

केन्द्रीय सूचना आयोग
Central Information Commission
बाबागंगनाथमार्ग, मुनिरका
Baba Gangnath Marg, Munirka
नईदिल्ली, New Delhi – 110067

द्वितीय अपील संख्या / Second Appeal No. **CIC/PMOIN/A/2019/600261**

Shri Prasenjit Bose

... अपीलकर्ता/Appellant

VERSUS/बनाम

1. PIO, Under Secretary.Prime Minister's Office,
South Block, New Delhi-110011
Through: Shri Praveen Kumar

...प्रतिवादीगण /Respondents

2. PIO, Nodal officer, RTI D/o Financial Services,
North Block, New Delhi-110001
Through: Shri Jnanatosh Roy – CPIO/BOA-I

Date of Hearing : 19.04.2021, 20.09.2021
Date of Interim Decision : 22.04.2021
Date of Final Decision : 28.09.2021

Chief Information Commissioner : Shri Y. K. Sinha

Relevant facts emerging from appeal:

RTI application filed on : 12.09.2018
PIO replied on : 10.10.2018
First Appeal filed on : 25.10.2018
First Appellate Order on : 22.11.2018
Second Appeal/complaint received on : 04.01.2019

Information sought and background of the case:

The Appellant filed an RTI application dated 12.09.2018 seeking information on the following 5 points:

1. Whether the PMO received any letter from Dr. Raghuram Rajan when he was RBI Governor, containing a list of high profile cases of bank frauds urging coordinated action to bring the fraudsters to book.
2. If so, what was the date of receipt of that letter and what action was taken on the basis of the list?
3. Can a copy of the letter be shared with the applicant?
4. The bankwise details of all loan fraud cases over the past ten years, including the year of sanction of the loans and the year of detection.

5. Has the PMO issued any directive to concerned agencies to initiate legal action against the perpetrators of loan frauds in the past 4 years?

The PIO, PMO vide letter dated 10.10.2018 furnished a reply on points no. 1 to 3 and 5 to the Appellant as under:

Sl No.	Information sought	Response
1.	Whether the PMO received any letter from Dr. Raghuram Rajan when he was RBI Governor, containing a list of high profile cases of bank frauds urging coordinated action to bring the fraudsters to book.	The information being sought by the applicant is in the form of query/ seeking opinion, clarification which does not constitute information as defined in Section 2(f) of RTI Act, 2005.
2.	If so, what was the date of receipt of that letter and what action was taken on the basis of the list?	Not applicable in view of inputs at point 1 above.
3.	Can a copy of the letter be shared with the applicant.	
5.	Has the PMO issued any directive to concerned agencies to initiate legal action against the perpetrators of loan frauds in the past 4 years.	The information sought is in the form of roving/ vague enquiry and does not come under the definition of "information" as per Section 2(f) of the RTI Act, 2005.

The RTI application for point No. 4 was transferred to D/o Financial Services.

Dissatisfied with the reply received from the PIO, the Appellant filed a First Appeal dated 25.10.2018. The FAA vide order dated 22.11.2018 directed the PIO, PMO to seek fresh inputs on points no. 1 to 3 and 5 and provide information to the Appellant within 15 days.

In compliance with the FAA's order, the PIO/PMO vide letter dated 11.12.2018 furnished a revised reply to the Appellant.

With his Second Appeal, the Appellant enclosed a copy of the reply sent by the PIO, D/o Financial Services, vide letter dated 12.12.2018 transferring point no. 4 of this RTI Application to all PSBs and RBI.

The Appellant also enclosed a reply sent by the PIO, SBI vide letter dated 14.12.2018 furnishing reply on point no. 4 to the Appellant as under:

"The information sought is third party personal information held by the bank in fiduciary capacity and exempted from disclosure under section 8(1)(e) & 8(1)(j) of the RTI Act, 2005."

Aggrieved and dissatisfied, the Appellant approached the Commission with the instant Second Appeal.

Facts emerging in Course of Hearing:

A written submission has been received from the Appellant vide letter dated nil and the same has been taken on record.

In order to ensure social distancing and prevent the spread of the pandemic, COVID-19, hearings through video conference were scheduled after giving prior notice to both the parties. Later, the hearings were held in audio conference mode, after informing the parties, in view of the rapid increase in Covid-19 infections.

The Appellant participated in the hearing through audio conference. He stated that the issues raised by him were in the larger public interest as it related to disclosure of high profile cases of bank frauds mentioned by Dr. Raghuram Rajan, former Governor, RBI in his letter to the PMO. He further stated that in his application he did not seek the detailed documents pertaining to the matter but only wanted information regarding the action taken by the PMO against perpetrators of loan frauds.

The Respondents, represented by Shri Parveen Kumar, US, PMO and Shri Gyantosh Roy, D/o Financial Services, participated in the hearing through audio conference. Shri Kumar stated that the matter was re-examined after the directions of the FAA and a revised point wise response was provided vide letter dated 11.12.2018. He stated that since the matter was currently pending investigation before various law enforcement agencies, hence the details of action taken on the representation of Dr. Raghuram Rajan, Ex-Governor, RBI dated 04.02.2015 cannot be provided at this stage as per Section 8 (1) (h) of the RTI Act, 2005. He also stated that the query raised in point no 5 was roving/ unspecific in nature as vague information pertaining to directions to “concerned agencies” for a period of 4 years was sought. Hence, an appropriate revised response was provided to the Appellant. Shri Gyantosh Roy stated that the RTI application was transferred to all Public Sector Banks (PSBs) and RBI for necessary action.

Interim Decision:

Having heard both the parties and on perusal of the available records and in the light of the fact that the matter requires detailed deliberation and examination which is difficult in an audio hearing, the Commission is of the view that the instant matter requires another hearing through video/ physical mode. The Commission thus directs the registry of this bench to list the instant matter as soon as the physical/ video conference hearings through NIC are resumed within the CIC premises.

Facts emerging in Course of Hearing: 20.09.2021

Pursuant to the above mentioned interim hearing, a written submission has been received from CPIO, Dept. of Financial Services vide letter dated 10.09.2021, relevant extracts whereof are as under:

Point no.4: The bank wise details of all loan fraud cases over the past ten years, including the year of sanction of the loans and the year of detection.

(ii) In this connection, it is submitted that the subject matter of the request *i.e.* point no.4 of the RTI application, Reserve Bank of India (RBI) and all Public Sector Banks (PSBs) is the appropriate public authority for providing information. The RTI application was transferred by the then CPIO to RBI and all PSBs under section 6(3) of the Right to Information Act, 2005 vide letter dated 12.12.2018. (Annexure-II).

The letter dated 11.12.2018 issued by the PIO, PMO in compliance with FAA's order dated 22.11.2018 is found on record which discloses the following information:

Sl No.	Information sought	Response
1.	Whether the PMO received any letter from Dr. Raghuram Rajan when he was RBI Governor, containing a list of high profile cases of bank frauds urging coordinated action to bring the fraudsters to book.	A letter dated 04.02.2015 of Shri Raghuram Rajan, the then Governor, RBI addressed to the Prime Minister had been received in this office. However, the copy of the said letter and action taken thereon cannot be disclosed as prescribed under Section 45E of the RBI Act, 1934 and the banking laws, which provide for obligation of a bank or financial institution to maintain secrecy about the affairs of its constituent.
2.	If so, what was the date of receipt of that letter and what action was taken on the basis of the list?	Further, investigation are ongoing in various law enforcement agencies on certain aspects of the aforesaid letter. Therefore, providing such information would impede the whole process of investigation or apprehension or prosecution of the offenders and is exempt from disclosure u/s 8(1)(h) of the RTI Act, 2005.
3.	Can a copy of the letter be shared with the applicant.	
5.	Has the PMO issued any directive to concerned agencies to initiate legal action against the perpetrators of loan frauds in the past 4 years.	The information sought by the applicant is in the form of roving enquiry, rather than seeking specific inputs. Particulars of information sought have not been specified. Hence, given the provision of Section 6 (1) read with Section 2(f) of the RTI Act, the details requested by the applicant do not come under the definition of information as per Section 2(f) of the RTI Act, 2005.

In order to ensure social distancing and prevent the spread of the pandemic, COVID-19, hearings through video conference were scheduled after giving prior notice to both the parties. All relevant parties participated in the hearing held through video conference and reiterated their respective contentions as have already been discussed above. The Appellant emphasised that though he had sought information about bank fraud cases, he had been denied access to such information invoking Section 45E of the RBI Act, 1934 which relates to non-disclosure of "credit information", especially the name of any banking company or its borrowers. He further objected to the fact that information about action taken in this regard had been wrongly declined to him invoking Section 8(1)(h) of the RTI Act.

Decision:

After careful perusal of the facts presented before this Commission, it is noted that the PIO, PMO had vide reply dated 11.12.2018 disclosed specific and satisfactory information in response to the queries raised by the Appellant, from available records. The main query of the Appellant which remains to be answered is query no. 4 about bank wise details of loan fraud cases, year of sanction of loan and year of detection.

It is pertinent to note that the issue in question has been dealt with by the Apex Court and the chronology of events in this regard is as follows:

1. The Supreme Court vide decision dated 16.12.2015 in the case of RBI vs. Jayantilal Mistry [2016 (3) SCC 525] and ten more connected cases, had upheld the decision of the CIC in 11 cases and dismissed the plea of the Banks deciding the issue that “*all the information sought for under the Right to Information Act, 2005 cannot be denied by the Reserve Bank of India and other Banks to the public at large on the ground of economic interest, commercial confidence, fiduciary relationship with other Bank on the one hand and the public interest on the other.*”
2. By a subsequent decision dated 26.04.2019, in the case of Girish Mittal vs. Parvati Sundaram[2019 (20) SCC 747], the SC held that RBI had committed contempt by withholding disclosure of information which had been directed to be disclosed referring to its earlier decision in *RBI vs Jayantilal Mistry*.
3. Subsequently, the banks had approached the Supreme Court praying for recalling of the decision in the *Jayantilal* case. The applications were rejected by the Supreme Court vide order dated 28.04.2021.

In the light of the above discussion, it is clear that the RBI and concerned Public Sector Banks are the actual custodian of information, which has been sought by the Appellant. The Department of Financial Services having received the RTI application on 12.11.2018, had thus correctly transferred the RTI application to the relevant custodians of information vide letter dated 12.12.2018, invoking Section 6(3) of the RTI Act. A public authority which is not the custodian of the information cannot be held liable for furnishing the same, under the RTI Act.

Before concluding the matter, the Commission wishes to point out a relevant portion of the landmark decision of the Hon'ble Supreme Court in the case of Central Board Of Secondary Education &Anr. Vs. Aditya Bandopadhyay & Ors.dated 9 August, 2011:

“...35. At this juncture, it is necessary to clear some misconceptions about the RTI Act. The RTI Act provides access to all information that is available and existing. This is clear from a combined reading of section 3 and the definitions of 'information' and 'right to information' under clauses(f) and (j) of section 2 of the Act. If a public authority has any information in the form of data or analysed data, or abstracts, or statistics, an applicant may access such information, subject to the exemptions in section 8 of the Act. But where the information sought is not a part of the record of a public authority, and where such information is not required to be maintained under any law or the rules or regulations of the public authority, the Act does not cast an obligation upon the public authority, to collect or collate such non- available information and then furnish it to an applicant. A public authority is also not required to furnish information which require drawing of inferences and/or making of assumptions. It is also not required to provide 'advice' or 'opinion' to an applicant, nor required to obtain and furnish any 'opinion' or 'advice' to an applicant. The reference to 'opinion' or 'advice' in the definition of 'information' in section 2(f) of the Act, only refers to such material available in the records of the public authority. Many public authorities have, as a public relation exercise, provide advice, guidance and opinion to the citizens. But that is purely voluntary and should not be confused with any obligation under the RTI Act...”

Emphasis supplied

In view of the foregoing, the Commission finds no legal infirmity under the RTI Act, in the replies furnished by the Respondents in question. Information as available on record has been furnished and action as mandated under the RTI Act has been taken by the Respondents. Hence, no further direction is deemed necessary in the case at hand.

The appeal is disposed off accordingly.

Y. K. Sinha (वाई. के. सिन्हा)

Chief Information Commissioner (मुख्य सूचना आयुक्त)

Authenticated true copy
(अभिप्रमाणित सत्यापित प्रति)

S. K. Chitkara (एस. के. चिटकारा)

Dy. Registrar (उप-पंजीयक)
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