

# CENTRAL INFORMATION COMMISSION

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

**File No.CIC/DS/A/2013/001734-SA**  
**(Sh.Sudhir Kumar Vs. Dte.of Education, GNCTD)**

**Appellant** : **Sh. Sudhir Kumar**

**Respondent** : **Directorate of Education,  
East District,GNCTD, Delhi**

**Date of hearing** : **12-08-2014**

**Date of decision** : **22-08-2014**

**Information Commissioner :** **Prof. M. Sridhar Acharyulu  
(Madabhushi Sridhar)**

**Referred Sections** : **Sections 3, 19(3) of the RTI  
Act**

**Result** : **Appeal allowed/  
Disposed of**

**Observation** : **Abuse of RTI**

The appellant is represented by Mr. Pravesh Kumar. The Public Authority is represented by Ms. Neha Shankar, OS(RTI), Mr. Raj Kumar. Mr. Surendra Singh, TGT and Mr. O.S.Dhaka, GBSSS, Directorate of Education, East District, GNCTD, Delhi.

## **FACTS**

2. The appellant's representative submitted that through his RTI application dated 15-5-2013, the appellant is seeking details of all learning centers which were permitted by the respondent authority in the schools controlled by them in East Delhi zone. The PIO has given reply by his letter dated 10-6-2013. Not satisfied, the appellant made first appeal before the FAA. The FAA by his order dated 4-7-2013 directed the PIO to provide point-wise reply to questions Nos. 5,6,7,8,9,10,11,12 and 13 within seven working days and disposed of the appeal. Claiming that the respondent authority has not furnished complete information, the appellant has filed 2<sup>nd</sup> appeal before the Commission.

**Decision:**

3. Heard the submissions made by both the parties. The respondent officer submitted that all the questions raised by the appellant in the present RTI application were already raised by him in his earlier applications which were answered. They have filed a statement in which the appellant Mr. Sudhir Kumar and his representative present in the hearing today, Mr. Parvesh Kumar, went on filing RTI applications about the same subject. They are the two brothers, residing at the same address. Both of them filed nearly 34 RTI applications so far. The Principal of the School, representing the Public Authority, submits that Mr. Parvesh Kumar, who worked as Guest Teacher, was removed from the school, as his term was over. Since then, he started filing the RTI applications against the Principal.

4. The Commission in its earlier order No.CIC/AD/A/2013/001326-SA delivered on 25-6-2014 in the case of **R.C.Jain Vs. DTC**, with respect to RTI applications which are repetitive and harassing in nature had observed as follows :

**"Repetitive use of RTI an ABUSE**

5. The Commission considers this case as the case of repetitive use of RTI Act, assuming the proportion of harassment to the Public Authority and thus, abuse of RTI Act, by a disgruntled employee.

6. The respondent officers made fervent appeals to the Commission that they were compelled to spend most of the time in answering harassingly repeated questions about the same subject matter repeatedly asked from different angles; and about individual officers, whom, the applicant assumed to be responsible for the grievance. The Commission found that the applicant was one of the four disgruntled employees against whom action was taken or their claims were denied.

**RTI: Not a rendezvous of disgruntled elements**

7. The Commission noticed three or four former employees in every public authority, who were either suspended or removed or facing charges, convicted in a crime or facing disciplinary action trying to run a counter inquiries with harassing questions. The Commission also noted an atmosphere of fear and worry was spread in the offices and the officers are hesitating to take action against erring staff members for fear of facing flood of questions under RTI. Sometimes, the RTI applications are running into hundreds similar to those posed by lawyers during cross examination. They appear like a parallel enquiry against the authorities who might have ordered disciplinary action against them. The respondents submitted that they were ready to

comply with the RTI Act but answering 'enquiry' type questions and repeated RTI applications would involve diversion of resources, energy besides having demoralizing effect. The Commission appreciates the genuineness of the problem and sincere feelings of the respondent officers and finds a need to address this serious issue. It is the responsibility of Information Commissioners and Government of India to see that the RTI Act will not become the rendezvous for disgruntled elements.

#### **Positive impact of RTI**

8. However, the Commission also takes this opportunity to state that because of RTI questions a positive sense of accountability had been introduced and certain systems of discipline and answerability are being put in place in many departments. The disarray situation of files and records keeping is gradually changing and systematic keeping of records is being initiated. If abuse or repetitive use is curtailed, the RTI can empower more number of citizens, make public authorities more accountable and democracy will hopefully be driven by informed citizenry.

#### **Placing RTI abusers information in public domain**

9. To address the problem of 'harassing & repeated questions', the Commission recommends the respondent authority to analyze all the RTI applications filed by such appellants, compile all the questions contained therein and indicate the information provided against them. That consolidated information along with a background note based on facts, avoiding unfounded allegations should also be placed on website besides sending a copy to the applicant and the concerned Information Commission. The Commission also recommends exhibiting such information in their notice board at the entrance or at any conspicuous place in their office and posting a photograph of such a notification on the website.

10. The entire information about the repeated RTI questions by appellants, and the documents given by the Public authority, the private interest of the appellants, if any, lack of public interest in the said RTI applications, etc. also should be kept in the public domain, so that people do not resort to filing repeated vexatious RTI applications leading to clogging of the public authority and depriving them of their valuable time that could have been spent on performance of their regular duties. The information in website also will serve as response to repeated RTI question. The same may be referred in the responses to first and second appeals.

#### **UK, South Africa, Mexico refuses vexatious requests**

11. The United Kingdom's Freedom of Information Act, 2000 which became fully effective in January 2005 provided an exception to Right to Information on the grounds of vexatious or repeated requests as a general exception under Section 14. Requests for information intended to be published are also excluded. Information which is already reasonably accessible to the applicant even though this involves payment, operates as absolute exception under Section 21 of Freedom of Information Act, 2000 of UK. In Mexico, the access to information law provides

grounds of offensive requests or requests which have already been dealt with for refusing the information. South Africa also provided for refusing information requests which are frivolous or vexatious. Renowned Author Sudhir Naib, in his book 'The Right to Information in India, published by Oxford University Press 2013 supported these restrictions saying: "This appears to be in order as vexatious, offensive or repeated requests can impose a costly burden on public authorities and yet not advance the right to information" (at page 28).

#### **Res judicata = already decided**

12. The Commission noticed that some of the applicants are filing photocopies of RTI requests with the same or other public authorities time and again seeking information, irrespective of the fact that previous application reached second appeal level or information was furnished or refused as decided by the concerned authorities. When not taken to High Court for judicial review in stipulated period, the matter decided in second appeal assumes finality and cannot be sought for again from the PIO. Though Right to Information Act, 2005 did not have any specific provision to bar the re-petition for information like Section 11 of Code of Civil Procedure, the universal principle of civil justice 'res judicata' will certainly apply and the repeated request need to be rejected with an emphasis. Two Latin maxims form the basis of this rule, they are: '*interest republicae ut sit finis litium*' (= it is in the interest of the State that there should be an end to litigation) and '*nemo devet vis vexari pro una et eadem cause*' (=no man should be taxed twice over for the same cause). If the PIOs, First Appellate Authorities and the Commissions entertain the repeated RTI applications, there will be no end to the information litigation and the public authorities would be continuously taxed for no fault of them. Appeal as provided by law is legal, because it is review and an opportunity to challenge the order on reasonable and legal grounds. Filing same or slightly modified application for information which was responded earlier is against the principles of natural justice; both procedural and substantive justice as far as right to information is concerned.

13. The universal principles of civil justice also recognized 'constructive res judicata', which means in the RTI context, when an applicant intends to avail opportunity of obtaining information on a particular subject, he is expected to seek all the related information in that opportunity itself. He cannot file another application for a bit or piece which he forgot to ask, or not advised by his lawyer, or for any other reason. He should ask all possible aspects of information about that subject matter, once and for all. If he does not, it is assumed that he asked for that and was refused properly. This is incorporated in principles of civil procedural justice and practiced universally. It is in the public interest and also to further the objectives of Right to Information Act, that such repeated or unending stream of questions being sought from same or different public authorities to be stopped.

14. The Commission noticed that several applicants seek some information from one wing of the public authority, and based on the information received, file a bunch of RTI questions from the same or other wings of same public authority, or from other authority. This will have a continuous harassing effect on the public authority

as the uncertainty continues. Even the PIO of Central Information Commission is flooded with such repeated questions from thousands angles by same person running into hundreds of RTI applications. As the PIOs went on answering, more and more questions are generated out of the same and in the same proportion the number of repeated first appeals and second appeals also will be growing.

#### **IC MM Ansari's observations**

15. In **Prem Prakash Kumar v NFL, Panipat**, (Decision no. 246/IC/(A)/2006, F.No. CIC/MA/A/2006/00374 & 375 dated 28 August 2006) the appellant sought documents and specific comments of CPIO on 89 queries. The Learned Commissioner Shri M M Ansari observed that in fact, **the nature of queries and the information sought are such that the information seeker would never be satisfied because the promotion of self interest, rather than public interest, was dominant, as the appellant had sought redressal of grievances.**

#### **A N Tiwari's observations**

16. In **Shri Gopal Soni v The New India Assurance Company Ltd** (F No CIC/AT/A2008/00097, 000116, 000124, dated 12.6.2008) Learned Commissioner Shri A. N. Tiwari dealt with similar problem. The respondents in this case submitted that the appellant, their employee, was suspended for insubordination and misconduct, and ever since he directed a spate of applications containing queries for detailed, voluminous but inane information which would have to be collected and collated from over 30 branches. The Commission held in this case: **answering the elaborate and detailed queries, which have to be both accurate and authentic, imposes heavy cost on the public authority and tends to divert its resources, which brings it within the scope of section 7(9) of RTI Act.**

17. In **Sh K. Lall v Sh M K Bagri**, Assistant Registrar of Companies & CPIO, F No. CIC/AT/A/2007/00112, the Learned Central Information Commissioner Sri A N Tiwari observed: **"...it would mean that once certain information is placed in public domain accessible to the citizens either freely or on payment of a pre-determined price, that information cannot be said to be 'held' or 'under the control' of the public authority and thus would cease to be an 'information' accessible under the RTI Act."**

18. From all above observations, one could infer that once the information is accessible or available, no requests for the same need to be entertained. It can also be stated, agreeing with the observation of Sri A N Tiwari referred above, that once applicant procured the information sought, that information will not be considered as 'held' by public authority or 'under its control' as far as that applicant is concerned, and thus the public authority need not answer.

#### **Shailesh Gandhi's observations**

19. It is relevant here to quote a paragraph from the order of Learned Information Commissioner Sri Shailesh Gandhi in case numbers **No. CIC/SG/C/2011/000760, CIC/SM/A/2011/000926/SG, CIC/SM/A/2011/001111/SG, CIC/**

SG/A/2011/002909 Dated 17<sup>th</sup> January, 2012 in a second appeal: “The Commission, at several appellate hearings, has explained to the complainant that under RTI Act, only the information as per records can be made available; multiple RTI applications and appeals would not provide him any information beyond the records that exists. The Commission recognizes the fact that valuable time of the complainant, respondent-public authority as well as the Commission is being spent in merely going through the motions prescribed under the RTI Act again and again to obtain similar information. .... At this juncture the Commission would like to mention that **though the right to information is a fundamental right of the citizens, it cannot be used indiscriminately to fulfill the demands of one individual.** In the present matter, it must be noted that the Complainant is pursuing multiple litigation and various public authorities are being asked to divert an extraordinarily disproportionate amount of resources just to respond to hundreds of RTI applications filed by him. ...**The Commission is also conscious of the fact that it is financed by the poorest man in this country who may be starving to death. The complainant by repeatedly filing similar RTI applications and appeals with the respondent public authority and the Commission, is wasting public resources.**“

20. In the above case the Sri Shailesh Gandhi observed that appellant was using RTI Act as a litigation tool, his use of RTI was vexatious in nature, and held that entertaining such appeal could no longer serve the objectives of the RTI Act and at one go the Commissioner had disposed off all the pending appeals.

#### **No scope for repeating under RTI Act**

21. The Commission thus holds that though RTI Act, did not specifically provide as a ground of refusing the information, it is implied from the objective and various provisions of RTI Act, that **any citizen has right to information only once and not repeatedly.**

#### **Principles of Freedom of Information Legislation**

22. International standard series have developed the Principles of Freedom of Information Legislation under the title ‘Public’s Right to Know”, by the Article 19 Organization. These Principles were endorsed by Mr. Abid Hussain, the UN Special Rapporteur on Freedom of Opinion and Expression, in his report to the 2000 session of the United Nations Commission on Human Rights, and referred to by the Commission in its 2000 resolution on freedom of expression. They were also endorsed by Mr. Santiago Canton, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression in his 1999 Report, Volume III of the Report of the Inter-American Commission on Human Rights to the OAS.

**Under Principle 4 “Limited scope for exceptions’ this document explained that exceptions should be clearly and narrowly drawn and subject to strict “harm” and “public interest” tests. Explaining the ‘harm’ test, it stated that the public**

**body must also show that the disclosure of the information would cause substantial harm to that legitimate aim.**

**23. Cases of disclosure of information to the repetitive applicants for their private purpose which promotes their private interest but not the public interest would cause substantial harm to the legitimate aim of the Right to Information Act.**

24. Once information is given, applicant shall not seek the same once again. If the applicant seeks information again and again, the PIO, the First Appellate Authority and the Commission would be forced to spend their time on this repeated application, and in the process the authorities would lose that much time to address the other RTI applications or performing their general duties in their public office. Repeated RTI applications amount to clogging the office of public authority and CPIO would be justified in refusing the same with intimation of reasons. Because the repeated RTI application has an effect of clogging the public offices, it would amount to obstructing the free flow of information to deserving and genuine RTI applicants, besides preventing the officers from performing their general duties attached to their office.

**Commission shall record ABUSE, admonish ABUSER**

25. There is no provision in RTI Act, 2005 to penalize the applicant for abusing his right to information or clogging public office. However the Commission recommends that the fact of abuse of RTI Act, 2005 shall be recorded and Commission should notify the admonition, direction or recommendation if any, to the applicants not to resort to abuse anymore along with direction or recommendation to public authorities to refuse such questions. If any applicant resorts to three such repeated RTI applications, the Commission may even recommend blocking of such abuse and direct the public authority not to entertain the same applicant anymore, which also has to be notified.

**Waste of public time and obstructing RTI**

26. All the above discussion can be consolidated into:

- (i) Even a single repetition of RTI application would demand the valuable time of the public authority, first appellate authority and if it also reaches second appeal, that of the Commission, which time could have been spent to hear another appeal or answer another application or perform other public duty.
- (ii) Every repetition of RTI application which was earlier responded will be an obstruction of flow of information and defeats the purpose of the RTI Act.

**Citizen has no Right to Repeat**

27. For the above reasons and based on objective of the RTI Act, its provisions, their interpretation by the Information Commissioners referred above, reading them together, this Commission observes:

- a) The citizen do not have a right to repeat the same or similar or slightly altered information request under RTI Act, 2005, for which he already got response.

b) Once an RTI application is answered, the appellants shall refrain themselves from filing another RTI application against the public authority as once information is received and held by them or posted in public domain, because such information is deemed to have ceased to be 'held' by the public authority.

**Repetition shall be ground of refusal**

c) Such repetition shall be considered as reasonable ground of refusal under the RTI Act.

d) An applicant or appellant repeating the RTI application or appeal either once or multiple times, suppressing the fact of earlier application and receipt of the answer, the CPIO of public authority shall reject it forthwith after intimating it along with reasons.

**Appeals can be rejected**

e) The First Appellate Authority and Commission shall be right and reasonable to consider this as a ground for rejecting the first or second appeal, respectively among other reasons if any. “

5. Hon'ble Supreme Court in **CBSE vs. Aditya Bandopadhyay, (2011) 8 SCC 497**, has held as under:-

“67. Indiscriminate and impractical demands or directions under the RTI Act for disclosure of all and sundry information (unrelated to transparency and accountability in the functioning of public authorities and eradication of corruption) would be counterproductive as it will adversely affect the efficiency of the administration and result in the executive getting bogged down with the non-productive work of collecting and furnishing information. The Act should not be allowed to be misused or abused, to become a tool to obstruct the national development and integration, or to destroy the peace, tranquillity and harmony among its citizens. Nor should it be converted into a tool of oppression or intimidation of honest officials striving to do their duty. The nation does not want a scenario where 75% of the staff of public authorities spends 75% of their time in collecting and furnishing information to applicants instead of discharging their regular duties. The threat of penalties under the RTI Act and the pressure of the authorities under the RTI Act should not lead to employees of a public authorities prioritising “information furnishing”, at the cost of their normal and regular duties.”

6. Hon'ble Delhi High Court in **SHAIL SAHNI Vs. SANJEEV KUMAR AND ORS. [W.P. (C) 845/2014]** has observed that :



- “10. Consequently, this Court deems it appropriate to refuse to exercise its writ jurisdiction. Accordingly, present petition is dismissed. This Court is also of the view that misuse of the RTI Act has to be appropriately dealt with, otherwise the public would lose faith and confidence in this “sunshine Act”. A beneficent Statute, when made a tool for mischief and abuse must be checked in accordance with law. A copy of this order is directed to be sent by the Registry to Defence and Law Ministry, so that they may examine the aspect of misuse of this Act, which confers very important and valuable rights upon a citizen.”

The Commission feels that there is no public interest in this appeal and it is a case of private vengeance. By filing 34 RTI applications on the same subject, the appellants are causing criminal wastage of time and resources of the Public Authority and the Commission, for which the Commission admonishes the appellants. The appellants like Mr. Sudhir Kumar and Mr. Parvesh Kumar should be discouraged from misusing the RTI Act and the Principal can defend himself against this harassment by the appellants, by prosecuting them with evidence and reason to show that he was unnecessarily harassed. The Commission also advises the public authority to prepare a list of all the RTI applications filed by these two appellants and the responses given by them, and upload the same on the official website and paste a hardcopy at a conspicuous place in the School premises, so that any further questions from the appellants can be replied by directing them to refer to the web-site/notice board.

7. With the above observations, the Commission **dismisses** the appeal.

(M. Sridhar Acharyulu)  
Information Commissioner

Authenticated true copy

(Babu Lal)  
Deputy Registrar

Address of the parties:

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