

CENTRAL INFORMATION COMMISSION

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

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Central Information Commissioner

CIC/SA/A/2016/001483

R.S.Gupta v. LG Office

Important Dates and time taken:

RTI Application: 22-2-2016	FAA Order: 12-5-2016	2 nd Appeal: 7-6-2016
Closed	Hearing: 29-07-2016	Decided on: 1-8-2016

Appellant:

Public Authority: Mr. Ashutosh Kumar- APIO and Mr. Shalil-UDC

FACTS:

2. Appellant had sought information regarding absorption of his services as PGT-English in any government school. The RTI application dated 22.02.2016 of Dr. R. S. Gupta has been received in LG Secretariat on 29.02.2016, whereby he had desired to get information related with Directorate of Education, Delhi. In response, the application of Dr. R. S. Gupta was transferred u/s 6(3) of RTI Act-2005 to the Directorate of Education, Delhi vide LG Office letter dated 02.03.2016 as it pertains to them. Dr. R. S. Gupta while filing his 1st appeal has stated that he is not satisfied with the reply received from PIO.

3. Submission of PIO in first appeal – The information available with the public authority can only be provided under the RTI Act. The requisite information has already been provided to Dr. R. S. Gupta vide this office letter dated 02.03.2016. Further, under the provisions of RTI

Act one public authority cannot direct another public authority to provide the information to the applicant.

4. The PIO has rightly informed the appellant about the information sought, that the RTI application was forwarded to the Directorate of Education. The appellant is advised to file the appeal before the Appellate Authority of the Department if the reply given by the Directorate of Education is not satisfactory. The appeal is disposed of accordingly.

DECISION:

5. The CPIO transferred the matter to Directorate of Education, which replied on 7.4.2016. The officers from LG office, along with Mr. Subhash Chandra Agrawal, Guinness World Record Holder for most published letters to editors of newspapers, RTI activist and Consultant, represented as follows: Appellant's RTI request has nothing to do with LG office. He is asking about absorption of his employment with Directorate of Education, which is straight away a matter to be decided by the Directorate of Education. Filing such an RTI petition with LG office knowing full well that it is not concerned with LG office is not correct. Similarly several appellants are filing numerous RTI applications for information pertaining to other departments. Because of this, the LG office has to spend its resources, man-hours and infrastructure simply to transfer the same to the concerned department(s). The RTI wings of offices of the President, Prime Minister, Governors, Lt Governors and Chief Ministers of different states are mostly spending their energy, time and money on transferring such RTI applications to concerned departments. Thanks to deliberate improper use of RTI by literate persons, these high offices have become mere post offices. Such an exercise does not serve any purpose but merely burdens them. In every first and second appeal they have to unnecessarily appear just to say that they have transferred the RTI application to the concerned department(s), and they have to spend huge money in writing and posting the transfer-letters. The Commission was requested to relieve these offices from such unnecessary burden.

6. There is merit in their submission. When these apex offices are expected to receive the complaints or grievances against the other departments, they have to accept those complaints, and initiate necessary action like ordering inquiry or giving proper directions. They have also to transfer RTI applications in such cases where their office and other public authorities are concerned to respond along with a specific endorsement. Under these circumstances also, they are not supposed to merely act as post offices. They should safeguard parental supervisory authority, power and monitor the governance of the public authorities under them. But an RTI request concerning a different public authority, it will be a burden without purpose. Whether the law intended such a transfer?

Section 6(3) of RTI Act, says:

Where an application is made to a public authority requesting for an information,—

(i) which is held by another public authority; or

(ii) the subject matter of which is more closely connected with the functions of another public authority, the public authority, to which such application is made, shall transfer the application or such part of it as may be appropriate to that other public authority and inform the applicant immediately about such transfer:

7. If the subject matter of RTI application is 'more closely connected with the functioning of another public authority', that has to be transferred. Here the case is totally different. The applicant is not an illiterate person. He knows that Education Department has to address his grievance and redress if possible under rules. He also knows that LG office is not at all concerned with it. Knowingly if an appellant files an RTI application with a wrong authority, i.e. the LG office in this case, he cannot insist that such RTI request should be transferred by LG office to the other. Because the LG office has accepted the RTI application it becomes the primary public authority, he will be filing first appeal with LG office and also going in second appeal with the Commission.

8. In such cases since the offices of President, Vice president, Prime Minister, Governors, Lt Governors or Chief Ministers will not be the primary public authorities, it is not reasonable to process or transfer such an application. Citizen are filing applications with higher authorities

like President, Vice president, Prime Minister, Governors, Lt Governors or Chief Ministers seeking information about their subordinates, with a belief that the subordinates would care more than a direct application to that office. This cannot be correct. Such a practice should be discouraged for the sake of proper governance. Only those RTI requests coming from illiterates or those who do not have opportunity to identify proper public authority for information should be properly guided.

9. As most of RTI applications come by post or online, LG office has no chance to interact or personally guide applicant to proper public authority. Once it is filed, it becomes burden of LG office to transfer to appropriate authority, which they are doing now with a request to transferee public authority to directly communicate the response to the applicant. They are also intimating to applicant. It is the duty of LG office to clarify that LG office will not entertain first appeals and respond to second appeals, for which they have to approach only transferee department.

10. As per Section 6(1) of RTI Act, it is duty of RTI applicant to file information request with the 'concerned public authority' which holds the information. In this case, the teacher applicant knows that LG office is not 'concerned public authority'.

11. Strictly speaking in this case, the LG office does not hold or control the information sought by the applicant. Thus according to section 2(j) of RTI Act, it is not holder of information. If that is the case why should it transfer or respond in appeals?

Section 2(j) "right to information" means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to—

- (i) inspection of work, documents, records;
- (ii) taking notes, extracts, or certified copies of documents or records;
- (iii) taking certified samples of material;
- (iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device;

12. The law is silent on what to do when a public authority receives request for information not concerning with or not in its control.

13. Mr. Wajahat Habibullah, Mr A N Tiwari, Mr Shailesh Gandhi, constituting Full Bench of the Central Information Commission in CIC/AT/A/2008/01280 dated 22.9.2009 in ***Ketan Kantilal Modi vs Central Board of Excise and Customs*** (<https://indiankanoon.org/doc/1883276/>) elaborately discussed this question.

Para 47: Given the wordings of Sections 6(1) and 6(3) and the arrangement of these two subsections, the argument put-forward by the Appellate Authority, deserves to be carefully reflected on. Appellate Authority has contended that it is Section 6(1), which lays down the principal methodology of filing RTI-petition by requesters before the CPIO of the "concerned public authority". A plain reading of Section 6(1) reveals that,

- (a) the requester shall make the request in writing or through electronic means;
- (b) the request application shall be accompanied by the prescribed fee and,
- (c) application shall be made before CPIO of the 'concerned public authority' specifying the particulars of the information sought.

48.reasoning that an application for information will have to first stand the test of Section 6(1) in order to be validly accepted by the CPIO concerned for processing for disclosure of information. In case the application is not filed before the 'concerned public authority' / CPIO, it shall not qualify to be a valid request for information.

49. The expression "concerned public authority" implies that that public authority should be holding the information which the petitioner sought as per Section 2(j) of the RTI Act, which states that right to information means "the right to information accessible under this Act which is held by or under the control of any public authority...". Section 6(1) □ its expression 'concerned public authority' □ becomes clearer when read in conjunction with Section 2(j) of the Act.

50. According to the Appellate Authority, an application, which is not filed before the 'concerned public authority' holding the information, is not a valid RTI application under Section 6(1) of the RTI Act.

51. argued that Section 6(3) comes into play only if an application is validly filed under Section 6(1). In other words, an applicant cannot file an RTI-application before an unrelated public authority expecting that the CPIO of that public authority would transfer his

application under Section 6(3) to the public authority where the information may be held. No application can be filed before a CPIO under Section 6(3).

52. The arrangement of these two sub-sections of Section 6 leads to the inference that there are certain definitive expectations of due diligence from an information-seeker [] about identifying the public authority where the requested information is known to be held. Section 6(3) casts an obligation on the CPIO to transfer an RTI-application filed under Section 6(1) to another public authority where the former knows the information is held [] a fact which a petitioner was not expected to know given the circumstances. In other words, Section 6(3) is the exception to the general rule contained in Section 6(1) that a request for information should be filed before a public authority, which holds the information. The decision whether to transfer an RTI-application within the meaning of Section 6(3) is to be the CPIO's given the circumstances of the matter. For example, a public authority may be known to be holding a certain set of information but due to internal arrangement that information might have been given under the control of some other public authority, which fact might not have been known to the information-seeker. The CPIO of the public authority receiving the RTI-application may then helpfully transfer the request to the public authority who now controls the information. There may be several such instances where an applicant may file his request under a bona-fide impression that a certain public authority holds a certain information, which may not be a valid impression. The CPIO then can help the petitioner by transferring his application to the public authority which may be concerned with the information.

14. The Full Bench opined that an applicant, who knew, cannot file RTI request with unrelated public authority, and such public authority cannot be compelled to accept it.

53. It follows from it that when a petitioner is aware of the location of a given information vis-à-vis a public authority, it is not open to him to file his RTI- application before any other public authority in the expectation that this latter public authority would act under Section 6(3) to transfer his application to where the information was known to be held. As in this particular case, it is quite obvious that the appellant was fully cognizant of the fact about the information requested by him being held by Chief Commissionerates and Commissionerates of Central Excise. Yet, rather than approach those public authorities [] and all these were public authorities in their own rights [] for the information under Section 6(1), he chose the easy way out of filing his application under Section 6(1) read with Section 6(3) before the CPIO, CBEC, demanding simultaneously that the application be transferred to the Commissioners. Appellant's argument that CBEC was the Apex body or the nodal office, does not help him much because even if CBEC were to be all that appellant says it is [] nodal office or Apex

body, etc. ? under the RTI Act it is a public authority and its rights and obligations flow from its status as that public authority under Section 2(h) of the Act. A public authority cannot be forced to accept obligations beyond the statutory limit in order to suit a petitioner's convenience.

Full Bench of the Commission finally concluded:

54. We, therefore, hold that a petitioner is obliged under Section 6(1) to file his RTI-application before the CPIO of the public authority which is the "concerned public authority", which holds the information within the meaning of Section 2(j) of the Act.

The PIO has discretion to decide:

55. The decision to transfer an RTI-application to another public authority under Section 6(3) is to be CPIO's given the circumstances surrounding a particular request for information. These circumstances may vary from case to case and petition to petition and cannot be pre-determined.

Full Bench of the Commission said that there is no obligation to answer.

56. A public authority which does not hold or is not related to an information sought by a petitioner, will not be obliged to provide an answer to the petitioner only for the reason that that public authority was the Apex body or the nodal office of others sub-ordinate public authorities. **Such a public authority ? such as the CBEC or the Ministry of Finance/ Department of Revenue ? when it receives an RTI- application for disclosure of an information which both the petitioner and the CBEC or the Ministry know is held by subordinate offices such as the Commissionerates, then the public authority (CBEC or the Ministry) may inform the petitioner that it was not the holder of the information and hence not the 'concerned public authority'. In the alternative, such a public authority may choose to help the petitioner by transferring his request to the subordinate public authorities where the information was known or expected to be held. This latter decision is to be of the public authority given the circumstances and the conditions surrounding the petition and the case. It cannot be claimed by the petitioner as a matter of right ? a substitute for his own due diligence, i.e. to file the petition under Section 6(1) appropriately before the public authority which is known to hold the information requested and, more importantly, which the petitioner himself knows holds the information.**

58. In our view, in case CPIO of the public authority can easily and inexpensively transfer an information-request under Section 6(1) to its subordinate offices under Section 6(3), which in themselves may be public authorities, then such CPIO should proceed to do so.

15. Thus it is clear that there is no legal obligation on the CPIO of LG office, in this case either to respond or transfer or answer in first or second appeal to the RTI application of appellant as LG office is unrelated to it. However, it has helpfully transferred it to the concerned public authority-Department of Education in this case. For that act of help, the CPIO of LG office cannot be subjected to first and second appeals. It is illegal and unreasonable besides being totally against the provisions of Right to Information Act, 2005.

16. The Full Bench of the Commission was discussing about the propriety and legality of RTI application filed before a superior body of a department when the information sought is unrelated to its office but related to subordinate. But this case is completely different. In this case the applicant filed RTI request without any justification before the LG office compelling it to transfer, and use their resources to attend first and second appeals without any relevance or necessity. This is sheer waste of public money and time of public authority including that of this Commission. From the representation of officers of LG office, it is clear that they are devoting substantial share of their quality office time on this kind of applications running into 15 to 20 every day. They need to write letters, post them to concerned public authority and intimate the appellant through another letter. Each of such unrelated RTI application compels the LG office to utilize public money around Rs 50 for posting one transfer letter. The LG office either has to send senior officers including the PIO and two of his assistants to the hearings first before first appellate authority and then before the Information Commission, which also involves purposeless expenditure and wastage of time of officers including their travel expenses. Instead of creating a good governance system, this practice is creating a bad and an aimless exercise burdening public exchequer. The Commission disapproves this practice.

17. The Commission thus holds:

- a) The offices of President, Vice President, Prime Minister, Governors, Lt Governors and Chief Ministers are not legally obliged under RTI Act to entertain RTI applications seeking information unrelated to it, or not held or controlled by these high offices.
- b) RTI applicants do not have any right to information which is not held or controlled by these high offices.
- c) The CPIOs of these high offices will have an obligation to respond and inform action taken when the applicant made a complaint against a sub-ordinate public authority, against whom it can exercise superior supervisory power and take action. Such application cannot be merely transferred to another public authority ignoring the fact that complaint was against public authority where the RTI petition was being transferred.
- d) If these offices of apex executive authorities create infrastructure to help these applicants at least by transferring their applications by email or by any other means convenient to them, they are welcome. But the CPIOs cannot be subjected to first and second appeals under RTI Act in such cases.
- e) The applicants who file such RTI applications by post shall intimate their email-ids and mobile numbers, so that they can be intimated about transfer.
- f) Department of Personnel & Training (DoPT) may develop necessary guidelines in consultation with these high executive offices to tackle various kinds of RTI applications from literate, illiterate, ordinary or Below-Poverty-Line (BPL) applicants even though they are not seeking information relating to these offices, without causing the wastage of public money and time of public authorities.
- g) RTI applicants, who know that information is not available with such offices shall not file RTI applications with these apex authorities.

18. The registry is directed to send copies of this order to offices of President, Vice President, Prime Minister, Governors, Lt Governors and Chief Ministers of all the states besides Department of Personnel and Training (DoPT).

(M. Sridhar Acharyulu)
Central Information Commissioner

Authenticated true copy

(Dinesh Kumar)
Deputy Registrar

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