

**ODISHA INFORMATION COMMISSION
BHUBANESWAR**

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

Date: 20 June, 2018

Second Appeal No.2356/2015

Biswajit Mohanty,
Shantikunj, Link Road,
Dist- Cuttack.....Complainant

Vrs.

1. Public Information Officer,
Office of the Commissioner of Police,
Bhubaneswar-Cuttack
Commissionerate of Police,
Bhubaneswar.
2. First Appellate Authority,
Office of the Commissioner of Police,
Bhubaneswar-Cuttack
Commissionerate of Police,
Bhubaneswar.....Respondents.

Decision

1. Appellant, Biswajit Mohanty, is not present. Pranadhan Mohapatra, Deputy Commissioner of Police (Hqrs), Office of the Commissioner of Police, Bhubaneswar-Cuttack Commissionerate, Bhubaneswar and Sanjay Kumar Singh, First Appellate Authority-cum-Addl. Commission of Police of the said Commissionerate are present. The PIO and the First Appellate Authority have made written submissions which are taken on record.

2. Vide an application in Form-A filed with the PIO, Office of the Commissioner of Police, Bhubaneswar-Cuttack, Bhubaneswar, the appellant had requested the PIO to provide him the file number and subject matter in which the fixing of Traffic CCTV Cameras had been dealt with, photocopies of the note-sheets of the above file for the period 01.04.2014 to 20.05.2015, name of the service agency in respect of Traffic CCTV cameras and photocopies of all the

letters written to the service agency during the period 01.01.2015 to 20.05.2015. The appellant had also requested the PIO to inform him the total number of Traffic CCTV cameras which were installed and functional as on date. In the application in Form-A, the required information had been listed out vide 5 points.

3. Vide a letter dated 27.05.2015, the PIO-cum-DCP(Hqrs), Office of the Commissioner of Police, Bhubaneswar-Cuttack transferred the application under Section 6(3) of the RTI Act, 2005 to the PIO, Office of the Chairman-cum-MD, Orissa State Police Housing and Welfare Corporation Ltd (OSPH&WC), Bhubaneswar on the ground that the subject matter of the information sought by the appellant related to the jurisdiction of OSPH&WC, Bhubaneswar. Simultaneously, he forwarded a copy of the transfer intimation to the Deputy Commissioner of Police (Traffic), Bhubaneswar-Cuttack with request to furnish point-wise information as available. In response, the Deputy Commissioner of Police (Traffic), Bhubaneswar-Cuttack vide a letter dated 17.06.2015 informed the PIO of the Office of the Commissioner of Police that no file relating to fixing of Traffic CCTV Cameras was available in his office. Hence compliance in respect of SI Nos. 1 to 5 of the application be treated as nil. However, he also informed the PIO that the CCTV-based Surveillance System was implemented in Bhubaneswar City w.e.f 05.02.2015 covering 28 locations. Details relating to the same would be available with the OSPH&WC, Bhubaneswar. Vide a letter dated 19.06.2015, the PIO-cum-DCP(Hqrs), Office of the Commissioner of Police, Bhubaneswar-Cuttack forwarded a copy of the letter dated 17.06.2015 of the Deputy Commissioner of Police (Traffic) to the appellant.

4. The appellant followed up his application in Form-A by filing first appeal vide an appeal memo in Form-D dated 29.06.2015. The First Appellate Authority in his order dated 25.07.2015 held, inter alia, that the files and notings would contain sensitive information relating to specifications of CCTV cameras, communication network, design & lay-out. There would also be information relating to locations including vital establishments such as the Odisha Legislative

Assembly, State Secretariat, Governor's House, Reserve Bank of India etc. If such sensitive information were not kept confidential, unscrupulous elements might misuse the information to indulge in unlawful activities thereby circumventing the System. They might also use the information to disrupt the System. Holding as above, the First Appellate Authority concluded that the information sought by the appellant could not be disclosed as the same was exempt under Section 8(1)(g)/(h).

4.1 It was further observed by the First Appellate Authority that OPH&WC was the executing agency for the project and Honeywell Automation India Ltd. was the contractor for the purpose.

5. Aggrieved with the order of the First Appellate Authority, the appellant filed second appeal vide an appeal memo in Form-E dated 21.09.2015. It was contended by him that the First Appellate Authority was not justified in dismissing the first appeal by relying upon Section 8(1)(g)/(h). As would be evident from the order of the First Appellate Authority, the information was actually on record but was falsely denied by the PIO on the ground of non-availability. The First Appellate Authority also usurped the power of the PIO and did not adjudicate on the grounds cited by the PIO.

6. This case was effectively heard on 3 earlier occasions. Most of the hearings were attended by the appellant. The respondent public authority was represented from time to time by M.N Bohidar, then PIO-cum-DCP(Hqrs); Anupama James, successor PIO-cum-DCP(Hqrs); P.S. Ranpise, then First Appellate Authority-cum-Additional Commissioner of Police, Office of the Commissioner of Police, Bhubaneswar-Cuttack and Himansu Kumar Lal, successor First Appellate Authority-cum- Additional Commissioner of Police of the said Commissionerate. P.S.Ranpise, then First Appellate Authority, made a detailed written submission defending the stand taken by the Ex-PIO and the Ex-First Appellate Authority on the appellant's application in Form-A and appeal memo in Form-D.

7. It was submitted by P.S.Ranpise, Ex-First Appellate Authority, that some of the files and note-sheets relating to correspondences made with the SP (Hqrs), OSPH&WC and with Honeywell Automation India Ltd. during the specified period were no doubt available in the Traffic Section of the Commissionerate of Police Hqrs. The files thus available as well as the subject matter of the information contained in such files were also listed out. It was, however, argued that the mentioned files contained vital, sensitive information including information regarding composition of software system, specification, communication net work, design, layout of command, types of cameras, features of cameras, operational procedures etc. In fact, the entire command and control system relating to surveillance had restricted access because of the sensitivities involved. Reference was also made to Sections 8(1)(h)&(g) as per which disclosure of information which would endanger the life and physical safety of any person or would impede the process of investigation or apprehension or prosecution of the offenders are exempt. It was also submitted that if disclosure of such information was permitted by the Commission, it would become a statute of direction for every individual including criminals, anti-socials and terrorists to seek such information in order to make counter strategies against police-preparedness. In this connection, reliance was placed on the decision of the Central Information Commission in the case of Sh. Asseem Takyar vs. Supreme Court of India and High Court of Delhi in which denial of information relating to installation of CCTVs in the Supreme Court of India and the High Court of Delhi had been upheld. The First Appellate Authority also argued that information in the matter of specification, communication net work, design, layout of command, types of cameras, features of cameras etc. would reveal the commercial confidence and trade secret of the company, Honeywell Automation India Ltd. Thus disclosure was also barred under Section 8(1)(d).

7.1 The appellant in his rejoinder submitted that the very fact that the respondents had now admitted availability of the files would show that the transfer of the application to OSPH&WC was illegal and had been done without

application of mind in the first place. It was also argued by the appellant that denial of any information could be resorted to strictly as per the specific clauses of Section 8. No clause of Section 8 had been invoked earlier when the application was rejected by the PIO. The fresh grounds raised by invoking clauses (g)/(h)&(d) of Section 8(1) now was only intended to deny the information on some ground or the other. It was also argued by the appellant that the words 'vital' and 'sensitive' did not find place in any exemption clause provided in the RTI Act, 2005. Even otherwise, Section 8(1)(g) and Section 8(1) (h) would not apply as he had not asked for the names of offenders or details of any offence committed by them. Section (8)(1)(d) would also not apply because none of the information sought by him could be said be in the nature of trade secret since no details of any proprietary right or patented technology had been sought which would affect the Supplier's interests. "The appellant also contends that the Supplier never supplied manufacturing process details to the respondent public authority as it was not within the scope of the tender". "As the product had already been supplied, there is no commercial confidence involved regarding the price bids or negotiation details which can be taken advantage of by any potential trade rival or other interested party". The appellant also contended that the judgement of the Central Information Commission in the case Sh. Asseem Takyar Vrs Supreme Court of India was not applicable as he had not sought, vide the subject application, any video footage. Even otherwise, disclosure of CCTV footage was allowed in a subsequent judgement of the Central Information Commission in the case of Jaspreet Singh Vrs PIO, Delhi Police.

7.2 The respondents in turn filed a counter-rejoinder. It was submitted that transfer of the application to OSPH&WC was justified as this concern had executed the project by engaging Honeywell Automation India Ltd. All details in connection with fixing of CCTV Cameras were maintained by OSPH&WC. Further, the very fact that part information was provided would by itself show that there was no intention of denying information. It was further contended by the respondents that disclosure of CCTV footages has been consistently held as

exempt in several judgements. In this connection, reliance was placed on the decisions in the cases of Mr. M. Mahadevappa vrs CPIO & DGM (HR/Adm), BSNL, Mysore; Shri Samir Vijay Zaveri vrs Western Railway Divisional Railway Manager's Office Commercial Deptt, Mumbai Central etc. It was also contended that the judgement in the case of Jaspreet Singh vrs PIO, Delhi Police was neither overruled nor dissented from. All the judgements having been passed by single members of the Hon'ble CIC, an earlier judgment could not be seen as per incuriam a later judgement. The respondents also referred to Schedule-II to Rule-19(2) of the Information Technology (Certifying Authorities) Rules, 2000 wherein publishing or communicating of certain information was prohibited.

8. The submissions thus made by the respondent as well as the appellant during the earlier hearings were considered. At the time of the hearing on 23.05.2018, the Commission directed the PIO and the First Appellate Authority to make specific submissions by referring to the files maintained in the Traffic section. They were also directed to ensure that the relevant files were produced before the Commission for perusal.

8.1 In compliance of the direction thus given, the PIO and the First Appellate Authority have produced 3 files for the Commission's perusal today. They have also prepared a list of the other files relating to CCTV Surveillance which are maintained in various sections, viz traffic section, reserve section and CCTV control room. In all, there are 17 files. As per the PIO and the First Appellate Authority, only 3 of these 17 files, viz N-26-12 (Part-II), N-21-13 and N-21-13 (Part-II) are relevant to the information sought by the appellant. The files have been perused in a cursory manner. Prima facie, the note-sheets do not contain any information which can be said to be exempt under Section 8(1)(d) which is applicable to information relating to commercial confidence. On the same being pointed out, the First Appellate Authority fairly agrees that copies of the note-sheets can be provided to appellant.

9. The information sought by the appellant vide his application in Form-A have been reproduced earlier on. He had not asked for any information relating to any individual or relating to any investigation, apprehension or prosecution of offenders. The appellant had also not asked for any information regarding sources of information or sources of assistance given in confidence for law enforcement or security proposes. Therefore, clauses (g) and (h) of Sub-Section (1) of Section 8 of the RTI Act, 2005 are not applicable. Prima facie, Section 8(1) (d) is also not applicable as the appellant had not asked for any information relating to commercial confidence, trade secret or intellectual property right, the disclosure of which would affect the competitive position of the third party i.e. Honeywell Automation India Ltd. He had also not asked for information relating to designs, specifications, patents, copy-rights, manufacturing process etc. In the circumstances, the Commission holds that PIO and the First Appellate Authority were not justified in not providing the required information to the appellant earlier. They are hereby directed to provide the required information, as available, within 15 days after severing information of a personal nature or information relating to commercial confidence, if any, disclosure of which would harm the competitive position of M/s Honeywell Automation India Ltd. The PIO and the First Appellate Authority shall send a compliance report to the Commission after furnishing the available information to the appellant.

9.1 With the above direction, the case pertaining to supply of information is hereby closed.

9.2 Having decided thus, the Commission directs the concerned PIO, i.e. PIO, Office of the Commissioner of Police, Bhubaneswar-Cuttack as well as the concerned Referred PIO, i.e. Deputy Commissioner of Police (Traffic), Office of the Commissioner of Police, Bhubaneswar-Cuttack to show cause as to the why action under Section 20 of the RTI Act, 2005 shall not be taken against them for failure to provide any information to the appellant earlier by taking an erroneous stand that no file relating to fixing of Traffic CCTV Cameras was

available. The PIO, Office of the Commissioner of Police shall also explain as to why adverse view shall not be taken of his action in transferring the application to OSPH&WC Limited, Bhubaneswar in a routine manner.

10. With the above directions, the subject appeal in so far as it relates to furnishing of information stands disposed of. Proceedings under Section 20 of the RTI Act, 2005 in the cases of the PIO and the Referred PIO shall continue.

Pronounced in open proceedings

Given under the hand and seal of the Commission this day, the 20th June, 2018.

State Chief Information Commissioner
20.06.2018