

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

Appeal No.CIC/WB/A/2006/00839 & 00900 and CIC/WB/A/2007/01118

Name of Appellant: Shri Manish Khanna

Respondent Public Authority: High Court of Delhi at
New Delhi

Date of Hearing 16.9.2008

Date of Decision 10.10.2008

FACTS OF THE CASE:

1. The following three cases where Shri Manish Khanna is the appellant and the High Court of Delhi is the respondent Public Authority were taken up for hearing on 16.9.2008:

CIC/WB/A/2006/00839
CIC/WB/A/2006/00900
CIC/WB/A/2007/01118

2. Out of these three cases, the first two cases had been heard on 1.6.2007 together with Case in File No. CIC/WB/A/2006/00836. While the latter case was decided upon, in these two cases the learned counsel appearing for the respondent Public Authority has submitted that the grievance of the appellant pertains to the judicial side of the Delhi High Court and that this Commission is not empowered to examine the functioning and conduct of judicial business of the Hon'ble High Court.

3. The appellant on the other hand submitted a rejoinder to the stand taken by the respondents and supported his stand with annexure of press cuttings reporting on public perceptions of the integrity in functioning of the judiciary. A copy was also handed to respondents. Shri Mahajan, Jt. Registrar and PIO, Hon'ble Delhi High

Court pleaded for adjournment in Appeal case Nos. **CIC/WB/A/2006/00839** and **CIC/WB/A/2006/00900** to enable the Delhi High Court to prepare and submit a considered response.

4. In view of the respondent's request for adjournment, the aforesaid two appeal cases were adjourned and listed to be heard on 2nd August, 2007. The case has been adjourned several times thereafter at the request of the respondents. The appellant on the other hand has been insisting for early hearing of the matter. The matter was, however, heard by this Commission on 11.1.2008. The appellant was not present at the time of hearing and the respondents were present along with learned counsel Shri Rajiv Bansal, Advocate. At the time of hearing, Shri Bansal learned counsel for the Delhi High Court reiterated his earlier submissions that this Commission is not empowered to examine the functioning and conduct of judicial business of the High Court but as to what would constitute an administrative function and as to what would fall within the ambit of judicial function, the learned counsel wanted some more time for making his submission on this aspect. The two cases were accordingly adjourned. The appellant later on submitted a written application requesting for a fresh date of hearing as he could not appear on the last date of hearing. He also requested that another case filed by him and registered as Appeal Case No. **CIC/WB/A/2007/01118** be also taken up and heard together.

5 All the three cases were heard on 16.9.2008. The following were present at the time of hearing:

Appellant:

Appellant Shri Manish Khanna, advocate present in person.

Respondents:

1. Shri Rajiv Bansal, Nominated Counsel to assist the High Court
2. Shri R. Gopalan, Deputy Registrar (Estt.)
3. Shri Sunil Kukreja, APIO, Delhi High Court
4. Shri Sudhir Sachdeva, Sr. Judicial Assistant, DHC

6 Presenting his arguments, the appellant submitted that his purpose is not to get information alone but to ensure that the RTI Act should not be rendered infructuous by inaction of the respondent but made effective by the fullest exercise of jurisdiction by this Commission under the RTI Act. If the information he has sought is not made available to him, he alleged that the institutions which are indulging in corrupt practices will go scot-free. The more the evidence, the more alarming the truth will become.

7. He further submitted that the information that he was asking would expose that ordinary people languished behind bars in Delhi jails, for, sometimes, over a decade — unheard in trial or in appeal — while the rich and the influential, including former Cabinet Ministers were invariably heard on priority. While the Constitution made everyone equal before law, the system made the powerful and the influential more equal than others.

8. The appellant referred to the judgment of the Hon'ble Supreme Court reported in **AIR1979SC1360** and said that it is inhuman to incarcerate people without trial. The time has come when the legal and judicial system has to be revamped and restructured so that such injustice does not occur any more. Even a delay of one year after commencement of trial is bad. Speedy trial is essence of justice. Such incarceration is affront to humanity. The appellant submitted that he needs information to present it to the High Court to lead the way to corrective action in the matter. . He submitted that he has asked the information in the public interest.

9. Reiterating his earlier stand, the appellant submitted that judiciary as well as judicial functions are covered under the RTI Act, the appellant quoted Section 2(e) of the Act which includes Chief Justice of a High Court as a Competent

Authority. He stated that if it were the legislative intent that the Hon'ble High Courts and the Hon'ble Supreme Court would be outside the purview of the RTI Act, then there would have been no need to make Chief Justices as the Competent Authority for the High Courts and the Apex Court under the RTI Act.

10. Appellant also submitted that the RTI Act is being used not only by the literate but also by the illiterate and the poor. So, in this case, whatever, decision this Commission will pronounce will not be applicable to appellant alone but to India's vast multitude. He referred to the judgment in the case of Bhagat Singh vs. CIC in which the Hon'ble Delhi High Court, in **Writ Petition (C) No.3114 of 2007** decided on 03.12.2007, has observed that 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, be strictly construed. It should not be interpreted in a manner so as to overshadow the very right itself.

11. Appellant submitted that he had asked for a copy of daily cause list on which the court master indicated the dates of hearing of cases, which was signed by the presiding judge. The cause list was never given to him. He stated that he is prepared to state on oath that such a cause list is kept as a 'record' in the registry 'for a month or two'. He said that the said cause list being a part of "Record" is "information" within the meaning of Section 2(f) of the Act and as such he is entitled to have copies of these lists even though their existence is transitory. As long as it existed, it was decidedly "information" under the RTI Act 2005 for that span of time, and the appellant must be allowed access to the cause list(s) for any given period of time when these were in the control of the public authority or any of its officials even if no record of such cause list is maintained thereafter.

12. Referring to his RTI application which is the subject matter of appeal no. **CIC/WB/A/2007/01118**, he submitted that what he has asked for is the photocopies of the cause lists sent in the Hon'ble High Court for the period May, 2007

to May 25, 2007 on the criminal side on which the Court Master of the Hon'ble Court writes the next date. He submitted that this information has been wrongly denied by the PIO on the following ground:

“The information asked for is not specific and the fact that you have not disclosed as to how you are an affected person and why such information is required by you.”

13. The appellant submitted that the grounds taken by the CPIO rejecting his RTI application are contrary to law as under Section 6(2) of the RTI Act, no public authority can ask for reasons as to why an applicant is seeking information.

14. He further submitted that all acquainted with the court and court procedures know very well that a cause list is prepared and that the court master on his copy of the cause list writes the next date of hearing of each case. This cause list which is a part of the record is sent to the Registry for listing of the cases for next hearing. The denial of information, therefore, he submitted, is *mala fide*.

15. Shri Khanna further submitted that he has explained and clarified to the First Appellate Authority as to the cause list that he needs. But the learned First Appellate Authority has misunderstood the request and has rejected the appeal petition on the ground that the cause list is in public domain and is available on the internet. He further submitted that the cause list that he is seeking is the one on which the Court Master has written the next date of hearing and not the cause list which has been previously circulated to the members of the Bar or placed on the web.

16. The learned counsel assisting respondent Public Authority, Shri Rajiv Bansal, Advocate submitted as under:

- i) The appellant is asking for a copy of the cause list which is available on internet. The cause list that the appellant is asking is only transitory and after the Court Master puts date on it, it is sent to the listing

department and destroyed. It has no relevance. It is just for the convenience of the staff of the High Court. This cause list is made in the morning and destroyed in the evening. In some cases, it may last for 2 or 3 days but ultimately it is destroyed. Some time it may be kept for a little longer period, say 8 to 10 days. In many cases, the Court Master himself destroys the same day and the Registry never keeps any record of this cause list.

- ii) Mr. Bansal submitted that there is nothing in the High Court Rules which imposes any obligation on the court or court staff to maintain such list. It is only for the convenience of the staff of High Court. The Court Master for the convenience of the Registry notes down the date but what is sacrosanct is the order passed on the said date. As an institution, the court is not obliged to maintain any such list. It is, in fact, a scrap of paper. It cannot also be said to be “held” as it is generated in the morning and destroyed in the evening of the same day.

DECISION AND REASONS:

17. Insofar as the first two appeal cases are concerned, it appears that the applicant has been asking for information pertaining to the rules relating to listing of cases for hearing and the priority, if any, granted for the cases on the criminal side. The learned counsel assisting the Delhi High Court has submitted that it pertains to the conduct of judicial functions of the High Court and as such this is clearly outside the purview of the Central Information Commission. The appellant, on the other hand, submitted that no information whether pertaining to the administrative or judicial side is outside the ambit of the Right to Information Act, 2005.

18. The Commission took note of the submissions of the respondent public authority that its learned Counsel needed more time for filing written submissions

as to what in his view comprised judicial functions of the High Court and what were its administrative functions. It is also to be examined whether such a determination can be made under the RTI Act, or by the Courts themselves under powers that they exercise under the Constitution. The Commission has decided to adjourn the matter for the time being. This decision is being taken to allow the Delhi High Court to fully present its view on an issue fraught with legal and constitutional implications. **The learned Counsel for the Court will provide his written submissions within twenty working days of the issue of this Decision Notice. A copy of the written submissions shall also be given to the appellant by the learned counsel so as to enable him to submit a rejoinder, if any.**

19. Insofar as the 3rd appeal is concerned, what has been asked for by the appellant are the photo-copies of the cause list for the period from May 21, 2007 to May 25, 2007 on which the Court Master of the Hon'ble Court has written the next date of hearing. This information has been denied by the PIO on the following ground:

“The information asked for is not specific and the fact that you have not disclosed as to how you are an affected person and why such information is required by you.”

20. Aggrieved with this order, the appellant approached the First Appellate Authority of the Delhi High Court and explained before the Public Authority that he requires the information for research work. The First Appellate Authority, however, dismissed the appeal on the ground that the cause lists asked for by the appellant are available as public documents in the Bar Library as well as on internet. **For determination of this appeal, the following issues present themselves:**

- I. Can what has been asked for by the appellant be treated as “*information*” as defined under Section 2(f) of the Right to Information Act, 2005?

II. Whether the denial of information by the PIO/First Appellate Authority of the Delhi High Court is justified under the law?

21. The word "Information" has been defined under Section 2 sub-section (f) of the Right to Information Act which reads as under:

2(f) "information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force;

22. The definition of information under Section 2(f) is clearly an inclusive one. It includes all records, documents, memos, e-mails, opinions, advices etc. available in any material form. In this context, since the word 'information' includes "records"; it will be pertinent to refer to Section 2(i) of the Act which defines "records" as follows:

2(i) "record" includes—

(a) any document, manuscript and file;

(b) any microfilm, microfiche and facsimile copy of a document;

(c) any reproduction of image or images embodied in such microfilm (whether enlarged or not); and

(d) any other material produced by a computer or any other device;

23. Section 2(f) and Section 2(j) read together, thus includes any manuscript or any document whether it is required to be maintained or not so required. In this context, it will also be relevant to refer to Section 2(j) of the RTI Act which defines the 'right to information' as follows:

2(j) "right to information" means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to—

(i) inspection of work, documents, records;

(ii) taking notes, extracts or certified copies of documents or records;

(iii) taking certified samples of material;

(iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device;

24. A combined reading of Sections 2(f), 2(i) and 2(j) supports the inference that all information which is available on record or in existence and held by a public authority are covered within the ambit of the Right to Information Act, 2005. Holding of information is not time-specific and as such even though the information is held for a very short period, nevertheless while the information is in a state of being 'held', it is 'information' for the time it is known to be held by the public authority through any of its officers or agents, within the meaning of section 2 (f) and is covered by the right conferred on a citizen under section 3 of the Act. It is immaterial as to whether the information is held by a lowly functionary or by the highest functionary. Also immaterial for the purpose of definition of information is the manner of the creation of the document. A document or a paper casually created as some sort out of an aide-memoire — e.g. "cause list" — is as much information under Section 2(f) as any other document or material under the control of the public authority.

.25. If the above legal position is applied to the facts of this case, it would be clear that a copy of the cause list which is otherwise prepared in bulk and circulated widely is also available with and held by the Court Master of the Court. On this cause list, the Court Master notes down the date of next hearing of each of the cases mentioned therein. The moment something is transcribed on this cause list, it becomes a document different and distinct from the cause list which has been prepared in bulk and circulated widely. Therefore, a citizen exercising his right under the RTI Act as defined under Section 2(j) becomes entitled to exercise the right to:

- i) inspect the cause-list so prepared;
- ii) take notes, extracts or certified copies of this cause-list;

- iii) obtain this cause-list in electronic form if available or kept;

26. The counsel for the respondent has not denied the existence of these cause-lists but has submitted that these are not required to be prepared under any Rule of the High Court and that it is prepared only for a limited purpose. In our view — as described in the preceding paragraphs —it is immaterial as to whether the cause-lists have been prepared under the direction of an authority or for the convenience of its officers; in this case the Listing Department of the High Court. To qualify to be information, it is enough that a material (in any form) is known to exist in the time-duration when the request for information was received.

27. The question whether a document, which is prepared in normal course of business, but not required to be so prepared under any rule, should be provided to a citizen under the RTI Act is also to be seen in the larger context of the scope of the RTI Act which was succinctly brought out by the Hon'ble Delhi High Court in **Bhagat Singh Vs. CIC (W.P.(C) No.3114/2007)** in which the Hon'ble Ravindra Bhat J, has held that the Right to Information Act being a right based enactment is akin to a welfare measure and as such should receive liberal interpretation. A definitive ruling on the application of exemption to the right to information, it will be worthwhile to re-produce what has been held by his lordship in the aforesaid case, which is as under:

- “12. The Act is an effectuation of the right to freedom of speech and expression. In an increasingly knowledge based society, information and access to information holds the key to resources, benefits, and distribution of power. Information, more than any other element, is of critical importance in a participatory democracy. **By one fell stroke, under the Act, the maze of procedures and official barriers that had previously impeded information, has been swept aside. The citizen and information seekers have, subject to a few exceptions, an overriding right to be given information on matters in the possession of the state and public agencies that are covered by the Act.** As is reflected in its preambular paragraphs, the enactment seeks to promote transparency, arrest corruption and to hold the

Government and its instrumentalities accountable to the governed. This spirit of the Act must be borne in mind while construing the provisions contained therein.

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 be strictly construed. It should not be interpreted in a manner as to shadow the very right itself. Under Section 8, exemption from releasing information is granted if it would impede the process of investigation or the prosecution of the offenders. It is apparent that the mere existence of an 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; there is some authority supporting this view (See *Nathi Devi v. Radha Devi Gupta* 2005 (2) SCC 201; *B. R. Kapoor v. State of Tamil Nadu* 2001 (7) SCC 231 and *V. Tulasamma v. Sessa Reddy* 1977 (3) SCC 99). **Adopting a different approach would result in narrowing the rights and approving a judicially mandated class of restriction on the rights under the Act, which is unwarranted.”¹**

28. As regards the question as to whether the denial of information could be held to be justified, it would be important to refer to the grounds taken by the PIO in this case, which may be summarised as under:

- (i) the information asked for is not specific;

¹ Emphasis in all above paras added.

(ii) no reason has been given as to why such information is required by the appellant.

29. At the time of hearing, both the appellant and respondents have admitted the existence of the documents asked for by the appellant. It appears that there was no doubt insofar as specification of the document asked for is concerned. As regards the second ground taken by the PIO, it must be stated that the PIO of the respondent Public Authority did not act in accordance with law while asking the applicant as to why the information was needed. He acted clearly in violation of Section 6(2) of the Act which reads as under:

“6(2) An applicant making request for information shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him.”

30. The CPIO had clearly overstepped the limits of his powers by demanding from the appellant the reasons for his seeking the information. He is cautioned to refrain from such acts in future.

31. The First Appellate Authority has dismissed the appeal on the ground that the cause list is available as public document in the Bar Library as well as on internet. Apparently, he has misunderstood what the appellant was seeking from the Public Authority. The denial of information, therefore, is unjustified.

32. During the course of hearing an apprehension has been expressed by the parties that the information asked for by the appellant may not be available with the Public Authority and it may have been in the meantime destroyed. The appellant has raised a very pertinent question as to whether the information was available as on the date the application under the RTI Act was submitted. It is his point that the manner in which the respondents denied him the information on wholly untenable grounds, knowing full well that the information would be destroyed and lost for ever by the time the appellant challenges their orders in appeal, smacks of deliberate action to withhold information.

It will be very unfortunate if the information was available on the date of submission of application and has been destroyed thereafter and a citizen is deprived of his right to seek information.

33. Since it is only an apprehension, **the Commission directs the PIO of Delhi High Court to make available the cause lists concerning the period mentioned in the RTI application to the applicant within 10 days from the date of this order.** In case the information has in the meantime been destroyed, the appellant may if he so desires obtain copies of such cause lists of later period available with the Public Authority. PIO is also directed to render all possible assistance to the applicant, which he is obliged to render under the provisions of sub-section 3 of Section 5 of the Act.

34. With these directions, **Appeal in file No. CIC/WB/A/2007/01118 is allowed** and the impugned order passed by the First Appellate Authority set aside. However because we are not convinced that there has been a delay in response or malafide denial of information, there will be no penalty. Pronounced in open chamber this tenth day of October 2008.

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

(Dr. O.P. Kejariwal)
Information Commissioner

(A.N. Tiwari)
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.

(PKP Shreyaskar)
Jt. Registrar
10.10.'08

