

## **Construing the Act's provisions regarding the authority / functions / jurisdiction of Information Commissions**

### **Central Information Commission**

#### **Decision No. CIC/SG/A/2009/001832/4853 -Appeal No. CIC/SG/A/2009/001832**

##### Request-

The Appellant sought for the following information regarding some unauthorized construction- If it is being constructed in an unauthorized manner without a map then what action has been taken as per DDA Act? What action was taken against this unauthorized construction? Which officer is investigating on the complaint? Give the name and the designation of the officer. The PIO had given the information that as per records no building construction had been sanctioned on the said plot.

The Appellant alleges that there is systematic modus operandi in which without any authorization or permissions buildings are constructed in collusive collaboration with MCD engineers. the Appellant states that inspite of complaints, MCD officers act as if the construction activities are invisible and when the building is complete it is claimed that the building has been in existence before and the Delhi Govt.'s blanket immunity to illegal works before 2007 is used to allow these buildings to continue without any hindrance. The Appellant has brought a photograph of the building being constructed at that site.

##### Decision-

The Commission orders a joint inspection of the site on 23/09/2009 at 11 am. Mr. SP Tanwar and the Appellant will conduct the joint inspection, take photographs of the site and make minutes of the meeting to record the existing position.

The Appeal is allowed.

#### **Decision number 30/ICPB/2006, 13.6. 2006**

For the first time, the CIC in its decision directed the Central Government Health Scheme, Pune to pay a sum of Rs. 5,000 to the appellant Ms. M. N. Trival as compensation and refund her the sum of Rs.60 paid by her as fee for non-application of mind by both the PIO and AA resulted in the appellant's having to interact with PIO and CIC repeatedly causing mental harassment to her.

#### **CIC/WB/C/2006/00040, 5.6.2006**

For the first time, Shri Wajahat Habibullah, Chief Information Commissioner imposed a penalty of Rs. 25,000 on a PIO for a complaint number CIC/WB/C/2006/00040, 5 June, 2006. PIO has failed to appear before the commission on due date and time despite a telephone reminder. Because the burden of proving that he acted reasonably and diligently is on the PIO under Provision II to Sec 20(1), it is assumed that he has no reasonable cause to show why penalty should not be imposed. Under the aforementioned section of the Act, penalty shall be imposed on any of the following grounds, if the PIO has

- refused to receive an application
- not furnished the information within the time frame specified in section 7 (1)
- malafidely denied the request for information or knowingly given

incorrect information  
- obstructed in any manner in furnishing the information  
by not supplying some of the information sought by the applicant as found by us in the Decision Notice of 23 May 2006, the PIO is in violation of (b) above, and by evading his responsibility to provide the information sought also obstructed the complainant's. he will therefore pay a penalty of Rs. 250 for every day subject to a maximum of Rs. 25,000.

**CIC/OK/A/2006/00163 of 19.10.2006.**

In exercise of powers conferred by Sec. 20(1) of the RTI Act 2005, the Commission imposes a penalty of Rs.25,000/- (Rupees twenty five thousand only) on the Registrar, BHU for denial of information despite the Commission's clear directions and directs him to remit the penalty by D.D, within 15 days of issue of this order. In case of failure, the VC has been authorized to recover the amount from the salary of Registrar.

**CIC/EB/C/2006/00040-24.4.2006**

The CIC recommended disciplinary action against an appellate officer. The appellate authority is not covered under the penal provisions of the Act. But in this case, he clearly failed to uphold the act in the public interest. It was observed that this decision may be sent to public authority to consider disciplinary action under their service rules..

**Decision No. CIC/SG/A/2009/000149/2693/penalty Appeal No.  
CIC/SG/A/2009/000149 Dt.1.5.2009**

The appellant had sought information about the area and property tax payment of property at S-230 Pandav Nagar. The appellant has been earlier given a letter by the Asst. Assessor & Collector on 28/12/2005 that a notice had been issued under Section 123A and 123B for non-submission of Annual property tax by the said property holder. In reply to his RTI application the PIO refused to give him the information on 18/11/2008. The First appellate authority's order on 16/1/2009 led to a reply from the PIO giving the area of the property but claiming that it was not possible to know whether property tax had been paid or not. The First appellate authority again passed an order on 24/3/2009 stating that the PIO's reply was incomplete and that the PIO must furnish complete information within 7 days.

Since the PIO had first refused to give the information, and subsequently not given complete information even after the order of the First appellate authority, the Commission issued a show cause notice to the PIO in the decision, asking him to showcause why penalty under Section 20 (1) should not be imposed on him. It is a clear case where, the PIO, officer-in-charge to give the information has failed to perform his duty. The denial of information to appellant even after having been ordered by the First Appellate Authority indicates that the PIO is not performing his duty. The fact that the First appellate authority had good reason to believe that the information on property tax , should be given within seven days proves that the PIO is guilty of withholding information without reasonable cause.

The Commission accepts that the initial denial of information by the PIO may have been an error of judgement. However after the order of the First Appellate authority on 17/1/2009 the complete information should have been provided within 7 days as ordered, i.e. by 24/1/2009. Instead the PIO provided the complete reply only on 6/4/2009.

Since the delay in providing the information has been 70 days from 23/1/2009 to 6/4/2009 the Commission passed an order penalizing the PIO, at the rate of Rs. 250 per day of delay as per Section 20 (1) of the RTI act.

Thus the penalty amounts to  $70 \times 250 = \text{Rs. } 17,500/$ .

The Municipal Commissioner of Delhi is directed to recover the amount of Rs. 17500/ from the salary of the PIO.

**Case No. CIC/AT/A/2007/01437\_ Dated: 10<sup>th</sup> August, 2009**

The appellant in his RTI-application dated 04.12.2006 requested for information regarding

- a) System regarding deduction of Provident Fund for the workers employed by the contractors for the period 2000 to 2004 and for the period 2004 to October, 2008.
- b) System of crediting the deducted amount of PF into the workers' account for the period 2000 to 2004 and from 2004 to Oct., 2008.
- c) Actual PF deductions made from the wages of workers employed by the contractors for the period from 2000 to 2004 and from 2004 to October, 2008.
- d) The method of disbursement of PF amount deducted from the workers for the period 2000 to 2004 and from 2004 to October, 2008 to the workers through their wage accounts.
- e) Whether the collected/deduction of PF amount as well as disbursement to the amount done fairly and systematically by the Public Authority. If not, who were responsible for it.

Even though all records pertaining to the information sought by the applicant were not available, keeping in view the statutory period for providing information, CPIO asked the appellant vide letter dt. 4.5.2007 to deposit a sum of Rs. 2804/- as charges for information required.

In the appeal, the Commission issued Notices under Section 19(8)(b), directing the holders of the information of the respondent-public authority to file Sworn Affidavit

A) providing the details of the system in place for deduction of PF/CMPF from workers' wages, its monitoring, the process of its depositing and other details such as calculation of interest, refund of PF/CMPF and so on. Statistics about refund claims and their disposal for the last three years were asked to be furnished. Respondents were required to provide to the Commission the names of officers managing the accounts and the records for ensuring proper disposal of PF/CMPF claims within the last three years.

(B) Affidavits to be filed by the officers regarding provisions in the agreement made with the contractor, M/s. S.K. Samanta & Company Private Limited regarding payment of bonus to the contractor along with the quantum of bonus paid to the contractor during the period 1997 to 2000.

(C) The system of stock taking of furniture in company especially furniture allotted to its senior management, including the CMD.

The Director, CIL furnished the following details in her enquiry report-

i) As per the Coal Mines Provident Fund Scheme and Miscellaneous Provisions Act 1948 any workmen employed by a contractor is covered under all the provisions of CMPF scheme and Misc. Provisions Act, 1948. However, enforcement of the scheme in the Coal

Companies started in its true spirit from June, 2003 and the actual deduction of CMPF from the wages of the workers engaged by contractor started only from June 2003.

ii) The Commissioner, CMPF through its Regional Commissioners is the enforcing authority. For the proper implementation of the CMPF Scheme for contract workers in most of subsidiary Companies, the Ministry of Coal and Board of Trustees of CMPFO introduced a clause in the agreement whereby the contractors were bound to ensure deduction of PF for each worker engaged. The contractors were also required to recover statutory dues and deposit the same along with employer's contribution (contractors share) with the respective PF offices and to submit statutory returns under intimation to principal employer.

iii) Regarding the system of crediting the deducted amount of PF into the workers' account, it was noted that as per the CMPF Scheme and Misc. Provisions Act 1948, the amount deducted every month should be remitted to the Assistant Commissioner, CMPF in the prescribed form. At the end of Financial Year Annual return regarding total contribution made is required to be submitted. There has been a qualifying period, i.e. 30 days of attendance from the date of joining, for coverage under CMPF scheme, and thereafter the deductions are made. The contractor is required to register himself with CMPF office and get a Registration number. From time to time corrective measures were being taken by CMPF Commissioner.

iv) For the default in payment of PF dues, the NCL management has withheld a total amount of Rs. 36.65 lakhs from the bills of 4 contractors.

v) Regarding the method of disbursement of PF amount deducted from the workers, the Commission observed that on termination/exit of the services of contract workers, the workers are required to submit refund application to the CMPF office through their employers, i.e. contractor, who submit the same to CMPF office through Coal Company. Thereafter CMPF office refunds the entire amount deposited with them including interest to the member through Account Payee Cheque. According to the NCL, so far no claim has been submitted by any contract workers who worked with the contractor at NCL, HQ.

vi) Assistant Commissioner, CMPF, Singrauli is the authority responsible for maintaining records of amount deposited by the Coal Company for the contract workers and also for disbursement of CMPF amount due to the contract workers. Form the year 2006-07 & 2007-08, PF has been deposited by all the contractors engaged in perennial nature of work.

In view of the Enquiry Report of the Director, CIL, it was decided not to pursue this matter any further as the respondents have agreed to effect the systemic changes required for monitoring of the funds collected from the workers through the contractors. Commission also appreciates the painstaking work which Director (P), CIL did in this matter which threw a flood of light on various aspects of this complex problem.

The Commission observed that though the NCL authorities have withheld an amount of Rs. 36.65 lakhs from the bills of 4 contractors, yet they did not have the names and addresses of the contract workers, to whom the money actually belongs to. The NCL authorities are therefore, advised to verify the details of workers from the respective contractors so that the withheld money could be deposited in the CMPF accounts of the respective workers. This exercise should be completed within 4 months of receipt of this order. The details should be uploaded in the website of the public authority, copies of the same be displayed in the notice boards of every office and copies should also be forwarded to the workers unions for giving wide publicity.

Further, the Commission also observed the procedure of refund of CMPF to the workers when it is due, is somewhat cumbersome. The contract workers are required to submit

their refund applications through their respective employer / contractor, who forward the same to the CMPF office through Coal Company. Once the deductions are made by the contractor from the wages of contract workers and deposited it to the CMPF office through respective Coal Company, the role of contractor should be done away with for refund application. The refund applications could be directly submitted by the contract workers to the respective offices of Northern Coalfields Ltd., who after verifying the records forward the same to CMPF office in a time bound manner.

The Commission therefore recommends to the NCL authorities that they should, in consultations with the CMPF authorities, evolve an easy and workers-friendly procedure for refund of the CMPF dues.

**File No. CIC/S/A/2009/000033 & 20 others. Dt. 31.3.2009**

It is the submission of the appellant that the then CIT (Appeals) XII, Mumbai, had passed a quasi-judicial order referred to above in his capacity as a Appellate Authority under the Income Tax Act and, therefore, under clause (d) quoted hereinabove, he is entitled to seek information on the observations/comments/remarks made by him in various paragraphs of his order and the conclusion arrived at by him.

The plea of the appellant appears to be far fetched in as much as if the appellant were to be allowed to seek information in regard to the order passed by Court or Tribunal and to ask questions as to its factual accuracy or legal validity under the RTI Act, not only the independence of such Court or Tribunal is likely to be compromised, which is a pre-requisite for its efficient and objective functioning, but also the very purpose of creating a hierarchy of courts and Tribunals, where these issues can be agitated by the interested parties, would be defeated. It is to be noted that in the matter in hand, CIT (Appeals)XII, Mumbai (Shri Pragati Kumar) has passed a detailed order running into 66 pages.

It is also an admitted fact that aggrieved with this order, the appellant has filed an appeal before ITAT, Mumbai and the matter is sub-judice. The Appellant is, thus, availing of a legal remedy available to him under the law.

It may be added that this issue came up before this Commission in Shri Rakesh Kumar Gupta Vs ITAT, New Delhi and a Full Bench of this Commission decided this matter vide this decision dated 18.9.2007. It would be apt to extract para 49 of the said decision :-

*"It is our conclusion, therefore, that given that a judicial authority must function with total independence and freedom, should it be found that an action initiated under the RTI Act impinges upon the authority of that judicial body, the Commission will not authorize the use of the RTI Act for any such disclosure requirement. Section 8 (1) (b) of the RTI Act is quite clear, which gives a total direction to the court or the tribunal to decide as to what should be published. An information seeker should, therefore, approach the concerned court or the tribunal if he intends to have some information concerning a judicial proceeding and it is for the concerned court or the tribunal to take a decision in the matter as to whether the information requested is concerning judicial proceedings either pending before it or decided by it can be given or not."*

**The Full Bench of this Commission has categorically laid down that if any action initiated under the RTI Act impinges on the authority of judicial body, the Commission will not authorize the use of RTI Act for such purposes.** It, thus, appears that RTI Act is not the proper instrumentality and this Commission not the proper forum for soliciting

*information in regard to the Appellate order passed under the provisions of Income Tax Act, and the grievances, if any, of the appellant can be redressed by the higher judicial authority i.e. ITAT/High Court/Supreme Court. As mentioned above, the appellant has already availed the opportunity of agitating this matter in the ITAT, Mumbai.*

*In view of the above discussion, it was held that seeking information in regard to various paras of the order dated 25.6.2007 passed by the CIT (Appeals)XII, Mumbai, either under S. 2 (f) or S. 4 (1)(d) is misconceived and not sustainable in law. The remedy lies elsewhere and the appellant has already availed of this remedy. The appeals cited above have no merit and are dismissed.*

### **Complaint No. CIC/WB/C/2010/000155 dated 3-10-2009 dt. 02.07.10**

The appellant moved an application before the Border Security Force in June 2007 seeking information regarding the suspected disappearance in police custody of one Mohammad Ashraf Yattoo of Badipora, Chadoora 17 years back, based on a cutting from the newspaper Greater Kashmir of 2.7.2007.

The request was faxed to the 80 battalion, BSF to which a reply was also received within three days indicating that the incident was stated to have occurred on 13.12.1990 but all records of that period had been weeded out by 11th May 2001. The Frontier Hqrs., BSF has also no record regarding the FIR which stated by complainant to have been lodged with the Police Superintendent Chadoora in this case, or the progress in investigation. The CPIO returned the complaint instead of transferring to the concerned PIO as required u/S. 6(3) of the Act.

CIC held that though the BSF is indeed an organisation listed at Sl. No. 9 of the Second Schedule of the RTI Act thus bringing it within the ambit of section 24 (1) of the Act, as the request is an allegation of disappearance in custody of a civilian working in a government Department in the State of Jammu & Kashmir amounting to an allegation of human rights violation, makes the BSF answerable. The Commission asked the complainant to produce details of FIR and other relevant documents to BSF within a week and directed BSF to disclose all the information on the issue, within 15 days of the date of the decision.

### **Appeal No.CIC/WB/A/2009/00010 dated 6.1.2009**

The applicant sought the copy of proceedings including inquiry committee reports and the medical reports of the victim in the complaint on sexual harassment, from the CPIO, Research & Analysis Wing of the Cabinet Secretariat (RAW), which was refused on the ground that the RAW under Cabinet Secretariat(s) which figures in the Second Schedule is exempted from the purview of the RTI Act vide Sub Section (1) of Section 24, Chapter VI (subject to the conditions stipulated therein) of the Act and that there is no involvement of human rights violations & allegations of corruption.

CIC held that the entire application centres on allegations of sexual harassment which is a material basis for allegations of human rights violation, reiterating that overt gender discrimination amounts to violation of human rights, as held in the Decision of the Commission in Full Bench in **Appeal No.CIC/WB/A/2007/001243 of 3.7.'08** Dr. Asha Singh vs. CRPF.

Though the appeal was unsustainable as the information sought from the CPIO is different to that sought in the initial application, the appellant was at liberty to move a fresh application before the CPIO RAW seeking information on the matters which she has now sought at the level of the second appeal. Her right to so move an application

notwithstanding the listing of RAW in the Second Schedule is upheld in light of proviso to sec. 24(1) which reads as follows:

*"Provided that the information pertaining to the allegations of corruption and human rights violations shall not be excluded under this sub-section:*

*Provided further that in the case of information sought for is in respect of allegations of violation of human rights, the information shall only be provided after the approval of the Central Information Commission<sup>1</sup>, and notwithstanding anything contained in section 7, such information shall be provided within forty-five days from the date of the receipt of request."*

## **Assam State Information Commission**

### **Case No. 132/2007**

On 18.5.07 a in a petition received by the Commission the applicant requested the Commission to direct the SPIO of Gauhati University to furnish necessary information to him in response to his application dated 20.1.07 wherein he wanted to know: the status of the letter addressed by him to the Registrar Gauhati University on 10th December, 2006 duly forwarded by the Head of Department of Law pertaining to the application under the Career Advancement Scheme of the University; the number of applicants under the said scheme received from the Department of Law along with the date of receipt and the action taken thereon, i.e. the dates when the same were processed; whether in computing the qualifying service, the period of service rendered as Principal (administrative post as accepted by Gauhati University Authority in its published documents from time to time) has been computed for qualifying service along with the copies of the relevant circular. He also wanted to inspect the file notings thereof and furnishing copies of the same as well.

The representative of Gauhati University, Guwahati carried a letter from the Registrar, Gauhati University seeking one month time for furnishing information to Dr. Subhram Rajkhowa, Reader, Department of Law, Gauhati University stating that the matter was under examination and would be placed in the next Executive Council for direction. Dr. Rajkhowa however requested for hearing of the case.

**As the entire matter was to be decided by the Executive Council of the Gauhati University as indicated in the letter of the Registrar, Gauhati University the Commission decided to adjourn the hearing.**

### **Case No. 119/2007**

The complainant submitted a about not being furnished any information to her when she sought to know about the illegal construction of a building. The Commission could not accept the contention of the Deputy Director, Town and Country Planning & Member-Secretary of the Tezpur Development Authority that provisions of the Assam Town and Country Planning Act do not allow furnishing of the information to the complainant.

The Commission observed that Section 22 of the RTI Act, 2005 clearly spells out that the provisions of the RTI Act shall prevail over any other law in force including the Officials Secrets Act, 1923 and hence the Public Authority and the APIO concerned cannot take shelter under the Assam Town & Country Planning Act.

Moreover, the Commission found no provision in the said Act which prevents the Public Authority or the SPIO to furnish the information sought for by the complainant.

The Commission directed the Deputy Director of the Town and Country Planning Department, Tezpur, Assam cum Member-Secretary of the Tezpur Development Authority to furnish the complete and correct information to the petitioner as requested by her **after due spot verification jointly with the petitioner of the encroachment in the construction of house**. As the notice had been issued for the demolition of the unauthorized construction within 20 days, the Commission refrained from imposing any penalty under Section 20(1) of RTI Act.

It was also clear that there was no intention on the part of the Public Authority to deny information to the petitioner. The delay in furnishing the information which was incomplete and misleading was the **outcome of ignorance of the RTI Act** coupled with official indifference to public request. The Commission accepted the apology of the Public Authority for the lapses and warned that in future no leniency would be shown.

In the interest of better implementation of RTI Act, 2005 the Commission required under Section 19(8)(a)(ii) that the Deputy Director, Town and Country Planning and the Member-Secretary of the Tezpur Development Authority **should be the State Public Information Officer** both in the office of the Deputy Director, Town and Country Planning, Tezpur and in the Tezpur Development Authority. The **First Appellate Authority** under Section 19(1) of RTI Act, 2005 in respect of Deputy Director, Town and Country Planning, Tezpur **should be the Director** of Town and Country Planning, Assam and the Chairman of Tezpur Development Authority, Tezpur in respect of that office.

#### **Case No. KP(M)23/2007**

It is made clear to all that the Central Information Commission and the State Information Commission are authorities independent of each other and the Central Information Commission does not have an advisory or superior standing over any State Information Commission and the decisions of the CIC are not binding on the State Information Commission. As such, the Central Information Commission has no role whatsoever in the matters /cases relating to the State Information Commission. The State Information Commission is an independent legal body and not subservient to the CIC.

#### **Case Nos : 18/2007**

The complainant submitted a complaint before the State Chief Information Commission stating that he submitted written applications before the SPIO of the Deputy Commissioner's office, Dhubri and deposited Rs. 80/- as application fees for 8 (eight) applications. However, the SPIO of the Deputy Commissioner's office Dhubri failed to give information within 30 days from the submission of the applications. He also did not inform anything to the applicant regarding the prayer. He also submitted that he verbally prayed to the SPIO several times to furnish information but the SPIO of the Deputy Commissioner's office Dhubri never responded positively in this matter.

The complainant also submitted that he tried to submit the appeal before the Deputy Commissioner's Office, Dhubri but the officials and staff being completely in dark about the R.T.I. Act, 2005 and refused to accept the appeal. He prayed before the Commission for supplying information as sought for in his applications dated 17.8.2006 and to impose penalties on the SPIO of the Deputy Commissioner's office Dhubri for willfully neglecting to give information thereby violating the provisions of RTI Act, 2005. He also sought for any other relief which the Commission deemed fit and proper.

The Commission was in receipt of two letters by fax where the Deputy Commissioner,

Dhubri stated that the complainant should have placed the matter before him and instead he came to the Commission and filed an appeal. In the letter addressed to the complainant, the SPIO of the Deputy Commissioner's office also took the same view that the complainant should have placed his grievances before the First Appellate Authority i.e. Deputy Commissioner, Dhubri and he should not have come before the State Information Commission.

**The contention of the Deputy Commissioner, Dhubri as well as the SPIO of the Deputy Commissioner's office Dhubri that the complainant should not have come before the Commission but should have preferred an appeal before the Deputy Commissioner, Dhubri is totally wrong and it showed their ignorance of the provisions of the Right to Information Act 2005.**

Under section 18 (c) of the RTI Act, 2005 the Commission has the obligation and duty to receive and enquire into a complaint from any person who has not been given a response to a request for information or access to information within the time limit specified under this Act. There was inordinate delay in providing the information; also there the SPIO got the applications misplaced in his office. The Commission could not allow such a state of affairs to continue in the DC's office, Dhubri.

The Commission, on careful consideration of the facts and circumstances of the case was of the opinion that the SPIO of an office/ Public Authority cannot take the plea of non-receipt of the petitions if his office had received them and also asked the petitioner to pay the application fee and the petitioner paid the same. In the instant case, the plea of SPIO was that he did not receive the applications personally but the Facilitation Centre as well as the Development Branch of the DC's office, Dhubri received them. These issues are matters of internal office administration which should have been sorted out by the SPIO and the head of office without any detriment to the petitioner under the RTI Act. This plea, therefore, could not be entertained by the Commission.

**The Commission observed that Shri Kalita's attitude to the petitioner was unbecoming of his position and has also failed to furnish him the information despite Commission's direction. It shows his utter disregard for the RTI Act. In our view, whenever any application was received by any branch of a Public Authority, it shall be deemed to have been received by the SPIO to whom the application was addressed.**

If SPIO's plea is entertained, a citizen will never be able to get information from a Public Authority on the plea that some branch or dealing assistant has received the same and hence the SPIO has no responsibility. This will defeat the very purpose of the enactment of this Act. Besides, in this case the Facilitation Centre has been created for public grievances redressal, specially for facilitating the submission of petitioners under the RTI Act.

This being the case, the plea of SPIO is only a lame excuse. The Commission, therefore, confirms its decision to impose a penalty of Rs.25,000/-, under Section 20 (1) of RTI Act, 2005 for the delay in furnishing the information, on APIO and the Addl. Deputy Commissioner, Dhubri. The Commission, further directs the DC, Dhubri to furnish the information free of charge to the petitioner within 7 days of the receipt of this order failing which the Commission would be constrained to enhance the quantum of penalty proposed.

#### **Case No. 44/2006 & 45/2006**

The **Complainant** submitted a petition before the Chief Information Commissioner stating that **he submitted first appeal before the First Appellate Authority** of Home & Excise Departments, Government of Assam due to furnishing of false,

misleading and incomplete information by the SPIO of the Home Department and **due to the furnishing of incomplete information by the SPIO Excise Department.**

The Commission, on hearing the appellant and the PIOs as well as the Investigating officer of Digboi Police Station and on careful consideration of the facts and circumstances of the case decided that the PIOs shall furnish certified copies of the available documents in Government and Deputy Commissioner's office files as enlisted hereinbefore.

**The Commission further directs that the Secretary, Excise Department, Government of Assam shall cause an enquiry into the disappearance of the original deed document alleged by the appellant to have been forged and fix responsibility for the missing document. The Commission further orders that the copies of the documents be given free of charge in view of delay in furnishing the information.**

The Commission refrains from imposing any penalty for the delay in furnishing information as it was satisfied that it was caused by the nature of the information sought and not by the neglect / indifference of the officers concerned.

#### **Case No: 44/2006**

During a case hearing the complainant was present at the AIC office. However, an officer who is neither the competent authority nor the Public Information Officer of the office of the Deputy Commissioner, Tinsukia was deputed by the Deputy Commissioner, Tinsukia with a report addressed to the Under Secretary, Assam Information Commission with photocopies enclosed with the report. Neither the Deputy Commissioner, Tinsukia nor the Public Information Officer of his office was present which shows utter disregard and disrespect to the Assam Information Commission.

**The Assam Information Commission hereby directs the Deputy Commissioner, Tinsukia along with the Public Information Officer to appear before the Commission on the next date fixed with all records and reports.**

**The Deputy Commissioner, Tinsukia / Public Information Officer in his office should explain why penalty as contemplated under the RTI Act 2005 should not be imposed on them for willful negligence on the part of D.C / PIO in remaining absent before the Commission with all records and reports.** The compensation, if any, to be paid to the complainant will also be decided on the next date fixed.

#### **Case No. 32/2006**

The Commission found that neither the Commissioner & Secy., Higher Education or his PIO nor the Director, Higher Education or his PIO acted promptly on the petition of the Complainant who is the President, All Assam Disabled Development Union. They have not yet furnished complete information to the petitioner.

The reported refusal on the part of the Director, Higher Education to receive the application fees in cash from the petitioner who is a disabled person and asking him to deposit a new Bank Draft purely on technical grounds spoke volumes about the apathy of the concerned authorities. This insensitive attitude of the Director, Higher Education and the PIO of his office towards a member of public, particularly disabled section of the society was highly inexcusable.

The Director, Higher Education, on one hand informed the Commissioner & Secy., Higher

Education that the petitioner did not deposit the application fees and on the other hand on the same date he sent a letter to the petitioner stating that he was not the appointing authority of the staff of universities and colleges and that a circular has been issued to all concerned vide his office letter dtd. 1.4.03 for reservation of 3% jobs in educational institutions. This was totally contradictory and misleading.

The Commission noted that the Public Authorities or the PIOs had not taken pains to collect the information from the field and to furnish it. The crux of the matter is that information has not yet been furnished to the petitioner for so many months now. This state of affairs is deplorable and detrimental to the implementation of the RTI Act.

On careful consideration of the facts and circumstances of the case the Commission decided to impose penalty on the PIOs of the Higher Education Deptt. and of the Director of Higher Education at the rate of Rs. 250/- per each day of delay in furnishing the information up to a maximum of Rs. 25,000/- each as contemplated under Section 20(1) of the RTI Act.

The Commission further decided to award compensation to the complainant under Section 19(8)(b) of RTI Act, 2005 for the harassment caused to him by the office of the Director, Higher Education. Notices be issued to the PIOs of the Higher Education and of the Director, Higher Education through their controlling officers as to why penalty as proposed should not be confirmed for willful delay in furnishing the information.

Notices are also to be issued to the Public Authorities i.e., the Commissioner & Secy., Higher Education Deptt. and the Director, Higher Education, Assam requiring them to furnish affidavits under Section 19(8)(a) of RTI Act, 2005 on the measures taken by each of them on the petition of the complainant and action taken by them against the persons responsible for the delay.

## **Bihar State Information Commission**

### **Case No. 01 / 06-07 Dt. 15.11.2006**

An RTI Application had been filed with the PIO of the 'Chanakya National Law University' for copies of examination answer sheets of candidates (including himself). The appeal was for being given incomplete information.

The PIO submitted that the University is ready to provide a copy of the examination answer sheet of the applicant himself, but not of the other 10 candidates, for that would go against public interest. This submission was accepted and the PIO was directed to do the same.

In a similar decision involving the same University, BIC ordered that the appellant would have to pay further fees as stipulated for getting the copies of his answer sheets (**Case No. 27 / 06-07 Dt. 03.01.2007**).

### **Case No. 04 / 06-07 Dt. 28.11.2006**

The request of a PIO for being given 3 months for providing some of the information sought was granted. The appellant was present. There is no way to know if the applicant agreed with this or had contested this – for nothing to this effect is available in the copy of the decision put on the website.

**Case No. 49 / 06-07 Dt. 02.02.2007**

Several hearings at the Information Commission about the long pending dues of an employee of the Minor Irrigation Department led to the senior officials of the said Department attending the final hearing admit to the fact that it was the inefficacy of 12 officials of the Department that the dues of the employees concerned got held up and that these officials were also to be blamed for the delay in the employee getting information on his RTI application in time.

The Information Commission ordered that Secretary, 'Minor Irrigation Department' should fix responsibility on all the said 12 officials vis-à-vis their lapses and should take appropriate departmental action against them and penalise them. The action so taken should be reported to the Information Commission within 3 months.

**Case No. 112 / 06-07 Dt. 22.11.2006**

The matter was forwarded – as such – to the Central Information Commission, New Delhi – seemingly because it pertained to a Central Public Authority. The interesting thing to be noted is that the BSIC forwarded the matter itself. This was done again for **Case No. 143 / 06-07 Dt. 06.12.2006.**

**Case No. 121 / 06-07 Dt. 29.11.2006**

The Information Commission has been established with a specific purpose in mind. It cannot act upon petitions received to grant relief to any body. Such petitions may be addressed to the senior authorities of the public Authority / department concerned. the PIO of the Public Authority concerned may be approached if any information is needed in this regard.

**Case No. 129 / 06-07 Dt. 14.02.2007**

An appeal in which the addressee has been stated to be the Secretary of some special agency is not permissible as per the Appeal Rules. Hence the appeal may be appropriately revised by the appellant.

**Kerala State Information Commission**

**Ref: Appeal No. 313(5)/2008/SIC (File No. 1636/SIC-G3/2008): Sajimon M.T., Vs. M.G. University, Kottayam: Order dated 5th March 2009**

Information/documents regarding byelaws relating to various examinations conducted by the M.G. University were sought. Respondents stated that there were no byelaws for the conduct of various examinations, and no answer keys for the examination. The SIC observed that conducting examinations without an answer key was an administrative lapse.

Since, the SIC could not interfere in the administrative matters of a public authority, the Public Information Officer was directed to file an affidavit, before the Commission accordingly, and give a reply to the appellant to that effect so that the appellant can approach appropriate forums to question that administrative lapse.

**Ref: A.P. No. 268(5)/2008/SIC (File No. 10344/SIC-G3/2008) - K. Girish Kumar vs. Dept. of Planning & Economic Affairs (A) – Decision dated 5-3-09**

The Commission observed that the information requested by the appellant was in fact a clarification on an action done by the Public Authority. *Clarifications, interpretations and explanations do not come under the definition of the "information" u/s. 2(f) of the Act.* Even then the information sought for were provided by the Public Authority. The Commission cannot enter into the administrative matters of the Public Authority. *The executive has the freedom to decide an administrative matter according to its administrative convenience.* Hence, if the action taken by the public authority is incorrect; RTI Act is not the medium by which the appellant can redress his grievances. He should approach the appropriate forums for the same.

**Ref: AP. No.735(4)/2008/SIC (File No.7068/SIC-Gen3/2008) : G.Sasi Kumar Vs. Conservator of forests, Social forestry, Southern region: Order dated 17th March, 2009**

Appellant had sought information on the details of a missing voucher in his department. The PIO had provided information on it stating that the voucher has not been traced and responsibility for the same has not been fixed. SIC ordered that this was only an administrative matter, wherein, the RTI Act had no scope for interference.

**Ref: AP No.1041 (2)2008/SIC (File No.9492/SIC-Gen2/2008): Maj (Rtd) P.M. RavindranVs. Chief Minister's Public Grievance Redressal Cell, Kerala : Order dated 19 March 2009**

The appellant had asked for copy of the minutes of a meeting held by the Chief Minister on 18.8.07. Based on the affidavits/statements filed before the Commission, the Commission arrives at the conclusion that even though a meeting was held by the Chief Minister on 18.8.07, no minutes of the meeting was available in the departments/offices of the Government Secretariat or the Pollution Control Board. Right to Information Act 2005 gives the citizen right to get copies of documents held by a public authority. However, the act does not provide to examine the reasons for not recording and taking follow-up action on the decision taken in the meeting. The RTI Act does not provide for evaluation of adequacy of administrative actions taken by public authorities.

## **Maharashtra State Information Commission**

### **Appeal No.2007/987/02**

If the information is not received by the Appellant within time limit, the Appellant can always approach the Commission directly with the complaint that he has not received the information within the stipulated time. However, if Appellant has not received the information within a period of one month from the date of application he also ought to have preferred 1st appeal with the Appellate Officer and Commissioner of the concerned department/public authority.

### **Appeal No.2007/1739/02**

Tata Memorial Centre comprising the Tata Memorial Hospital and Advanced Centre for Treatment, Research and Education in Cancer is a grant-in-aid institute under the administrative control of Department of Atomic Energy, Government of India. The centre is fully funded by the Department of Atomic Energy and all the expenditure incurred on the procurement of equipment are met from the grants sanctioned by the Department. Taking into consideration the above the appropriate Government u/s 2(a) of the RTI Act, 2005 is the Central Government in relation to the Public Authority of the Tata Memorial

Centre. Therefore, 2<sup>nd</sup> appeal u/s 19(3) should lie with the Central Information Commission.

**Appeal No.2009/2324/02 (Commission not settling disputes)**

Complaints regarding transfer from one department to another department of the same college need not get commission's attention as the Commission is not mandated to settle disputes or provide remedial measures.

**Appeal No.2008/2326/02 (Commission not settling disputes)**

The appellant feels that this happened because of administrative lapses on the part of the Medical Officer. He wanted to know why he acted in the way that led to the revocation of the notices. This cannot be answered under the RTI Act. If the appellant wants action against the Medical Officer, the commission is not the right place.

**Appeal No.2009/216/02 (Commission not settling disputes)**

The Commission is not mandated to interfere into allotment of shops. The RTI Act ensures furnishing of available information and the same has been done. There is no substance in the complaint.

**Appeal No.2008/597/02**

The RTI guarantees access to available information and redressal of individual grievances is not mandated under the Act.

**Appeal No.2009/2198/02**

The RTI does not provide remedial action. Appellant will have to approach the appropriate authority of redressal of her grievances.

**Appeal No.2008/650/02 (Cooperatives)**

The RTI Act does not redress grievances it provides information to facilitate redressal of grievances.

**Appeal No.2008/ /02 (Courts)**

The information sought by the appellant is arising out of a judgment by the small causes court. If the appellant is not satisfied with the judgment or the way in which it has been executed or wrong execution of a court's order, the remedy lies with the same courts or higher court as the situation demands.

**Appeal No.2008/391/02**

It may not be the way the appellant would have liked it to be but RTI guarantees access to available information and redressal of grievances / settlement of claims have not been mandated.

**Appeal No.2008/1305/02**

The appellant has a grievance why has she not been appointed as an Administrator and someone whose English is not so good has been appointed. This is beyond the scope of Right to Information Act and the commission is not mandated to redress grievances.

**Appeal No.2009/3814/02**

The RTI Act ensures furnishing of available information and is not mandated to redress grievances.

**Appeal No.2009/3982/02**

The RTI Act ensures furnishing of available information and cannot be used for settling personal scores.

**Appeal No.2009/484/02**

The RTI Act is not mandated to rectify irregularities committed. He can draw adverse inference and approach the competent authority to get the matter sorted out. The RTI Act ensures furnishing of existing information. If the documents did not exist, the question of furnishing to the complainant does not arise.

**Appeal No.2009/1845/02**

If the information sought is a policy matter where govt. has to take a conscious decision, it is beyond the scope of RTI.

**Appeal No.2008/1891/02 (not provide relief)**

The appellant may take up the issue with the Food and Civil Supply Department if he feels that the ration card was wrongly issued and it should be cancelled. The commission is not mandated to provide relief in such cases.

**Complaint No.2010/493/02**

The RTI Act ensures furnishing of available information and the same has been done in this case. The commission is not mandated to get the lock opened to facilitate inspection by the Municipal staff and further action as desired by the complainant.

**Appeal No.2008/2041/02**

The RTI act cannot investigate into somebody's dismissal from service leave apart reinstating him. The RTI Act does not provide for remedial measures. The appellant should approach the appropriate forum for getting relief.

**Appeal No.2008/566/02**

RTI Act provides an instrument through which omissions and commissions can be rectified. If the appellant has found some defect in the list, he could approach the

appropriate authority for remedial action. The RTI Act cannot be used for redressal of grievances.

**Appeal No.2008/2237/02**

These issues can be sorted out under the Maharashtra Cooperative Societies Act 1960. The RTI Act is not supposed to provide remedies or redressal of grievances.

**Appeal No.2009/2370/02**

RTI Act does not permit arbitration or resolution of the problem for which citizens are supposed to take recourse to the appropriate competent authority.

**Appeal No.2009/3226/02**

The RTI Act ensures furnishing of available information. If reasons for doing or not doing something is on record, the same can be furnished. If something has not been done, the commission is not mandated to order that this should be done. In fact what the appellant has sought is not information but arbitration – direction to do something – whether the MMC should have issued notices under section 53 (1) of the MRTP Act, cannot be decided under the RTI Act.

**Appeal No.2009/2851/02**

The appellant wanted was arbitration and not information. It is not within the purview of the RTI Act to decide who is a trustee and whether the police charge of trespassing is right or wrong. The RTI Act ensures furnishing of available information.

**Appeal No./ KR-656/08**

The Subject "Banking" is within the purview of Central Government and Commission therefore is inclined to agree with the Bank of Maharashtra that the 2nd appeal lies with the Central Information Commission, New Delhi. The Commission therefore cannot entertain this appeal and would advise the Appellant to approach the Central Information Commission

**Appeal No./ KR-2041/08**

I.C.I.C.I. Bank is not covered by R.T.I. Act, 2005 as decided by the order of C.I.C. in Ekta Chaudhary V/s. I.C.I.C.I. Bank, dated 9.8.2007.

**Appeal No.2009/2846/02 (filing application in a casual way)**

If the Commission observes that the appeal has been filed casually by the appellant, it can ask the appellant to approach the commission after rectifying the appeal documents. In this appeal, the appeal was made without any required documents – copy of the application for information and PIO's order if any. It is not known whether he has fixed the stamp of required amount. It is therefore decided to reject the appeal.

## **Orissa State Information Commission**

### **Complaint Case No. 614/2007, dated 1 October 2008, Jagamohan Pandit vs. PIO, Office of the Tahasildar, Anandapur, Keonjhar, Orissa**

The SIC depreciated the action of the PIO in seeking more time than prescribed from complainant to provide information. Instead, it ordered the PIO to streamline record management system in its office.

On the other hand, the SIC ordered to the complainant that he could seek only information and cannot ask for certified copies of his own mutation certificates as it is supposed that the owner should have a copy of the same with himself.

### **Ref: Complaint Case No. 194/2006, dated 5 October 2007, Shri Aswini Kumar Tripathy, Kuchinda, Sambalpur District, Orissa vs. Registrar-cum-PIO, Orissa Administrative Tribunal, Bhubaneswar**

Due to administrative lapses in the public authority PIO could not be designated which caused delay in providing information to the complainant. Realizing this fact the current PIO was exonerated by the SIC u/S 20 (1) and 7 (1) of the RTI Act.

## **West Bengal State Information Commission**

### **Appeal/Complaint No.1325(3)-WBIC/RTI/116/07**

The Act has not stipulated any time frame for the Commission to dispose an appeal. The Commission makes it clear that whether or not PAR department or the State Vigilance Commission has any authority to initiate vigilance inquiry against an AIS officer is beyond the scope of jurisdiction of the Commission to adjudicate.

Section 8(1) should be considered as a whole being read with section 8(2) also. Public interest in disclosure is of paramount consideration even if any of the clauses under sub-section 8(1) or Official Secrets Act, 1923 permit exemption.

Exemption incorporated in 8(1)(e) does not bind both the parties having fiduciary relationship. The department which holds information in trust and confidence of another department cannot disclose information, but the other department has no obligation under this relationship to disclose findings of the department if such disclosure is otherwise allowable. A doctor is bound by such relationship and should not disclose the confidential matter of the patient but the patient himself, being the other party, is free to disclose the same. This holds good in case of such a relation between a lawyer and a client.

To understand the applicability of section 8(1)(h) one has to have a clear understanding of the terms "inquiry" and "investigation." Though RTI Act has not given any definition of the terms "inquiry" and "investigation", the Act does differentiate the terms. Section 8(1)(h) of the Act allows exemption from disclosure of information which would impede only "investigation" and not "inquiry". But when the Commission receives complaint under section 18(1), the Act makes it duty bound upon the Commission to inquire into the complaint and under section 18(2) of the Act, the Commission initiates "inquiry" and not "investigation".

Therefore, the Commission does not subscribe to the view that "investigation" as mentioned in section 8(1)(h) includes "inquiry" as per RTI Act 2005 is concerned.