

CENTRAL INFORMATION COMMISSION

Block IV, 5th Floor, Old JNU Campus

New Delhi 110067

Appeal No.CIC/AT/A/2006/00074 dated 21.4.'06

Appeal No.CIC/WB/A/07/00679 dated 22.5.'07

Complainant/Appellants:

Mrs. Guninder Kaur Gill
Shri Prabhakar, DCP EOW

Respondents:

Shri Prabhakar, DCP EOW
Shri Jai Parakash APIO
Smt. Bimla Maken, ADJ

Date of Hearing:

31.07.2007

Date of Decision:

02.08.2007

Facts:

By an application of 29-12-'05 Ms. Guninder Gill of Safdarjung Enclave, New Delhi applied to the Additional Commissioner Police (Crime) Delhi Police Hqrs. seeking information on 3 sets of requests:

“1. In the charge sheet submitted by the Crime Branch in the above court the Crime Branch had taken to investigate the role of Deutsche Bank to determine their complicity in the crime in question and to investigate that angle further as some discrepancies with respect to the statement of Deutsche Bank were noted. (“Correspondence of the lawyers of Deutsche Bank with accused BN Singhvi even after the said full and final settlement had arrived at remain unexplained. Clarification of these points may be sought from the bank in due course”)

Hence, under the RTI Act please inform to the undersigned:

- i. Was any investigation conducted as stated in the charge sheet to ascertain the complicity of DB?
- ii. If yes, what were the results?

2. Vide the undersigned's letter dated 20.06.05 addressed to Jt CP (Crime), it was mentioned that the procedure in German Courts is that the claimant or representative can also sell the claim in the third party's name-in this regard- the undersigned requested the Crime Branch to re-write to Deutsche Bank to obtain the written statement of their German HO officials on this point.

Hence under the RTI please inform the undersigned:

- i. Was any clarification sought by the Crime Branch on this point from Deutsche Bank German officials?
- ii. If so, a certified copy of the letter and the reply of the Deutsche Bank officials be provided.

3. As per the Indian Evidence Act, a statement of the German officials regarding filing of a case in Germany by BN Singhvi (accused is required to be filed in the trial court. The undersigned, hence requested as per letter dated 22.08.05 addressed to Joint Commissioner (Crime) to request Kanga & Co solicitors, who had replied vide letter dated 25.04.05 on behalf of Deutsche Bank to provide a copy of the statement of the German officers of Deutsche Bank as they were holding.

Under the Right to Information Act please inform me:

- i. Did Crime Branch write to Kanga & Co/Deutsche Bank to obtain the statements of the German officials of Deutsche Bank held by them?
- ii. If so, a copy of the letter be certified and provided to the undersigned.
- iii. A copy of the reply of Deutsche Bank/Kanga & Co. in this regard be certified and provided to the undersigned.

The said requests led to the following questions:

“Under the Right to Information Act, please inform the undersigned:

1. If any investigation was done by the Crime Branch with respect to these allegations concerning Sh Rajat Singhvi and Smt Asha Singhvi or not?
2. If yes, what was the conclusion of the investigation?
3. Certified copy of report/findings/investigation of Crime Branch be provided.
4. Were any specimen signatures of Sh Rajat Singhvi and Smt Asha Singhvi obtained for purposes of examination and comparison with the fabricated documents?
5. if yes, certified copies of the same to be supplied to undersigned including copy of the FSL expert opinion with respect to the same.
6. The charge sheet made by the Crime Branch relies solely on the reply of certain officials of Deutsche Bank India who have

clarified that they have based their reply solely on some records provided by their Singapore Branch vide their letters dated 6.12.05 and 25.04.05.

Under the Right to Information Act, kindly inform me:

- i) Did the Crime Branch send any letter of rogatory to Deutsche Bank in Germany to obtain the answers in a format that is legally admissible as evidence as per the Indian Evidence Act?
- ii) If yes, certified copy of the same and reply thereof be provided to the undersigned.
- iii) If not, what is the legal basis of the administrative decision not to send the letter rogatory in terms of the Indian Evidence Act?
- iv) What is the evidential value of the statement of Deutsche bank Mumbai officials based on records solely of Deutsche Bank Singapore Branch with respect to filing of a case against Deutsche Bank in Germany? Would it be considered as "proved", "disproved or "unproved" as per the Indian Evidence Act?
- v) In this regard, if the crime branch has taken any legal opinion of the Public Prosecutor, the same be supplied.

On complaining about the role of Sh. Rajat Singhvi, son of accused in the above crime, the undersigned had requested the Crime Branch to seize the computer used in the office of BN Singhvi and send it for analysis.

Under the Right to Information Act, kindly inform me if the Crime Branch sent the hard disk of the computer used in the office of BN Singhvi for analysis to the Forensic Science Laboratory as requested?

- i) if yes, a certified copy of the report may be provided to the undersigned.
- ii) A certified copy of the dump of the hard drive may also be provided to ascertain if the accused, BN Singhvi engaged in any correspondence with Deutsche Bank, their solicitors Messrs Rajah or any third party negotiating on behalf of Deutsche Bank.

1. The undersigned vide her letter dated 26.09.05 addressed to Jt. CP (Crime) had requested the Crime Branch

To file a certified copy of the correspondence with Deutsche Bank in the trial court to enable the complicity of Deutsche Bank to be established.

Under the Right to Information Act-please provide with the following information:

- i) Was the correspondence with Deutsche Bank as requested filed by the Crime Branch in the trial court?
- ii) If not kindly provide the basis of the administrative decision, not to do so.

2. Vide letter dated 21.09.04 addressed to Jt. CP (Crime), the undersigned had mentioned that the accounts and assets of BN Singhvi be frozen.

In this regard the following information be supplied under the RTI Act to the undersigned.

- i) Whether any account and assets of BN Singhvi was frozen?
- ii) If yes, details thereof.

3. Vide letter dated 16-8-05 the undersigned had requested that the Bar Council of Maharashtra be intimated where accused BN Singhvi is registered as advocate vide membership No.560, to take appropriate action against him.

4. Under RTI Act kindly inform the undersigned:

- i) Whether Bar Council of Maharashtra was intimated by the Crime Branch or not?
- ii) If yes, what action has the Bar Council of Maharashtra taken? Certified copies of the same be provided.”

In his response of 19-1-2006 Shri Muktesh Chander stated as follows:

“It is to inform you that case FIR No. 395/2004 u/s 406/409/420/467/468/471 IPC PS Connaught Place was registered on your complaint. After investigation of the case, charge sheet was filed in the Hon’ble trial court of MM, Patiala House, where the case is pending trial and is at prosecution evidence stage. The next date of hearing in the case is fixed for 31-1-2006. The EOW has informed that throughout the investigation of the above FIR, you were kept informed of the developments in investigation.

The information/documents sought for pertaining to the above case fall under the "Exemptions from disclosure of information. Thus, the information/documents sought for by you cannot be provided u/s 8 (1) (h) of the RTI Act 2005.

Against this denial you may file an appeal to the Appellate Authority i.e. Jt. Commissioner of Police, Crime, Delhi Police Hqrs. IP Estate, New Delhi within the stipulated time as per provisions in the above said Act, if so desired."

In short, the PIO has sought protection of Section 8 (1) (h) in refusing disclosure of the information sought. Appellant Ms. Guninder Gill therefore, moved her first appeal on 9-3-2006 before the Jt. Commissioner, Police (Crime) PHQ New Delhi in which she has disputed that the information sought is exempted from disclosure u/s 8 (1) (h) arguing as follows:

"Firstly the information asked for by the appellant/complainant is not covered under this clause as investigation as per EOW is over the moment they filed the charge-sheet in the Court, it is also not covered under the second clause of the prosecution of offenders as the accused is being prosecuted in the trial court where the examination of the complainant is underway and is fixed for 31-3-2006, for further examination and the information asked for by the appellant/complainant would rather help the appellant to get the accused prosecuted properly and also to ensure that the role of the other accused persons is brought to the attention of the concerned court."

She also pleaded that the denial of the information sought would in fact help the accused Shri B.N. Singhvi to "get away with the crime".

The appellate authority Shri Ranjit Narayan, Jt. Commr. Of Police, Crime had observed as follows:

"With regard to the investigation in respect of Shri Rajat Singhvi, comments have already been given above. As regards seizure of computers from the office/residence of the accused, it may be mentioned that two computers were seized during investigation. Hard disk of the said computers along with the questioned writing/material were sent to GEQD, Hyderabad for comparison. **Opinion of GEQD has since been received which had positively supported the case of Prosecution.**¹ The said

¹ Emphasis ours

GEQD's opinion and the connected records are being submitted in the court through supplementary challan.

It has already been stated above that during investigation no evidence to establish the complicity of the Deutsche Bank officials in the commission of the crime was noticed."

However, he concluded by stating as follows:

"All the details/documents sought for pertaining to the above case cannot be provided under the exemption clause 8 (1) (h) of the RTI Act, 2005."

Aggrieved by this decision Ms. Gill has moved her second appeal before us on 19-4-06 in which her prayer was as follows:

"In the light of above facts and grounds, it is, therefore, most respectfully prayed that the order dated 21-3-06 of Shri Ranjit Narayan, Jt. Commissioner of Police (Crime) Police Hqrs, New Delhi may kindly be struck down and they be directed to provide the information asked for in the enclosed application and appeal, to the appellant/complainant at the earliest."

In response to the appeal notice Shri Ranjit Narayan through his letter of 17-5-'06 responded to each of the grounds of appeal, but re-asserted the application of Section 8 (1) (h) in this case while stating that "a speaking order was passed addressing the possible queries of the appellant vis-à-vis the referred case."

On this basis the appeal was heard on 8-6-06 by a double Member Bench consisting of Information Commissioner Shri A.N. Tiwari and Information Commissioner Prof. M.M. Ansari who in a decision notice dated 8-6-06 had directed as follows:

"Upon hearing the arguments in the case we notice that there is a certain lack of clarity regarding what exact information the appellant now needs after what she has already received from the public authority through its CPIO. The appellant may, therefore, send a clarificatory letter to the CPIO listing the exact information she requires. The CPIO shall process the appellant's communication within 10 days of its receipt as per the provisions of the RTI Act and make a suitable response."

Accordingly, in her letter of 4-8-06 Ms. Guninder Gill detailed the information that she has sought to Shri Mukhtesh Chander, Addl. Commnr. Crime and CPIO categorized under the following heads:

- i) Hard drive
- ii) Deutsche Bank
- iii) Other Accused

To this she received a response from Addl. Commnr. Crime and PIO in which although some information has been given under each head, it is stated that the GEQD, Hyderabad's opinion, to whom the hard discs have been sent, has been submitted in the learned Trial Court and hard discs stand deposited in the Police Station Malkhana. However, information sought has again been argued to be exempt u/s 8 (1) (h) of the RTI Act under all three heads. Pleading non-compliance and therefore contempt towards orders of the Central Information Commission by the Crime Branch of Police Hqrs. Ms. Guninder Gill moved a further petition before us on 13-9-'06 in which her prayer repeated the request made in her first appeal. She followed this up with another letter of 15-12-'06 accusing respondents of misrepresenting the facts before the Commission and of an effort at intimidation. In the meantime Information Commissioner Shri A.N. Tiwari constituting the bench hearing the case reported through a note on file on 11-6-2007 as follows:

"There is no doubt that the behavior of the appellant in this case was offensive and contemptuous. In the absence of specific powers of the Commission to deal with such outbursts of anger and offensive behavior by appellants during hearings, no precise action could be taken at that moment against the appellant, or even later. I was not inclined to initiate any action, which would later on turn out to be indefensible, or could even be embarrassing to the Commission.

After careful consideration, I have decided to desist from pursuing any action against the appellant. However, I would like to that this appeal is better heard by another Bench, preferably a Division Bench, on a date considered convenient to the Bench."

Accordingly since the Chief Information Commissioner constitutes the present Bench for Delhi Police a full bench was constituted for hearing this case

comprised of Chief Information Commissioner Wajahat Habibullah, Information Commissioner Prof. M.M. Ansari and Information Commissioner Mrs. Padma Balasubramanian.

In the meantime, we were approached by Shri Prabhakar, DCP & PIO EOW Crime, Delhi with an appeal against the order passed by Smt. Bimla Makin, A.D.J. in the office of District & Session Judge, Delhi and First Appellate Authority under the RTI Act: The appellant appeared personally and he was heard by the CIC on 5-7-07. The appellant has prayed staying of an impugned order passed by the FAA.

In this appeal petition, the appellant had submitted as follows:

- i) "Subject matter being a hard disk has been seized in connection with a criminal case and that the trial court has rejected giving a copy of the said hard disk.
- ii) RTI application in the instant case was moved before the Director of Prosecution and that neither the Director of Prosecution nor the office of the District & Sessions Judge, Delhi, are the appropriate public authorities for entertaining the RTI application.

In regard to a similar matter, an appeal has already been pending before the CIC which was listed for hearing today by the Full Bench and the hearing has been adjourned at the request of appellant Smt. Guninder Gill."

In this case appellant has challenged the order dated 2-6-2007 passed by Ms. Bimla Makin, 1st Appellate Authority of the office of District & Sessions Judge under the RTI Act. The appeal was to be heard on 17-7-07 and notices to that effect were issued to the appellant as well as to the FAA. The appellant appeared again and produced a copy of the order passed by the FAA whereby the appellant had been directed to appear before the SHO, PS Sarojini Nagar on 13-7-2007 for the purpose of handing over copies of the hard disc that is the subject matter of appeal. The appellant had also submitted that if stay is not granted, the appeal petition filed by him will be rendered infructuous.

Under these circumstances, the Commission was satisfied that this is a fit case that justifies grant of a stay. Accordingly, it was ordered that the operation of the impugned orders dated 2-6-07 and 13-7-07 passed by the FAA shall remain stayed till the 2nd appeal submitted before this Commission is heard and decided.

Accordingly, both the cases were clubbed for a hearing on 31-7-2007. The case was heard by full Bench and following are present

Appellant:

Ms. Guninder Kaur Gill (observer in case No 000679)

Respondents:

Shri Prabhakar, DCP/EOW, PIO (appellant in case No 00679)

Shri Rajinder Singh Ghumman, DCP, Legal Cell (-do-)

Shri R.S. Chauhan ACP/IO, EOW Crime (-do-)

APIO, Patiala House Court

Shri Ajit Singh, APIO/Supdt, District court, Tis Hazari, Delhi

Mr. Iqbal Khan, Sr. Asstt, Tis Hazari Delhi

Shri A.K. Gupta, PIO of Director of Prosecution

Observers:

Mr. M.K. Tyagi,

Ms. Jasbir Gill

Submissions by Appellant:

Opening the argument, the appellant Ms. Guninder Gill raised strong objection to the presence of Shri Prabhakar, DCP EOW and said that the matter has already been decided and disposed of by the Central Information Commission and as per the said order; the information had to be provided within 10 days of the order. The duty of the police is to assist the citizens. Appellant had suffered a huge theft of money, information about which is contained in the hard disk that is in the Malkhana of PS Sarojini Nagar in the form of case property. Unless the case property is disclosed, she would not be able to get her money.

The appellant said when the order of the appellate authority was not complied, she had to file contempt petition. She therefore argued that PIO has a

personal liability and he has to appear himself rather than DCP Prabhakar EOW or DCP (Law) PHQ appearing on his behalf.

Ms. Gill produced a copy of a note addressed by Shri Shantanu Sen, OSD, Public Grievances to the Lieutenant Governor, Delhi addressed to the Commissioner of Police Delhi dated 20-6-07, which concludes as follows:

“Shri R.S. Chauhan ACP declaring himself as “Crl. (Criminal) Counsel, GNCT of Delhi” has filed a criminal writ against this order in the Delhi High Court and obtained interim *ex parte* stay. He appeared himself in the Hon’ble High Court. The State Govt. consent in a State Appeal is sacrosanct. This prima-facie could be misconduct and after due examination and deliberation, a report may be sent for LG’s perusal.”

Ms Gill therefore argued that Mr. Prabhakar DCP EOW or Shri R.S. Ghumman, DCP (Law) are not entitled to represent the State as they have no authority to be present. They have been continuously disregarding the orders of the Director of Prosecution as well as of the LG of Delhi. These officers having been rejected by the High Court should not be entertained by the CIC. She wanted them to show their vakalatnama for the appearance on behalf of the State.

Appellant Ms. Guninder Gill said that they had submitted the report before the trial court only after one and a half years of receiving the same. As per section 25 Cr.P.C. once challan is filed in the court, the jurisdiction of the investigating agency is over. The respondent opposed her application for information before the court but the public prosecutor who represents the State supported her application before the court. Filing of 261 pages of the hard disc before the trial court as mentioned in the order of the Metropolitan Magistrate is only a misstatement by respondents. The prosecution is not relying on 261 pages but on all the 3 hard discs in their entirety. The police is only being recalcitrant saying that the prosecution is relying only on 261 pages.

Appellant submitted that the respondents have only on 13.3.2007 at 5 PM rushed to the Malkhana and sent the hard discs hurriedly to Hyderabad so that the appellant should not get copy of the hard discs. She also objected to the respondents saying that they would place before the trial court “only documents relevant to the case”.

Appellant submitted that on the asking of the respondents, she approached the trial court where instead of supporting the appellant, they opposed her. She also approached two agencies for copies of evidence at any stage of trial under the High Court Rules. She only wanted electronic documents of the hard discs and not printouts because in the electronic documents she could be sure that they had not been tampered with. Appellant said that therefore she is not asking for any case property. She is only asking for its copies in electronic form.

Appellant submitted that the Investigating Officer (IO) before depositing the case property in Malkhana should have taken permission of the Trial Court for doing so. The case property is now the property of the court and not the property of the respondents. She said that if the police wishes to keep an object in Malkhana, it has to apply to the court for permission and the permission is granted only on an indemnity being executed by the police to the effect that as and when the same is required by the court, it should be produced before it.

Appellant also raised objection as to why the police have removed the case property from Malkhana of PS Sarojini Nagar when there is order not to move the case property from the said Malkhana.

Submissions by Respondents:

To appellant’s argument regarding orders of the OSD , LG’s office Shri Ranjit Narain Jt Commissioner has responded through a letter of 18-7-07 in which he has addressed each of the questions placed before Lt. Governor and also requested Secretary to LG to look into the circumstances in which an official reference emanating the office of LG and addressed to the Commissioner of

Police came into the possession of Ms. Guninder Gill, which in his view was “to the detriment to the investigating agency and to the writ petition filed in the High Court by the investigating agency leading to dismissal on technical grounds”.

We observed that the respondents have continuously denied information to the appellant on the ground of 8(1) (h) of the RTI Act. Considering that the case was initiated on the basis of an FIR filed by appellant Ms Gill, respondents were asked to justify how 8(1) (h) applies in this case. In response respondents submitted that the information contained in 3 hard discs and 3 cases are registered against the same persons, B.M. Singhvi, Advocate. These properties belonged to B.N. Singhvi. If we open the seal and disclose the information to Ms. Guninder Gill, the only person who is going to be benefited will be the accused. In the process, the hard disc if opened may be destroyed and can spoil the prosecution case.

We asked the respondents that, if disclosing the contents of the hard disc would compromise the case of the appellant, then why did they not simply tell her so instead of denying information under 8(1) (h). Respondents submitted that firstly, the information sought was about giving of hard disc, later it was changed to a request for image of those hard discs. We had to send that hard disc to Hyderabad after formulating certain questionnaires and filed the same before the trial court.

Respondents submitted that Ms. Guninder Gill had already approached the trial court for the same information but the trial court had rejected her request. Prosecution relied only on 261 pages, which were report based on the questionnaire formulated by them. Even now, they do not know what exactly is contained in the hard disc. Ms. Guninder Gill subsequently engaged an Advocate B.N. Singhvi who misrepresented by showing certain forged documents and said that he was pursuing the matter in a German court and defrauded her of huge sum of money. The said B.N. Singhvi was arrested and has been in jail for 3 years now.

When asked that since the information was not held by respondents, why did they not transfer the same to the authority that held it, respondents said that they have no conflict with the Directorate of Prosecution but the disclosure of information would impede the prosecution.

Respondents further submitted that the Investigating Agencies do not take any order from the Directorate of Prosecution. In this connection, Shri Prabhakar PIO relied on the judgment of the Supreme Court in '**R. Sarala vs. T.S. Velu & ors.**' Reported in 2000 II AD (Cr.) SC 237 which held that

"The power of the Officer-in-Charge of the police station is subject only to the supervision of superior police officers in rank as envisaged in Section 36 of the Criminal Procedure Code. There is no stage during which the investigating officer is legally obliged to take the opinion of a Public Prosecutor or any authority, except the aforesaid superior police officer in rank."²

But the detailed judgment in this case also explained as follows:

"Investigation and prosecution are two different facets in the administration of criminal justice. The role of Public Prosecutor is inside the court, whereas investigation is outside the court. Normally the role of Public Prosecutor commences after investigating agency presents the case in the court on culmination of investigation. Its exception is that Public Prosecutor may have to deal with bail applications moved by the parties concerned at any stage. Involving the Public Prosecutor in investigation is unjudicious as well as pernicious in law. At any rate no investigating agency can be compelled to seek opinion of a Public Prosecutor under the orders of court. Here is a case wherein the investigator officer concerned is directed by the High Court to take back the case from the court whereas it was laid by him after completing the investigation and he is further directed to consult the Public Prosecutor and submit a fresh charge-sheet in tune with the opinion of the Public Prosecutor, is such a course permissible in law?"

Respondents submitted that they are here to help the complainant and not the accused. They will do every thing possible within the four walls of law to help

² Emphasis ours

Ms. Guninder Gill as they have already done. They have sent all the 3 hard discs to the Hyderabad laboratory on 17.7.'06 and are waiting for their print-out. Once they have received the printouts, they will decide what documents out of those printouts are relevant to the case and then they will produce the same before the trial court.

Respondents submitted that the appellant submitted her first application on 10th October, 2006. On 18th November, the then Directorate of Prosecution treated this application under the RTI Act and asked the appellant to deposit fees. PIO of the prosecution bifurcated the RTI request of the appellant and sent one copy to DCP, New Delhi and another to PIO of District Courts Tis Hazari, which cannot exercise the jurisdiction of an appellate authority over the jurisdiction of another public authority. He said that two parallel proceedings under the RTI Act cannot take place simultaneously at two places.

Shri Prabhakar clarified that the moment an item involved in a crime is seized, it becomes case property. Release order for this case property can be passed only by the trial court. This is no longer the property either of respondent or Director of Prosecutions. Respondents further submitted that the information asked by the appellant is contained in hard disc that is a case property that is kept in Malkhana as documents are kept as documents in judicial files.

Director of Prosecution was and is aware of the order of the trial court dated 16th October, 2006. The prosecution itself knows that once a case property is seized through seizure memo, neither the investigating Agency nor the Prosecution is owner thereof except the trial court. The Metropolitan Magistrate, New Delhi in his order dated 16-1-2006 has directed as follows:

“However, after hearing the submissions and going through the file I am of the view that she is not entitled to get the certified copies of the said Hard Discs as sought in the present application, as she is entitled only to the documents which are

relied upon by the prosecution whereas the alleged Hard Disc, recovered from the accused in some other matter, also contain some personal information of the accused.³ In the facts of the case the prosecution is relying upon a set of 259 computer generated pages technically stated as images of the in stored text of the Hard discs recovered whose copies have already been supplied to the complainant and thus she is not entitled to get more than that relied upon. Moreover the apprehension of the IO that the same may be corrupted during the whole process and it is quite risky to de seal the same unless the same is proved by the GEQD is justified.”

Respondents are holding this information for the trial court. The order passed by the APIO, Patiala House, therefore, constitutes contempt of the trial court.

Respondents submitted that APIO is not empowered to entertain RTI applications. He is to discharge only certain responsibility in the absence of the PIO. He himself says that he is not custodian of the case property. He therefore has no authority to direct the case property to be given to Ms. Guninder Gill.

Respondents further reiterated that neither they nor the Directorate of Prosecution has any power under the Cr.P.C. to decide the fate of the case property. He wanted the prosecution to cite one single precedent where the Directorate of Prosecution has asked the Investigating Officer to disclose case property to the complainant.

Arguments of Prosecution Branch, Patiala House:

Mr. Khan of the Prosecution Branch, New Delhi Courts, Patiala House submitted that the application of Ms. Guninder Gill was forwarded to them by the Directorate of Prosecution. One copy of it was sent to PIO of District & Sessions Court and another copy to DCP New Delhi District. It was thus sent to two Public Authorities. He cited the provisions of Sec 6 (3) the RTI Act, whereby if one Public Authority does not have the information sought, he forwards it to another Public Authority who holds that information. Therefore, this Public

³ Highlighted by us

Authority sent the request to APIO of the Trial Court, New Delhi Courts, Patiala House where the trial was being held. They also wrote to the *Ahlmad* of the court asking him that copy of the hard disc be prepared and supplied to the appellant. However, he did not supply the same. Instead, the *Ahlmad* said that hard discs are not deposited in the court and is still lying with the Malkhana. In this connection, Smt. Mamta Sehgal and DCP were also approached. They did not give this information to the appellant because they did not have this information.

APIO, Patiala House Court has not ordered disclosure but has observed that,

“In view of the above facts it is directed that a copy of this order along with copy of application dated 12-12-2006 be sent to Ms. Mamta Sehgal, Ld. Appellate Authority and the Ld. District & Sessions Judge, Delhi, **seeking further instructions/directions in the matter**. A copy of the order be also sent to Shri Paul, PIO, Dte. Of Prosecution and DCP/PIO, New Delhi District for information and further action under intimation to this office.”

PIO Directorate of Prosecution:

PIO, Directorate of Prosecution who was present in the hearing raised the following objections on a point of law: he referred to Section 19(1) of the RTI Act and submitted that the said section does not empower any PIO or APIO to file an appeal before the CIC and as per the said provision, it is only the aggrieved ‘person’ who is the information seeker who can file such appeal. He further submitted that if PIO or CPIO starts filing appeal before the CIC, the entire purpose of RTI Act will become infructuous.

Points:

- Respondents made no submission on the maintainability of their appeal. In fact, they were silent when the PIO, Prosecution referred to provisions of Section 19 of the RTI Act according to which only information seeker has the right to prefer appeal before the CIC.
- It was not specifically pleaded whether the case property can be disclosed to the appellant.

- The appellant also did not make submission on vacation of stay or compliance of the order of Smt. Bimla Maken.

The issues to be decided, inter-alia, are —

1. Whether the information sought by the appellant Ms. Guninder Gill falls under the exclusion clause of Section 8(1) (h) of the RTI Act?
2. Whether the petition moved before us by Ms Gill is to be treated as a further hearing of the appeal or as a contempt petition
3. Whether the CPIO, who represents a public authority has the authority u/s 19 (1) to move an appeal against the orders of an appellate authority of another public authority?

DECISION NOTICE:

Issue No.1:

It is quite clear that this is a prosecution initiated at the behest of appellant Ms. Guninder Gill. It is also clear that investigation has been completed and the matter is at the stage of prosecution. The judgment cited by respondents in support of their argument is “R. Sarla vs. T.S. Velu & Ors.” But the detailed judgment in this case also explained as follows:

“Investigation and prosecution are two different facets in the administration of criminal justice. The role of Public Prosecutor is inside the court, whereas investigation is outside the court. Normally the role of Public Prosecutor commences after investigating agency presents the case in the court on culmination of investigation. Its exception is that Public Prosecutor may have to deal with bail applications moved by the parties concerned at any stage. **Involving the Public Prosecutor in investigation is unjudicious as well as pernicious in law. At any rate no investigating agency can be compelled to seek opinion of a Public Prosecutor under the orders of court.** Here is a case wherein the investigation officer concerned is directed by the High Court to take back the case from the court whereas it was laid by him after completing the investigation and he is further directed to consult the Public Prosecutor and submit a fresh charge-sheet in tune with the opinion of the Public Prosecutor, is such a course permissible in law?”

This decision will apply quite understandably at the investigation level, but not at the level of prosecution. As explained by appellant in the hearing she needs to satisfy herself that the police is not seeking to cover up for the accused in this case as a result of suspicion having aroused for the reasons mentioned in her petition to the LG. **We can, therefore, find no grounds for respondents denying information sought to appellant on the basis of Section 8 (1) (h)** when she herself is the initiator of the prosecution and the director of prosecution agreeing that this is not the case. It will be clear from the above that this matter had been referred to GEQD, Hyderabad whose report had also been received. This was, in fact, made clear in the order of the First Appellate Authority on 21-3-06. We find however that as admitted by respondent in the hearing they have again sent the impugned document/discs to GEQD Hyderabad on 17-7-2007, after the issue of stay order by us at their request. Although, Shri Prabhakar, CPIO apologized for this contempt during the hearing this has led us to suspect the bonafides of the Delhi Police (Crime branch) in pursuing this case.

This brings us to the argument that the documents sought are the property of the court and moreover in light of the orders of trial court their disclosure will amount to contempt of court. They have contested the authority of the *Ahlmad* in stating that the information is not the property of the Court. Even if this argument is accepted, in that case the request for information should have been transferred to the trial court u/s 6 (3) (i). This has not been done. Instead respondents have repeatedly denied access to appellant Ms Gill on the grounds of Sec 8(1) (h).

The appellate authority under RTI in the office of the trial court has ordered disclosure on which respondents have not moved for contempt in light of their stand that the order was passed by Judge Ms Bimla Maken as appellate authority under RTI and not in her judicial capacity as Additional District & Sessions Judge. They have instead moved the Hon'ble High Court where their plea for stay has failed. We therefore see no reason to interfere in the orders of appellate authority Additional District & Sessions Judge Ms Bimla Maken. The

stay order 13.7.'07 is vacated. **The information sought by the appellant be made available to her as directed by appellate authority, Office of the District & Sessions Judge within 10 days of the date of issue of this decision notice under intimation to us.** As per 7 (6) this information will be provided free of charge

This disposes of issue no 1.

Issue No. 2

Appellant's case is that the Decision of 1.6.'06 by CIC was in her favour and information was to be provided to her within ten days of the date of the Decision of 1.6.'06. Therefore her petition is of contempt and certain individuals present have no right to appear in a contempt petition directed against specific individuals Shri Ranjit Narayan, Jt Commissioner (Crimes) and Shri Muktesh Chander Additional Commissioner Police (Crimes). We have perused the order cited which is quoted above. It only requires that the CPIO process appellant's communication within ten days of its receipt. That communication dated 4.8.'06 has in fact been responded to on 14.8.'06 well within the time limit postulated. The petition has therefore been treated as an extension of appellant Ms Gill's appeal, and it is in that context that the hearing is held. In that context it is open to CPIO to "seek the assistance of any other officer as he or she considers it necessary for the proper discharge of his or her duties" [sec 5(4)]. The CPIO was therefore within his rights to seek the assistance of those present as designated by the Commissioner of Police by Notification XXIV/29/SPL./C&T[AC-1]PHQ issued on 7.12.'06 read with Addendum of 19.12.'06. This issue thus stands disposed of.

Issue No. 3

The appeal No. CIC/WB/A/2007/00679 before us stands decided in light of the above decision. However, it raises a basic issue, which is whether a public

authority can appeal the decision of a PIO/Appellate Authority under the RTI Act. We have therefore proceeded to address this issue.

Section 19(2) recognizes the right of a **third party** to submit an appeal before the First Appellate Authority. Section 19(2) reads as under:

“19(2) where an appeal is preferred against an order made by a Central Public Information Officer or a State Public Information Officer, as the case may be, under section 11 to disclose third party information, the appeal by the concerned third party shall be made within thirty days from the date of the order.”

The definition of “third party” as given under Section 2(n) includes a Public Authority. Section 2(n) is reproduced as under:

“2(n) “third party” means a person other than the citizen making a request for information and includes a public authority.”

. Section 2(n) is a definition clause and definition clause under the Rules of Interpretation is one that defines a concept and insofar as that particular enactment is concerned, the meaning is applicable to the term wherever it is used in that enactment. Thus, the term “third party” wherever it occurs in the RTI Act shall *ipso facto* include a Public Authority. Over and above the definition of “third party” is an inclusive one, which makes it’s meaning wide and extensive.

. In this context, Section 11(1) is pertinent. Under Section 11(1), whenever a CPIO intends to disclose an information or record —

- (i) which relates to and has been treated as confidential by that ‘third party’; or
- (ii) which has been supplied by a third party and has been treated as confidential by that third party

the CPIO shall give a written notice to such third party of the request and of his intention to disclose the information.

. Section 19(2) confers a right on a Public Authority of preferring an appeal before the First Appellate Authority against the decision of CPIO. Thus, if the CPIO decides to disclose information that relates to a Public Authority and if the Public Authority has treated the information as confidential, it can submit an appeal before the First Appellate Authority under Section 19(2) of the RTI Act.

. The issue still remains as to whether a Public Authority can appeal against the decision of its own CPIO. In this context, the opening words of Section 19(1) are important. It says that **any person** can prefer an appeal who —

- (i) does not receive a decision within time specified; or
- (ii) is aggrieved by a decision of the CPIO**

It may be mentioned that the word `person' has not been defined in the Act but it is wide enough to include a Public Authority, which is a juristic entity and as such is a "person" in the eye of law.

The right of appeal is a legal right and is available to every aggrieved party to a proceeding and this right cannot be taken away unless law explicitly provides it.

Insofar as an appeal before the CIC is concerned, Section 19(3) of the Act refers, which reads as under:

"19(3) A second appeal against the decision under sub-section (1) shall lie within ninety days from the date on which the decision should have been made or was actually received, with the Central Information Commission or the State Information Commission;

Provided that the Central Information Commission or the State Information Commission, as the case may be, may admit the appeal after the expiry of the period of ninety days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time."

The opening words of the sub-section makes it clear that the 2nd appeal is against the decision passed by the First Appellate Authority and it can be preferred by any of the aggrieved parties. Issue No 3 is so disposed of.

Announced on 2.8.'07. Notice of this decision be given free of cost to the parties.

(Wajahat Habibullah)
Chief Information Commissioner
2-8-2007

(Padma Balasubramanian)
Information Commissioner
2-8-2007

(Prof. M. M. Ansari)
Information Commissioner
2-8-2007

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.

(L.C.Singhi)
Addl. Registrar
3-8-2007