

CENTRAL INFORMATION COMMISSION

Appeal No. CIC/WB/A/2009/000148 dated 20-2-2009

Right to Information Act 2005 – Section 19

Appellant: Shri Shanmugu Patro

Respondent: Cabinet Secretariat.

Decision announced: 12.3.2010

FACTS

By an application of 4-10-2008 Shri Shanmugu Patro of Safdarjung Enclave, New Delhi applied to the CPIO, Cabinet Secretariat seeking the following information:

“Kindly provide me copies of the material showing constitution of RAW, its functions, structure and mandate.’

To this Shri Shanmugu Patro received a response from CPIO Ms. Sumati Kumar, Director (CS) dated 29-10-08 refusing the information as follows:

“Research and Analysis wing being an organization dealing with the Security and Intelligence it would not be possible to furnish the information sought for. Besides, there is no involvement of human rights violations & allegations of corruption, therefore, this Sectt. Is not under any obligation to provide the information under the RTI Act, 2005.”

Shri Shanmugu Patro then moved an appeal before the Appellate Authority Shri Ashok Kapur, Addl. Secretary (SR) dated 3-11-08 pleading as follows:

“I state and submit that the CPIO’s response dated 29.10.2008 is violative of and contrary to the proviso to section 8 (1) which reads as:

‘Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.’”

Upon this Shri Ashok Kapur in his order of 17-11-08 came to the following conclusion:

“Clause 24 (1) of the RTI Act says that ‘nothing contained in this Act shall apply to the intelligence and security organizations specified in the Second Schedule, being organizations established by the Central Govt. or any information furnished by

such organizations to that Govt. Hence proviso 8 (1) does not apply to Research and Analysis Wing of Cabinet Secretariat. Further the information sought for pertains neither to allegations of corruption nor to human rights violations. Thus, sub-section (1) of section 24 of the Act would, hence, be applicable in this case.”

Nevertheless, Shri Patro has then approached this Commission in second appeal with the following prayer:

- “a) Direct the respondents to provide the information sought by the appellant in its application dated 4.10.2008;**
- b) Pass appropriate orders to ensure non-recurrence of denial of information by the Respondents on unsubstantiated grounds.’**

Shri Patro has based this plea on the following grounds:

“The appellant states and submits that under the provisions of law and in view of the circumstances mentioned in his application dated 4.10.2008, constitution of RAW, its functions, structure and mandate cannot legitimately claim benefit of exemption from disclosure. Cabinet Secretariat being a huge organization with multifarious activities, a citizen must know the constitution and the mandate of RAW so that he can meaningfully exercise his rights to seek information from Cabinet Secretariat without violating the law and/ or without seeking information in respect of RAW which is one amongst several branches of Cabinet Secretariat possibly constituted for the sake of classification and administrative convenience.

Further the appellant states and submits that the RTI Act itself stipulates in the proviso to section 8 (1) that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person. Needless to state that the Parliament and/ or State Legislature of India/ Indian States, which are democratic in nature, have a right to know constitution of RAW, its functions, structure and mandate.”

The appeal was heard through video-conferencing on 12-3-2010. The following are present.

Respondents

Ms. Sumati Kumar, CPIO & Director, Cabinet Secretariat
Shri D. Bhargava, Director, Cabinet Secretariat.

Although informed of the date of hearing through our letter of 9-2-2010 and arrangements made for videoconference appellant Shri Shanamugu Patro opted not to be present.

Ms. Sumati Kumar, CPIO submitted a written statement arguing para-wise as below:

- “1. In reply to para no. 1 of the appeal, it is submitted that the appellant has challenged the order dated 29.10.2008 passed by the CPIO, Cabinet Secretariat and the order dated 17.11.2008 passed by the Appellate Authority, before this Hon'ble Commission. The contents of this para clearly demonstrate, that the appellant is 'seeking information about RAW', as has been stated in the para under reply. In view of this specific and categorical averment made in this para, it is the respectful submission of the Respondent that the information sought by the appellant cannot be provided because it pertains to an organisation to which the provisions of RTI Act, 2005 is not applicable, in terms of section 24 (1) read with Second Schedule of the RTI Act, 2005.
2. In reply to para no. 2 of the appeal, it is submitted that the averments made in this para are wrong and denied. Perusal of the order of the CPIO dated 29.10.2008 and that of the Appellate Authority dated 17.11.2008 are very specific and clear that, since the information sought by the appellant pertains to Research & Analysis Wing (R&AW), which on the plain reading of the provisions of the RTI Act, 2005 would leave nobody in doubt that this organisation is exempt from the purview of the RTI Act, 2005 in terms of section 24 (1) read with Second Schedule of the RTI Act, 2005. Further it is respectfully submitted that the very application of the applicant dated 4.10.2008, clearly refers to the information regarding the constitution, functioning, structure and mandate of R&AW. Thus it is respectfully submitted that the above mentioned orders have specifically referred to the statutory provisions of the Act, which have been invoked, to deny the information to the appellant. Therefore, it is not correct to state that the CPIO and the Appellate Authority had not given reasons for such denial, as alleged.
3. In reply to para no. 3 of the appeal, it is submitted that the averments made in this para are correct only to the extent that the appellant, who is an advocate by profession, must have been conscious and aware of the provisions of Law as cited by the Public Authority. However, the appellants understanding and interpretation of the provisions of Law, with respect, is not correct. The stand taken by the CPIO and the appellate authority is in consonance with the scheme of the Act and the legislative intent, to exclude the organisations who are dealing with the intelligence and security, and have been specified in the second schedule of the Act.

It is once again reiterated, that the right to information, is subject to certain restrictions, as provided in the Act itself. One such restriction is provided in section 24 (1) of the RTI Act, 2005 and therefore, any disclosure regarding the constitution, functioning and the mandate of Research & Analysis Wing, is directly covered by these provisions. Rest of the para is wrong and denied.

4. In reply to para no. 4 of the appeal, it is submitted that the averments made herein are wrong and denied. That the proviso to section 8 (1) of the RTI Act, 2005 which provides that : 'the information which cannot be denied to the Parliament or a State Legislature, shall not be denied to any person, is subject to the provisions of section 24 of the Act, which start with non obstante clause which reads as follows:

- (1) Nothing contained in this Act shall apply to the intelligence and security organization being specified in the Second Schedule, being organizations established by the Central Government, or any information furnished by such organizations to that Government.

It is, therefore, respectfully submitted that the appellant cannot be provided with the information regarding the constitution, functioning, structure and mandate of R&AW.

5. In reply to para no. 5 of the appeal, which refers to the reliefs sought by the appellant, it is submitted that the appellant is not entitled to any relief as prayed for in view of the submissions made herein above."

DECISION NOTICE

Quite clearly this is a case seeking information from and about an organisation listed at serial No.2 in the second Schedule as conceded by complainant Shri Shanamugu Patro himself. Under the circumstances as clearly explained by Appellate Authority Shri Ashok Kapur in his order of 17-11-08 there is nothing contained in this Act which shall apply to that organisation. Not only would this mean that there is no question of application of Section 8 (1) but it would also mean that this Commission, whose authority flows entirely from the RTI Act, has no jurisdiction whatever to rule on the information sought by Shri Shanmugu Patro in his application, at present before us in appeal. Under the circumstances, the order of Addl. Secretary (SR) of 17-11-08 warrants no interference by us. The appeal is unsustainable and is hereby dismissed.

Announced in the hearing. Notice of this decision be given free of cost to the parties.

(Wajahat Habibullah)
Chief Information Commissioner
12-3-2010

Authenticated true copy. Additional copies of orders shall be supplied against application and payment of the charges prescribed under the Act to the CPIO of this Commission.

(Pankaj K.P. Shreyaskar)
Joint Registrar
12-3-2010