

CENTRAL INFORMATION COMMISSION

(Room No.315, B-Wing, August Kranti Bhawan, Bhikaji Cama Place, New Delhi 110 066)

Prof. M. Sridhar Acharyulu (Madabhushi Sridhar)

Information Commissioner

CIC/SA/A/2014/001069

(Video-Conference)

Mr Omprakash Kashiram v. PIO, Lt Governors Secretariat

Important Dates and time taken:

RTI: 4.4.2014	Reply:	Time: ---
FAA: 5.5.2014	FAO: 2.6.2014	Time:
SA: 1.7.2014	Hearing: 13-2-2015	Decision:
Show cause		
Compliance		
Result: Disposed of		
Observation:		

Parties Present:

The appellant is not present for video-conference at NIC Centre, Kalyan. The Public Authority is represented by Mr. J.P.Kothari, PIO and Mr. Rakesh Gupta, APIO.

Information sought:

1. Appellant through his RTI application sought the name of political parties who submitted the willingness for forming government in Delhi, reasons for not conducting re-election of Delhi Assembly or Government, reasons for difficulty facing LG for recommending re-election in Delhi Assembly etc

PIO response:

2. PIO replied that no such information as requested is maintained in the Secretariat.

Ground for First Appeal:

3. Non furnishing of information as sought by the appellant.

First Appellate Authority Order:

4. FAA upheld the reply provided by the PIO

Ground For Second Appeal :

5. Unsatisfied with the FAA Order and non furnishing of the information by the PIO.

Proceedings Before the Commission:

6. The appellant is not present for video-conference at Kalyan. There was a second appeal by Mr Rakesh Agarwal (CIC/SA/A/2014/000836, decided on 31.12.2014) in which the appellant sought (1) copies of all communication made between Lt Governor and Mr. Arvind Kejriwal, Central Government, Commissioner of Police & Advocate General or Solicitor General in connection to Khirki Extn. Episode, Sagarpur till date of providing information; (2) correspondence , emails, and other forms of communication exchanged between the Lieutenant Governor or his office and the Central Government (President, Prime Minister, Home Minister etc) or their offices together with certified copies of the connected files and file notings (4) and communication between Lieutenant Governor and Advocate General or Solicitor General of

India since 8.12.2013 to the date of providing information. He also sought (3) communication between LG and Commissioner of Police in connection with matters raised by the Council of Ministers eg Khriki Extn episode and Sagarpur etc). The CPIO on 26.3.2014 claimed the exemption of section 8 (c) of RTI Act on point no 1,2 & 4 and on point no 3 stated that no correspondence has been made between the Lt Governor and Commissioner of Delhi police. There was no claim by respondents that they were not public authority. Respondents claimed 'privilege' while appellant said that there was no case made out for exemption on that ground. Except to legislature, the Right to Information Act, 2005 does not accord any privilege to any other authority to deny communication. In case of ***SP Gupta vs Union of India***, AIR 1982 SC 149, the apex Court held that while the exact advice given by the Council of Ministers to the President could not be examined by the court, the material on which such advice was based was not excluded from the judicial purview. Six judges of a 7-member Bench held that no privilege could be claimed with respect to the documents which constituted the material for forming opinion in the case of appointment and transfer of judges. The Supreme Court finally gave a statement which gave life to the 'right to information' and removed the curtains of secrecy.

...where a document was withheld, a court could examine it, and only when it was convinced that its disclosure would prejudice public interest, could it allow such action. The Government's privilege to withhold disclosure of documents was considered as subject to the right to information of the individual.

7. The Commission in that case held: The Correspondence between Executive Head and a Political Leader regarding appointment of Chief Minister is not privileged correspondence as per any provision of the RTI Act or Constitution of India. It is not information given in fiduciary relationship. Assuming again for a moment that disclosure of such information would cause harm to 'protected interest', Section 8(2) comes to the aid of disclosure. The Supreme Court in ***Bommai*** case (1994 SCC (3), 1) held that Article 74(2) is **not a bar against the scrutiny of the material** on the basis of which the President has arrived at his satisfaction for issuing the Proclamation under Article 356(1).

8. The respondent authority submitted that the higher officers of the public authority have decided to go in appeal against this CIC's order to disclose similar information about political parties correspondence with the LG office in an earlier application. Hon'ble Delhi High Court in W.P (C) No. 1052/2015 had granted stay in that matter while holding that the question 'whether L.G Office is a public authority or not' is under consideration before the Hon'ble Supreme Court of India in SLP(C) No. 33124/2011 [PIO Vs Manoj Parrikar and Ors.] and also in view of Article 163(3) of the Constitution.

9. In response to the Commission's question whether the public authority would respond to the other RTI appeals before the Commission, the CPIO stated, in spite of this stand, it was ready to furnish information to various RTI applications to the extent feasible by them. He has also expressed their difficulty in handling nearly 500 representations per day from the public in addition to another

25 RTI applications per day. Generally most of the RTI applications received by the LG office are transferred to concerned departments of the Delhi Government, under intimation to the appellant and these departments would directly reply to the appellants. It is not possible for the LG office to keep track of all the transferred RTI applications.

10. The Commission and even this respondent public authority, has no doubt in their character, that it is a public authority, as per the text of the Sec 2 (h) of the RTI Act, which says:

(h) "public authority" means any authority or body or institution of self-government established or constituted— (a) by or under the Constitution; (b) by any other law made by Parliament; (c) by any other law made by State Legislature; (d) by notification issued or order made by the appropriate Government, and includes any— (i) body owned, controlled or substantially financed; (ii) non-Government organization substantially financed, directly or indirectly by funds provided by the appropriate Government;

9. Article 239 of the Constitution says that every Union Territory shall be administered by the President, to such extent as he thinks fit, through an administrator to be appointed by him with such designation as he may specify. Articles 239A, 239AA 239AB and 239B provide for local legislatures or Council of Ministers in those Union Territories and deal with several aspects of administration in relation to the National Capital Territory, the Lieutenant Governor and Legislative Assembly. The office of LG, being a constitutional authority, should be a 'public authority'. All the privileges and immunities that are associated with high office of LG are provided and protected under RTI Act through various exceptions.

10. The LG office has an official website: http://delhi.gov.in/wps/wcm/connect/doiit_lg/New/LG/RTI, wherein the RTI regime is specified along with names of designated PIOs and First Appellate Authority, their addresses. The office was generous enough to place the photographs of these designated officers.

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11. The Commission also found the officers as responsible and responsive in most of the cases, in both answering RTI questions and complying with the orders of First Appellate Authority and the Information Commission. They never raised the claim that the office of LG was not a public authority under RTI Act, 2005, until recently when they obtained a stay order from the Hon'ble Delhi High Court.

12. Strangely the office of the LG took a peculiar stand that whenever it is feasible it will conduct itself as 'public authority' under RTI Act, 2005 to give information, and whenever it is not, it will raise the claim that it is not a public authority. It, in fact, gets translated into 'I will give information whenever I like or whomever I like or whenever it is convenient to me and if not, not'. This is not the law. Parliament passed RTI law only to avoid this discriminatory attitude

of the Government Offices. They should not act according to their whims and fancies in sharing information with public.

13. Even on the day when they have produced the Photostat copy of the stay order from Delhi High Court, they agreed to comply with the orders of CIC and follow RTI Act in half-a-dozen cases. By acquiescence the public authority has conceded that they are public authority. They cannot approbate or reprobate or blow hot and cold at a same time. It is a principle of natural justice.

14. The Commission found that the office was responding to the RTI requests without protesting so far and also stated that it would answer in future also. The office should have chosen to invoke the provisions of RTI Act empowering them not to answer and taken the issue on such points to the Higher Courts for clarification. But taking a U turn to say they are not public authority is whimsical and arbitrary intended only to deny information about certain questions and to certain people. For some RTI applications citizens will get information because office of LG considers itself as Public Authority and some RTI applicant citizens will not get because same office of LG considers it as not public authority. It is straight away a violation of fundamental right to equality under Article 14. It is difficult to understand reasons for the office of LG to choose to behave like a Discom, a private hospital, a so called 'public' school or a 'cooperative' society, a private 'trust' or a sports body enjoying concessional land and monopoly over a particular sport, etc, exhibiting nonresponsive non accountable attitude craving for private profit and clamoring for cover to their deeds.

15. The Commission would honor the stay order of the Hon'ble High Court of Delhi issued in the matter concerned and will not proceed

further in this second appeal where the appellant is seeking information about claim before LG by political parties to form Government. As per the action, acquiescence and readiness to respond, the office of respondent authority wanted to act as Public Authority. The Commission requires the public authority under Section 19(8)(a) to inform and explain their contradictory stand and firm decision whether it wants to be a public authority within 30 days from the date of receipt of this order. The people in Delhi have a right to know whether their LG office is public authority or not.

16. The Commission recommends the Council of Ministers, Government of New Delhi, to declare and explain their policy and stand on the matter of nature of office of LG as to public authority, as entire RTI regime is dependent upon that and because they are under an obligation to declare such policy mandatorily as per Section 4(1)(c). This is needed because it will kick up unnecessary litigation and increase the burden of pendency on the Delhi High Court. It is also not in accordance with the avowed policy called 'National Litigation policy' wherein the state is advised to behave like a responsible litigant to identify and withdraw unnecessary litigation.

17. The Commission having heard the submissions and after perusing the record thoroughly, **closes** the appeal with above observations.

(M.Sridhar Acharyulu)
Information Commissioner

Authenticated true copy

(Babu Lal)
Deputy Registrar

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2. Shri Omprakash Kashiram
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3. Office of Chief Minister