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Right to Information

CIC AUTONOMY UPHeld

The exhaustive ruling of the Central Information Commission (CIC) against the Department of Personnel and Training of the Government of India (DoPT) on January 27, 2007 is particularly significant. It counters last-ditch attempts to override the autonomy and authority of the CIC by any Government agency and proclaims the supremacy of the provisions of the Right to Information Act of 2005.

The ruling deals comprehensively with the contentious issues of disclosure of file notings and the continued defiance of DoPT to its decision requiring it to erase contrary advice on its

website that file notings need not be disclosed. It also rebuts the DoPT argument seeking to question decisions that are not taken by a full bench and thus the autonomy of the CIC.

The concluding remark that "the DoPT as the nodal Ministry must realise that it is bound by the provisions of an enactment and it cannot do anything which will be contrary to the provisions of any law" puts an end to any further doubts. It is to be seen if the department now amends its website as instructed.

The following are extracts from the ruling of January 29:

Section 27 of Chapter II: 'Definitions', clearly states, File means a collection of papers on a specific subject matter assigned a file number and consisting of one or more of the following parts:

- (a) Correspondence
- (b) Notes
- (c) Appendix to Correspondence
- (d) Appendix to Notes'

This would imply that 'notings' are an inextricable part of a record as defined u/s 2(t) and further defined u/s 2(i)(a) of the Act unless it had been specifically exempted. Without that, by excluding 'notings' from a file, the DoPT would be going against their own Manual and established procedure mandated by them. This would also mean that if, as the Learned Counsel insists, 'notings' are not to be a part of the file, then first an amendment would have had to be carried out on the definition of a file in the DoPT's own manual.

Thus, from whichever angle the provisions of the Right to Information Act are looked into, "file noting" cannot be held to be excluded unless they come in conflict with public interest as aforesaid or are excluded under any of the provisions of the RTI Act, 2005. We therefore see no reason to disagree with the Decisions on the subject pronounced thus far by this Commission. File noting is to be made available to applicants under the Right to Information Act unless they come in conflict with public interest including preservation of confidentiality of sensitive information and are therefore excluded under any of the provisions of the Act.

The issue is decided accordingly.

The Right to Information Act, 2005 seeks to establish a practical regime to ensure that the right to access of **information** conferred on a citizen is put in actual practice in order to pro-

mote transparency and accountability in the working of every public authority. With that object in view, it provides for constitution of Central Information Commission and the State Information Commissions. In this context, it is pertinent to refer to the preamble of the Act which reads as under:-

"An Act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental there to."

Thus, the constitution of the Central Information Commission is central to the Act of 2005 and the Commission has been constituted to exercise the powers conferred on and to perform the functions assigned to it under this Act. The Act intends to secure complete autonomy to the Commission while exercising its Powers and performing its functions assigned to it under the Act. It will be pertinent to quote the provisions contained in Section 12(4) of the Act which reads as under:

"The general superintendence, direction and management of the affairs of the Central Information Commission shall vest in the Chief Information Commissioner who shall be assisted by the Information Commissioners and may exercise all such powers and do all such acts and things which may be exercised or done by the Central Information Commission autonomously without being subjected to directions by any other authority under this Act."

The Central Information Commission is, therefore, expected to work without being subjected to directions by any other

authority under this Act and it is needless to say that any other authority would implicitly include the Government and any public authority. It is also clear that the general superintendence, direction and management of the affairs of the Commission vests in the Chief Information Commissioner and he may exercise all such powers and do all such acts and things which may be exercised or done by the Central Information Commission autonomously. The autonomy granted to the Commission would implicitly mean and include that the Commission has the freedom and powers to act independently and effectively for ensuring better management of its affairs. The constitution of the Benches is an integral part of internal management of the affairs of the Commission. If the Commission is of the view that the disposal of cases or discharging of the duties can be better managed by constitution of single or division Benches under these provisions, the Chief Information Commissioner is fully empowered to do so under Section 12(4) of the Act. The comparison with the powers assigned under the Consumer Protection Act 1986 is misplaced since there is no clause comparative to Sec 12(4) in that Act.

The very fact that the Government has already framed the rules and that these rules did not provide for constitution of the Benches makes it very clear that these matters concerning the constitution of Benches and internal management affairs of the Commission were left to be decided by the Chief Information Commissioner and the Commission has been deciding these matters normally in its weekly meetings, the minutes of which are displayed on its web site for the information of the general public. In this context, it may be pertinent to mention that the Commission has so far received more than 4,000 Appeals/complaints and if the contention of the DoPT that the Commission should hear and decide all Appeals and complaints sitting only in full Bench is accepted, it would be amount to rendering the whole enactment meaningless negating the very first words of the Preamble to the Act, "for setting out the practical regime of right to information". No such interpretation can ever be accepted which will make the Act, which confers the right on a citizen to access information totally unworkable. The issue is decided accordingly.

The question that now remains to be decided is as to whether the directions could have been passed by the Commission asking the DoPT to remove its instructions/views displayed on its web site and contained in its Office Memorandum No.10/8/2006 IR dated 2.2.2006 addressed to the Railway Ministry. It is a fact that the DoPT was not a party in any of these cases where the matter concerning "file noting" was decided, but each of the Department/Public Authority has cited and submitted that the DoPT instructions are in conflict with the decisions of the Commission. This necessitated the Commission to direct the DoPT to remove these instructions from their web site which were misleading other public authorities. During the course of hearing, it has been submitted on behalf of the DoPT that the web site contains its views and these are not directions to any public authority. In fact Joint Secretary Shri Ramanujam of the DoPT has, in a closely argued

presentation before us gone to the extent of stating that nowhere have they said that no one should disclose the "file noting" and that they have not stopped any public authority from disclosing "file noting".

One of the arguments that has been advanced on behalf of the DoPT is that the web site reflects the views of the nodal Ministry and not of a public authority and as such no directions can be passed by this Commission on the Ministry. While making these submissions, the DoPT has relied on Section 25 (5) of the RTI Act and has accordingly contended that the Central Information Commission or the State Information Commission, if it finds that the practice of a public authority in relation to the exercise of its functions under this Act does not conform with the provisions or spirit of this Act, it may give to the authority a recommendation specifying the steps which ought in its opinion to be taken for promoting such conformity. The provisions of Section 25 relate to monitoring and reporting implementation of the Right to Information Act. The recommendations given under this Section while monitoring the implementation of the provisions of the Right to Information Act are different in nature. It does not mean that the Commission while deciding a matter under Sections 18 and 19 cannot pass directions or issue orders or that it cannot enforce its decision. Sections 19 and 25 are different and deal with different aspects. The role of the Central Information Commission is advisory while discharging functions under Section 25 whereas it is quasi-judicial when exercising appellate powers under Section 19 of the RTI Act.

In this context, it is pertinent to refer to the provisions of Section 19(7) of the Right to Information Act, 2005 which read as under:

Section 19(7) - "Central Information Commission or State Information Commission, as the case may be, shall be binding."

The DoPT as the nodal Ministry must realize that it is bound by the provisions of an enactment and it cannot do anything or act in a manner which will be contrary to the provisions of any law. No public authority, Government, or statutory organization can ever claim that it is above the law. An authority which has been conferred with powers under a law is deemed to be vested with all incidental or ancillary powers to ensure that the powers conferred on it are effectively exercised. The directions of the Commission are, therefore, binding on each public authority which includes the Ministry of Personnel, Public Grievances and Pensions. The Ministry of Personnel, Public Grievances & Pensions has erred in claiming that it is not the public authority but a nodal Ministry, In fact that Ministry cannot escape its obligations under the Act nor can it take the plea that the Commission can only give recommendations and not issue directions.

In light of the reasons recorded above, the Commission recommends that the DoPT will suitably amend their website and remove all instructions/views which are contrary to the above decision within one month.