

GOVERNMENT OF ANDHRA PRADESH  
ENERGY (CC) DEPARTMENT

R-11674/14

Letter No.942/CC/2014-1

dt:4-3-2014



From  
The Special Secretary to Government,  
Energy Department,  
A.P. Secretariat,  
HYDERABAD

- To
1. The Chairman & Managing Director, APTRANSCO, Hyderabad (w.e.)
  2. The Chairman & Managing Director, APGENCO, Hyderabad (w.e.)
  3. The Chairman & Managing Director, SCCL, Hyderabad (w.e.)
  4. The Vice Chairman & Managing Director, NREDCAP, Hyderabad (w.e.)
  5. The Chairman & Managing Director, APCPDCL, Hyderabad (w.e.)
  6. The Chairman & Managing Director, APNPDCL, Warangal (w.e.)
  7. The Chairman & Managing Director, APSPDCL, Tirupathi (w.e.)
  8. The Chairman & Managing Director, APEPDCL, Visakhapatnam (w.e.)
  9. The CEIG, AP, Hyderabad (w.e.)
  10. The Secretary, APERC, Hyderabad (w.e.)

GM/HRD  
22/3  
GM/HRD

- DGM/ER
- DGM/Estt.
- DGM/MPS
- DGM/UC
- DGM/...
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*an 22/3*  
*To all circles*

Sir,  
Sub: RTI Act 2005 - Disclosure of personal information and on records under the RTI Act, 2005 - Instructions - Issued - copy communicated - Reg.

Ref: Circular Memo. No.36259/RTIA/GPM&AR/2013, dt:18.2.2014 & 32481/RTI/GPM&AR/13, dt:19.2.2014 of G.A. (GPM&AR) Dept. and its enclosures referred therein

-x-

A copy of the reference cited and its enclosures is communicated herewith for information and for taking necessary action.

Yours faithfully,

*Macep*

For Special Secretary to Government

Dir/Opn.		CGM/O&CS	
Dir/Proj.		CGM/Com.	
Dir/HRD		CGM/Per.	
Dir/Fin.		CGM/PS&M	
CVO		CGM/IA	
CS		CGM/Pl.	
DE/T		CGM/Exp.	
AD/ET			✓
CMD/APEPDCL			

No. 962  
Date 22/2/14

GOVERNMENT OF ANDHRA PRADESH  
GENERAL ADMINISTRATION(GPM&AR)DEPARTMENT

Circular Memo No.36259/RTIA/GPM&AR/2013,Dated. 18.7.2014

Sub:- GA (GPM&AR) Dept., - Disclosure of personnel information under the RTI Act,2005-Instructions-Issued.

Ref:-1.O.M.No.11/2/13-1R(Pt.), Govt. of India, Ministry of Personnel, PG&P, Department of Personnel & Training, GOI, New Delhi, dt.14.8.2013.

2. Orders of SC of India in the matter of Girish R.Deshpande Vs CIC & others SLP(c) No.27734/12,dt:3.10.2012.

The attention of the officers noted in the address: entry is invited to the references cited resting the subject and they are informed that the Central Information Commission in one of its decisions has held that information about the complaints made against an officer of the Government and any possible action the authorities might have taken on those complaints, qualifies as personal information within the meaning of provision of section 8 (1j) of the RTI Act, 2005.

2. The Central Information Commission, while the said case has cited the decision of Supreme Court of India in the matter of Girish R. Deshpande Vs CIC & Others SLP (c) No.27734/2012 in which it was held as under:

"The performance of an employee/Officer in an organisation is primarily a matter between the employee and the employer and normally those aspects are governed by the service rules which fall under the expression personal information, the disclosure of which has no relationship to any public activity or public interest. On the other hand the disclosure of which could cause unwarranted invasion of the privacy of that individual". The Supreme Court further held that such information could be disclosed only if it would serve a larger public interest.

3. All the Special Chief Secretaries/Principal Secretaries/Secretaries are requested to bring notice of the instructions to all the staff under their control for guidance. The copy of Office Memorandum of Government of India, Ministry of Personnel, Public Grievance Pension Department of Personnel & Training, New Delhi, dated. 14.8.2012 is available in the website <http://persmin.gov.in>. A copy of the order of Supreme Court, referred above is also enclosed. !

S.K.SINHA  
PRINCIPAL SECRETARY TO GOVERNMENT(GPM&AR)(FAC)

To  
The Spl.C.S's/Prl.Secys/Secys of all Department of Secretariat.  
All the Departments of Secretariat ( with a request to circulate to all HOD's under their control)  
SF/SC

//FORWARDED::BY ORDER//

*Y. Anurag*  
SECTION OFFICER.

No. 11/2/2013-IR (Pt.)  
Government of India  
Ministry of Personnel, Public Grievances & Pensions  
Department of Personnel & Training

North Block, New Delhi,  
Dated the 14th August, 2013

**OFFICE MEMORANDUM**

Subject: Disclosure of personal information under the RTI Act, 2005.

The Central Information Commission in one of its decisions (copy enclosed) has held that information about the complaints made against an officer of the Government and any possible action the authorities might have taken on those complaints, qualifies as personal information within the meaning of provision of section 8 (1) (j) of the RTI Act, 2005.

2. The Central Information Commission while deciding the said case has cited the decision of Supreme Court of India in the matter of Girish R. Deshpande vs. CIC and others (SLP (C) no. 27734/2012) in which it was held as under:-

*"The performance of an employee/Officer in an organisation is primarily a matter between the employee and the employer and normally those aspects are governed by the service rules which fall under the expression 'personal information', the disclosure of which has no relationship to any public activity or public interest. On the other hand, the disclosure of which could cause unwarranted invasion of the privacy of that individual."* The Supreme Court further held that such information could be disclosed only if it would serve a larger public interest.

3. This may be brought to the notice of all concerned.

Encl: As above.

*Manoj Joshi*  
(Manoj Joshi)  
Joint Secretary (AT&A)  
Tel: 23093663

1. All the Ministries / Departments of the Government of India.
2. Union Public Service Commission /Lok Sabha Secretariat/ Rajya Sabha Secretariat/ Cabinet Secretariat/ Central Vigilance Commission/ President's Secretariat/ Vice-President's Secretariat/ Prime Minister's Office/ Planning Commission/Election Commission.
3. Central Information Commission/ State Information Commissions.
4. Staff Selection Commission, CGO Complex, New Delhi.
5. O/o the Comptroller & Auditor General of India, 10, Bahadur Shah Zafar Marg, New Delhi.
6. All officers/Desks/Sections, DOP&T and Department of Pension & Pensioners Welfare.

Central Information Commission, New Delhi  
File No.CIC/SM/A/2013/000058  
Right to Information Act-2005-Under Section (19)

Date of hearing : 26/06/2013  
Date of decision : 26/06/2013  
Name of the Appellant : Sh. Manoj Arya,  
(RTI Activists and Social Worker) 67, Sec-  
12, CPWD Flats, R K Puram, New Delhi  
-110022  
Name of the Public Authority : Central Public Information Officer,  
Cabinet Secretariat,  
(Vigilance & Complaint Cell), 2nd Floor,  
Sardar Patel Bhawan, New Delhi -110001

The Appellant was not present in spite of notice.

On behalf of the Respondent, Shri M.P. Sajeevan, DS & CPIO was present.

The third party, Shri S B Agnihotri, DG (DEF. ACQ) MoD was present.

**Chief Information Commissioner : Shri Satyananda Mishra**

2. We heard the submissions of both the respondent and the third party in the case.

3. In his RTI application, the Appellant had sought the copies of the complaints made against the third party in the case and the details of the action taken including the copies of the enquiry reports. He had also wanted the copies of the correspondence made between the Cabinet Secretariat and the Ministry of Shipping in respect of the third party in the case. The CPIO after consulting the third party under Section 11 of the Right to Information Act, had

refused to disclose any such information by claiming that it was personal in nature and thus exempted under the provisions of section 8(1) (j) of the Right to Information (RTI) Act. Not satisfied with this decision of the CPIO, the Appellant had preferred an appeal. The Appellate Authority had disposed of the appeal in a speaking order in which he had endorsed the decision of the CPIO.

4. We have carefully gone through the contents of the RTI application and the order of the Appellate Authority. We have also considered the submissions of both the respondent and the third party in the case. The entire information sought by the Appellant revolves around the complaints made against an officer of the government and any possible action the authorities might have taken on those complaints. The Appellate Authority was very right in deciding that this entire class of information was qualified as personal information within the meaning of the provisions of Section 8 (i) (j) of the RTI Act. In this connection, it is very pertinent to cite the decision of the Supreme Court of India in the SLP(C) No. 27734 of 2012 (Girish R Deshpande vs CIC and others) in which it has held that "the performance of an employee/Officer in an organisation is primarily a matter between the employee and the employer and normally those aspects are governed by the service rules which fall under the expression personal information, the disclosure of which has no relationship to any public activity or public interest. On the other hand, the disclosure of which could cause unwarranted invasion of the privacy of that individual." The Supreme Court further held that such information could be disclosed only if it would serve a larger public interest. The information sought by the Appellant in this case is about some complaints made against a government official and any possible action the authorities might have taken on those complaints. It is, thus, clearly the kind of information which is envisaged in the above Supreme Court order. Therefore, the information is completely exempted from disclosure under the provisions of the RTI Act which both the CPIO and the Appellate Authority have

rightly cited in their respective orders.

5. We find no grounds to interfere in the order of the Appellate Authority.

The appeal is rejected.

6. Copies of this order be given free of cost to the parties.

(Satyananda Mishra)  
Chief Information Commissioner

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.

(Vijay Bhalla)  
Deputy Registrar

## IN THE SUPREME COURT OF INDIA

## CIVIL APPELLATE JURISDICTION

Special Leave Petition (Civil) No. 27734 of 2012  
(@ CC 14781/2012)

Girish Ramchandra Deshpande .. Petitioner  
Versus .. Respondents  
Gen. Information Commr. & Ors.

## O R D E R

1. Delay condoned.

2. We are, in this case, concerned with the question whether the Central Information Commissioner (for short 'the CIC') acting under the Right to Information Act, 2005 (for short 'the RTI Act') was right in denying information regarding the third respondent's personal matters pertaining to his service career and also denying the details of his assets and liabilities, movable and immovable properties on the ground that the information sought for was qualified to be personal information as defined in clause (j) of Section 8(1) of the RTI Act.

3. The petitioner herein had submitted an application on 27.8.2008 before the Regional Provident Fund Commissioner (Ministry of Labour, Government of India) calling for various details relating to third respondent, who was employed as an Enforcement Officer in Sub-Regional Office, Akola, now working in the State of Madhya Pradesh. As many as 15 queries were made to which the Regional Provident Fund Commissioner, Nagpur gave the following reply on 15.9.2008:

"As to Point No.1: Copy of appointment order of Shri A.B. Lute, is in 3 pages. You have sought the details of salary in respect of Shri A.B. Lute, which relates to personal information the disclosures of which has no relationship to any public activity or interest, it would cause unwarranted invasion of the privacy of individual hence denied as per the RTI provision under Section 8(1)(j) of the Act.

As to Point No.2: Copy of order of granting Enforcement Officer Promotion to Shri A.B. Lute, is in 3 Number. Details of salary to the post along with statutory and other deductions of Mr. Lute is denied to provide as per RTI provisions under Section 8(1)(j), for the reasons mentioned above..



- As to Point NO.3: All the transfer orders of Shri A.B. Lute, are in 13 Numbers. Salary details is rejected as per the provision under Section 8(1)(j) for the reason mentioned above.
- As to Point No.4: The copies of memo, show cause notice, censure issued to Mr. Lute, are not being provided on the ground that it would cause unwarranted invasion of the privacy of the individual and has no relationship to any public activity or interest. Please see RTI provision under Section 8(1)(j).
- As to Point No.5: Copy of EPF (Staff & Conditions) Rules 1962 is in 60 pages.
- As to Point No.6: Copy of return of assets and liabilities in respect of Mr. Lute cannot be provided as per the provision of RTI Act under Section 8(1)(j) as per the reason explained above at point No.1.
- As to Point No.7: Details of investment and other related details are rejected as per the provision of RTI Act under Section 8(1)(j) as per the reason explained above at point No.1.
- As to Point No.8: Copy of report of item wise and value wise details of gifts accepted by Mr. Lute, is rejected as per the provisions of RTI Act under Section 8(1)(j) as per the reason explained above at point No.1.
- As to Point No.9: Copy of details of movable, immovable properties of Mr. Lute, the request to provide the same is rejected as per the RTI Provisions under Section 8(1)(j).
- As to Point No.10: Mr. Lute is not claiming for TA/DA for attending the criminal case pending at JMFC, Akola.
- As to Point No.11: Copy of Notification is in 2 numbers.
- As to Point No.12: Copy of certified true copy of charge sheet issued to Mr. Lute - The matter pertains with



head Office, Mumbai. Your application is being forwarded to Head Office, Mumbai as per Section 6(3) of the RTI Act, 2005.

- As to Point No.13: Certified True copy of complete enquiry proceedings initiated against Mr. Lute - It would cause unwarranted invasion of privacy of individuals and has no relationship to any public activity or interest. Please see RTI provisions under Section 8(1)(j).
- As to Point No.14: It would cause unwarranted invasion of privacy of individuals and has no relationship to any public activity or interest, hence denied to provide..
- As to Point No.15: Certified true copy of second show cause notice - It would cause unwarranted invasion of privacy of individuals and has no relationship to any public activity or interest, hence denied to provide."

4. Aggrieved by the said order, the petitioner approached the CIC. The CIC passed the order on 18.6.2009, the operative portion of the order reads as under:

"The question for consideration is whether the aforesaid information sought by the Appellant can be treated as 'personal information' as defined in clause (j) of Section 8(1) of the RTI Act. It may be pertinent to mention that this issue came up before the Full Bench of the Commission in Appeal No.CIC/AT/A/2008/000628 (Milap Choraria v. Central Board of Direct Taxes) and the Commission vide its decision dated 15.6.2009 held that "the Income Tax return have been rightly held to be personal information exempted from disclosure under clause (j) of Section 8(1) of the RTI Act by the CPIO and the Appellate Authority, and the appellant herein has not been able to establish that a larger public interest would be served by disclosure of this information. This logic would hold good as far as the ITRs of Shri Lute are concerned. I would like to further observe that the information which has been denied to the appellant essentially falls in two parts - (i) relating to the personal matters pertaining to his services career; and (ii) Shri Lute's assets & liabilities, movable and immovable properties and other financial aspects. I have no hesitation in holding that this information also qualifies to be the 'personal information' as defined in clause (j) of Section 8(1) of the RTI Act and the appellant has not been able to convince the Commission that disclosure thereof is in larger public interest."

5. The CIC, after holding so directed the second respondent to disclose the information at paragraphs 1, 2, 3 (only posting details), 5, 10, 11, 12,13 (only copies of the posting orders) to the appellant within a period of four weeks from the date of the order. Further, it was held that the information sought for with regard to the other queries did not qualify for disclosure.

6. Aggrieved by the said order, the petitioner filed a writ petition No.4221 of 2009 which came up for hearing before a learned Single Judge and the court dismissed the same vide order dated 16.2.2010. The matter was taken up by way of Letters Patent Appeal No.358 of 2011 before the Division Bench and the same was dismissed vide order dated 21.12.2011. Against the said order this special leave petition has been filed.

7. Shri A.P. Wachasunder, learned counsel appearing for the petitioner submitted that the documents sought for vide Sl. Nos.1, 2 and 3 were pertaining to appointment and promotion and Sl. No.4 and 12 to 15 were related to disciplinary action and documents at Sl. Nos.6 to 9 pertained to assets and liabilities and gifts received by the third respondent and the disclosure of those details, according to the learned counsel, would not cause unwarranted invasion of privacy.

8. Learned counsel also submitted that the privacy appended to Section 8(1)(j) of the RTI Act widens the scope of documents warranting disclosure and if those provisions are properly interpreted, it could not be said that documents pertaining to employment of a person holding the post of enforcement officer could be treated as documents having no relationship to any public activity or interest.

9. Learned counsel also pointed out that in view of Section 6(2) of the RTI Act, the applicant making request for information is not obliged to give any reason for the requisition and the CIC was not justified in dismissing his appeal.

10. This Court in Central Board of Secondary Education and another v. Aditya Bandopadhyay and others (2011) 8 SCC 497 while dealing with the right of examinees to inspect evaluated answer books in connection with the examination conducted by the CBSE Board had an occasion to consider in detail the aims and object of the RTI Act as well as the reasons for the introduction of the exemption clause in the RTI Act, hence, it is unnecessary, for the purpose of this case to further examine the meaning and contents of Section 8 as a whole.

11. We are, however, in this case primarily concerned with the scope and interpretation to clauses (e), (g) and (j) of Section 8(1) of the RTI Act which are extracted herein below:

"8. Exemption from disclosure of information.- (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,-

(e) information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;

(g) information, the disclosure of which would endanger the life or

physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;

(j) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information."

12. The petitioner herein sought for copies of all memos, show cause notices and censure/punishment awarded to the third respondent from his employer and also details viz. movable and immovable properties and also the details of his investments, lending and borrowing from Banks and other financial institutions. Further, he has also sought for the details of gifts stated to have accepted by the third respondent, his family members and friends and relatives at the marriage of his son. The information mostly sought for finds a place in the income tax returns of the third respondent. The question that has come up for consideration is whether the above-mentioned information sought for qualifies to be "personal information" as defined in clause (j) of Section 8(1) of the RTI Act.

13. We are in agreement with the CIC and the courts below that the details called for by the petitioner i.e. copies of all memos issued to the third respondent, show cause notices and orders of censure/punishment etc. are qualified to be personal information as defined in clause (j) of Section 8(1) of the RTI Act. The performance of an employee/officer in an organization is primarily a matter between the employee and the employer and normally those aspects are governed by the service rules which fall under the expression "personal information", the disclosure of which has no relationship to any public activity or public interest. On the other hand, the disclosure of which would cause unwarranted invasion of privacy of that individual. Of course, in a given case, if the Central Public Information Officer or the State Public Information Officer of the Appellate Authority is satisfied that the larger public interest justifies the disclosure of such information, appropriate orders could be passed but the petitioner cannot claim those details as a matter of right.

14. The details disclosed by a person in his income tax returns are "personal information" which stand exempted from disclosure under clause (j) of Section 8(1) of the RTI Act, unless involves a larger public interest and the Central Public Information Officer or the State Public Information Officer or the Appellate Authority is satisfied that the larger public interest justifies the disclosure of such information.

15. The petitioner in the instant case has not made a bona fide public interest in seeking information, the disclosure of such information would cause unwarranted invasion of privacy of the individual under Section 8(1)(j) of the RTI Act.

~~16. We are, therefore, of the view that the petitioner has not succeeded in establishing that the information sought for is for the larger public interest. That being the fact, we are not inclined to entertain this special leave petition. Hence, the same is dismissed.~~

.....J.  
(K. S. RADHAKRISHNAN)

.....J.  
(DIPAK MISRA)

New Delhi  
October 3, 2012

ITEM NO.1A  
(FOR ORDERS)

COURT NO.11

SECTION IX

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No(s).27734/2012  
(arising out of SLP(C)..CC No.14781/2012)

(From the judgement and order dated 21/12/2011 in LPA No.358/2011 of The  
HIGH COURT OF BOMBAY AT NAGPUR)

GIRISH RAMCHANDRA DESHPANDE

Petitioner(s)

VERSUS

CEN.INFORMATION COMMR.& ORS.

Respondent(s)

Date: 03/10/2012 This Petition was called on for hearing today.

For Petitioner(s) Mr. Jatin Zaveri, Adv.

For Respondent(s) Mr. Surya Kant, Adv.

Ms. Purnima Jauhari, Adv.

Hon'ble Mr. Justice K.S. Radhakrishnan pronounced reportable order of the Bench comprising His Lordship and Hon'ble Mr. Justice Dipak Misra.

In terms of signed reportable order, the special leave petition is dismissed.

| (A.D. Sharma)

| Court Master

| | (Renuka Sadana)

| | Court Master

(Signed reportable Order is placed on the file)

GOVERNMENT OF ANDHRA PRADESH  
GENERAL ADMINISTRATION(GPM&AR/RTIA)DEPARTMENT

Circular Memo.No.32481/RTIA/GPM&AR/2013. Dated.19 -02-2014.

Sub:-- GA(GPM&AR) Deptt - RTI Act 2005,(Act 22 of 2005) -  
Judgement of the Hon'ble High Court of Delhi in the matter  
of W.P(C)3660/2012, dated. 13.9.2013 between Union of  
India Vs Sri Vishwas Bhamburkar on Right to Information Act,  
2005 -Certain instructions - Issued.

Ref:-- Judgement of the Hon'ble High Court of Delhi in the matter  
of W.P.(C) 3660/2012, dated.13.9.2013 communicated  
by the Govt. of India, Ministry of Tourism (RTI Cell), New  
Delhi,dt.10.10.2013.

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In the letter dated.10.10.2013, the Deputy Secretary (RTI)  
Government of India, Ministry of Tourism (RTI Cell) has enclosed the  
judgement of Hon'ble High Court of Delhi in W.P.(C) No.3660/2012 and  
requested the Chief Secretary, Government of Andhra Pradesh to issue  
guidelines to the Public Authorities of the State Government for  
information and guidance.

2. There have been instances wherein the information sought under  
Section 6 of the Right to Information Act, 2005 is not being provided to  
the information seeker on the plea that the required information is not  
available or the concerned record was not traceable,etc. Such action by  
Public Information Officers is in violation to the Right to Information Act,  
2005, as the Act is a progressive legislation aimed at providing access to  
information to the citizens. Such access was not available to the citizen  
prior to commencement of this Act. The intention behind this act is to  
disclose the information to the maximum extent possible subject to  
certain safeguards and exemptions stated explicitly in the Act.

1. Recently, the Hon'ble High Court of Delhi had passed orders in  
W.P.(C) 3660/2012 and CM 7664/2012 dated.13.9.2013, while  
dealing with a similar situation in which Public Information Officer  
had not provided the information sought by the citizen. The citizen  
had filed an application to the Public Information Officer seeking an  
authenticated photo copy of a report made to the Government along  
with the file notings, duly indicating the File Number, Public  
Information Officer, while dealing with his request, stated that the  
report sought for, was not received by the Government, and  
therefore the information was not furnished to the citizen. When the  
matter was dealt in the 1<sup>st</sup> appeal, the First Appellate Authority  
questioned the authenticity of the photo copy of cover page of the  
report submitted by the appellant, which confirmed that such a  
report was received by the Government. However,the 1<sup>st</sup> Appellate  
Authority, in his order, provided the following options to the Public  
Information Officer:

- a. Directed the Public Information Officer to make a  
thorough search for the said report and records,  
pertaining to its receipts and movement in the  
ministry;

(PTO)

03 MAR 2014  
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Secretary to Govt.  
RTI Department

03 MAR 2014

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- b. If the report is traced, its authenticated copy be supplied to the applicant;
- c. if the report is not traceable, but records are found, which confirms that the report was received in the ministry, a report be lodged with the police regarding the missing documents and intimation to this effect, was to be conveyed to the applicant; and
- d. if neither the report nor any records of its receipt are available, the applicant be informed accordingly.

2. Not satisfied with the above order of the 1<sup>st</sup> Appellate Authority, 2<sup>nd</sup> appeal was filed before the Central Information Commission and the Commission directed the Secretary of the concerned Ministry, to enquire into the matter and to send the Inquiry Report to the Central Information Commission and the applicant. While making this direction, the Central Information Commission had observed that it was possible that either the Public Information Officer or someone else could be hiding the information or even the possibility of a conspiracy through which the report and the associated papers were taken away from the custody of the Government.

3. When the matter was taken before the Delhi High Court, initially an interim direction was issued by the Court to make available the Inquiry Report as directed by the Commission. The Inquiry Report prepared in pursuance to this order of the Commission confirmed that there was no documentary record in the ministry to show that original report was received. The Inquiry Report also concluded that the original document was not available in the Ministry, but the enquiry report did not reveal that any serious attempt was made by the officials of the ministry to ascertain under what circumstances the then Joint Secretary and Director of the Ministry, whose signature was available on the photo copy of the report, had signed the document. This made the Court to have an impression that the ministry was avoiding conducting a proper enquiry in terms of direction given by the Central Information Commission.

4. The following issue were dealt by Delhi High Court:

- a. Whether the Information Commission has authority to direct an enquiry of this nature, when the Information Commission itself can make such an enquiry under Section 19(8) of the RTI Act.

5. Delhi High Court observed that,

"5 ..... A careful perusal of sub section 8 of Section 19 would show that the Commission has the power to require the public authority to take any such steps as may be necessary to secure compliance with the provision of the act. Such steps could include the steps specified in clause (i) to (iv) but the sub section does not exclude any other steps which the Commission may deem necessary to secure compliance with the provisions of the Act. In other words, the steps enumerated in clause (i) to (iv) are inclusive and not exhaustive of the powers of the Commission in this regard".



The High Court of Delhi concluded that the Information Commission has power to direct disclosure of information provided, it is not exempted from such disclosure. High Court further concluded that the Information Commission has jurisdiction to direct inquiry into the matter, wherever it is claimed by the Public Information Officer that information sought by the applicant is not traceable/ not readily traceable/not currently traceable etc. The High Court further concluded that, even in cases where Public Information Officer takes a plea that the information sought by the applicant was never available with the Government but, the Commission on the basis of the material available to it forms a prima facie opinion that the said information was in fact available with the Government, it would be justified for the Commission to direct an enquiry by a responsible officer of the department/ office concerned, to look into the matter deeply and verify whether such information was actually available in the records of the Government at some point of time or not. The Court further ordered that it would also be open to the Commission to make an enquiry itself instead of directing an enquiry by the department/office concerned. It was left to the Commission to decide whether in the given facts and circumstances, such an enquiry should be done by the Commission itself or by directing an officer of the department/office to do so. The Court had further laid down the guidelines to be followed in cases where the information sought by the applicant is not made available to the applicant.

6. Government after careful examination of the matter, hereby orders that in relation to the situation where the records are not traceable/ not readily traceable/not currently traceable; etc.;

- a. A thorough attempt needs to be made to search and locate the information sought by the applicant, wherever it may be available;
- b. If despite a thorough search and enquiry made by Responsible officer, it is concluded that information sought by the applicant cannot be traced or was never available with the Government or has been destroyed in accordance with the rules of concerned department, that the Public Information Officer concerned would be justified in expressing his inability to provide the desired information. Public Information Officer, while expressing his inability to provide the desired information, shall record in his order the steps taken by him to locate and furnish the information, sought by the applicant;
- c. In cases, where it is found that desired information, though available in the records of the Government at some point of time, cannot be traced despite best efforts made in this regard, the department concerned must necessarily fix the responsibility for the loss of record and take appropriate departmental action against the officers/officials responsible for the loss of record;

- d. A.P. Information Commission is competent under Section 19(8) of the RTI Act, to order an enquiry by an officer of the department/office. Such an enquiry report must necessarily fix responsibility, for the loss of record, if the record has been lost as concluded in the enquiry report, and it will be entirely within competence of Andhra Pradesh Information Commission to recommend for appropriate departmental action against the officers/officials responsible for loss of record.
- e. The officer of the department/office, for conducting such an enquiry, as ordered by A.P. Information Commission, must not be below the rank of:
- i) Additional Secretary/Joint Secretary/Deputy Secretary in case of Secretariat Department
  - ii) Additional Director/Joint Director/Deputy Director/Additional Commissioners/Joint Commissioners/Deputy Commissioner or equivalent ranks, in case of Heads of Departments
  - iii) District Revenue Officer in case of Collectorates in the State.
  - vi) Chief Executive Officers of Zilla Parishad, in respect of Panchayat Raj Offices in the districts.
  - v) Regional Officers, in case of such of the Public Information Officers of the offices in the Districts, which falls within the jurisdiction of such regional Officers.

7. A copy of the order of the High Court, dated.13.9.2013 is enclosed herewith for further guidance to all Heads of Departments, Appellate Authorities/Public Information Officers/Assistant Public Information Officers etc.

Dr.P.K.MOHANTY  
CHIEF SECRETARY TO GOVERNMENT

To  
All the Special Chief Secretaries/Principal Secretaries/Secretaries  
in A.P.Secretariat.

Copy to:

P.S. to Chief Secretary to Government.  
P.S.to Principal Secretary to Government  
G.A.(GPM&AR)Deptt.  
SF/SC.

//FORWARDED::BY ORDER//

  
SECTION OFFICER.

No. 14504 (SP) 2013  
**HIGH COURT MATTER  
(RTI RELATED)**

F. No. 8(1)/2013-CC  
Government of India  
Ministry of Tourism  
(RTI Cell)



C-1, Hutments,  
Dalhousie Road,  
New Delhi-110011  
Date: 10.10.2013

**OFFICE MEMORANDUM**

**Subject: Judgment of the Hon'ble High Court of Delhi in the matter of [W.P. (C) 3660/2012] -- in respect of Right to Information Act, 2005.**

In the matter of W.P. (C) 3660/2012 the Hon'ble High Court of Delhi has directed the Ministry of Tourism to circulate its judgment on this petition to all the CPIOs/PIOs of the Govt. of India and other Public Authorities for information and guidance) Accordingly a copy of the above said judgment is attached herewith for information and guidance of CPIOs/PIOs of the Govt. of India and other Public Authorities.

2. The Ministries Departments of Govt. of India and other Public Authorities are requested to circulate the above said orders of the Hon'ble High Court to all the Public Authorities under their administrative control for information and guidance.

(S.K. Chakrabarty)  
Deputy Secretary (RTI)

1. The Secretaries of all Ministries/Departments of Govt. of India.
2. Union Public Service Commission/Lok Sabha Secretariat/Rajya Sabha President's Secretariat/Vice-President's Secretariat/Prime Minister's Office/ Planning Commission.
3. Staff Selection Commission, CGO Complex, Lodi Road, New Delhi.
4. Office of the Comptroller & Auditor General of India, 10, Bahadur Shah Zafar Marg, New Delhi.
5. Central Information Commission/State Information Commissions.

Copy to: Chief Secretaries of all the States/UTs.

The guidelines contained in the Annexure apply *mutatis mutandis* to the public authorities under the State Governments/UTs also. Accordingly the State Governments/UTs may like to issue similar guidelines for their public authorities also.

(S.K. Chakrabarty)  
Deputy Secretary (RTI)

Chief Secretary  
18 OCT 2013  
No.....

<b>GAD</b>
No. 32481
Date 21.10.2013
Section GPM & AR
Signature

SP  
F.D. 084786297 (w)  
SP/Chief Secretary  
Tourism Dept.  
08/10/13  
SOM  
AR  
CCP  
18/10/13  
506  
14 OCT 2013

GI  
To  
18/10/13  
cc.  
Dy. Secy  
P.I. met. mt.  
with

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of Decision: 13.09.2013

+ W.P.(C) 3660/2012 & CM 7664/2012 (stay)

UNION OF INDIA

..... Petitioner

Through: Mr. Neeraj Chaudhari, CGSC, Mr. Akshay  
Chandra and Mr. Ravjyot Singh, Advs.

versus

VISHWAS BHAMBURKAR

..... Respondent

Through: respondent in person

**CORAM:**

**HON'BLE MR. JUSTICE V.K.JAIN**

**JUDGMENT**

**V.K.JAIN, J. (ORAL)**

The respondent filed an application on 14.5.2011 with the PIO in the Ministry of Tourism, PSW Division, seeking an authenticated photocopy along with the file notings of the Project Report for Development of Ayurvedic Health Resort and Herbal Garden at Vagamon, which was submitted by the Department of Tourism, Government of Kerala in December, 2005, and was bearing file number 426/D(CN) dated 20.02.2006.

2. In his reply, the PIO stated that the said project report had not been received in the Ministry of Tourism. Being dissatisfied with the reply furnished by the PIO,

the respondent preferred an appeal before the First Appellate Authority. The following was the order passed by the First Appellate Authority:

"The noting initials on the cover page of the Project Report produced by Shri Bhamburkar suggest that the Report was received in MOT. However, since it is only a photocopy, its authenticity cannot be taken for granted. CPIO & Asstt. DG (PSW) is directed to make a thorough search for the said Project Report and records pertaining to its receipt and movement in the Ministry. If the Report is traced, its authenticated copy will be supplied by the CPIO to the applicant. If the Report is not traceable, but records are found which confirm that the Report was received in the MOT, a report may be lodged with Police regarding the missing documents. An intimation to this effect may then be conveyed to the applicant by the CPIO. In case neither the Project Report nor any records of its receipt in Ministry are available, the applicant may be so informed by the CPIO. Action has to be taken within 15 days".

3. Being still dissatisfied, the respondent preferred a second appeal before the Central Information Commission. During the course of hearing before the Commission, the appellant produced a photocopy of a report purporting to be signed by Department of Tourism, Government of Kerala in December, 2005. The aforesaid report purported to be signed by various officials. The PIO confirmed that the signatures of the then Joint Secretary Mr. Amitabh Kant and Director Mrs. Leena Nandan. She, however, stated that there was no trace of the said Report in the Ministry nor any other relevant papers were available to indicate the presence of such a report. The Commission, therefore, directed Secretary, Ministry of Tourism to inquire into the matter and send his report to the appellant and the Commission. In this regard, the Commission observed that either the PIO or some other officer could be hiding the information or the report being submitted could be forged or it could be a conspiracy by which the report and all associated papers



were taken away from the Government. Being aggrieved from the order of the Commission, the Union of India is before this Court by way of this writ petition.

4. Vide an interim order, this Court directed the petitioner to place on record the fact finding report of the Ministry of Tourism, Government of India and also directed that copy of the report be provided to the respondent. A perusal of the said report would show that the officer who conducted the said inquiry reported that there was no documentary record in the Ministry to show that the original report was received in the year 2006. He concluded beyond reasonable doubt that the original project documents on the subject matter was not available in the Ministry of Tourism. However, the said report does not indicate that any attempt was made to contact the then Joint Secretary (T) and Director (T) whose signatures on the photocopy of the report were admitted by the PIO before the Commission, to find out when, where, and in what circumstances they had signed the documents photocopy of which was produced before the Commission. In my view, it was incumbent upon the officer who conducted the inquiry into the matter to contact the above referred officers and inquire from them about the aforesaid report, before taking the final view in the matter. There is no explanation at this stage as to why no such attempt was made. The impression which I get in these circumstances is that the petitioner somehow wants to avoid a proper inquiry in terms of the directions given by the Commission.

5. The learned counsel for the petitioner assailed the order of the Commission primarily on the ground that the Right to Information Act does not authorize the Commission to direct an inquiry of this nature by the department concern, though the Commission itself can make such an inquiry as it deems appropriate. Reference in this regard is made to the provisions contained in Section 19(8) of the Act. A careful perusal of sub section (8) of Section 19 would show that the Commission has the power to require the public authority to take any such steps as may be

necessary to secure compliance with the provisions of the Act. Such steps could include the steps specified in clause (i) to (iv) but the sub-section does not exclude any other step which the Commission may deem necessary to secure compliance with the provisions of the Act. In other words, the steps enumerated in clause (i) to (iv) are inclusive and not exhaustive of the powers of the Commission in this regard.

6. The Right to Information Act is a progressive legislation aimed at providing, to the citizens, access to the information which before the said Act came into force could not be claimed as a matter of right. The intent behind enactment of the Act is to disclose the information to the maximum extent possible subject of course to certain safeguards and exemptions. Therefore, while interpreting the provisions of the Act, the Court needs to take a view which would advance the objectives behind enactment of the Act, instead of taking a restrictive and hyper-technical approach which would obstruct the flow of information to the citizens.

7. This can hardly be disputed that if certain information is available with a public authority, that information must necessarily be shared with the applicant under the Act unless such information is exempted from disclosure under one or more provisions of the Act. It is not uncommon in the government departments to evade disclosure of the information taking the standard plea that the information sought by the applicant is not available. Ordinarily, the information which at some point of time or the other was available in the records of the government, should continue to be available with the concerned department unless it has been destroyed in accordance with the rules framed by that department for destruction of old record. Therefore, whenever an information is sought and it is not readily available, a thorough attempt needs to be made to search and locate the information wherever it may be available. It is only in a case where despite a thorough search and inquiry made by the responsible officer, it is concluded that the information



sought by the applicant cannot be traced or was never available with the government or has been destroyed in accordance with the rules of the concerned department that the CPIO/PIO would be justified in expressing his inability to provide the desired information. Even in the case where it is found that the desired information though available in the record of the government at some point of time, cannot be traced despite best efforts made in this regard, the department concerned must necessarily fix the responsibility for the loss of the record and take appropriate departmental action against the officers/ officials responsible for loss of the record. Unless such a course of action is adopted, it would be possible for any department/ office, to deny the information which otherwise is not exempted from disclosure, wherever the said department/ office finds it inconvenient to bring such information into public domain, and that in turn, would necessarily defeat the very objective behind enactment of the Right to Information Act.

8. Since the Commission has the power to direct disclosure of information provided, it is not exempted from such disclosure, it would also have the jurisdiction to direct an inquiry into the matter wherever it is claimed by the PIO/CPIO that the information sought by the applicant is not traceable/ readily traceable/ currently traceable. Even in a case where the PIO/CPIO takes a plea that the information sought by the applicant was never available with the government but, the Commission on the basis of the material available to it forms a prima facie opinion that the said information was in fact available with the government, it would be justified in directing an inquiry by a responsible officer of the department/ office concerned, to again look into the matter rather deeply and verify whether such an information was actually available in the records of the government at some point of time or not. After all, it is quite possible that the required information may be located if a thorough search is made in which event, it could be possible to supply it to the applicant. Fear of disciplinary action, against

1.2

the person responsible for loss of the information, will also work as a deterrence against the willful suppression of the information, by vested interests. It would also be open to the Commission, to make an inquiry itself instead of directing an inquiry by the department/ office concerned. Whether in a particular case, an inquiry ought to be made by the Commission or by the officer of the department/ office concerned is a matter to be decided by the Commission in the facts and circumstances of each such case.

9. In the case before this Court, as noted earlier, the PIO, who appeared before the Commission and admitted that the photocopy of the report made available to the Commission was signed by the concerned Joint Secretary and Director at the relevant time. Prima facie, they would have signed the documents only if they had received either the original report or its copy. The endorsement made on the cover of the documents would show that the report/ copy on which endorsement was made was signed by the Secretary, Tourism, Government of Kerala. Had a thorough inquiry been made by inquiring from the concerned officer to find out as to where, when and in what circumstances they had signed the documents, it could have been possible to locate the report in the records of the government.

10. For the reasons stated hereinabove, I find no merit in the writ petition and the same is hereby dismissed. The interim order dated 1.6.2012 stands vacated. In my view, the inquiry conducted by the petitioner in compliance of the order passed by the Commission on 17.4.2012 was not at all satisfactory. It is, therefore, directed that a thorough and meaningful inquiry in terms of the provisions of the directions of the Commission be carried out by an officer not below the rank of a Joint Secretary to the Government within eight weeks from today and a copy each of the said report shall be provided to the Commission as well as to the respondent before this Court.

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11. The petitioners are directed to circulate a copy of this order to all the CPIOs/PIOs of the Government of India and other Public Authorities, within four weeks for information and guidance.

There shall be no orders as to costs.

V.K. JAIN, J

SEPTEMBER 13, 2013/*rd*