

Central Information Commission, New Delhi
File Nos. CIC/WB/A/2009/001006, CIC/WB/A/2010/000186, 000187,
000317, 000367-SM, CIC/SM/A/2011/000181, 000182, 000333,
000334, 000516, 000765
Right to Information Act-2005-Under Section (19)

Date of hearing : 7 December 2011

Date of decision : 30 December 2011

Name of the Appellant : Shri Subhash Chandra Aggarwal,
1775, Kucha Lattushah,
Dariba, Chandni Chowk,
Delhi – 110 006.

Name of the Public Authority : CPIO, Supreme Court of India,
New Delhi – 110 002.

The Appellant was present along with the following persons:-

- (i) Shri Prashant Bhushan
- (ii) Shri Pranav Sachdeva

On behalf of the Respondent, the following were present:-

- (i) Smt. Smita Vats Sharma, CPIO
- (ii) Shri D. Kamat, Advocate

On behalf of third party, Shri Prakash Sharma, was present.

Chief Information Commissioner : Shri Satyananda Mishra

2. The Appellant had sought a variety of information in these 11 cases. Some of these are about the appointment of some individuals as Judges and

some others are about the questions arising out of the conduct of judges based upon some Newspaper Reports. There are also some cases in which information of a purely administrative nature relating either to the appointment of judges or to the enquiry into the allegations of misconduct against judges had been sought.

3. No information had been provided in most of these cases by taking one or the other grounds. The CPIO stated "it is beyond the jurisdiction and the scope of duties of the CPIO, Supreme Court of India under the Right to Information Act, 2005 to authenticate news-report, opine, comments or advice on matters. Your request cannot be acceded to under the Right to Information Act 2005" The Appellate Authority had, by and large, endorsed the decision of the CPIO.

4. During the hearing, on behalf of the Appellant, his learned advocate argued that none of the information sought was either exempt from disclosure or stayed specifically by any court, including the High Court or the Supreme Court from disclosure. He extensively cited the Supreme Court order in the S.P. Gupta case and argued that the entire correspondence/file noting related to the appointment of judges should be disclosed. On the other hand, on behalf of the Respondent, the learned advocate argued that the desired information could not be disclosed for the following reasons:-

(i) That, there is an express stay by the Supreme Court of India against the orders passed by the CIC in case No. CIC/WB/A/2009/000859 and CIC/WB/A/2009/000529 in which similar

information had been sought;

(ii) That, the Supreme Court has referred, among other issues, the plea of the Respondent that under Section 2(j) of the Right to Information Act, the Chief Justice of India could not be said to hold any such information;

(iii) The ratio of Shri S.P. Gupta has been overruled in the Advocates on record case and the Supreme Court has clearly held that the process of appointment of judges cannot be open to the litigative public or to busy bodies as it would impair the autonomy and independence of the judiciary.

5. Although the Appellant had filed several second appeals at the beginning, he himself informed us that he would not like to press for the information sought in the following five cases:-

CIC/WB/A/2009/001006-SM

CIC/WB/A/2010/000186-SM

CIC/WB/A/2010/000187-SM

CIC/SM/A/2011/000333

CIC/SM/A/2011/000334

6. In the remaining six cases as below, he had sought the variety of information which in some cases were like authentication of News Paper Reports:

CIC/WB/A/2010/000317-SM

CIC/WB/A/2010/000367-SM
CIC/SM/A/2011/000181
CIC/SM/A/2011/000182
CIC/SM/A/2011/000765
CIC/SM/A/2011/000516

First Case is authentication of News paper Report of Times of India dated 30.03.2010 and Hindustan Times Report Dated 30.03.2010, second Case is PTI News Dated 6.6.2010. Third is relating to New paper report concerning use of blogs by the Judges, Fourth is regarding Times of India News Dated 25.08.2010, Fifth is about Times of India News Dated 28.11.2010, Hindustan Times News Dated 28.11.2010 and the last is about appointment and retirement of One Shri M. Kannabiran to and from Supreme Court of India.

7. Out of these six cases also, during the hearing on the previous date, he had specifically prayed for the disclosure of the information (case No. 367) relating to the correspondence between the Union Law Minister and the Chief Justice of India about the proposed procedure for appointment of judges. In dealing with this specific request, a distinction needs to be made between the process of appointment of an individual as a Judge and the procedure for making such appointments. Both these classes of information cannot be equated. The procedure of appointment of judges is freely available in the public domain. Even if the appointment of an individual is made following such a procedure, the details of that appointment cannot be disclosed now since there is an express stay against the disclosure of such information. However, the information sought by the Appellant, namely, the correspondence between the Union Law Minister and the Chief Justice of India about some modified or different procedure of appointment of judges cannot be said to fall in the same

class. There is already a laid down procedure. If the Union Law Minister has proposed in a certain communication to the CJI about a modification of the existing procedure and if the CJI has responded to him with his view, this correspondence cannot be equated to the appointment of a particular individual as a judge under the existing procedure. It cannot be anybody's case that the change in the procedure of judges should happen completely outside the notice or the knowledge of the citizens of India and that the citizens of India should not be given an opportunity to articulate their views. The objective of the RTI Act is precisely to help create an informed citizenry so that it can hold the state and its instrumentalities to account. Therefore, the procedure of appointment of judges or any proposal for modifying that procedure should necessarily be available in the public domain so that the citizens know what is transpiring among the major stake holders, in this case, the Government of India and the CJI, in respect of such a vital matter as the appointment of judges to the High Courts and Supreme Court of India.

8. The argument of the learned advocate for the Supreme Court that the scope of the RTI as defined in Section 2(j) does not include such information is not acceptable. If any information is physically available in the office of a public authority, it is to be deemed that the information available is held by the public authority. The only way a public authority can claim not to have any information is when the said information is physically not available in the office or the information has been destroyed or weeded out. Any other interpretation of the scope of Section 2(j), specially the one being suggested by the learned advocate that if the CJI is not constitutionally or statutorily required to hold a particular information, he cannot be said to be holding the said information for the purpose of Section 2(j) even if the information is available in his office would

make the operation of the RTI Act completely impossible. Every public authority can then claim that some of the information though physically existing in their respective office, they do not hold it for the purpose of the RTI Act as they are not required under any law to hold or keep such information. Nowhere in the RTI Act, it is mentioned or provided that information has to be held only if some Statute or the Constitution mandates the public authority to do so. Information pours into the office of the Public Authorities from all sources in the shape of letters and e-mails. It is also generated by the public authority in the shape of office memorandum, letters, file noting, correspondence, e-mails etc. Therefore, unless the public authority concerned decides to screen out and destroy all such information it deems unnecessary since not mandated to retain under any statute or the Constitution, every paper or file or correspondence existing in its possession is said to be held by it and will have to be disclosed subject to any exemption provision of the Right to Information Act.

9. While we concede that due to the stay granted by the Supreme Court in the case No. SLP-32855-56 of 2009, all information relating to the in-house procedure of the Supreme Court and vigilance matters relating to the Judges of the High Courts and the Supreme Court should not be disclosed, we cannot agree that every information held in the office of the CJI should not be disclosed till the Constitutional Bench officially disposes of the issues referred to it by the Division Bench in the case No. SLP-32855-56/2009. Acceptance of this argument would virtually mean the complete exclusion of the CJI from the scope of the RTI Act which certainly is not the case. Had the intent of the Legislature been so, there would have been an express provision in the law to exclude the office of the CJI from the operation of the RTI Act or the information held in the office of the CJI would have been kept out of the definition of

information as given in Section 2(f).

11. Accordingly, the learned Counsel for the Supreme Court was asked categorically to state whether (a) the draft of the revised memorandum of Procedure of Appointment of Judges in higher courts given by Law Minister to the then Chief Justice of India, and (b) the response from the Chief Justice of India on the said draft of the revised Memorandum of Procedure of appointment of Judges in higher courts, was available in the Supreme Court or not. To this specific query, the following written reply was received "... file relating to proposed revised Memorandum of Procedure of appointment of Judges is not available with this registry". Under section 2(j) of the 'Right to Information' means the right to information accessible under this Act which is held by or under the control of any public authority ..."

12. The claim that the said file containing the correspondence between the Ministry of Law and Justice and the CJI is not available with the registry may be true; but it does not clarify if this is available anywhere else in the Supreme Court, such as, in the office of the CJI or not. Therefore, the CPIO must look for this information once again and, if found, provide to the Appellant. We direct the CPIO to do so within 10 working days of getting this order.

13. Regarding Appeal No. CIC/WB/A/2009/000317-SM, the required information has now been furnished by the CPIO to the RTI applicant containing letter Dated 29.3.2010 written by Shri R.C. Gandhi Consultant (Protocol) to Joint Secretary, Department of Justice and also information regarding Shri Kannabiran has been provided to the Applicant by the CPIO. The Commission also upholds the stand of the CPIO on point no. 6 & 7 of

appeal no. CIC/SM/A/2011/000516

13. Copies of this order be given free of cost to the parties.

(Satyananda Mishra)
Chief Information Commissioner

Authenticated true copy. Additional copies of orders shall be supplied against application and payment of the charges prescribed under the Act to the CPIO of this Commission.

(Vijay Bhalla)
Deputy Registrar