ODISHA INFORMATION COMMISSION
BHUBANESWAR
Present : Shri Sunil Kumar Misra,
State Chief Information Commissioner
Date 20th November, 2020
Second Appeal No- 1693/2016

Biswajit Mohanty,
Shantikunj,
Link Road,
Dist-Cuttack-753012…….....Appellant

-Vrs-

1. Public Information Officer,
Office of the DG of Police & Dirctor Vigilance,
Odisha, Cantonment Road,
Dist-Cuttack

2. First Appellate Authority,
Office of the DG of Police & Dirctor Vigilance,
Odisha, Cantonment Road,
Dist-Cuttack.....Respondents

DECISION

1. Appellant, Biswajit Mohanty, is present and has submitted a rejoinder to the PIO's written memorandum dated 27.10.2020.

1.1 Aswini Kumari Pattanayak, PIO-cum-Superintendent of Police, Vigilance Directorate, Odisha, Cuttack is not present. However, she has sent a written memorandum dated 16.11.2020.

2. Vide an application in Form-A dated 16.03.2016 submitted before the PIO of the Office of the Director General of Police, Vigilance, Odisha, Cuttack, the appellant had requested the PIO to provide photo-copies of all the letters which had been issued by the Directorate to the State Government during the period 01.04.2000 to 17.03.2016 as reminders of cases pending for issue of sanction

to prosecute Class-I officers, and, copies of all the replies received from the Government to such reminders. The PIO vide a reply dated 11.04.2016 informed the appellant that disclosure of the information sought by him was exempted under Section 8(1)(h) as sanction for prosecution was a part of the criminal procedure of a case.

3. The appellant followed up his application in Form-A by filing first appeal vide an appeal memo in Form-D dated 19.04.2016. The appellant contended in the first appeal that the desired information could by no stretch of imagination affect the process of investigation since he had not asked for details of witnesses, copies of statements recorded or copies of evidences collected in connection with the cases. Vigilance Police would arrive at the sanction–seeking stage only after completing investigation and only on being convinced that there was enough material to prosecute the accused. Therefore, disclosure could not affect the investigations which had been already completed. Even if the investigations were still going on, disclosure of the reminders for sanction could by no means affect the same. The appellant alleged that there was an obvious attempt by the PIO to conceal information relating to corruption in high places in the State Government by denying information about reminders issued to the Government in connection with such cases. Such denial amounted to obfuscation of transparency and accountability in the sphere of the concerned public authority.

3.1 The First Appellate Authority disposed of the first appeal vide an order dated 17.05.2016. He observed in his order that the contention of the appellant that sanction was sought only after completion of investigation represented a very myopic view of investigation. As held by the Hon'ble Supreme Court in the case of Directorate of Enforcement vrs. Dipak Mahajan (AIR 1994 SC 7075), the word "investigation" could not be limited only to police investigation but

would include “investigation” carried on by any agency, whether a police officer or any other officer / authorized officer empowered by or invested with the power of investigation. The expression “inquiry” as defined in the Code of Criminal Procedure was of wide import and would take in every proceeding other than a Trial conducted by a Magistrate. The First Appellate Authority further observed that the term “investigation” used in Section 8(1)(h) of the RTI Act, 2005 should be interpreted broadly and liberally instead of restricting it to the technical definition of “investigation” provided under the criminal law. Investigation in the context of the RTI Act would mean all actions of law enforcements, disciplinary proceedings, inquiries, adjudications and so on. Logically, therefore, no investigation could be said to be complete until it reached a point of final decision. Thus, investigation would include extended investigation. Observing thus, the First Appellate Authority took the view that obtaining sanction of prosecution against class 1 officers of the Government formed part of the process of investigation. Moreover, letters issued to the State Government for obtaining sanction would contain vital information pertaining to the culpability of the accused or co-accused persons involved in the crimes. Disclosure of such information would impede the process of investigation. The First Appellate Authority accordingly held that the PIO had rightly denied the information by considering the same as exempt under Section 8 (1)(h) of the Right to Information Act, 2005.

4. Aggrieved with the order of the First Appellate Authority, the appellant filed the subject second appeal before this Commission vide an appeal memo in Form-E dated 26.07.2016. In the second appeal, apart from reiterating the grounds already raised in the first appeal, the appellant strongly contested the interpretation of the word “investigation” given by the First Appellate Authority in his order. It was argued that such interpretation to the effect that any and all the

processes undertaken till the matter was disposed of by the Court would come within the scope of "investigation" was beyond comprehension and also marked perverse logic. The First Appellate Authority failed to note that there could be no Trial in a case where investigation was pending; and, Court proceedings could commence only after completion of investigation. The stage of prosecution would commence only after confronting the accused with all the materials held against him and not in bits and pieces which would put him to immense jeopardy. Further, it was incompressible how mere disclosure of the letters / reminders relating to sanction of prosecution would reveal evidences indicating the culpability of the accused. In the Second appeal memo, the appellant also referred to the decision of the Delhi High court in the case of B.S Mathur vrs. PIO(WPC 295/2011) reaffirmed in the case of Adersh Kumar Vrs. Union of India (WPC 3543/2014) wherein it was held that information could be legitimately denied by the PIO under Section 8(1)(h) only if disclosure would "impede the process of investigation". The onus to prove that disclosure would impede the process of investigation was on the PIO. Therefore, the First Appellate Authority erred in blanketly denying the required information on the ground that the cases were under investigation without explaining how the process of investigation would be impeded. The appellant also stated that the First Appellate Authority had stretched the definition of investigation to imaginary limits much beyond the permissible boundary of law and logic. If the definition and the interpretation thus sought be made were to be followed, then hypothetically information could be denied even where investigation was completed merely because the final decision was yet to be taken by the Court.

5. This case was earlier heard on a few dates. During the course of the initial hearings, the concerned First Appellate Authority, i.e. A N Sinha, and the successor PIOs submitted written memoranda. The First Appellate Authority

strongly defended his order. The PIO apart from reiterating the stand taken in the order of the First Appellate authority also submitted that the vigilance organization had since been exempted from the ambit of the RTI Act vide Government's Notification No. 801 dated 11.08.2016 issued under Section 24(4) of the RTI Act, 2005 (22 of 2005). The appellant on the other hand argued that the respondents had not stated how the desired information, i.e. photo-copies of reminders relating to pending cases of sanction for prosecution and replies received on such reminders, would impede the process of investigation as per Section 8 (1)(h) of the RTI Act. The appellant also stated that the reference made by the PIO to the Government's Notification dated 11.08.2016 was not relevant as he had filed his application prior thereto. Even otherwise, the subject matter of the information related to allegations of corruption to which the proviso to Section 24(4) would apply.

5.1 The Commission considered the respective arguments and observed that the respondents had relied on Section 8(1)(h) in a general manner without any corroboration whatsoever. The orders / submissions of the respondents lacked in specifics. There was also nothing in their submissions to show what investigations were still pending in the concerned cases and how disclosure of the reminders and replies would impede such investigations. Hence, the Commission directed the PIO to make categorical submission regarding availability of the information and also to produce the available information for the Commission's perusal.

6. Complying with the above direction, the PIO made a further submission at the time of the hearing on 25.06.2019. It was stated that the appellant had sought similar information with minor variation in the case in S.A No 1365/2014. The Commission noted that the information covered by the said case was similar but not identical. Moreover, the same related to a different period. The

Commission nonetheless noted that in the case in S.A No. 1365/2014, the appellant had sought details regarding sanction proposals pending with the State Government, particulars of the concerned Class-I Officers etc. Such details had also been given by the PIO as directed by this Commission in order dated 15.12.2016. Hence, the Commission enquired of the respondents how the information covered by the subject appeal, i.e. letters and reminders, could be treated as undisclosable and how disclosure of the same could be considered as impeding any process of investigation when details relating to the sanction proposals had been already given earlier. Moreover, it did not appear that the information sought by the appellant was voluminous. At this, the respondents submitted that reminders had not been issued in any single file and the same would have to be collected from scattered files. The Commission observed that if the respondents had chosen not to index and catalogue the required information which they should have done as per the mandate of Section 4(1)(a), they should consider the alternative of allowing the appellant to see the scattered files. At this, the respondents submitted that they would have no objection to the appellant doing an inspection.

7. Pursuant to the observations thus made by this Commission, the appellant inspected the available files on 06.09.2019. The appellant informed the Commission at the time of the hearing on 11.09.2019 that he had done the inspection. The appellant also agreed that the information were not kept in any single file. All the same, he requested that copies of the reminders be given to him.

7.1 The PIO submitted a written memorandum on the next date of hearing i.e. on 10.02.2020. Along with the written memorandum, the PIO also submitted copies of reminders consisting of 35 pages which had been sent to the Government from time to time. It was also stated by the PIO that the Additional

Superintendents of Police of the Northern and Southern Ranges as well as the Superintendent of Police of the Cell Division intimated that 4 cases against Class-I officers were pending and reminders had been issued in these 4 cases. The PIO submitted copies of reports received from the Additional Superintendents of Police of the 2 Ranges and from the Superintendent of Police of the Cell Division. The Commission perused the reports and noted, inter alia, that the Superintendents of Police had not raised any objection in the matter of disclosing the reminders to the appellant. On the contrary, the Additional Superintendent of Police of the Crime Section stated that "copies of reminders can be furnished" and "furnishing copy of reminders.. are not detrimental to the safety of preservation of the records". Hence the Commission sought to know from the PIO why copies of the reminders were still not given to the appellant.

7.2 Responding to the Commission's direction, the PIO argued that she was not in favour of sharing the information with any person who was neither the complainant in the cases, nor the accused, nor even belonged to any investigating agency with whom information relating to investigation could be shared. It was also contended by the PIO that as the contents of the reminders for obtaining sanction of prosecution of Class-I officers formed part and parcel of the case records, disclosure would be premature. It was further argued that the information sought by the appellant did not relate to corruption or Human Rights Violation. Reference was once again made to the Notification dated 11.08.2016 issued by the Government thereby exempting the respondent organisation from the application of the Right to Information Act, 2005.

7.3 The appellant contested the stand thus taken by the PIO. It was argued that the PIO had not made her submission by making reference to any specific exemption clause of the RTI Act. Moreover, there was nothing like premature

disclosure in the RTI Act. The appellant also contended that when similar information had been given to him earlier, which the PIO herself had admitted, it was not comprehensible as to why the further information sought vide this appeal should not be provided.

8. The Submissions made by both the parties from time to time have been considered. As already noted, the PIOs and the First Appellate Authority have all along taken the stand that disclosure of the required information is exempt under Section 8(1)(h). The arguments raised especially by the First Appellate Authority in this matter have been noted. Briefly put, investigation in a case could be made at any point of time until the case became final. The Commission has carefully considered the above argument. First and foremost, the First Appellate Authority has advanced the above argument rather generally and theoretically. In this connection, it needs to be stated that the "process of investigation" as used in Section 8(1)(h) is clearly the on-going process i.e. investigation which is going on. Where investigations have been completed, the possibility that further investigation may have to be made would not come within the ambit of Section 8(1)(h). To reiterate at the cost of repetition, investigation referred to in Section 8(1)(h) is actual investigation under way and not some hypothetical investigation belonging to the realm of speculation.

8.1 It is also important to note that Section 8(1)(h) can not apply merely because investigation is pending. It is also necessary to show that disclosure would impede the process of investigation. The burden is on the public authority to prove that the process of investigation would get impeded by the disclosure. Needless to say, the above burden has to be discharged by presenting the relevant facts and not otherwise. Even while the respondents had earlier harped on the word "impede", nothing had been shown by them as to what investigations were still pending and how disclosure would impede the same.

Since the above burden was found not to have been discharged, the Commission asked for submission of copies of the reminders. The reminders have since been submitted and perused. The Commission finds that the reminders reveal the names of the officers, the earlier letters which had been issued on the subject and requests for expeditious issue of sanctions. The reminders neither contain any information of a personal nature nor make references to the specific charges made against the concerned officers. Another feature noted by the Commission is that the cases relevant to the reminders have been pending consideration of the Government for many years. Two cases relate to the years 2006 & 2007. Two other cases relate to the years 2014 & 2015. In one of the reminders, the respondents had informed the Government that the Hon'ble Apex Court had fixed a time-limit of 3 months for disposal of sanction proposals. In another reminder, it was brought to the notice of the Government that even the Government itself had earlier directed vide a letter dated 25.11.2014 that all pending sanction proposals be disposed of by 31.12.2014. Thus, what emerges from a perusal of the reminders is that the cases are old and investigations in all such cases had been completed long back. No further investigation as permitted under Section 173(8) of the Criminal Procedure Code has been made after the proposals for sanction of prosecution were submitted. Even if it is assumed that some such investigation may have to be made in future, it has been already observed that investigation as referred to in Section 8(1)(h) has to be construed to denote actual / on-going investigation and not some investigation which may have to be done in a remote future. The word "process" itself connotes "continuity". Section 8(1)(h) would therefore apply to a continuous process of investigation. It cannot be gain-said that the continuous processes of investigation in all the concerned cases had been completed. Even otherwise, going by the contents of the reminders, it is hard to

see how any further investigation, even if undertaken, would get impeded by the disclosure.

8.2 The Commission further finds that all the cases covered by the reminders relate to cases of corruption. Specific references have been made in some of the reminders to the Prevention of Corruption Act. Under the RTI Act, 2005, even an organisation exempted under Section 24(4) is under obligation to provide information relating to allegations of corruption. The above being the statutory position in relation to an exempted organisation, there is no valid reason why the same can not apply to the respondent organisation for the period prior to the issue of the Notification.

9. In view of the foregoing, the Commission holds that the respondents have not been able to make out any case to the effect that disclosure of the required information is barred by any of the provisions of Section 8 of the RTI Act, 2005. Hence, the appellant is entitled to the information sought by him. Accordingly, the Commission directs the PIO to send copies of the required information / documents to the appellant by registered post within seven days from the receipt of this order under intimation to this Commission.

10. With the above observations and directions, the case is hereby closed and the subject second appeal stands disposed of.

Pronounced in open proceedings

Given under the hand and seal of the Commission this day, the 20th November, 2020.

State Chief Information Commissioner
20.11.2020