

**ODISHA INFORMATION COMMISSION  
BHUBANESWAR**

**Present : Shri Sunil Kumar Misra,  
State Chief Information Commissioner**

**Date 12<sup>th</sup> June, 2018**

**Second Appeal No.2970/2014**

Biswajit Mohanty,  
Shantikunj,  
Link Road, Cuttack,  
District-Cuttack.....Appellant

**-Vrs-**

1. Public Information Officer,  
Office of the Director-cum-Addl. D.G. & I.G. of Police Vigilance,  
Odisha, Cuttack,  
District-Cuttack.
2. First Appellate Authority,  
Office of the Director-cum-Addl. D.G. & I.G. of Police Vigilance,  
Odisha, Cuttack,  
District-Cuttack.....Respondents

**Decision**

1. Appellant, Biswajit Mohanty, is present. Aswini Kumari Pattanayak, PIO-cum-Superintendent of Police, Coordination, Vigilance, Odisha, Cuttack and Rabindra Kumar Panda, APIO-cum-Deputy Superintendent of Police of the said Office are present. The PIO had earlier sent a written memorandum requesting for a month's time on the ground, among others, that the First Appellate Authority is on Mid-Career Training and currently not available.

2. Vide an application in form-A dated 13.10.2014, the appellant had requested the PIO, office of the Director-cum-D.G. & I.G. of Police, Vigilance, Odisha to provide him the following information:

“Regarding sanction and disbursement of source money for collecting intelligence and information on corruption in State

Government agencies as per details furnished below for each financial year and part of financial year:

- a) Total amount sanctioned by Government for the year;
- b) Total amount disbursed to various District Vigilance offices for the year;
- c) Total amount disbursed at Headquarters Cell for the year."

3. After receiving the application in form-A on 14.10.2014, the PIO-cum-Superintendent of Police(Coordination), Vigilance Directorate, Cuttack informed the appellant vide a letter dated 03.11.2014 that the information sought by him could not be supplied as disclosure of information relating to assistance given in confidence was exempt under Section 8(1)(g) of the RTI Act, 2005.

4. Aggrieved, the appellant filed first appeal vide an appeal memo in form-D dated 10.11.2014. The appellant contended in the appeal that he had not asked for any details regarding the sources or names of the persons who were paid source-money. On the contrary, he had only sought details of amounts sanctioned and disbursed under the relevant budget-head respecting source-money. Under the circumstances, the required information could by no means come within the purview of the exemption clause of Section 8(1)(g). The appellant also contended that as the concerned public authority happened to be the only anti-corruption body in the State, he had every right to know how much was sanctioned for collecting intelligence and how much was paid in a particular year. It was also stated that as lakhs of rupees were being disbursed as source-money every year, disclosure of information relating thereto would be of immense public interest. The appellant alleged that the PIO had willfully denied the required information with mala fide intention.

4.1 Vide an order dated 04.12.2014, the First Appellate Authority rejected the appeal by holding that he agreed with the PIO that the required information could not be provided as assistance given in confidence was exempt under Section 8(1)(g) of the RTI Act, 2005.

5. Aggrieved with the order of the First Appellate Authority the appellant preferred the subject second appeal alleging that the First Appellate Authority grossly erred in rejecting the appeal without application of mind and also without consideration of the grounds of appeal submitted by him. In the second appeal thus filed, the appellant also raised the arguments as had been raised by him in the first appeal memo.

6. This case was earlier heard on several occasions. During the earlier hearings, A. N. Sinha, then First Appellate Authority made written submissions. The appellant also filed rejoinders. Briefly stated, the First Appellate Authority strongly defended the stand taken by the PIO in not providing information to the appellant by relying on Section 8(1)(g). It was argued that if the information sought by the appellant were to be provided, the same would adversely affect the intelligence-gathering process. Disclosure of the required information would also give clues to the suspects / organizations involved in illegal activities and would enable them to change their modus operandi. Disclosure would also result in adoption of measures by the suspects in order to avoid detection. It was also submitted that considering the confidentiality and sensitiveness of the nature of the required information, the secret service money is not even subjected to audit. The First Appellate Authority in his later submissions also contended that if clauses (g) & (h) of Section 8(1) were read together and holistically, it would be clear that disclosure of the information sought by the appellant was exempt under the said clauses. It was further submitted that accountability and proper

utilization of secret service money were duly taken care of by the elaborate guidelines and layers of supervision in place. Finally, it was argued that the appellant had not produced any substantive material to establish that the information was required in the larger public interest. On the contrary, public interest would get seriously jeopardized.

**6.1** The appellant on the other hand strongly rebutted each and every argument thus advanced by the First Appellate Authority. Apart from contending that the First Appellate Authority could not go beyond the stand taken by the PIO and use provisions which had not been pressed into service by the PIO earlier, the appellant also argued that disclosure of the information sought by him could by no means endanger the life and physical safety of any person since he had not asked for personal particulars at all. He also wondered as to how sources of information or assistance given in confidence for law enforcement or security purposes would get identified if the amounts of funds sanctioned were disclosed. The appellant further contended that since huge amounts of tax-payers' money were being utilized, a citizen had right to know about the use of such money. The appellant also stated that there were instances of allegations of corruption in handling reward / intelligence money and, therefore, the mere fact that there were layers of supervision in place could not be taken as the ground to deny the required information to a citizen. Absence of audit of secret service money was also not relevant to the issue at hand.

**7.** The submissions thus made during the initial hearings were considered whereupon the Commission vide proceedings dated 03.10.2017 directed the PIO and the First Appellate Authority to produce the relevant records for the Commission's perusal. Responding to the above direction, the successor First Appellate Authority, Yatindra Koel, filed a further written memorandum in

connection with the hearing on 26.04.2018. It was submitted by him that “the PIO does not seem to be incorrect” in claiming exemption under Section 8(1)(g) of the RTI Act, 2005. In addition, the required information could also be denied under Section 8(1)(h). The First Appellate Authority also stated that considering the intelligence-based nature of vigilance operations and the need for maintaining confidentiality in its functioning, “the Government of Odisha vide Notification No.RTI-74/16-8082/IPR dated 11.08.2016 have exempted the Odisha State Vigilance under Section 24 of the RTI Act, 2005 from the ambit of the RTI Act, 2005”. It was submitted by the First Appellate Authority that in view of such exemption as per the Notification, the direction for production of the relevant records relating to secret service fund be reconsidered and the appeal of the appellant be rejected.

**7.1** The further submissions of the successor First Appellate Authority were considered and as the Commission had called for the records in order to appreciate the issues at hand better, the PIO and the First Appellate Authority were once again directed to ensure that the relevant records were produced for the Commission’s perusal on 19.05.2018. The appellant was also allowed time to submit his written memorandum on the contentions raised by the successor First Appellate Authority.

**7.2** Availing the opportunity thus allowed, the appellant submitted his rejoinder dated 09.05.2018. It was reiterated by the appellant that the First Appellate Authority could not usurp the authority of the PIO who under the RTI Act, 2005 has an extra ordinary degree of responsibility and power as would be evident from the fact that Section 19(5) mandates that the onus to justify denial of information shall be only on the PIO. No such onus has been fastened to the First Appellate Authority whose order, therefore, can only be treated as auxiliary.

Hence the First Appellate Authority was not empowered to add a further exemption clause to what had been invoked by the PIO. It was also contended by the appellant that the reliance on the exemption Notification issued by the State Government in 2016 was misplaced since the said notification did not grant exemption to the concerned organization with retrospective effect. The appellant once again reiterated that he had not asked for any information relating to any person(s) who benefitted from the secret service funds. Therefore, the question of their lives getting endangered would not arise at all.

8. At the time of the next hearing on 29.05.2018, the Commission noted that its direction to the PIO and the First Appellate Authority to produce the relevant records on 19.05.2018 was not complied with. Hence the Commission vide order dated 29.05.2018 allowed final opportunity to the respondents to produce the relevant records for the Commission's perusal on 08.06.2018.

8.1 The records were not produced on 08.06.2018 either. The PIO and the First Appellate Authority have also not submitted any counter-memorandum on the rejoinder filed by the appellant. It has been stated by the PIO-cum-Superintendent of Police in her written memorandum dated 08.06.2018 that a copy of the appellant's written memorandum was received in the office only on 10.05.2018 and, in order that counter-memorandum can be submitted, records need to be scrutinized thoroughly. Hence a further one month's time may be allowed. It has also been submitted that the First Appellate Authority's request vide letter dated 24.05.2018 for reconsideration of the order to produce relevant records be looked into.

9. The submissions made from time to time by both the parties have been considered. As already noted, the relevant records have not been produced even though more than 8 months have elapsed since the direction to this effect

was first given vide proceedings dated 03.10.2017. Moreover, counter-memorandum on the appellant's rejoinder has not been filed even though the PIO had received a copy of it more than a month back. Therefore, the Commission deems it appropriate to dispose of the appeal on merits as under without protracting the proceedings any further.

**9.1** The information sought by the appellant have been already reproduced in para 2 of his order. Briefly stated, the appellant had sought to be informed about the total amount sanctioned for the year, total amount disbursed to the District Vigilance Offices for the year and total amount disbursed at the State Headquarters for the year. The PIO denied information by claiming exemption under Section 8(1)(g) of the Act. Even the First Appellate Authority confirmed such denial by referring to the very same clause i.e. clause(g). It was only later during the course of the proceedings before this Commission that clause(h) was also sought to be pressed into service. Still later, reference has been made to the Notification whereby the Directorate of Vigilance has been notified under Section 24.

**9.2** The arguments raised by the appellant with regard to invoking the new clauses and bringing in new arguments at this second appeal stage have been noted. Without prejudice to the merits of the arguments thus advanced, it may be pertinent to see if these clauses, whether earlier used or were subsequently sought to be invoked by the First Appellate Authority, would apply to the facts of the case.

**9.3** First coming to the Notification, the same is patently not applicable as it does not have retrospective effect. Coming next to clause(h) of Section 8(1), exemption thereunder would apply only if there is any process of investigation, apprehension or prosecution of offenders which would get impeded by disclosure

of information. As can be seen from the reproduction in para 2, the appellant had not requested for any information relating to any investigation, apprehension or prosecution in the case of any offender(s). Therefore, Section 8(1)(h) is not applicable. Now we are left with deciding on the applicability or otherwise of clause(g) of Section 8(1). This clause would apply to information, the disclosure of which would endanger the life or physical safety of any person or would identify the source of information or assistance given in confidence for law enforcement or security purposes. The appellant had not asked for the names of any persons to whom funds were sanctioned. The appellant had also not sought to know about the purposes for which the sanctioned funds were spent. He had also not asked for any information regarding persons to whom payments were made. It thus automatically follows that he had not asked for any information connected with "sources of information or assistance given in confidence for law enforcement or security purposes". The amount of money sanctioned to the Headquarters and the units can by no means be treated as information of the above kind. Thus even Section 8(1)(g) is not applicable to the facts of the case.

**9.4** The other arguments raised by the PIO and the First Appellate Authority regarding the secret service money not being subjected to audit and there being a proper system of guidelines and supervisions in place to take care of accountability and proper utilization of such money are not relevant since the same do not fit into any of the clauses of Section 8(1) of the RTI Act, 2005. As regards the respondents' stand that there is no public interest involved in the information sought by the appellant, suffice would it to state that in Section 8, the expression "larger public interest" applies only to clauses (d), (e) and (j) and to none others.

10. In view of the foregoing, the stand taken by the PIO and the First Appellate Authority are held as erroneous / inapplicable and accordingly negated. The appeal is allowed and the PIO, Vigilance Directorate, Odisha is hereby directed to provide the required information to the appellant within 15 days under intimation to this Commission.

10.1 Having directed thus, the Commission also notes that the concerned PIO had not provided information to the appellant notwithstanding that Section 8(1)(g) was not applicable. Hence the Commission directs the concerned PIO / Ex-PIO to show cause why action under Section 20 of the RTI Act, 2005 shall not be taken against him for the above failure on his part.

10.2 The Commission also finds that the concerned First Appellate Authority upheld the order of the then PIO without duly considering the case on merits. The Commission therefore directs the said First Appellate Authority too to explain why he should not be proceeded against under Section 19 of the RTI Act, 2005 for the above lapse on his part.

11. With the above directions, the subject second appeal in so far as it relates to furnishing of information stands disposed of. Proceedings under Sections 19 & 20 of the RTI Act, 2005 in the cases of the concerned First Appellate Authority on the one hand and the Ex-PIO on the other respectively shall continue.

**Pronounced in open proceedings**

Given under the hand and seal of the Commission this day, the 12<sup>th</sup> June, 2018.

**State Chief Information Commissioner**  
12.06.2018