

CENTRAL INFORMATION COMMISSION
Block IV, 5th Floor, Old JNU Campus
New Delhi 110067

Appeal No. CIC/OK/C/2008/00245

dated June 19, 2008

Name of the Appellant:	Shri Nusli Wadia, Mumbai.
Name of the Public Authority:	Ministry of External Affairs (MEA) South Block New Delhi-110011.
Date of Hearing	03.04.2008
Date of Decision	19.06.2008

FACTS OF THE CASE:

1. By an application of 6-6-2007 submitted on 12-6-2007 Shri Nusli Wadia of Mumbai sought the following information from the CPIO, MEA :-

(i) "documents, notes of meeting and file notes relating to or arising out of the letter dated July 06, 2001 sent by Mrs. Dina Wadia to the Hon'ble Prime Minister of India including notes of or documents relating to the discussion between the Hon'ble Prime Minister of India and the Hon'ble External Affairs Minister referred to in the letter no. 757/PSBPM/2001 dated July 13, 2001;

(ii) copies of all documents, notes of meetings, file notings, including inter-ministerial notes, advice sought or given including all approvals, proposals, recommendations from the concerned ministers/ICCR including those to and from the Hon'ble Prime Minister;

(iii) minutes of meetings with the Hon'ble Prime Minister and any other Ministers/Officials on the matter; and

(iv) Opinions given by any authority or person, including legal advice."

2. Initially, the CPIO Shri A.K. Nag, JS, (Welfare & Information) informed the applicant that the information is being collected and sought more time to provide the information. On still not having received the information sought, however, Shri Wadia made his first appeal to Shri Ajai Chowdhary, AS (PP). The First Appellate Authority vide his orders dated 22-8-07 directed as follows:

“The CPIO, Ministry of External Affairs is directed that subject to the provisions of Section 8 of RTI Act, 2005, he may, without any further delay, provide the information requested by the applicant in his original application with the assistance of Shri T.C.A Raghavan, JS (PAI). If any information is withheld under Section 8 of RTI Act, the applicant may be duly informed of the reasons for withholding the information.”

3. The applicant received a detailed response from the CPIO through a letter dated 23.8.2007 along with copies of certain documents but in regard to some of the documents that were withheld, the CPIO Shri A.K. Nag communicated as follows.

“As you are aware, the matter of Jinnah House has been subject of discussion at the inter-governmental level between India and Pakistan from time to time. Issues concerning our relations with Pakistan are involved.

A close scrutiny of the documents pertaining to this case indicate that disclosure of the contents of some of the documents, would prejudicially affect the relation of India with a foreign State. After a careful consideration, it has, therefore, been decided to invoke provisions of Section 8 (1) (a) of the RTI Act, 2005 in respect of that part of the information and not to disclose the same.”

4. The applicant submitted another appeal before the 1st Appellate Authority Shri Ajai Choudhary dated 18-9-07 which was, however, rejected on the ground that a second appeal could not be agitated on the same matter already decided upon by the 1st Appellate Authority. The appellant then approached this Commission under Section 19(3) of the RTI Act

5. The appeal was heard by a Full Bench of this Commission on 21.12.2007 and vide their decision pronounced on 16.1.2008, the Commission decided to

remit the matter back to the 1st Appellate Authority, as he had in our view, not heard the 1st appeal after supply of some information. The relevant extract of the said order reads as under:

“31. After carefully considering the matter and the submissions of both parties, and after perusing the documents produced before it, the Commission is of the opinion that as explained by respondents in the hearing of 15.1.'08, the information asked for by the appellant can be classified as “sensitive” in nature, but still some part of it or an edited version thereof can certainly be made available to the appellant, particularly in light of information already disclosed, much of what has been classified as “Secret” or “Confidential”. As referred at Para 15 above, we also have on record a communication from then External Affairs Minister Shri Jaswant Singh MP that he had indeed made certain recommendations on the basis of the report of AG, which had been approved by then PM, Hon'ble Shri AB Vajpayee, and that he would be willing to swear as much on oath.. The material already in the public domain therefore, has already negated MEA's conclusion that specific correspondence not be edited as this will lead to unwarranted conjecture. However, as held by us in Para 22 it is not for us to substitute our judgment on the applicability of exemption to that of the agency duly authorised to determine such issues. In this case the duly constituted authority responsible for administering relations with foreign states, is the Ministry of External Affairs. It is therefore for the concerned Public Authority to determine as to which part is sensitive and cannot be disclosed and which part even though sensitive can still be disclosed without prejudicially affecting relations with a foreign state.

32. The Commission, therefore, has decided to remit the matter back to the first Appellate Authority Shri Ajai Chowdhary, AS (PP) who has till now not heard the 1st appeal, which he was required to do as held by us in determining Issue No. 1. The first Appellate Authority, which has not examined this issue from this angle, will now examine the whole matter and consider disclosing such part of the information that can be disclosed without undermining the relations of this country with a foreign State. The Commission is also of the view that the First appellate authority would be justified in disclosing an edited version of the information withholding such of the sensitive information that may prejudicially affect our relations with a foreign State. The appeal may be disposed of within fifteen working days of the date of this Decision Notice. “

6. Before the 1st appellate authority could re-hear the appeal, after it was remanded back by the Commissioner, another application was filed on 24.1.2007 by Shri Nusli Wadia through his advocates, Karanjawala & Company informing the First Appellate Authority as follows:

- (i) That the Pakistan Government has officially stated on 17.01.2008 that it is abandoning its claim to Jinnah House. The appellant enclosed relevant press clippings in support of the statement made by them.
- (ii) that consequent upon the abandonment of any claim to Jinnah House by the Pakistan Government, the fundamental consideration on which the issue of non-disclosure of the document in question should be addressed have undergone a change.
- (iii) That the CPIO was obliged u/s 7(8) and Section 10(2) of the RTI Act to apply his mind and disclose reasons as to how the documents could be categorized as exempted ones under the RTI Act.
- (iv) That a list of the documents withheld should have been provided by the CPIO along with specific reasons.

7. The applicant submitted that documents have been selectively provided and there was no apparent reason as to why the other documents have not been disclosed. The First Appellate Authority was accordingly requested by the applicant to disclose all the documents and records relating to Jinnah House.

8. At the time of hearing before the 1st appellate authority, the respondents made it clear that the Government of Pakistan had already denied having made any statement regarding abandoning its claim on Jinnah House. The respondents also denied that the disclosure made by the CPIO was a selective one and that only those documents that are favorable have been disclosed. The respondents on the other hand submitted that the only consideration before the Ministry in disclosing certain documents was whether or not these documents prejudicially affect India's relations with a foreign State. The Ministry also

submitted that this explains as to why some classified documents have been disclosed while certain other documents have not been disclosed.

9. After considering the submissions made before it, the First Appellate Authority decided as follows:

“A complete list of completed information does not exist at all. It does not constitute “information” as defined in RTI Act and, therefore, the question of disclosing it to the applicant does not arise. Since the competent authority in the Ministry has already decided after due and careful consideration that no further documents can be disclosed, no further information can be provided to the appellant.”

10. The appellant again approached the Commission and submitted a fresh 2nd appeal under Section 19(3) of the RTI Act, which was duly registered and the Chief Information Commissioner decided that the same Bench that heard the matter earlier will again be constituted to also hear this appeal.

11. The appeal was heard on 8th May, 2008. At the time of hearing, the following were present:

APPELLANT

Appellant, Nusli N. Wadia opted not to appear. However, he was represented by the following representatives from M/s Karanjawala & Co.:

1. Mr. Neeraj Kishan Kaul
2. Ms. Diya Kapur
3. Ms. Manik Karanja, Manik Karanjawala
4. Ms. Prachi Goel

RESPONDENTS

1. S/Shri T.C.A. Raghavan, Joint Secretary
2. Pratap Singh, Joint Secretary, PIO
3. G. Balasubramanian, Deputy Secretary

12. In his appeal petition and during the hearing of the appeal petition, the appellant submitted that during the course of his meeting with the External Affairs Minister and the Prime Minister in the year 2002, he has come to know that the

Union of India had referred the entire matter relating to the claim of the appellant's mother Mrs. Dina Wadia to the Jinnah House to the Attorney General. The then Attorney General of India after studying all the papers had opined that Mrs. Wadia was in law no doubt the sole heir of Mr. Jinnah being his only child and as such would be entitled to all his properties including Jinnah House and that the Union of India acting through the then External Affairs Minister took a decision to lease Jinnah House to the appellant's mother on certain terms and conditions.

13. The appellant further submitted that he believes that documents have been selectively disclosed as aforesaid to create an impression that there was only one decision taken in respect of Jinnah House, namely, not to restore or grant the same to Mrs. Wadia and that the documents showing that a different decision had been earlier taken had been deliberately withheld. The appellant also submitted that the non-disclosure of the documents is with a view to frustrate the rights of Mrs. Wadia in the writ petition filed by her in the High Court of Bombay.

14. The appellant has also submitted that even after the Commission vide its order dated 16.1.20087 has directed the First Appellate Authority to examine the matter and consider disclosing such part of the information that can be disclosed without undermining the relations of this country with a foreign State, the First Appellate Authority has without application of mind, and in a mechanical manner, concluded that no further disclosure of the documents was required to be made as decided by the Ministry of External Affairs. The appellant further submitted that the First Appellate Authority has failed to give effect to the direction of the Commission regarding the disclosure of the edited version of the information and that the First Appellate Authority has also failed to appreciate that the RTI Act provides that if some part of the documents is exempted under 8(1) sub-section (a) of the RTI Act, it is the duty of the CPIO as prescribed by Section 10 of the RTI Act to sever that part which should be prejudicial to the relation with a foreign

State and disclose the remaining part of the document. The First Appellate Authority has, therefore, failed to appreciate the mandate regarding the disclosure of documents under the RTI Act.

15. The respondents on the other hand reiterated that the matter has been carefully examined and that the Public Authority being the Competent Authority to decide the matter has taken a considered view that nothing could be disclosed more than what has been already disclosed. They have further submitted that the relevant documents are sensitive in nature and disclosure of any part thereof would prejudicially affect relations with a foreign State. They also submitted that Section 8(1)(a) of the RTI Act specifically exists for dealing with such matters where disclosure of information under the RTI Act can adversely affect relations of the country with a foreign State.

16. To verify whether the concerned public authority has carefully considered the matter and have decided not to disclose even an edited version of the documents in question, we decided that the respondent Public Authority would be asked to produce the documents once again in original for inspection by the Commission so as to enable us to determine as to which part, if any, of the document or edited version thereof should be disclosed to the appellant in this case.

17. Accordingly, the respondents were directed to appear before us on 11.6.2008 and to produce all the relevant documents before the Commission.

18. Accordingly, on 11.6.2008, Shri T.C. Raghavan and Sri Pratap Singh, JS, RTI appeared before the Commission and produced the documents for perusal by the Commission. They also submitted the relevant file wherein the matter of disclosure of the documents in question had been dealt with.

19. On perusal of the records, the Commission was of the view that neither the First Appellate Authority nor the Ministry had given serious consideration to the directions of the Commission in its decision dated 16.1.2008 whereby they were specifically directed to consider as to whether some part of the documents or an edited version thereof could be made available to the appellant, particularly in the light of information already disclosed much of what has been classified as 'secret' or 'confidential'. The plea of the External Affairs Ministry that disclosure of edited version of the information would lead to unwarranted conjecture was not found to be convincing. The Commission also found from the record that there is no evidence that the Ministry had at all addressed the question as to whether it is possible to disclose an edited version of the information without prejudicially affecting relations with a foreign State, and if so, which part could be so disclosed and which not so, with reasons for the same.

20. The Commission has accordingly decided that the matter be remitted back to the First Appellate Authority which should carefully examine the matter as to whether it is possible to disclose any part of the documents or an edited version of the information. **The Ministry should do this exercise in the light of the documents/information already disclosed.** This will be in accordance with our Decision quoted at Para 5 that *"the information asked for by the appellant can be classified as "sensitive" in nature, but still some part of it or an edited version thereof can certainly be made available to the appellant, particularly in light of information already disclosed, much of what has been classified as "Secret" or "Confidential".*

21. In this context we would invite the attention of respondents to the judgment of the **Delhi High Court in W.P.(C) No.3114/2007 – Shri Bhagat Singh Vs. Chief Information Commissioner & Ors**, in which Hon'ble Ravinder Bhat J has held as follows:

13 Access to information under Section 3 of the Act, is the rule and exemptions under Section 8, the exception. Section 8 being a restriction on this fundamental right, must therefore is to be strictly

construed. It should not be interpreted in manner as to shadow the very right self. Under Section 8, exemption from releasing information is granted if it would impede the process of investigation process cannot be a ground for refusal of the information, the authority withholding information must show satisfactory reasons as to why the release of such information would hamper the investigation process. Such reasons should be germane, and the opinion of the process being hampered should be reasonable and based on some material, sans this consideration, Section 8(1)(h) and other such provisions would become the haven for dodging demands for information.

14 A rights based enactment is akin to a welfare measure, like the Act, should receive a liberal interpretation. , **The contextual background and history of the Act is such that the exemptions, outlined in Section 8, relieving the authorities from the obligation to provide information, constitute restrictions on the exercise of the rights provided by it. Therefore, such exemption provisions have to be construed in their terms**¹. There is some authority supporting this view (See Nathi Devi vs. Radha Devi Gupta 2005(2) SCC201; B. R. Kapoor vs. State of Tamil Nadu 2001 (7) SCC 231 and V. Tulasamma vs. Sessa Reddy 1977(3) SCC 99). Adopting a different approach would result in narrowing the rights and approving a judicially mandated class of restrictions

22. The judgment refers specifically to application of Sec 8 (1) sub-section (h). However, the principles enunciated therein on the invocation of Section 8 (1) are applicable to all subsections.

DECISION NOTICE

23. MEA will now initiate an exercise to determine which part of the information sought by appellant is sensitive or is likely to affect adversely India's relations with a foreign State, and duly record its reasons as to why disclosure of any part of the information withheld from disclosure would affect such relations with a foreign State, so as to bring the disclosure within the ambit of Section 8(1)(a) of the RTI Act. This exercise will be completed within 21 working days from the date of receipt of this order. Compliance report to this decision should be submitted

¹ Emphasis added

by the Public Authority to Shri LC Singhi, Additional Registrar, Central Information Commission within the aforesaid period and **not later than 10.7.2008.**

24 Ordered accordingly. Notice of this decision be given free of cost to the parties

(Prof. MM Ansari)
Central Information Commissioner

(Dr OP Kejariwal)
Central Information Commissioner

(Wajahat Habibullah)
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.

(L.C. Singhi)
Additional Registrar