

CENTRAL INFORMATION COMMISSION

(Room No.315, B-Wing, August Kranti Bhawan, Bhikaji Cama Place, New Delhi 110 066)

File No.CIC/AD/A/2013/001326-SA

(Mr. Ramesh Chand Jain Vs. DTC)

Appellant : **Mr. Ramesh Chand Jain**

Respondent : **Delhi Transport Corporation
GNCTD, Delhi**

Date of hearing : **16-06-2014**

Date of decision : **25-06-2014**

Information Commissioner : **Prof. M. Sridhar Acharyulu
(Madabhushi Sridhar)**

Referred Sections : **Sections 3, 19(3) of the
RTI Act**

Result : **Appeal allowed / disposed of**

Observation : **A case of mis-use of RTI Act**

The appellant is not present. The Public Authority is represented by Mr. Raj Kumar Singh, Senior Manager (Adm) along with three other officers from the Delhi Transport Corporation, Govt. of NCT of Delhi.

FACTS

2. Through his RTI application dated 8-11-2012, the appellant sought information regarding the service details and assets of the then CMD, DTC, Mr. Rajiv Verma and also information about the retired employees who have been granted pension as mentioned in his application, etc. The PIO responded on 3-12-2012. Not satisfied with the same, the appellant filed first appeal before the FAA. FAA by his order dated 4-2-2013, issued directions to the PIO (HQ) to collect the specific and correct information as sought from the concerned unit/dept. and provide to the appellant within 15 days of the order. Being unsatisfied with the information provided by the respondent authority, the appellant filed 2nd appeal before this Commission.

Decision:

3. Heard the submissions made by both the respondent authorities. The respondent authority submitted that the appellant Mr. Ramesh Chand Jain has filed **around 130 RTI applications, mostly on the similar subject, i.e. non-payment of pension to him**, for which he is not entitled as per rules, as he did not put in the requisite 'qualifying service of 10 years' as submitted by the respondent authority. Appellant repeatedly sought the details about the officers involved in deciding his pension case. Accordingly, the respondent authority has given the information about the amount of salary of the then CMD, Mr. Rajiv Verma, etc.

4. The Commission directs the respondent authority to follow and implement the provisions of section 4(1)(b) of the RTI Act and make voluntary disclosure about the names, designations, salaries and functions of all the administrative officers of the respondent authority along with other information required under the said section. As the relevant information was already provided by the respondent authority to the appellant, the Commission closes the present appeal.

5. The Commission considers this case as the case of repetitive use of RTI assuming the proportion of harassment to the Public Authority and thus, abuse of RTI, by a disgruntled employee.

6. The respondent officers made fervent appeals to the Commission that they were compelled to spend most of the time in answering harassingly repeated questions about the same subject matter repeatedly asked from different angles; and about individual officers, whom, the applicant assumed to be responsible for the grievance. The Commission found that the applicant was one of the four disgruntled employees against whom action was taken or their claims were denied.

RTI: Not a rendezvous of disgruntled elements

7. The Commission noticed that three or four former employees in every public authority, who were either suspended or removed or facing charges, convicted in a crime or facing disciplinary action, or trying to run a counter inquiry with several harassing questions. The Commission also noted an atmosphere of fear and worry was spread in the offices and among the officers who are hesitating to take action against erring staff members for fear of facing flood of questions under RTI. Sometimes, the RTI applications are running into hundreds similar to those posed by lawyers during cross examination. It is almost a parallel enquiry against the authorities whose decision or disciplinary action might have adversely affected them. The respondents submitted that they were ready to comply with the RTI Act but answering 'enquiry' type questions and repeated RTI applications would involve diversion of resources, energy besides having demoralizing effect. The Commission appreciates the genuineness of the problem and sincere feelings of the respondent officers and finds a need

to address this serious issue. It is the responsibility of Government of India and Information Commissions to see that the RTI Act will not become rendezvous for disgruntled elements.

Positive impact of RTI

8. The Commission also takes this opportunity to acknowledge the fact that because of RTI questions a positive sense of accountability has been introduced and certain systems of discipline and answerability are being put in place in many departments. The change from disarray situation of files and records-keeping has gradually started. If abuse or repetitive use can be curtailed, the RTI can effectively empower citizens at an optimum level, make public authorities more accountable and democracy will hopefully be driven by informed citizenry.

UK, South Africa, Mexico refuses vexatious requests

9. Various access law enactments have provisions to prevent abuse of right to information.
- a. The United Kingdom's Freedom of Information Act, 2000 which became fully effective in January 2005 provided an exception to Right to Information on the grounds of vexatious or repeated requests under Section 14. Requests for information intended to be published are also excluded. Information which is already reasonably accessible to the applicant even though this involves payment operates as absolute exception under Section 21 of Freedom of Information Act, 2000 of UK.
 - b. In Mexico, the access to information law provides grounds of offensive requests or requests which have already been dealt with for refusing the information.
 - c. South Africa also provided for refusing information requests which are frivolous or vexatious.

Renowned Author Sudhir Naib, in his book 'The Right to Information in India, published by Oxford University Press 2013 supported these restrictions saying: "This appears

to be in order as vexatious, offensive or repeated requests can impose a costly burden on public authorities and yet not advance the right to information" (at page 28).

Res judicata = already decided

10. The Commission noticed that some of the applicants are filing photocopies of RTI requests with the same or other public authorities time and again seeking information, irrespective of the fact that previous application reached second appeal level or information was furnished or refused as decided by the concerned authorities. When not taken to High Court for judicial review in stipulated period, the matter decided in second appeal assumes finality and cannot be sought for again from the public authority.

11. Though Right to Information Act, 2005 did not have any specific provision to bar the repetition for information like Section 11 of Code of Civil Procedure, the universal principle of civil justice 'res judicata' will certainly apply and the repeated request can be denied. Two Latin maxims form the basis of this rule, they are:

- a. '*interest republicae ut sit finis litium*' (= it is in the interest of the State that there should be an end to litigation) and
- b. '*nemo devet vis vexari pro una et eadem cause*' (=no man should be taxed twice over for the same cause).

If presumed that the PIOs, First Appellate Authorities and the Commissions are statutorily compelled to entertain the repeated RTI applications, information litigation and woos of public authorities would never end. An Appeal, as provided by law is legal, because it is a legal opportunity to challenge the order on reasonable and legal grounds. Engaging with the application which is same or slightly modified request for information which was responded earlier will be certainly against the principles of natural justice- both procedural and substantive, as far as right to information is concerned.

12. The universal principles of civil justice also recognized '*constructive res judicata*', which in the RTI context means when an applicant uses an opportunity of obtaining information on a particular subject as per law, he is expected to seek all the related information in that first ever opportunity itself. He cannot file another application for a bit or piece which he forgot to ask, or not advised by his lawyer, or for any other reason. He should ask all possible aspects of information about that subject matter, in the first ever available opportunity. Even if he does not, it is presumed by law that he asked for that and was refused after due trial. This is incorporated in principles of civil procedural justice and practiced universally. It is in the public interest and also to further the objectives of Right to Information Act, that such repeated or unending stream of questions being sought from same or different public authorities to be stopped.

13. The Commission noticed that several applicants seek some information from one wing of the public authority, and based on the responses file a bunch of RTI questions from the same or other wings of same public authority, or from other authority. This will have a continuous harassing effect on the public authority. As the PIOs go on answering, more and more questions are generated out of the same and in the same proportion the number of repeated first appeals and second appeals also will be growing.

Earlier Observations of CIC: Sri MM Ansari

14. In several occasions earlier the Central Information Commission referred to the issue of repeated RTI requests and harassing tendency. In **Prem Prakash Kumar v NFL, Panipat**, (Decision no. 246/IC/(A)/2006, F.No. CIC/MA/A/2006/00374 & 375 dated 28 August 2006) the appellant sought documents and specific comments of CPIO on 89 queries. The Learned Commissioner Shri M M Ansari observed that in fact, **the nature of queries and the**

information sought are such that the information seeker would never be satisfied because the promotion of self interest, rather than public interest, was dominant, as the appellant had sought redressal of grievances.

Sri A N Tiwari's observations

15. In **Shri Gopal Soni v The New India Assurance Company Ltd** (F No CIC/AT/A2008/00097, 000116, 000124, dated 12.6.2008) Learned Commissioner Sri A. N. Tiwari dealt with similar problem. The respondents in this case submitted that the appellant, their employee, was suspended for insubordination and misconduct, and ever since he directed a spate of applications containing queries for detailed, voluminous but inane information which would have to be collected and collated from over 30 branches. The Commission held in this case: **"answering the elaborate and detailed queries, which have to be both accurate and authentic, imposes heavy cost on the public authority and tends to divert its resources, which brings it within the scope of section 7(9) of RTI Act."**

16. In **Shri K. Lall v Sh M K Bagri**, Assistant Registrar of Companies & CPIO, (F No. CIC/AT/A/2007/00112) the Learned Central Information Commissioner Sri A N Tiwari observed: **"...it would mean that once certain information is placed in public domain accessible to the citizens either freely or on payment of a pre-determined price, that information cannot be said to be 'held' or 'under the control' of the public authority and thus would cease to be an 'information' accessible under the RTI Act."**

17. From the above observations, one could infer that once the information is accessible or available, no requests for the same need to be entertained. It can also be stated, agreeing with the observation of Sri A N Tiwari referred above, that once applicant procured the

information sought, that information will not be considered as 'held' by public authority or 'under its control' as far as that applicant is concerned, and thus the public authority need not answer.

Sri Shailesh Gandhi's observations

18. It is relevant here to quote a paragraph from the order of Learned Information Commissioner Sri Shailesh Gandhi in case numbers No. CIC/SG/C/2011/000760, CIC/SM/A/2011/000926/SG, CIC/SM/A/2011/001111/SG, CIC/SG/A/2011/002909 Dated 17th January, 2012 in a second appeal: "The Commission, at several appellate hearings, has explained to the complainant that under RTI Act, only the information as per records can be made available; multiple RTI applications and appeals would not provide him any information beyond the records that exists. The Commission recognizes the fact that valuable time of the complainant, respondent-public authority as well as the Commission is being spent in merely going through the motions prescribed under the RTI Act again and again to obtain similar information. At this juncture the Commission would like to mention that **though the right to information is a fundamental right of the citizens, it cannot be used indiscriminately to fulfill the demands of one individual.** In the present matter, it must be noted that the Complainant is pursuing multiple litigation and various public authorities are being asked to divert an extraordinarily disproportionate amount of resources just to respond to hundreds of RTI applications filed by him. ...**The Commission is also conscious of the fact that it is financed by the poorest man in this country who may be starving to death. The complainant by repeatedly filing similar RTI applications and appeals with the respondent public authority and the Commission, is wasting public resources.**"

19. In the above case Sri Shailesh Gandhi observed that appellant was using RTI Act as a litigation tool, his use of RTI was vexatious in nature, and held that entertaining such appeal could no longer serve the objectives of the RTI Act and at one go the Commissioner had disposed off all the pending appeals.

Principles of Freedom of Information Legislation

21. International standard series have developed the Principles of Freedom of Information Legislation under the title 'Public's Right to Know', by the 'Article 19 Organization'. These Principles were endorsed by Mr. Abid Hussain, the UN Special Rapporteur on Freedom of Opinion and Expression, in his report to the 2000 session of the United Nations Commission on Human Rights, and referred to by the Commission in its 2000 resolution on freedom of expression. They were also endorsed by Mr. Santiago Canton, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression in his 1999 Report, Volume III of the Report of the Inter-American Commission on Human Rights to the OAS. Under Principle 4 "Limited scope for exceptions" this document explained that exceptions should be clearly and narrowly drawn and subject to strict "harm" and "public interest" tests. Explaining the 'harm' test, it stated that the public body must also show that the disclosure of the information would cause substantial harm to that legitimate aim.

22. Cases of disclosure of information to the repetitive applicants for their private purpose which promotes their private interest but not the public interest would cause substantial harm to the legitimate aim of the Right to Information Act.

23. Thus, once information is given, applicant shall not seek the same once again in the guise of different form or language. If the applicant seeks information again and again, the

PIO, the First Appellate Authority and the Commission would be forced to spend their time on this repeated application, and in the process the authorities would lose that much time to address the other RTI applications or performing their general duties in their public office. Repeated RTI applications will amount to clogging the office of public authority and CPIO would be justified in refusing the same with intimation of reasons. Because the repeated RTI application has an effect of clogging the public offices, it would amount to obstructing the free flow of information to deserving and genuine RTI applicants, besides preventing the officers from performing their general duties attached to their office.

Conclusions

24. All the above discussion can be consolidated into:

- (i) Even a single repetition of RTI application would demand the valuable time of the public authority, first appellate authority and if it also reaches second appeal, that of the Commission, which time could have been spent to hear another appeal or answer another application or perform other public duty.
- (ii) Every repetition of RTI application which was earlier responded will be an obstruction to flow of information and defeats the purpose of the RTI Act.

No scope for repeating under RTI Act

20. The Commission infers from the above that though RTI Act, did not specifically provide as a ground of refusing the information, it is implied from the objective and various provisions of RTI Act, that right of citizen to information is limited to one time and does not extend to repetition of request for that directly or indirectly.

Citizen has no Right to Repeat

25. For the above reasons and based on objective of the RTI Act, its provisions, their interpretation by the Information Commissioners referred above, reading them together, this Commission observes:

- a) The citizen has no right to repeat the same or similar or slightly altered information request under RTI Act, 2005, for which he already got a response.
- b) Once an RTI application is answered, the appellants shall refrain themselves from filing another RTI application against the public authority as once information is received and held by them or posted in public domain, because such information is deemed to have ceased to be 'held' by the public authority.

Repetition shall be ground of refusal

- c) Such repetition of information request may be considered as reasonable ground for refusal under the RTI Act.
- d) An applicant or appellant repeating the RTI application or appeal either once or multiple times, suppressing the fact of earlier application and receipt of the answer, the CPIO of public authority may reject it forthwith after intimating it along with reasons.

Appeals can be rejected

- e) The First Appellate Authority and Commission may be right and reasonable to consider this as a ground for rejecting the first or second appeal, respectively among other reasons if any.

Recommendations

26. To address the problem of 'harassing & repeated questions', the Commission recommends the respondent authority to analyze all the RTI applications filed by such appellants, compile all the questions contained therein and indicate the information provided

against them. That consolidated information along with a background note based on facts, avoiding unfounded allegations may also be placed on website besides sending a copy to the applicant and the concerned Information Commission. The Commission also recommends exhibiting such information in their notice board at the entrance or at any conspicuous place in their office besides posting a photograph of such a notification on the website.

27. The entire information about the repeated RTI questions by appellants, and the documents given by the Public authority, the private interest of the appellants, if any, lack of public interest in the said RTI applications, etc. also may be kept in the public domain. The information in website may also serve as response to repeated RTI question. The same may be referred in the responses to first and second appeals.

28. There is no provision in RTI Act, 2005 to penalize the applicant for abusing his right to information or clogging the public office. However the Commission recommends that the fact of abuse of RTI Act, 2005 may record and Commission may notify the admonition, direction or recommendation if any, to the applicants suggesting them not to resort to abuse anymore along.

29. The Commission finds it appropriate to frame certain guidelines, for the prevention this kind of misuse, for the benefit of and ready reference by Public Information Officers to refuse the repeated RTI applications and advise appellate authorities to consider such repetition as the ground among others for refusal. The Commission recommends the Ministry of Personnel and Training to consider the framing of such guidelines. The Commission directs the registry to send the copy of this order to the Ministry of Personnel and Training for their consideration.

(M. Sridhar Acharyulu)
Information Commissioner

Authenticated true copy

(Ashwani K. Sharma)
Designated Officer

Address of the parties:

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Copy also forwarded to:-

3. The Secretary to Govt. Of India,
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