

CENTRAL INFORMATION COMMISSION
Club Building (Near Post Office)
Old JNU Campus, New Delhi - 110067
Tel: +91-11-26161796

Decision No. CIC/SG/A/2011/002793/15661
Appeal No. CIC/SG/A/2011/002793

Relevant Facts emerging from the Appeal:

Appellant : Mr. Kishanlal Mittal
1305 Dhruv, Ashok Van,
Borivali East, Mumbai - 400066.
Ph – 09323462428.

Respondent : Mr. P. Satish
CPIO & Chief General Manager
NABARD,
Head Office, Plot:C-24/'G',
Bandra-Kurla Complex,
Post Box-8121, Bandra (East),
Mumbai-400051.

RTI application filed on : 12/05/2011
PIO replied : 10/06/2011
First appeal filed on : 17/07/2011
First Appellate Authority order : Not Given
Second Appeal received on : 03/08/2011

Information sought: - Kindly let me know the following information under RTI Act 2005:

1. Kindly provide copies of inspection reports of apex co-operative banks of various states/Mumbai District Co-operative Bank from 2005 till date.
2. Kindly provide copies of all correspondences with Maharashtra State Govt./RBI/any other agency of state/central government regarding Maharashtra State Cooperative bank from January, 2010 till date.
3. Kindly provide confirmed/draft minutes of meetings of governing board/board of directors / committee of directors of NABARD from April 2007 till date.
4. Kindly provide information on compliance of section 4 of RTI Act, 2005 by NABARD.
5. Kindly provide the above information on a CD.

PIO response:-

1. Furnishing of information is exempt under Sec 8(1) (a) of the RTI Act
2. Different department's in NABARD deal with various issues related to MSCB. The query is general in nature. Applicant may please be specific in query / information sought
3. Furnishing of information is exempt under Sec 8(1) (d) of the RTI Act
4. Compliance available on the web site of
5. NABARD i.e. www.nabard.org

Grounds for the First Appeal:

Unsatisfactory information was given by the PIO. For query 2 inspection should have been offered.

Order of the First Appellate Authority (FAA):

No order had passed by First Appellate Authority.

Grounds for the Second Appeal:

Unsatisfactory reply received by the Appellant and no order had passed by FAA.

Relevant Facts emerging during Hearing:

The following were present

Appellant: Mr. Kishanlal Mittal on telephone through mobile no. 09323462428;

Respondent: Mr. P. Satish, CPIO & Chief General Manager on video conference from NIC-Mumbai Suburban Studio;

The respondent states that he has provided information after the order of the FAA on query-3. The Appellant contends that he has not been given copies of the various notes which have been referred to in the minutes of the meeting. The PIO states he is willing to provide these if the appellant explains which papers he is referring to. As regards query-1 the respondent is claiming exemption under Section 8(1)(a) of the RTI Act. The Commission now examines the exemption claimed by the PIO under Section (8)(1)(a) for query-1.

Section 8(1)(a) of the RTI Act exempts- *“information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence”*. From a plain reading of the said provision, it is unlikely that disclosure of the information sought in query 1 would prejudicially affect the sovereignty and integrity of India, the security, strategic or scientific interests of the State, or relation with a foreign State or lead to incitement of an offence. Therefore, the issue to be examined is whether disclosure of the information sought in query 1 is likely to prejudicially affect the economic interests of the State.

In query 1, the Appellant has sought copies of inspection reports of apex co-operative banks of various states/Mumbai District Co-operative Bank from 2005 till date. At the outset, this Bench is unable to agree with the PIO that disclosing the said inspection report(s) would prejudicially affect the economic interests of the Indian Nation. Moreover, even if the information sought was exempt under Section 8(1)(a) of the RTI Act, this Bench is of the considered view that disclosure of inspection reports of apex co-operative banks of various states/Mumbai District Co-operative Bank must be shared with the public in a proactive manner. This kind of disclosure would certainly serve public interest, as mandated under Section 8(2) of the RTI Act.

Section 8 (2) of the RTI Act states, *“Notwithstanding anything in the Official Secrets Act, 1923 nor any of the exemptions permissible in accordance with sub-section (1), a public authority may allow access to information, if public interests in disclosure outweighs the harm to the protected interests”*. It is pertinent to mention that significant amounts of public funds are kept with institutions including co-operative banks which are regulated by the apex co-operative banks. Therefore, it is only logical that the public has a right to know about the functioning and working of such entities including any lapses in regulatory compliances. Merely because disclosure of such information may harm the economic interest of the state, that cannot be a reason for denial of information under the RTI Act. If there are certain irregularities in the working and functioning of such banks and institutions, the citizens certainly have a right to know about the same. The best check on arbitrariness, mistakes and corruption is transparency, which allows thousands of citizens to act as monitors of public interest. There must be transparency as regards such organisations so that citizens can make an informed choice about them.

I would like to remember Justice Mathew's clarion call in State of Uttar Pradesh v. Raj Narain (1975) 4 SCC 428 - "In a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, everything that is done in a public way by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing. Their right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary when secrecy is claimed for transactions which can at any rate have no repercussion on public security".

It is also worthwhile remembering the observations of the Supreme Court of India in S. P. Gupta v. President of India & Ors. AIR 1982 SC 149:

"It is axiomatic that every action of the government must be actuated by public interest but even so we find cases, though not many, where governmental action is taken not for public good but for personal gain or other extraneous considerations. Sometimes governmental action is influenced by political and other motivations and pressures...

At times, there are also instances of misuse or abuse of authority on the part of the executive. Now, if secrecy were to be observed in the functioning of government and the processes of government were to be kept hidden from public scrutiny, it would tend to promote and encourage oppression, corruption and misuse or abuse of authority, for it would all be shrouded in the veil of secrecy without any public accountability. But if there is an open government with means, of information available to the public there would be greater exposure of the functioning of government and it would help to assure the people a better and more efficient administration. There can be little doubt that' exposure to public gaze and scrutiny is one of the surest means of achieving a clean and healthy administration. It has been truly said that an open government is clean government and a powerful safeguard against political and administrative aberration and inefficiency...

This is the new democratic culture of an open society towards which every liberal democracy is evolving and our country should be no exception. The concept of an open government is the direct emanation from the right to know which seems to be implicit in the right of free speech and expression guaranteed under Article 19(1)(a). Therefore, disclosure of information in regard to the functioning of Government must be the rule and secrecy an exception justified only where the strictest requirement of public interest so demands...

Even though the head of the department or even the Minister may file an affidavit claiming immunity from disclosure of certain unofficial documents in the public interest, it is well settled that the court has residual powers to nevertheless call for the documents and examine them. The court is not bound by the statement made by the minister or the head of the department in the affidavit. While the head of the department concerned was competent to make a judgment on whether the disclosure of unpublished official records would harm the nation or the public service, he/she is not competent to decide what was in the public interest as that is the job of the courts. The court retains the power to balance the injury to the State or the public service against the risk of injustice, before reaching its decision on whether to disclose the document publicly or not."

The idea that citizens are not mature enough to understand and will cannot understand information in a mature fashion is repugnant to democracy. For over 60 years citizens have handled their democratic rights in a mature fashion, punished leaders who showed tendencies of trampling their rights, and again given them power once the leaders had learnt their lessons not to take liberties with the liberties of the sovereign citizens of India. 'We the people' gave ourselves the Constitution, nurtured it and will take it forward. The fundamental rights of citizens, enshrined in the Constitution of India cannot be curbed on a mere

apprehension of a public authority. The Supreme Court of India has recognized that the Right to Information is part of the fundamental right of citizens under Article 19 of the Constitution of the India. Any constraint on the fundamental rights of citizens has to be done with great care even by Parliament. The exemptions under Section 8 and 9 of the RTI Act are the constraints put by Parliament and adjudicating bodies have to carefully consider whether the exemptions apply before denying any information under the RTI framework.

In view of the same, this Bench is of the considered opinion that even if the information sought in query 1 was exempted under Section 8(1)(a) of the RTI Act,-as claimed by the Respondent,- Section 8(2) of the RTI Act would mandate disclosure of the information.

Decision:

The Appeal is allowed.

The PIO is directed to give the information to the Appellant with regard to query-1 before 10 December 2011.

This decision is announced in open chamber.

Notice of this decision be given free of cost to the parties.

Any information in compliance with this Order will be provided free of cost as per Section 7(6) of RTI Act.

Shailesh Gandhi
Information Commissioner
14 November 2011

(In any correspondence on this decision, mention the complete decision number.)(ANP)