

Central Information Commission

CIC/AD/A/2008/000243

Dated August 18, 2009

Name of the Applicant : Mr. Ashwini Kumar Shrivastava
Name of the Public Authority : M/o External Affairs

Background

1. The Applicant filed an RTI application dated 11.6.08 with the CPIO and Joint Secretary (Wel & Inf) MEA, requesting for the following information:
 - i) Details whether any Red *Alert* Notice by Interpol and International Arrest Warrants was ever issued by German Judicial Authorities against Mr. Ashok Kumar Chauhan and Mr. Arun Kumar Chauhan, Directors of AMITY International, Ghaziabad, UP.
 - ii) If yes, whether the notice was served upon them (individually or both)
 - iii) To state why was it for and when the Ministry/Government was informed about it.
 - iv) To provide the detail of the action taken by the Govt/Ministry in the case, from receiving Red Corner Notice and International Arrest Warrant.
 - v) The status of the case as on 9.6.08.

2. The CPIO, MEA, who received the RTI request on 13.6.09 transferred it under Section 6(3) (ii) of the RTI Act, 2005 to the CPIO & DS, Ministry of Home Affairs, under its covering letter dated 17.6.08 for necessary action since the functions of the MHA are more closely connected with the concerned RTI request. The CPIO, MHA having received the application on 19.06.2008, in turn transferred the RTI application to the CPIO & Dy. Secy. Legal Cell of MHA in Lok Nayak Bhavan on 30.06.08 requesting the latter to take necessary action and to transfer the request to the concerned Public Authority in case it does not pertain to his Unit. The CPIO, Legal Cell vide his letter dated 08.07.2008 informed the Appellant that requests for extradition (Execution of arrest warrant) under various Extradition Treaties is administered by the Ministry of External Affairs while Red Corner Notices are dealt by the AD (Interpol), CBI and therefore the requisite information may be available with these agencies. He also requested these agencies to furnish the information, while marking to each of them. Meanwhile, Mr. R. N. Kajla, US(CPV-RTI) & CPIO, MEA responded to the transferred request from the Legal Cell of MHA on 21.7.08 denying the information sought against points 1 to 5 under provisions of Section 8 (1) (a) of the RTI ACT, 2005 which states as under:-
'Information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or

economic interests of the State, relation with a foreign State or lead to incitement of an offence'.

Mr. Pratap Singh, CPIO & JS (Wel. & Inf.), MEA also replied to the Applicant on 22.7.08 expressing the Ministry's regrets for not being in a position to provide any information to the Applicant in this regard in terms of Section 8(1)(a) of the RTI Act, 2005.

3. Being dissatisfied with the reply, the Applicant filed an appeal on 20.08.08 with the Appellate Authority & Dean (Foreign Service Institute) on the following grounds:
 1. **It is denied that disclosure of information is exempt under the said provision**
 - a) **it would not affect the sovereignty and integrity of India. Such an idea would be far-fetched.**
 - b) **providing information about alleged criminals would not harm the security, strategic, scientific or economic interests of the country. On the contrary, interests of the State would be served better if such information comes in the public domain.**
 - c) **it would not affect relations with Germany or any other nation**
 2. **The CPIO has not explained on what grounds the information can be exempt from disclosure.**
 3. **On 17.6.08, the MEA transferred the application to MHA on the ground that the matter is closely connected with them. Now, however, the same MEA is denying information implying that information subsists with it. There is, clearly, a contradiction in the two actions which the PIO has not explained as required under Section 4(1) (d).**
 4. **It is curious to note that the CPIO has begun his transfer letter by stating that he has been 'directed to transfer an RTI Application'. The CPIO ought to clarify who has directed him to do so and what authority that person has to direct the CPIO in the matter of original transfer of an RTI application.**
4. The Appellate Authority in his Order dated 29.9.08 upheld the decision of the CPIO. Being aggrieved at the continuous denial of his request, the Applicant preferred a Second Appeal dated 18.11.08 before the CIC reiterating his contentions as made in the original RTI application and reiterating the same ground for his second appeal as for his first appeal.

5. The Bench of Mrs. Annapurna Dixit, Information Commissioner, scheduled the hearing for June 15, 2009.
6. Mr. D. K. Ghosh, Deputy Passport Officer – Extradition (US) and Mr. P. Roy Chaudhuri, Advocate represented the Public Authority.
7. The Applicant was present in person along with Mr. Abhishek Shukla for the hearing.

First hearing on 15 June, 2009

8. During the hearing, the Appellant repeated his arguments which he had put forth in his Appeal. The Respondents maintained that the information cannot be provided under Section 8(1) (a) of the RTI Act. The Appellant contended that the information regarding the two Directors is already in the public domain with several newspapers and magazines having covered the story, (This information was verified by a search of various websites by the Commission) and the issue had already been tabled in the Parliament. He also pointed out that denial of information suggests corruption and the collusion of various officials in hushing up the case. The Commission after hearing both parties, directed the Appellant to give a further submission in support of his averments substantiating the fact that he sought the information in larger public interest and the Respondent was directed to file a rejoinder to the Appellant's submissions explaining further how the disclosure of the information would prejudicially affect relations with a foreign State. Both parties were advised to submit their respective submissions by 23 June, 2009.
9. The Appellant in his submissions dated 19.06.09 averred that:
 - i) **It is inconceivable how the disclosure of information about the issuance of Red Corner Notice by Interpol will harm the security, strategic, scientific or economic interests of the country.**
 - ii) **Information sought has already been made public in the Rajya Sabha in reply to a question. The PIO and the Appellate Authority cannot deny information if it has been tabled in the House.**
 - iii) **Disclosure of information is in larger public interest as is evident from the fact that the Appellant is a journalist and sought to share the information on the accused persons or persons wanted by international law enforcement agencies such as Interpol.**
 - iv) **Giving of information will not be an invasion of privacy as the accused person/s against whom the Red Corner Notice is issued runs one of the largest private institutions and their alleged involvement in criminal activities (as suggested in the Red Corner Notice) does harm the sanctity of the institutions they run and will**

have negative effect on the morale and future of the students enrolled therein.

- v) **The First Appellate Authority and the PIO have no right to change the ground of denial during hearing.**
- vi) **In any event, the PIO was at liberty to make use of Section 10(1) of the RTI Act, 2005 in case he felt part of the information could not be disclosed under any of the exemption clauses.**

The Appellant prayed that his appeal be allowed and all reliefs requested in the appeal be granted. He also requested for a copy of the submissions made by the First Appellate Authority and/or PIO in this regard.

10. The Respondent Public Authority viz. the MEA submitted its written statements alongwith a covering letter dated 26.06.2009 from the office of the Dy. Passport Officer (Extradition). Perusal of the written statements of the Respondent indicates the contents of the para 5 of the submissions, which is an excerpt directly out of the information already available on the website of the CBI in relation to Extradition, is contradictory to the action adopted by the MEA. In the paragraph 5 it is clearly submitted by the Respondent ".....In view of the solidarity of nations in repression of criminality, however, **a State, though refusing to impose direct penal sanctions to offences committed abroad, is usually willing to cooperate otherwise in bringing the perpetrator to justice lest he goes unpunished...**" In the light of such admitted position of law, the action of the Respondent/s in denying information as sought by the Appellant herein about the issuance of the Red Corner Notice and the International Arrest Warrants, service thereof, cause of issuance and about the action taken thereupon is self contradictory. Despite a careful consideration of the submissions, the Commission fails to understand why the information against the points (1) & (2) - whether Red Corner notices were issued to the two Directors in the subject matter or not and whether the notice was served upon them (individually or both) - have been denied under Section 8(1)(a) by the Public Authority. In order to get a better insight into the matter, the Commission conducted a suo motu research of the information available in this regard in public domain. The information available on the internet revealed that while answering questions regarding the two Directors and charges of their criminal acts already tabled in the Rajya Sabha the Minister of State in the Ministry of External Affairs (Shri E. Ahmed), responded admitting the issuance of such Red Corner Notice and International Arrest Warrants giving the numbers of the Red Corner notices as 453/1990 and 459/1998, thereby confirming that the news about the Red Corner notice is already in the public domain due to its coverage by the Press.

The submissions of the MEA is rather sketchy, vague, presumptuous containing uncalled for comments in the para 6 of the written statement in as much as the

MEA has incorrectly assumed the role and responsibility of laying down the jurisdiction and authority of the Commission as to whether the Commission can adjudicate on matters concerning foreign relations. In this context it is made clear that according to the Commission neither the information sought herein can by any stretch of imagination adversely affect our national sovereignty and/or foreign relations nor is the Commission adjudicating on any issue outside its jurisdiction as maintained by the Respondent in their submissions. In fact it is pertinent to mention here that any issue unless expressly exempt as per Section 8, 24 & covered under the Second Schedule to the RTI Act 2005, falls well within the jurisdiction of the Central Information Commission. The Public Authority in the para 7 of its submissions has wrongly averred that ".....the Appellant has sought information/documents sent by the Government...." whereas records of the case clearly indicate that the Appellant has sought ONLY INFORMATION about the issuance, service and action taken etc upon the RCN and Interpol Warrants and no documents whatsoever. Such incorrect averment by a Public Authority is misleading and unexpected from such a responsible office. In its averments as made out in the para 9 the MEA appears to have assumed the role of advocating the cause of protecting accused persons from the so-called unwarranted invasion of their privacy while seeking exemption, for the first time, under Section 8(1) (j) of the RTI Act 2005. In the event that such argument was to be put forth at all, the Public Authority in all its wisdom should have either raised it in the very beginning and/or sought the consent of the Third Party before raising such contention at this stage. The arguments put forth by the Public Authority are accordingly found to be inadequate in reasoning and grossly lacking merit.

11. Furthermore with regard to information against points 2 to 4 of the RTI request, the Commission again places its reliance on information already existing in the public domain wherein, as researches revealed that in a reply given by a Minister in the Rajya Sabha:

(a) Valid warrants of arrest issued by German Judicial authorities against S/Shri Ashok Kumar Chauhan and Arun Kumar Chauhan, Directors of AMITY International, Ghaziabad, U.P. exist and the Interpol has issued Red-Corner-Notice Nos. 453/1990 and 459/1998 respectively at the request of Interpol Wiesbaden.

(b) The Embassy of Federal Republic of Germany in India at New Delhi has requested for legal assistance in serving documents/extradition of Ashok Kumar Chauhan and Arun Kumar Chauhan.

(c) As per Article 6 of the Extradition Treaty between the Republic of India and the Federal Republic of Germany neither of the Contracting States shall be bound to extradite its own nationals. However, as per the same article, criminal prosecution may be effected, in India. Therefore, Ministry of Home Affairs, which is the nodal Ministry in such matters have been requested to proceed in accordance with law.

It is observed from the above that the Hon'ble Minister of External Affairs has admitted that the Federal Republic of Germany is keen on the prosecution of the two Directors and that they have requested India for legal assistance in serving documents/extradition of the two individuals. Since as per Article 6 of the Extradition Treaty between the Republic of India and the Federal Republic of Germany neither of the Contracting States shall be bound to extradite its own nationals and the criminal prosecution may be affected in India itself, the Commission construes that any steps taken in the direction of prosecution of the two individuals by India in accordance with Indian Law, would be welcomed by Germany and the Commission accordingly finds no merit in the Ministry's argument that disclosure of information regarding **details of the two warrants** would adversely affect the relations between the two countries. In any case a number of details of the warrants, based on **parts of the English translation of the texts of these warrants** are already in the public domain (available on the internet) and indicate the alleged involvement of the two individuals in a number of fraud cases in Germany relating to misappropriation of millions of Dollars. The information available in public domain and on various websites indicate that the Delhi High Court has passed restraint orders against the accused persons from disposing of or otherwise encumbering their specific properties and bank accounts of the accused persons have been attached in cases filed by various international companies on charges of fraud against the two Directors of Amity International. In view of the fact that the aforementioned information already exists in public domain including statements of the Hon'ble Minister of MEA, it is quite surprising as to why the Public Authority is shying away from clearing the numerous questions and doubts arising in this internationally controversial issue.

12. The subject matter sought in the RTI request being related to a case of alleged fraud by two Indians mentioned hereinabove, and involving millions of Dollars, the possibility of corruption taking place at various levels in an effort to save the two individuals from being prosecuted as per the laws of this country, as alleged by the Appellant, certainly cannot be ruled out. In this connection the Commission believes that it would be appropriate to quote here from the A.D. Gorwala Report - one of the earliest official documents that laid bare the problem of corruption in India:

It seems fairly clear that if the public is to have confidence that moral standards do prevail in high places, arrangements must be made that no one, however highly placed, is immune from enquiry if allegations against him are made by responsible parties and if a prima facie case exists. There should be no hushing-up or appearance of hushing-up for personal or political reasons." (India, 1951).

13. The objective of the RTI Act is to promote transparency and accountability in the functioning of the Public Authorities and remove chances of corruption at any level/s of the Government and if transparency has to be achieved then information regarding decisions taken, based on rules and regulations, should be freely available and accessible to those who will be affected by those decisions and in this case the public and thousands of students of Amity International have a right to the information about the two Directors of Amity International. More importantly, in view of the Extradition Treaty signed between India and Germany in 2004, and in view of information available in public domains such as various websites, indicating the chequered history of the accused persons, it will only enhance the image and integrity of India and help in improving India's international relations by taking adequate steps in rendering justice. In the instant case, the principle of doing justice is as important as ensuring and aiding the process of justice.

It is therefore the view of the Commission that the provisions of the Section 8 (1) (a) of the RTI Act 2005 are not attracted in this case since disclosure of information as sought by the Appellant in this case, is not likely to in anyway prejudicially affect the sovereignty and integrity of India, nor can the disclosure of such information lead to any breach of security, strategic, scientific or economic interests of the State, in relation with a foreign State. In fact disclosure of such information will only be beneficial in boosting the integrity of Indian judicial system in the international scenario as also lead to transparency about such matters of international consequence. Hence it is in the larger public interest that such information should be made available to the public to promote the faith of people of not only India but also of the world on the Indian judicial system.

14. In the light of its above observations, the Commission allows the appeal and directs the CPIO to provide complete information to the Appellant by 15 September, 2009 under intimation to the Commission.
15. The appeal is accordingly disposed of.

Annapurna Dixit
(Information Commissioner)

(G. Subramanian)
Asst. Registrar

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