

CENTRAL INFORMATION COMMISSION

Room No. – 308, 2nd Floor, August Kranti Bhawan,
Bhikaji Cama Place, New Delhi – 110066.
Website: cic.gov.in

File No. CIC/SS/A/2013/000138/KY

Appellant : Shri P. Balachandar
Plot No. 8B, Jai Flats, 1st Floor, F2
Kamaraj Garden Street, Medavakkam, Chennai-600100

Public Authority : The Dy. Commissioner (Enquiry)
O/o. the Commissioner of Customs
Chennai Port-Imports, Custom House, 60 Rajaji Salai, Chennai-1

Date of Hearing : 31.07.2014
Date of Decision : 31.07.2014

Presence:

Appellant : Absent
PIO : Dr. Ajitesh Radhakrishnan, Deputy Commissioner & CPIO (Exports)

FACTS:

1. Vide RTI application dated 13.08.2012, the Appellant sought information on the sole **issue**.
2. CPIO, vide its response dated 17.09.2012, allegedly not provided the information to the appellant.
3. The First Appeal (FA) was filed on 24.09.2012 as the desired information was not provided
4. First Appellate Authority (FAA), vide its order dated 25.10.2012, upheld the decision of CPIO.
5. Grounds for the Second Appeal filed on 30.11.2012, are contained in the Memorandum of Appeal.
6. **HEARING**

Appellant opted to be absent despite of our due notice to him. Dr. Ajitesh Radhakrishnan, CPIO, appeared before the Commission personally **with empty handed** and made the oral submissions, at length.

DECISION

It would be seen here that the appellant, vide his RTI Application dated **13.08.2012**, sought information from the respondents on **sole issue** as contained therein. CPIO, vide his response dated **17.09.2012**, **denied** the required information to the appellant. Being aggrieved by the aforesaid response, FA was filed by the appellant, on **24.09.2012**, before the FAA, who vide his order dated **25.10.2012**, **upheld** the decision of CPIO. Hence, a Second Appeal before this Commission.

2. At the outset, it is stated here that Dr. Ajitesh Radhakrishnan, Deputy Commissioner (Imports) & CPIO, appeared before the Commission **without any case record**. On being queried by the Commission, as to whether in the absence of the relevant records, how will you defend your case? On this very aspect, it is pointed out by Dr. Ajitesh, CPIO, that there is **no necessity** to

bring the relevant record of the case, at all, everything are on my finger tips. Further, when Commission allowed him to proceed with the case. He started the arguments very **aggressively** and with a **very rough & high tone** which is not expected, at all, from the level of Dy. Commissioner of the department concerned. Dr. Ajitesh went on arguing the case **illogically and on irrelevant issues**. He was again requested by the Commission either argue the case on **relevant issues only or file written submissions**, in the matter. However, he failed to accede the Hon'ble Commissioner's request in this regard and went on arguing the case at his **whims and fancies**, which is **totally unwanted and uncalled for**, from such officers of the level of Dr. Ajitesh Radhakrishnan, CPIO. However, later on, he submitted a written submissions dated **31.07.2014**, in the case.

3. However, he has taken the plea of **Section 8(1) (h) of the RTI Act 2005** while making **oral submissions** before the Commission. Furthermore, when he was again asked to justify his plea taken under **section 8(1) (h) of the RTI Act 2005**. On this very aspect, **he replied very rudely in negative**, in this regard. Not only this, **he also kept mum**, when he was further asked by the Commission, to give the details of appellant's RTI application, FAA's order etc. Dr. Ajitesh Radhakrishnan, CPIO also **miserably failed** to highlight the **details of the investigation** i.e. the date of starting, present status and the time period by which **the investigation** would be concluded.

4. Apart from above, Dr. Ajitesh Radhakrishnan, CPIO also **started to issue a number of threats** to the Hon'ble Commissioner (undersigned), such as, to make a **complaint** before the Chief Information Commissioner, today itself and even to **lodge an FIR** with the Police Station concerned, in case Hon'ble Commissioner fails to give its decision **in accordance with his dictum**, in the matter. However, later on, a **good sense prevailed** upon Dr. Ajitesh Radhakrishnan, and he submitted his **unconditional apology dated 31.07.2014**, before the Hon'ble Commission. However, he suppressed so many things, such as, lodging of an FIR, making complaint before the Chief Information Commissioner etc. in his written apology.

5. It is pertinent to mention here that the CPIO, vide his response dated **17.09.2012**, **denied** the required information to the appellant by taking a plea under **Section 8(1) (h) of the RTI Act 2005**. Further, learned FAA, vide his order dated **25.10.2012**, disposed of the FA by upholding the CPIO's plea taken under **Section 8(1) (h) of the RTI Act 2005**.

6. It is needless to mention here that **Section 8(1) (h) of the RTI Act 2005**, deals with the exemptions from the disclosure of information which **would impede the process of investigation or apprehension or prosecution of offenders**. No doubt, CPIO vide his response, referred to above, taken a plea under **Section 8(1) (h) of the RTI Act 2005** but **failed to justify** his stands as to how it is going to **impede the process of investigation** or there is an **apprehension or prosecution** of offenders, in the present case.

7. Furthermore, according to the Section 19(5) of the RTI Act 2005, the **onus to justify the plea taken under section 8(1) of the RTI Act 2005, lies on the shoulders of CPIO only** and not of

the information seeker i.e. appellant. Thus, merely taking a plea by the respondents under any **sub-clauses** of the Section 8(1) of the RTI Act 2005, would not serve the **real legislative intent** for which it (RTI Act 2005) was legislated by **Hon. Legislatures** in the Parliament of India and also it may not stand the **judicial scrutiny**, if, the matter is challenged before any Hon. High Courts or Supreme Court of India.

8. By virtue of the position above, the Commission feels that respondent's plea taken under **Section 8(1) (h) of the RTI Act 2005**, without highlighting its justification, is **not legally tenable**, at all. This view is also supported by **earlier decision** dated **27.03.2012** of this Commission, dealt with, in file no. **CIC/SG/A/2012/000213/18091**.

9. The Commission heard the submissions made by Dr. Ajitesh Radhakrishnan, CPIO at length. The Commission also perused the case-file **thoroughly**; specifically, **nature of issue** raised by the appellant in his RTI application dated **13.08.2012**, respondent's response dated **17.09.2012**, FAA's order dated **25.10.2012**, respondent's written submissions dated **31.07.2014** and also the grounds of memorandum of second appeal.

10. The Commission is of the considered view that the appellant has been deprived by the respondents **deliberately** from having the benefits of the RTI Act 2005, **even after lapse of more than twenty three months** period on the basis of plea taken under section **8(1) (h) of the RTI Act 2005 only**, without highlighting its justification. Thus, the respondents **have defeated the very purpose** of the RTI Act 2005 for which it was legislated by Parliament of India.

11. In view of the **position** above and **in the circumstances of the case**, the respondents are hereby directed to either provide the **full justification** of their plea taken under section **8(1) (h) of the RTI Act 2005** to the appellant or **in case of failure**, provide the **complete and categorical** information on the issue of the appellant's RTI application, within 30 days from the date of receipt of this order under intimation to this Commission. **If need be, Section 5(4) of the RTI Act 2005 be also invoked in the matter.**

The appeal is disposed of accordingly.

Enclosure: A Copy of Written Apology dated 31.07.2014.

Sd/-
(M.A. Khan Yusufi)
Information Commissioner

Copy of this Decision be given free of cost to the parties.

Authenticated true copy

(K. L. Das)

Deputy Registrar

1. Sh. S. Ramesh

Chief Commissioner of Customs

Chennai Port-Imports, Custom House,
60 Rajaji Salai, Chennai-1

2. Sh. S. Kanan

Commissioner of Customs (Appeal)

Chennai Port-Imports, Custom House,
60 Rajaji Salai, Chennai-1

3. The Dy. Commissioner (Enquiry)

O/o. The Commissioner of Customs

Chennai Port-Imports, Custom House,
60 Rajaji Salai, Chennai-1

4. Shri P. Balachandar

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