

द्वितीय अपील संख्या / Second Appeal No. **CIC/MHOME/A/2018/164984**

Shri Utpal Kumar Roy

... अपीलकर्ता/Appellant

VERSUS/बनाम

1. PIO, MHA

Through – Shri Akhil Chandra Jha, D.S. (N.E.-
I), MHA.

a) Directorate of Census Operations, West
Bengal;

Through – Ms. Parnelekha Das, Dy.
Director.

b) O/o Registrar General, India;

Through- Ms. Sadhna Chhibber, Dy.
Director.

c) Immigration Section, Foreigners
Division;

Through – Shri Sumant Singh, Director.

d) Department of Border Management-II
Division

Through- Shri Tarun Kumar, 2 I/C

2. PIO/Ministry of External Affairs.

...प्रतिवादीगण / Respondents

Date of Hearing : 07.01.2021

Date of Decision : 22.01.2021

Chief Information Commissioner : Shri Y. K. Sinha

Relevant facts emerging from appeal:

RTI application filed on : 23.04.2018

PIO replied on : 21.06.2018, 29.06.2018, 13.07.2018

First Appeal filed on : 11.06.2018

First Appellate Order on : -

2ndAppeal/complaint received on : 29.10.2018

Information sought and background of the case:

The Appellant filed an RTI application dated 23.04.2018 seeking the following information:-

- (i) File notings about the official records of population in West Bengal registered as per Census 1971, 1981, 1991, 2001 & 2011 including District-wise (specifically Cooch Behar, Jalpaiguri, Darjeeling, Uttar

Dinajpur, Dakshin Dinajpur, Malda, Murshidabad, Nadia) based on religion and caste (Hindus, Muslims, SC/STs, OBC, General and Minorities);

- (ii) Official records of migrants (legal/illegal), trespassers identified and booked in West Bengal since 1971-1981, 1981-1991, 1991-2001, 2001-2011 & 2011 to January 2018;*
- (iii) Name of the treaties/contracts/agreements between India and Bangladesh regarding migration, border security and bilateral co-operation since 1971 to Jan, 2018; and*
- (iv) Official records of action on the serious issues of appellant's email complaint dated 13.02.2018 to the Nodal Officer, Joint Secretary, Ministry of Home Affairs, Govt. of India.*

The CPIO & Dy. Secretary (NE.I) vide letter dated 21.06.2018 transferred the RTI application to concerned CPIOs in Ministry of Home Affairs as well as to Ministry of External Affairs.

The CPIO & Dy. Director, O/o the Registrar General vide letter dated 29.06.2018 transferred the RTI application to the CPIO, Directorate of Census Operations, Kolkata, West Bengal for providing the information on point nos. 1 & 2 of the RTI application.

On getting no response/information from the CPIO, the Appellant filed a First Appeal dated 11.06.2018. Meanwhile, the CPIO & Assistant Director, Directorate of Census Operation, West Bengal vide their letter dated 13.07.2018 furnished information on point nos. 1 & 2 of the RTI application.

The CPIO & Dy. Secretary (BM-II) in response to point no. 3 of RTI application vide their letter dated 13.07.2018, informed the Appellant that "*the information sought in respect of point no. 3 may be treated as 'NIL' as far as this Division is concerned.*"

Under Secretary, MHA vide letter dated 16.07.2018 forwarded the First Appeal dated 11.06.2018 to the Dy. Secretary (NE-II), MHA.

Feeling aggrieved and dissatisfied, the Appellant approached the Commission with the instant Second Appeal.

Facts emerging in Course of Hearing:

A written submission has been received from the Deputy Director & CPIO, Ministry of Home Affairs, O/o Registrar General, India vide letter dated 31.12.2020, relevant extracts whereof are as under:

"....3. The RTI application was forwarded to the concerned CPIO of DCO, West Bengal vide letter dated 29.06.2018 as both points pertained to the West Bengal and its districts with a request to supply the available information directly to the applicant. The applicant was also informed about the same.

4. In this connection, it is hereby informed that the First Appellate Authority of this office has not received any appeal in this connection earlier. With reference to the point no. 1, firstly it is informed that the

records for Census 1971-2002 are not available as these are disposed of as per Rule 11 of the Census Rules, 1990 one year before the next census. It is further informed that at the Office of the Registrar General, India the population data are finalised and released after discussions with the respective States/UTs, seeing the comparability of various parameters at State/UT level during the meetings. The detailed scrutiny of data pertaining to all administrative units is done at Directorate of Census Operations in their own ways.

5. Data of 2011 were scrutinized internally with the help of officials of the concerned Directorates and after being satisfied from comparability angle with the earlier census data, the final data of 2011 were released. Census data being very fast, its scrutiny and validation was done through computer programming and by presenting the data directly on the screen for open discussions in series of meetings with the concerned officials/officers. In case of any issue in data comparability with previous census data, the reasons were sought from the State officials and only after obtaining convincing reasons, the data were finalised. Once data in respect of all States/UTs were cleared from all angles and finalised, the Census Commissioner allowed to upload the complete data set on the official website. This data is henceforth available in the public domain for free download. Subsequently, few publications were also released.

As regards point no. 2, it is gathered that the same was already forwarded to the other Public Authorities also. As regards census data of migration, it is informed that the data on legal/illegal migrants, trespasser identified and booked are not collected in Census.”

A written submission dated 01.01.2021 has been received from Deputy Director & CPIO, Directorate of Census, West Bengal wherein it is mentioned that on receipt of Appellant's RTI application (forwarded to them by DDCO, O/o Registrar General, India) a reply dated 11.07.2018 was sent to the Appellant on points no. 1 & 2. The Appellant was informed that *the population and other relevant data have been finalized and published by the Census Commissioner, India with respect to all States, therefore, the desired information is not available in the Directorate of Census Operations at their end.*

In order to ensure social distancing and prevent the spread of the pandemic, COVID-19, video hearing was scheduled after giving prior notice to both the parties. The Appellant participated in the hearing through video-conference. He reiterated the contents of his RTI application and submitted that no specific response/information has been received from the Respondent except on point no. 3 of his application. He requested the Commission to direct the Respondent to provide the desired information in a compiled form.

Ms. Parnalekha Das Gupta, Dy. Director, Directorate of Census (Operation), Kolkata, participated in the hearing through video conference and reiterated the contents of the above mentioned written submissions dated 01.01.2021.

Ms. Sadhna Chhibber, Dy. Director, O/o Registrar General of India, MHA participated in the hearing through video conference. She placed reliance on the contents of her above mentioned written submissions dated 31.12.2020.

Shri Sumant Singh, Director, Foreigner Division (Immigration Section), Ministry of Home Affairs, New Delhi, participated in the hearing through video conference. He submitted that a reply to the RTI application was duly sent to the Appellant by their section vide letter dated 11.07.2018. He apprised the Commission that the job role of Immigration Section is to verify and maintain data regarding foreign immigrants and to cater to ingoing and outgoing movement of foreigners. The Immigration Section is also involved in policy making in matters related to foreigners. He further apprised the Commission that the task of maintenance of records/data pertaining to illegal/legal migrants has been delegated to the State Agencies who are the actual custodian of the desired information. Thus, the subject matter of RTI application is a state subject and beyond the jurisdiction of CIC.

Shri Akhil Chandra Jha, Dy. Secretary (NE- I), MHA, participated in the hearing through video conference. He submitted that State of West Bengal is not covered under the NE – I Division, MHA, therefore, the desired information is not available at their end.

Appellant interjected during the course of hearing and stated that Ministry of Home Affairs is the actual custodian/nodal agency for the information. Therefore, he filed the application with the said Public Authority. However, MHA instead of giving specific/desired information transferred his RTI application to multiple Public Authorities. He stated that since the information involves the larger public interest, therefore, such information should be made available to the Appellant.

Decision:

Upon hearing the submissions of the parties at length and careful perusal of records, it is observed that the CPIO, Dy. Secretary (NE-I) has appropriately transferred the RTI application u/s. 6(3) of the RTI Act to the concerned Public Authorities. The CPIOs have also replied to the RTI applications vide their letters dated 29.06.2018, 11.07.2018 and 13.07.2018 respectively as per the provisions of the RTI Act. However, it is observed that the moot question about illegal infiltration of migrants into the country has not been addressed by any of the PIOs, to the satisfaction of the Appellant.

The information sought by the Appellant deals primarily with the larger question of illegal migration in the country more specifically West Bengal. As per the existing statutory regime, there are three categories of persons living in India i.e. citizens, legally resident foreigners/aliens and illegal migrants. Therefore, to identify/detect illegal migrants and thereafter, follow the due process of law devolves on the Central Government. A combined reading of the Foreigners Act, The Passport (Entry into India) Act, 1920 and the Citizenship Act, 1955 shows that it is responsibility of the State to identify/detect illegal migrants and thereafter take action as per due process of law. Preventing the

entry of illegal migrants to the country is particularly important as they not only pose a burden on the public exchequer but could also constitute a security threat to the nation. National policy should ideally preclude illegal migration into the country and accordingly the government should devise appropriate policies and mechanisms to achieve this objective.

Given the significance of the information sought by the Appellant, it is felt that the replies given by the PIOs fail to do justice, since no clear and categorical information covering the queries of the Appellant has been furnished by the Respondents. Under these circumstances, the Commission is of the considered opinion that in larger public interest the PIO/MHA acting as the nodal authority, should address the queries in a more pragmatic and accurate manner, answering the queries with information available on records, as permissible under the RTI Act. The Respondent-PIO, MHA if required, should invoke provisions of the Section 5(4) of the RTI Act and obtain the requisite information from the actual custodian(s) of information. A compliance report in this regard shall be filed by the Respondent Public Authority by 31.03.2021, failing which appropriate proceedings shall be initiated as per law.

Before parting with the case at hand, the Commission advises the Respondent-MHA to maintain a consolidated record/database regarding identified legal/illegal migrants, in the national interest.

With the above mentioned observations, the instant Second Appeal is disposed off.

Y. K. Sinha (वाई. के. सिन्हा)

Chief Information Commissioner (मुख्य सूचना आयुक्त)

Authenticated true copy
(अभिप्रमाणित सत्यापित प्रति)

S. K. Chitkara (एस. के. चिटकारा)

Dy. Registrar (उप-पंजीयक)

011-26186535