

(2010) 12 DEL CK 0019

In the Delhi High Court

Case No : Writ Petition (C) No. 7671 of 2010

Maj. Gen. V.K. Singh (Retd)

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 08-12-2010

Acts Referred:

Citation : (2010) 12 DEL CK 0019

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : Party in Person, for the Appellant; Neeraj Chaudhari, CGSC and Khalid Arshad, for the Respondent

Final Decision : Dismissed

Judgement

S. Muralidhar, J.

CM No. 19938 of 2010 (Exemption)

Exemption allowed subject to all just exceptions.

The application is disposed of.

W.P. (C) No. 7671/2010

1. The Petitioner is aggrieved by the orders dated 3rd December 2008 and 21st June 2010 passed by the Central Information Commission ("CIC") on his complaint.

2. In relation to a Report dated 19th February 2001 of the Group of Ministers ("GOM") on National Security, the Petitioner filed an application under Right to Information Act, 2005 ("RTI Act") on 28th April 2008 raising numerous queries. Inter alia, it was pointed out by the Petitioner that many parts of the Report contained security deletions. These deletions were listed out by the Petitioner. He sought "the reasons for these deletions, and the agencies on whose recommendations they were carried out."

3. The Petitioner's further query was as under:

The four major divisions of the report are Internal Security (Page 41 to 57); Intelligence Apparatus (Page 16 to 40); Border Management (page 58 to 96); and Management of Defence (Page 96 to 117). The entire chapter on Intelligence has been deleted. However, there is only one minor deletion in the chapter on Internal Security (Page 41) dealing with archaic laws. Similarly, there is only one minor deletion in the Chapter on Defence Management (Page 115) dealing with Military Civil Interface. From Section 3 of Official Secrets Act 1923 it is amply clear that Defence matters are considered more sensitive than others. The reason for deletion of the entire chapter on Intelligence when there are almost no deletions in the chapter on Defence may please be explained?

4. There were other queries as regards the status of the Report, whether the deleted portion was classified etc. Significantly, the Petitioner's was filed more than seven years after the date of the report.

5. The Central Public Information Commissioner ("CPIO") of the National Security Council Secretariat ("NSCS") refused to provide information in respect of some of the Petitioner's above queries. In response to the query concerning the deletion of the entire chapter on intelligence, the response was that "the deletion was as per the recommendations of the GOM accepted by the Cabinet Committee on Security ("CCS")." In response to the query concerning the reasons for the deletions, the CPIO replied that "the CCS approved the Security deletions on grounds of implications on national security. The deletions were recommended by various Govt. departments concerned with various aspects of national security. Therefore, the information cannot be provided u/s 8(1)(a) of the RTI Act. Moreover, the information relates to third party in terms of Section 11 of the RTI Act." The NSCS stated that the disclosure of information concerning the above matter and certain other queries would, in terms of Section 8(1)(a) of the RTI Act, "prejudicially affect the security and strategic interest of the country." In the response to another query, the Petitioner was informed that the Report of the GOM on national security had not been placed before the Parliament.

6. The Petitioner then filed an appeal to the first Appellate Authority enclosing newspaper cuttings which according to him showed that the Report had been laid on the table of the Parliament in 2001. Since no response was forthcoming to his appeal, the Petitioner approached the CIC. His complaint was heard on 10th October 2008 by the CIC. The Respondents pointed out that the NSCS was included at Serial No. 22 in the Second Schedule to the RTI Act and, therefore, in terms of Section 24(2) RTI Act, no information concerning the NSCS could be disclosed. However, the CIC took the view that date of the Notification by which NSCS was so added to the Second Schedule to the RTI Act was 8th October 2008 whereas the Petitioner's application was filed on 22nd April 2008. Consequently, the Respondents were directed to appear before the CIC together with a copy of the original GOM Report to ascertain if the exemption claimed u/s 8(1)(a) of the

RTI Act was admissible.

7. At the hearing before the CIC on 20th November 2008, the Petitioner claimed that the full Report of the GOM, including the portion on intelligence, that was already in the public domain. In support of this submission he produced copies of certain articles published in the "Frontline" and "The Hindustan Times" as well as news report of the Press Information Bureau ("PIB"). The CIC then issued notice to the journalists to share information with the CIC whether in fact they had a complete copy of the Report of the GOM.

8. It appears that without awaiting response of the journalists, the CIC took up the matter again on 3rd December 2008 and passed the following order:

Shri Manoj Pande, ADGM PIB submitted a copy of a press release of 23.5.01, released by the Chairman of the GOM

Shri L.K. Advani on that date. He also submitted copies of record of Hindustan Times of 24th May, 2001 and Times of India of 24th May, 2001, in both of which there is a mention of "Formal Release of the GOM Report on National Security." Since neither Shri Praveen Swami nor Ms. Swati Chaturvedi is present, it is not possible to ascertain whether in fact the full report was actually released. Even were it in the hands of these individuals, their failure to appear would imply either that they are not in possession of the documents in question or that they are with them through sources other than bonafide, neither of which would be cause for ordering release by the NSCS under the RTI Act, 2005. However, representatives of PIB affirmed that no such report other than the press release displayed was received by them. It must, therefore, be assumed that reference to the release of GOM Report in these two press reports is in fact a reference to the PIB release of the report on "Reforming the National Security System.

9. Consequently, it was decided by the CIC as under:

In light of the above, we accept the request of Shri G. Rajeev, US & CPIO, NSCS that time is allowed to the National Security Council Secretariat to deliberate whether the exemption from disclosure sought is appropriate. This will be in keeping with the requirement of exemption from disclosure u/s 8(1)(a). It is the NSCS that as an institution is assigned to determine whether or not, the information contained in GOM with the release of information contained in GOM would "prejudicially affect" the security and strategic interest of the State. If judiciously arrived at, any such decision cannot be substituted by our own.

With the above discussion, it is now decided as follows:

- a) A copy of the PIB release received from Shri ADG PIB will be given to Appellant Shri V.K. Singh together with a copy of this decision notice forthwith.
- b) CPIO, NSCS and Shri Rajeev may proceed to issue replies to the RTI queries of Appellant Maj. Gen. Singh as addressed and quoted by us above, in response to his RTI request, within one week of the date of issue of this Decision Notice.

c) The NSCS give due deliberation to the requirement for classifying the GOM report within the time requested, and based on such decision may either issue or refuse a copy to Appellant Maj. Gen. V.K. Singh with the condition that if it is refused, reasons for so refusing will be provided to Appellant Maj. Gen. Singh.

10. The Petitioner filed a review petition before the CIC stating that he had no notice of the hearing on 3rd December 2008 and that without awaiting the response of the journalists to whom notices had been issued by the CIC, his appeal could not have been disposed of. The Petitioner had in the meanwhile also filed a complaint before the Press Council of India ("PCI") which in turn had sent notices to "The Hindu" as well as "The Hindustan Times". By a letter dated 28th August 2009 the Associate Editor of "The Hindu" informed the PCI that the GOM Report was not tabled in the Parliament; it was presented to then Prime Minister in the Parliament. Further, it was stated that the newspaper had a copy of the Report in its possession.

11. It appears that on the strength of the above letter, the entire focus of the hearing of the review petition before the CIC shifted to whether the GOM Report was already in the public domain and whether a copy of it should be made available to the Petitioner. The Petitioner insisted that the CIC was not earlier informed the fact that the GOM Report was already in the public domain. The Petitioner urged that since it was discovery of a new matter, the CIC should review its earlier order dated 3rd December 2008. He further submitted that since the GOM Report was already in the public domain, the NSCS should be directed to give to the Petitioner a complete copy thereof. The CIC, however, was not inclined to review its earlier order dated 3rd December 2008. It accepted the contention of the NSCS that a copy of the full Report, including the deleted portions, had not been issued to the press. It was observed that it was open to the Petitioner to seek a copy of the GOM Report from "The Hindu" and no direction could be issued for that purpose.

12. The Petitioner, who appears in person, submitted that the complete Report of the GOM, including the deleted portions, was already available with "The Hindu" and, therefore, the CIC ought to have directed its disclosure by the NSCS to the Petitioner.

13. This Court is unable to accept the above submission of the Petitioner. The letter written by "The Hindu" to the PCI no doubt acknowledges that "The Hindu" has a copy of the Report of the GOM. However, it by no means does acknowledge that the said copy of the Report includes the chapter on intelligence which even according to the Petitioner stands deleted. Incidentally, it must be observed that the Petitioner has been able to download from the internet a copy of the GOM Report minus the deleted portions. Therefore, what the Petitioner is really seeking is not a copy of the GOM Report which is available in the public domain. His queries under the RTI Act unmistakably shows that he wants to access the deleted portions and the reasons for deletion of the chapter on intelligence.

14. The Petitioner has proceeded on the premise that the press has already been given a copy of the GOM Report together with the deleted portion. However, he has not been able to substantiate this. There is no question, therefore, for the CIC directing the NSCS to furnish to the Petitioner a copy of the GOM Report together with the deleted portions.

15. It was then submitted by the Petitioner that reasons given to him for the deletions was unsatisfactory. According to him it was incumbent on the CIC to adjudicate on the adequacy of reasons. In the petition itself in para 29.10.1, the Petitioner has referred to certain news report of 24th May 2001 where the then Home Minister explained that the portion of the Report of the GOM relating to the intelligence apparatus was deleted "at the urging of the intelligence agencies who did not want their adversarial counterparts to learn about their weaknesses." Further, "those deleted parts pointed to specific shortcomings that people inimical to the country's security could have exploited...A few other omissions pertained to observations that could have had adverse diplomatic implications.

16. This Court is unable to appreciate how, within the scope of its powers under the RTI Act, the CIC can possibly sit in appeal over the subjective satisfaction of the GOM that certain portions of its Report should be deleted since it could have security implications. For that matter even this Court cannot possibly sit in appeal over such determination by the GOM. In matters concerning security, it would be very difficult for either the CIC or this Court to override the views of the agencies on security issues. The CIC, or even this Court, lacks the expertise to evaluate the various inputs that go into such decision. In other words, the determination by the GOM which prepared the Report that the chapter on intelligence should be deleted as its disclosure would prejudicially affect the security interests of the state are not capable of being judicially reviewed either by the CIC or this Court.

17. This Court finds no merit in this petition and it is dismissed as such.