CENTRAL INFORMATION COMMISSION
Adjunct to Complaint No. CIC/WB/C/2010/000120 dated 14-5-2010
Right to Information Act 2005 – Section 19

Complainant: Shri Venkatesh Nayak

Respondent: Dep't of Personnel & Training (DOPT)

Appeal heard in Full Bench 20.8.2010

Decision announced 30.8.2010

Background:

In accordance with the Commission's decision of 3-8-2010 in Single Bench the full Commission heard the case on 20th August 2010. The following are present:

Complainant:
Shri Venkatesh Nayak
Shri Shekhar Singh
Respondents:
Shri V.K. Velukutty, DS (V.II) DOPT
Shri K.G. Verma, Director (RTI) DOPT

In the decision of 3-8-2010 we had, while dismissing the appeal, on the request for a copy of the draft PIDPI Bill approved by Cabinet, decided as follows:

> "…the larger complaint argued before us that the kind of information sought should not be exempted from disclosure u/s 8 (1) (i), and dealt with as per Section 4 (1) (c) is indeed not an issue which Dy. Secretary Shri V.K. Velukutty is competent to discuss. This issue touches upon the nature of the law itself and raises the issue of whether this Commission has the authority to determine (i) whether different clauses of law are contradictory, and (ii) if so found, to take action either u/s 19 (8) (a) or Section 25 (5) of the RTI Act. To decide upon this issue we will require a larger Bench. For this purpose a Bench consisting of Chief Information Commissioner, Information Commissioner (SM) and Information Commissioner (DS) is constituted. The Full Bench will meet on 20th August, 2010 at 3.00 p.m. DOPT may on this occasion depute an officer authorised to discuss this issue and assist the Commission in arriving at a decision.

Appellant Shri Venkatesh Nayak sought to clarify that clause 8 (1) (i) and 4 (1) (c) are not contradictory but that the interpretation given to them by public authorities in disclosure under the RTI Act has been so thus far. In this

context he had, subsequent to the hearing, submitted a supplementary submission in which he has cited the contents of the circular of 15-4-02 of the Cabinet Secretariat laying down procedural requirements to be met while preparing/submitting notes for the Cabinet/Cabinet Committee/ Group of Ministers. In this he invited our attention to the normal procedure for inter-ministerial consultation laid down in Part-V. He submitted that up to this stage the draft Cabinet Note cannot be considered a draft eligible for exemption from disclosure u/s 8 (1) (i). This exemption can only apply to the Note submitted in final draft to the Cabinet Secretariat. In this context he cited section 4 (1) (c), which reads as follows:

4 (1) (c)

> *" publish all relevant facts while formulating important policies[1] or announcing the decisions which affect public."*

In the revised version of his supplementary submission appellant Shri Venkatesh Nayak has referred to a decision of this Information Commission on this subject announced on 7.7.'10 in complaint No. **CIC/SG/C/2010/000345 Venkatesh Nayak vs. Chief Secretary, Delhi** in which this Commission has held as follows:

> "Given that the DP Bill is a significant legislative change, the relevant public authorities involved in drafting of the said bill had a duty to proactively disclose its contents under Section 4(1) (c) of the RTI Act. The concerned public authority, however, acted only after the Complainant approached the Commission and filed a complaint under Section 18(1) of the RTI Act. The public authority should have disclosed the contents of the DP Bill suo motu and by omitting to do so, the very purpose of Section 4(1) of the RTI Act stands defeated. The Commission has further observed that at present, the GNCTD is not fully complying with Section 4 of the RTI Act and therefore, is of the view that citizens must be provided with means to debate legislative and policy changes which are likely to affect public lives as contemplated by the GNCTD. The citizens individually are the sovereigns of the democracy and they delegate their powers in the legislature. The RTI Act has recognized this and Section 4(1) (c) is meant to ensure that the citizens would be kept informed about proposals for significant legislative and policy changes."

[1] Underlined by us for reference

Although this does form part of the ruling in that appeal before the Commission, this is not part of the Decision and we have treated it as an issue to assist in our deliberation

Complainant Shri Nayak conceded that policies which do not require Cabinet approval need not face a perceived contradiction between Sections 8 (1) (i) and 4 (1) (c). However, this has come up in the case of PIDPI Bill, which constitutes in itself an important policy of wide public interest to be determined through an Act of Parliament. Appellant also made a written submission in the hearing as follows:

1. "There is a distinction between the process of "formulation" and "approval". Cabinet papers are for approval.
2. Till the draft bill is put up to the cabinet, it is essentially in a process of formulation (with intermediate internal approvals, which are not exempt as they are not from the cabinet).
3. The formulation process involves drafting, consultations, redrafting, interim approvals. This is the process that goes on up to and including when the committee of secretaries considers the draft bill. It is only after it is redrafted, following discussions in the committee of secretaries, that it can become a part of a cabinet note – which attracts exemption under S. 8 (1) (i).
4. Therefore, the provisions of S.4 (1)(c) are certainly applicable till the stage of a cabinet note.
5. Besides, if this was not so, there is no real mechanism for public consultations, as bills in Parliament do not necessarily have to be opened to public feedback, and there is no other mechanism, without an elaborate procedure, which is almost never activated, of allowing the public to effectively comment on the draft bill.
6. In any case, it is much easier and time effective to allow a public debate before the bill is introduced in Parliament, as that is the only way that the public can brief its representatives in Parliament, directly or through the mass media, to represent their views.
7. Therefore, there is actually no conflict between 8(1)(i) and 4(1)(c), unless the government insists on terming every document that is involved in any process that might finally lead to seeking approval of the cabinet, as a cabinet paper this is not only incorrect but also not in public interest.
8. However, selectively other exemptions under S.8 (1) can be invoked, where relevant, to exempt those papers (even though they are not yet cabinet papers) that attract one or more of the exemptions.
9. It might also be pointed out here that though S.8 (1)(i) exempts "cabinet papers", it does not ipso facto exempt material that is independent of the cabinet note, though it might also be a part of the cabinet note. Therefore, if a cabinet note contains statistics

> about poverty, for example, the fact that those statistics become a part of the cabinet note does not mean that they are now exempt under the RTI Act. Perhaps that is why the Government thought it fit to release a copy of the draft bill to the media even before the cabinet meeting (see attachments), even while denying it under the RTI."

In this context appellant cited the Finance Ministry's publication in August 2009 of a "Draft Direct Taxes Code Bill (Draft Code)", discussing the need for replacing the Income Tax Act, which placed the draft Bill together with a discussion paper in the public domain, followed by publication of a revised discussion paper on the subject dated June 15, 2010. On a question by the Bench as to whether publication of the draft Bill still under consideration will not amount to breach of privilege of Parliament and is therefore, exempt u/s 8 (1) (c) Shri Shekhar Singh assisting complainant submitted that Parliament has no claim over a draft Bill prepared by Government until it has been approved for submission to Parliament by Cabinet.

Respondent Shri K.G. Verma, Director, DOPT, on the other hand, submitted that the very first words in clause 8 (1) of the Act read, "***Notwithstanding anything***[2] *contained in this Act*". If therefore follows that if there is any perceived contradiction, it is the exemption u/s 8 (1) which will override such a contradiction. If, therefore, the draft Bill before its submission to Cabinet is made public Section 8 (1) (i) will be rendered irrelevant. Shri K.G. Verma submitted that at any rate there is a full discussion in Parliament on presentation of Draft legislation and also the requirement of a Press briefing. In the present case Shri Velukutty displayed press reports, which indicated that Government has indeed disclosed this information. He displayed newspaper reports of August 5, 2010 in Hindustan Times, New Delhi, Times of India New Delhi, and Indian Express New Delhi. After the consideration of the Bill by Cabinet follow up reports also appeared in the Hindustan Times and Indian Express dated 10-8-2010 but as pointed out by complainant in the hearing, this did not form part of the PIB Press release of that date. Compalinant has taken note of this in point 9 of his written

[2] Emphasised by respondent

submission that we quote above. Shri Velukutty further submitted that the question on policy formulation would apply only once the Bill has been passed by Parliament, which will then form the basis of policy.

DECISION NOTICE:

The plea of complainant is that the information he seeks is not in violation of Section 8 (1) (i) but is only in full compliance with Section 4 (1) (c) insofar as it applies to Section 8 (1) (i). The key issue for decision here, therefore, would appear to us to be to distinguish what constitutes the stage of "formulation", when disclosure of draft legislation leading to policy is mandatory, as against the stage of "finalisation", when it will constitute a document exempt from disclosure. This would imply that exemption u/s 8 (1) (i) will not apply to deliberations leading to formulation of a policy framework till such time as the draft is submitted to the Cabinet Secretariat, with all its necessary attachments for submission to the Cabinet, which would then be a final form given to the draft. Thereafter, this draft would remain exempt from disclosure till such time as the decision has been taken and action to be taken thereon is "*complete and over".*

In the present case appellant's plea for access to the PIDPI Bill passed by the Parliament has been refused and appeal before us dismissed in our decision of 3-8-2010 on the grounds that this is a request for information after the draft Bill has been put in motion for submission to Parliament. At that stage the disclosure would be in violation not only of Section 8 (1) (i) but also of Section 8 (1) (c). However, with reference to the larger issue, the Cabinet Secretariat in its procedural requirement to be met by preparing notes has noted as follows:

> "There have been instances in which the data/information, based on which proposals are formulated, has undergone significant changes by the time the proposals are actually considered by the Cabinet/ Cabinet Committees/ GOM. In such cases, it would be advisable either to withdraw the Note for necessary updating and revision or bring the facts to the notice of the Cabinet Secretary/ Cabinet/ Cabinet Committees/ GOM for consideration, before the note is taken up for consideration."

A Note that is withdrawn would therefore not constitute a Cabinet Note and would consequently qualify for disclosure. The distinction between

formulation and finalisation is then clear. It is only when proposals formulated are actually taken up for consideration by the Cabinet that they become so exempt. In other words, when a Cabinet Note is finally approved for submission to the Cabinet through the Cabinet Secretariat Sec 8 (1) (i) will apply. Once approved by Cabinet it will also qualify for exemption u/s 8 (1) (c).

For the above reasons this Commission holds that exemption u/s 8 (1) (i) will apply only when a Note is submitted by the Ministry that has formulated it to the Cabinet Secretariat for placing this before the Cabinet. All concomitant information preceding that, which does not constitute a part of that Cabinet Note will then be open to disclosure u/s 4 (1) (c), but in a manner as will not violate the provisions of Sec 8 (1) (i). The Commission further recommends u/s 25 (5) that Cabinet Secretariat considers amending Part V of Circular No. 1/16/1/2000-Cab of 15.4.2002 to allow for public consultation in appropriate form. This issue is decided accordingly. There will be no cost.

Reserved in the hearing, this decision is announced in open chambers on this the thirtieth day of August 2010. Notice of this decision be given free of cost to the parties.

(Satyananda Mishra)
Information Commissioner

(Deepak Sandhu)
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.

(Pankaj K.P. Shreyaskar)
Joint Registrar
30-8-2010