difficult to avoid a conclusion that the reference to exemption under Section 8(1)(a) in respect of the two documents, i.e. the fax-message from the Ministry of Home Affairs to the State Government of West Bengal, which led to a corresponding notification being issued by the West Bengal Government, has not been made with any serious deliberation. Otherwise, the AA and the PIO could not have over-looked the glaring fact that the communication from the Special Secretary, Ministry of Home Affairs to the Government of West Bengal regarding entrusting the Purulia Arms Drop Case to the CBI was through an open fax-message. The information which is handled through open channels is potentially disclosable, and the public authorities ought to know this fact. The respondents' plea for non-disclosure of this information from the Ministry of Home Affairs to the State Government, on grounds of exemption under Section 8(1)(a) must, therefore, fail.

The PIO is directed to supply to the appellant a copy of the fax-message of the Special Secretary, MHA to the Govt. of West Bengal about

entrusting the Purulia Arms Drop Case to the CBI, within 2 weeks from the date of the receipt of this order.

As regards point (3) in the appellant's request for information dated 27.3.2006, it needs to be stated that all submissions made before a Parliamentary Standing Committee by the Departments of the Government are treated as confidential as per parliamentary practice. Documents and other submissions handed over to the Committee become property of the Parliament. It is not open to a Department to disclose any information in respect of those submissions unless authorized by the Committee. It is, therefore, obvious that the information sought by the appellant, besides being confidential, is also a property of the Parliament.

Insofar as supply of this information to the appellant can potentially cause a breach of the privilege of Parliament, it is held that it attracts the bar of Section 8(1)(c) of the RTI Act and is not liable to be disclosed by the PIO to the appellant.

Before parting with this appeal, I am constrained to note that PIOs of several public authorities invoke exemptions under Section 8 of the RTI Act without adequate appreciation of the evidence before them. The tendency is to apply the exemption and then leave the matter to be decided by the Commission. As in this case, the PIO and the AA could have easily come to a different conclusion in respect of items (1) and (2) of the appellant's request for information dated 27.3.2006, if they had chosen not to ignore the fact that what the appellant was requesting to be supplied was an open communication between the Central and the State Governments. The only reason which I can attribute to this approach of the PIOs and the AAs is that they want to play safe lest their superior authorities hold it against them for disclosing information. The AA and the PIO seem to be constantly looking over their shoulders and are driven by a safety-first approach, viz. take the safest decision (read: apply exemption) and disclose information only when so directed by the Commission. Presumably, this saves them from the ire of their superiors. Passing the buck is a safer bet, but, sadly enough, it is not conducive to accelerating decision-making or to building of popular trust in the Department's commitment to transparency.

The Commission expects the AAs and the PIOs to apply their minds, duly analyze the material before them, and then draw a conclusion about disclosure or non-disclosure based upon a cogent and objective analysis of evidence. Any other approach will not be in the interest of removing the veil of mistrust which hangs between Governments and their peoples.

The appeal is accordingly disposed of.

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

Authenticated by –

Sd/-
(L.C. SINGHI)
ADDL. REGISTRAR

Address of parties:

1. Shri B.R. Manhas, S/o Late Thakur Lal Manhas, R/o 164, Janipur Housing Colony, Jammu – 180 007.
2. Shri N.S. Samant, PIO, Director(IS), Ministry of Home Affairs, North Block, New Delhi-110001.
3. Shri L.C. Goal, Appellate Authority, Joint Secretary (IS), Ministry of Home Affairs, North Block, New Delhi-110001.
4. In-charge, NIC.
5. Press 'E' Group.