

CENTRAL INFORMATION COMMISSION

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Central Information Commissioner

CIC/ALDMU/A/2017/102135

Dinesh Kumar Kesarwani v. PIO, Allahabad Museum

RTI	:	25.05.2016
FAO	:	30.07.2016
Second Appeal	:	07.01.2017
Hearing	:	13.04.2017
Appellant	:	Present
Public authority	:	Shri Ajay Kumar, CPIO Dr. Rakesh Chandra Mishra, ACPIO
Decided on	:	24.04.2017

FINAL ORDER

FACTS:

1. The appellant in his RTI application sought information about recruitment of the collector of the museum along with his recruitment letter; the person appointed and the date of the interview along with the place and the number of people in the panel along with their details; under which rule the annual performance report of the museum was given etc through twelve points. The CPIO gave point-wise information. Being aggrieved he filed first appeal, FAA gave explanation to the reply given by the CPIO. Being dissatisfied, the appellant approached this Commission.

Decision :

2. The appellant stated that the information given was incomplete and misleading. The CPIO submitted that point-wise information was provided to the appellant on 21.06.2016. Further, the CPIO added that the appellant have filed abundant RTI applications before the Allahabad Museum and the questions that were asked, were of no relevance to the reality. That this appellant has caused so much trouble to the respondent authority that the respondent authority are finding it real hard to carry on their day-to-day activities, as stated by the CPIO.

3. The CPIO stated that the appellant has filed first appeal before Director, Allahabad Museum, Allahabad requesting that he had not been given information on point no. 2 to 6; he has not been given the copies of rules-regulations etc. as sought for on point no. 7 to 12 in his RTI application by the CPIO. The first appellate authority after going through the appeal, disposed of by stating that he has already filed writ petition no. 22515/2014 and 49414/1999 in the Hon'ble High Court of Allahabad and the same is still pending adjudication. Hence the information desired by him at point no.1 to 9 were not provided keeping in view Section 8(1)(h) of RTI Act, 2005. The FAA further added that the information desired at point no. 10 to 12 are concerned with the bye-laws of the Allahabad Museum Society which are available on the web site of the Museum and the same can be obtained it online.

4. The appellant when asked at the time of hearing stated that he is not in a state of mind to remember how many RTI applications he has filed before this respondent authority, this is a lame and lethargic way of response which the Commission admonishes for the same. When pressed and sought for a specific number, he still did not leave his stance despite being admonished, his response came with an imaginary number that till date he has filed around 400-500 RTI applications. The respondent authority submitted before the Commission that this appellant have filed 47 cases before various District Court, High Court and Supreme Court of India in order to thwart the *modus operandi* of the Allahabad Museum.

5. It has come to the notice of the Commission that Shri Dinesh Kumar Kesarwani is a habitual and a disgruntled person who keeps filing multiple RTI applications. This has to be discouraged as such RTI applications will impede the process of inquiry.

6. 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 person.

7. 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.

RTI: Not a rendezvous of disgruntled elements

8. 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

9. 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.

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 re-petition for information like Section 11 of Code of Civil Procedure, the universal principle of civil justice 'res judicata' will certainly apply and the repeated requesta can be denied. Two Latin maxims form the basis of this rule, they are:

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

12. 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.

13. 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.

14. 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

15. 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:

16. 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 Shri 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."

17. 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."

18. 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:

19. 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 fulfil 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."

20. 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

25. 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

26. 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

27. 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 after redacting personal information, if any. The Commission also recommends exhibiting such information in their notice board at the entrance or at any conspicuous place in their office to prevent repetition. The entire information about the repeated RTI questions by appellants, and the documents given by the Public authority, etc. also may be kept in the public domain. The Commission records its admonition against such misuse.

Sd/-

(M. Sridhar Acharyulu)
Central Information Commissioner

Authenticated true copy

(Dinesh Kumar)
Deputy Registrar

Copy of decision given to the parties free of cost.

Addresses of the parties:

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