

केन्द्रीय सूचना आयोग
Central Information Commission
बाबा गंगनाथ मार्ग, मुनिरका
Baba Gangnath Marg, Munirka
नई दिल्ली, New Delhi – 110067

द्वितीय अपील संख्या / Second Appeal No. **CIC/SCOFI/A/2019/642099**

Ms Anjali Bhardwaj

अपीलकर्ता / Appellant

VERSUS/बनाम

CPIO
Supreme Court of India

...प्रतिवादीगण / Respondent

Date of Hearing : 11.11.2021

Date of Decision : 16.12.2021

Chief Information Commissioner : Shri Y. K. Sinha

Relevant facts emerging from complaint:

RTI application filed on : 26.02.2019
PIO replied on : 11.03.2019
First Appeal filed on : 08.04.2019
First Appellate Order dated : 23.04.2019
2nd Appeal dated : -

Information sought and background of the case:

The Appellant filed an RTI application dated 26.02.2019 seeking information on the following 03 points:-

1. Please provide a copy of the agenda of the meeting of the Collegium of the Supreme Court held on December 12, 2018.
2. Kindly provide a copy of the decisions taken on the meeting of the Collegium of the Supreme Court held on December 12, 2018.
3. Kindly provide a copy of the resolutions of the Collegium meeting held on December 12, 2018.

The CPIO, vide letter dated 11.03.2019 replied as under:-

Point No. 1 - 3 : The issue of providing information relating to appointment of Hon'ble Judges, is the subject matter of judicial proceedings in SLP Nos. 32855-56 of 2009 now converted into Civil Appeal Nos. 10044-45 of 2010 which are now sub-judice before this Hon'ble Court.

Further, in terms of order dated 4/12/2009 in SLP (C) No. 32855-56/2009 titled "Central Public Information Officer & Anr. V. Subhash Chandra Agrawal" there is a stay of disclosure of information relating to matters like the present one.

Hence disclosure of information in this regard may constitute contempt of court. Therefore, the information in the nature sought by you is exempt under Section 8 (1) (b) of the Right to Information Act, 2005.

Further, the information in the nature sought by you is confidential and is exempted under Section 8 (1) (e) & (j) of the Right to Information Act, 2005, you have no right to access the said information under section 2(j) of the Right to Information Act, 2005.

Dissatisfied with the reply of the CPIO, the Appellant filed a First Appeal dated 08.04.2019. The FAA, vide order dated 23.04.2019 referred to the resolution passed by the Collegium dated 10.01.2019 and stated that as per the said resolution it was clear that although certain decisions were taken on 12.12.2018, the required consultations could not be taken and completed. Thus, there arises no question of passing any resolution by the collegium on 12.12.2018 as claimed by the Appellant. In the absence of any resolution, the information cannot be supplied to the Appellant. The FAA however concluded that although the denial of information is justified, the reasons given by the CPIO to deny the information were not proper.

Feeling aggrieved and dissatisfied, the Appellant approached the Commission with the instant Second Appeal inter alia on the ground that the decision to not disclose the resolution dated 12.12.2018 was against the resolution of the collegium dated 03.10.2017 wherein it was resolved that "*decisions henceforth taken including the reasons shall be put on the website of the Supreme Court, when the recommendation(s) is/are sent to the Government of India, with regard to the cases relating to initial elevation to the High Court Bench, confirmation as permanent Judge(s) of the High Court, elevation to the post of Chief Justice of High Court, transfer of High Court Chief Justices / Judges and elevation to the Supreme Court, because on each occasion the material which is considered by the Collegium is different. The Resolution is passed to ensure transparency and yet maintain confidentiality in the Collegium system.*" Following the decision more than 200 resolutions were uploaded on the website of the Supreme Court. She further argued that the departure from the usual practice by denying access to the instant resolution/ decision was noted by Justice Lokur who was a member of the collegium during the 12.12.2018 meeting. It was also contended that if no resolution was passed the other information regarding the agenda of the meeting and the decision taken in the meeting should be disclosed.

Facts emerging in Course of Hearing:

In order to ensure social distancing and prevent the spread of the pandemic, COVID-19, hearing through audio conference was scheduled after giving prior notice to both the parties.

The Appellant participated in the hearing through audio conference. She reiterated her RTI application and Second Appeal and stated that there is larger public interest in disclosure of information since the decision taken on 12.12.2018 meeting was subsequently overturned after the change of composition of the collegium and that even if no resolution was passed, the agenda and decision of the meeting should be disclosed. She further stated that Section 8 of the RTI Act was not considered by the CPIO prior to denial of information which was done on vague grounds stating that the matter of appointment of Hon'ble judges is a matter of judicial proceedings presently sub-judice before the Supreme Court. However, the RTI Act does not allow for denial of information on such vague grounds. Nonetheless, the information sought in the present RTI application is completely different from the type of information that was sought in the cases that were sub-judice.

The Respondent represented by Shri Ajay Agrawal, CPIO and Addl Registrar and Shri Bharat Singh, Advocate representing the Supreme Court participated in the hearing through audio conference. In addition to the reasoning given in the FAA's order, Shri Agrawal stated that subsequently the Civil Appeal No 10044 of 2010 was decided on 13.11.2019. He referred to page 106 of Justice Sanjiv Khanna's judgement on behalf of the full bench, the relevant extracts of which are as under:

“Transparency and openness in judicial appointments juxtaposed with confidentiality of deliberations remain one of the most delicate and complex areas. Clearly, the position is progressive as well as evolving as steps have been taken to make the selection and appointment process more transparent and open. Notably, there has been a change after concerns were expressed on disclosure of the names and the reasons for those who had not been approved. The position will keep forging new paths by taking into consideration the experiences of the past and the aspirations of the future.”

Thus, Shri Agrawal argued that disclosure of the reasoning adopted in the collegium resolutions pertaining to appointment/ elevation or transfer of judges was not permissible since it would result in disclosure of names of judges and reasons for approval/ disapproval for appointment/ elevation and transfer of judges and that in the abovementioned extract of the judgement of the Apex Court it is clearly observed that concerns were expressed regarding disclosure of such information. He also made reference to a statement issued by the collegium pertaining to the meeting held on 17.08.2021 wherein only the final outcome/ decision relating to elevation of judges to the Hon'ble Supreme Court was disclosed without revealing the reasons based on which the decision was arrived at and that this practice is adopted now while disclosing all collegiums resolutions. In addition, he stated that in the FAA's order, reference was made to the subsequent resolution of the collegium dated 10.01.2019 which is mentioned below:

"The Collegium comprising the Chief Justice of India and four senior-most Judges of the Supreme Court viz. Mr. Justices Madan B. Lokur, A.K. Sikri, S.A. Bobde and N.V. Ramana met on Wednesday, 12th December, 2018 to discuss the Agenda viz., (1) to consider and recommend names for appointment as Judges in the Supreme Court and (2) to consider proposals for transfer of Chief Justices and Judges of High Courts.

The then Collegium on 12th December, 2018 took certain decisions. However, the required consultation could not be undertaken and completed as the winter vacation of the Court intervened. By the time the Court re-opened, the composition of the Collegium underwent a change. After extensive deliberations on 5th / 6th January, 2019, the newly constituted Collegium deemed it appropriate to have a fresh look at the matter and also to consider the proposals in the light of the additional material that became available."

Thus, all information available with the public authority with regard to the fate of the meeting dated 12.12.2018 was mentioned in the above mentioned resolution dated 10.01.2019.

Decision:

On perusal of the resolution dated 10.01.2019 it is clear that the agenda for the meeting dated 12.12.2018 has been mentioned therein which answers point no 1 of the instant RTI application. With regard to the remaining points, the Commission concurs with the order of the FAA dated 23.04.2019 and holds that in the absence of any resolution passed in the meeting dated 12.12.2018, no available information as per Section 2 (f) exists on record which can be disclosed to the Appellant. Furthermore, the final outcome of the fate of the meeting dated 12.12.2018 has been discussed in the resolution dated 10.01.2019. Hence, no further intervention of the Commission is required in the instant Second Appeal which is disposed off accordingly.

Y. K. Sinha (वाई. के. सिन्हा)

Chief Information Commissioner (मुख्य सूचना आयुक्त)

Authenticated true copy
(अभिप्रमाणित सत्यापित प्रति)

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