

Central Information Commission

Mr. G K Krishnan vs Ministry Of Environment And ... on 9 April, 2012

CENTRAL INFORMATION COMMISSION

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Decision No. CIC/SG/A/2012/000374/18316

Appeal No. CIC/SG/A/2012/000374

Relevant Facts

emerging from the Appeal:

Appellant : Mr. G. Krishnan,
Ashiana, P.O. Paduapuram,
Via Karukutty, District Ernakulam,
Kerala-683582

Respondent : Dr. Amit Love,
CPIO & Deputy Director,
Ministry of Environment and Forests,
Room No. 539, Paryavaran Bhavan,
CGO Complex, Lodhi Road
New Delhi-110003

RTI application filed on : 22/09/2011
PIO replied on : 11/11/2011
First Appeal(s) filed on : 09/11/2011 (Not enclosed) and 23/11/2011
First Appellate Authority order(s) of : 16/11/2011 (Not enclosed) and 02/01/2012
Second Appeal received on : 27/01/2012

Information sought
Summary of the report submitted to the
Ministry of Environment and Forests
("MOEF") by the Western Ghats Ecology
Expert Panel ("WGEEP") under the
chairmanship of Professor Madhav Gadgil and
their report on the Athirappilly HEP, Kerala.

Reply of Public Information Officer (PIO)
MOEF is still in the process of examining the
report of WGEEP in consultation with six
state governments of the Western Ghats
region. The report is not final and a draft
under consideration of MOEF and thus not
complete/ready for disclosure under the RTI
Act. The Appellant was requested to file his
RTI application again at a later date after
completion of the process.

Grounds for First Appeal dated 23/11/2011:
Denial of information by PIO.

Order of First Appellate Authority (FAA) dated 02/01/2012:

On perusal of the FAA's order dated 02/01/2012, the Commission noted that the Appellant had initially filed a First Appeal on 09/11/2011 (prior to receipt of the PIO's reply dated 11/11/2011). The FAA, vide order dated 16/11/2011, disposed of the said appeal by enclosing the PIO's reply dated

11/11/2011. However, the Appellant was aggrieved by the order of the FAA and filed another First Appeal on 23/11/2011. The FAA, in its subsequent order dated 02/01/2012, noted that the Appellant's claim was that he did not receive the PIO's reply dated 11/11/2011. The FAA observed that the information sought may not be disclosed under Section 8 of the RTI Act and enclosed a copy of the speed post receipt addressed to the Appellant.

Grounds for Second Appeal:

Denial of information by PIO and aggrieved by FAA's order.

Relevant Facts emerging during Hearing held on 23 March 2012:

The following were present:

Appellant: Absent;

Respondent: Dr. Amit Love, CPIO & Deputy Director.

The Commission observed that initially the PIO did not give any reasons under Section 8 or 9 of the RTI Act for denying the Appellant's request for information. At the hearing held on 23/03/2012, the PIO stated that the FAA had held that the information may not be disclosed under Section 8 of the RTI Act. The PIO further submitted that the information was denied on the basis of Section 8(1)(a) of the RTI Act. The Commission asked the Respondent to identify and explain the specific interest which might be affected, on the basis of which the said exemption was claimed. The PIO accepted that the sovereignty and integrity, security or strategic interests of State would not be affected. He argued that "scientific or economic interests of the State" would be prejudicially affected on disclosure of the information at this stage.

The PIO stated that the methodology for demarcation of ecologically sensitive zones had been proposed in the report, which was required to be refined. He submitted that premature release of the report could lead to demands/proposals for declaration of ecologically sensitive areas under the Environment (Protection) Act, 1986 ("EPA"). The PIO further stated that views from 11 ministries, the Planning Commission and six states were being sought. Therefore, disclosure of information at this stage would lead to various proposals as per the recommendations of the report-which had not been finally accepted. This would affect the economic interests of the state. The PIO submitted that MOEF intended to put the report in public domain once the policy was finalized. The PIO submitted written submissions to the Commission.

The order was reserved at the hearing held on 23/03/2012.

Decision announced on 9 April 2012:

The Appellant has sought a copy of the summary of the report submitted to MOEF by the Western Ghats Ecology Expert Panel (WGEEP) under the chairmanship of Professor Madhav Gadgil and

their report on the Athirappilly HEP, Kerala. Initially, the PIO did not give any reasons under Section 8 or 9 of the RTI Act for denying the Appellant's request for information. He denied the information contending that the report was being finalized and hence not ready to be furnished under the RTI Act. He did not deny that the report had been submitted by Professor Madhav Gadgil. It must be noted that since the report has already been submitted by the panel to MOEF, it cannot be called a 'draft' report. Moreover, there is no provision in the RTI Act which exempts from disclosure a report that has not been finalized or accepted by a public authority.

At the hearing held before the Commission on 23/03/2012, the PIO claimed that the information was protected from disclosure under Section 8(1)(a) of the RTI Act--which exempts-"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 foreign State or lead to incitement of an offence". The Commission asked the Respondent to identify and explain the specific reasons for claiming the exemption under Section 8(1)(a) of the RTI Act. The PIO argued that the 'scientific or economic interests of the State' would be prejudicially affected on disclosure of the information at this stage, since citizens would demand demarcation of ecologically sensitive areas on the basis of the report. The PIO appeared to contend that disclosure of the report would affect economic development and hence such disclosure would be prejudicial to the economic interests of the state.

Therefore, the issue before the Commission is whether disclosure of the WGEEP report would prejudicially affect the scientific and economic interests of India, which can be exempted under Section 8(1)(a) of the RTI Act. The PIO has given written submissions, which have been perused by the Commission.

The Western Ghats Ecology Expert Panel or WGEEP was set up in 2010 by MOEF under the chairmanship of Professor Madhav Gadgil. It was designated certain functions which included an assessment of the ecological status of the Western Ghats region, demarcation of areas within the said region required to be notified as ecologically sensitive, and recommendations for conservation, protection and rejuvenation of the Western Ghats region. Subsequently the panel was also given the task of examining the Athirappilly Hydroelectric projects.

The WGEEP report inter alia contains recommendations for demarcation of ecologically sensitive zones in the Western Ghats region, broad sectoral guidelines for regulation of activities therein and establishment of the Western Ghats Ecology Authority under EPA for the entire Western Ghats region. WGEEP has developed a scientific methodology wherein a geospatial database and multi-criteria decision support system based on eight variables relating to ecology, biodiversity and topography has been used to identify, demarcate and delineate ecologically sensitive zones in the Western Ghats region. WGEEP held wide consultations with principal stakeholders such as civil society, government officials and people's representatives including various elected representatives. It also conducted field visits and held public consultations.

On receipt of the report, MOEF recognised that the recommendations contained therein had far-reaching consequences on conservation and development of the Western Ghats region, and

centre-state relations. Therefore, wide ranging consultations from the concerned states and central ministries were instituted. While comments have been received from certain ministries/state governments, the process is still ongoing.

Before delving into the issue presently before this Bench, it would be useful to discuss the interface between the right to information and the environment movement in India. The Supreme Court of India has recognised that the right to information is a fundamental right of the citizens of India under Article 19(1) of the Constitution of India. The RTI Act has codified this fundamental right mandating that every citizen shall have the right to information, subject only to the provisions of the RTI Act. It sets out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of such authority. The RTI Act recognises that a democracy requires an informed citizenry and transparency of information, and the need for transparency in information to contain corruption and to hold the government and its instrumentalities accountable to the citizens.

Thus, the RTI Act has made the fundamental right to information legally enforceable, with timelines, provisions of what constitutes information and also identifying which information may be denied. The RTI Act also provides for penalties for violating the citizen's fundamental right and a proper appellate mechanism for enforcing the right. Under the RTI Act, information can be exempted from disclosure in accordance with Sections 8 and 9 only, and no other exemptions can be claimed while rejecting a demand for disclosure of information.

Section 3 of the RTI Act lays down that all Citizens can exercise their fundamental right to information from all public authorities, without having to give any purpose or reasons. A PIO must provide the information within 30 days unless it falls under the ten exemptions of Section 8 (1) or Section 9. As an illustration, there is no exemption for 'confidential' information, unless it has been provided by a foreign Government. No PIO, Commission or Court can allow a public authority to claim that 'confidential' information will not be provided, since it is meant for internal consumption only. If a matter is pending in Court, information cannot be denied on the grounds that it is subjudice. Unless it can be established that disclosure of information will impede the process of investigation or prosecution of offenders, mere continuing investigation or prosecution of a case cannot be a ground for denial. If some personal information appears to be exempt since disclosure may amount to an unwarranted invasion on the privacy of an individual, it would have to be determined if it would have been denied to Parliament. Similarly a claim that a final decision has not been taken, hence information will not be provided, is not a tenable reason for refusal. Thus, all denial of information would have to be justified by the provisions of the RTI Act.

Even if the information is exempted, it would have to be provided, if a larger public interest can be proved in disclosure as per the provision of Section 8 (2). After twenty years have elapsed, only three of the exemptions of Section 8 (1) would apply. Thus Parliament clearly intended that most of the information should be available to Citizens and denial of information should be the exception and disclosure the rule. Section 4 of the Act was a statutory direction to all public authorities 'to provide as much information suo moto to the public at regular intervals through various means of

communications, including internet, so that the public have minimum resort to the use of this Act to obtain information.' This was also Parliament's promise to the Citizens. Alas, most public authorities have failed to follow this direction of Parliament and fulfill the promise to citizens.

Since disclosing information with citizens was not the norm for nearly five decades after independence, most public servants find the idea alien and also one that challenges their power and wisdom. Some also nurse a genuine doubt that such disclosures will make it impossible to govern and take decisions. It must be remembered that the object and purpose of governance in a democracy is to fulfill the will of the people. The PIO has claimed that the policy is being formulated and hence the report cannot be disclosed. This Bench would like to remember Justice Mathew's clarion call in *State of Uttar Pradesh v. Raj Narain* (1975) 4 SCC 428 - "In a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, everything that is done in a public way by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing. Their right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary when secrecy is claimed for transactions which can at any rate have no repercussion on public security".

With the advent of the RTI Act, citizens have access to a variety of information held by the government and its instrumentalities. It includes information impacting the environment such as impact assessment reports, clearances, permissions/licenses provided by the concerned ministries, etc. This has enabled citizens to knowledgeably understand the environmental issues affecting our country. Citizens and civil society, who are actively pursuing the objective of protecting the biodiversity of ecologically sensitive regions, flora, fauna, and endangered species, now have access to information which allows them to obtain a true picture of our ecosystem. The RTI Act has proved to be a crucial tool for creating awareness among citizens and making them cognizant of the realities.

Human beings have been interfering in environment and ecology for thousands of years. To change the environment, or landscape man needed force. However, for most of these periods their ability to alter and intervene was limited originally to what they could do with manpower or animal power. This limited their ability to bring rapid change and intervene significantly in the environment. In the last three hundred years man developed a variety of sources of power, which has resulted in a continuous exponential ability to interfere with nature and the environment. This huge ability, - if not deployed with some caution and wisdom, - could result in a cataclysmic change in the environment of the entire earth, resulting in depletion in the quality of life for all human beings at the least, and an end to life on earth in the worst case scenario. Humans are not only the most destructive, but paradoxically the only prudent species of animal on earth. If human activities continue in an indiscriminate manner, it would impact the environment adversely and may lead to complete destruction of life on our planet. Therefore, there is a growing demand to lessen environmental devastation and optimize the use of limited natural resources.

In today's day and age, every nation is confronted with the challenges of environmental conservation and management. India too, like other nations, strives to achieve maximum economic

development. However, it is increasingly being recognised that such economic development cannot be solely at the cost of the environment and natural resources. In other words, there is a necessity to attain economic development which is sustainable in nature. The Supreme Court of India in *Vellore Citizens Welfare Forum v. Union of India & Ors.* (Decided on 28/08/1996) has observed as follows:

"...Sustainable Development as defined by the Brundtland Report means "Development that meets the needs of the present without compromising the ability of the future generations to meet their own needs" ..."

It follows from the above that environmental resources being limited and scarce, any economic development must meet the needs of the present generations without compromising the ability of future generations to meet their own needs. More importantly, we are conscious that unbridled interference with ecology could lead to all life being threatened on this earth and wrong hurried actions taken today could be at the cost of our future generations.

The Western Ghats have been internationally accepted as a region of topographical and ecological significance. It is recognised as a biodiversity hotspot on account of a substantial number of species facing the threat of extinction. To assess the ecological status of the region and formulate means to protect and rejuvenate the same, MOEF formed a special panel (WGEEP) consisting of 14 eminent persons, including four government servants. From the broad mandate of WGEEP, it is clear that its report would have extensive ramifications on the biodiversity of an ecologically-sensitive region as the Western Ghats. Moreover, as submitted by the PIO, the areas covered by WGEEP in its report and the recommendations given therein would influence many important sectors such as agriculture, land use, mining, industry, tourism, water resources, power, roads and railways.

Coming to the specific issue before this Bench-the PIO has contended that the WGEEP report should be exempt from disclosure under Section 8(1)(a) of the RTI Act. He has claimed that if the report is put in public domain it would prejudicially affect the scientific and economic interests of the nation. To support this claim, the PIO has argued that premature release of the report (containing the methodology for demarcation) into the public domain without adequate consultations with the state governments/central ministries to refine the boundaries of eco-sensitive areas may lead to a situation wherein there would be an influx of proposals for declaration of eco-sensitive zones in the Western Ghats by individuals/groups/organizations. His contention is that this would impact economic progress and interests. The PIO also has however not advanced any argument to show how the scientific interests of the nation would be affected.

Implementation of proposals for demarcation of eco-sensitive zones, whether before or after finalisation of the WGEEP report, is an executive decision. Mere apprehension of proposals being put forth by citizens and civil society who are furthering the cause of environment protection cannot be said to prejudicially affect the scientific and economic interests of the country. Disclosing a report or information does not mean that the government has to follow it. It may perhaps have to explain the reasons to public for disagreeing with a report based on logic and coherent reasons. This cannot be considered as prejudicially affecting the scientific and economic interests of the State.

Further, the PIO appears to suggest that a slow-down in economic activity on account of environmental concerns is not desirable. If an economic activity causes substantial loss to the environment, then it is necessary that such an activity is not carried out or deferred to a later date (where it can be carried out in a manner which is less damaging to the environment). In such circumstances, there would only be a delay in implementing the project and the monetary gains expected from it. The economic gain would merely be postponed, since the resources would remain where they were. At a future date, the economic gain would still accrue. The only real loss may be to some people who wish to exploit the resources presently. The Nation would not really lose. On the other hand, if the economic activity is allowed to be carried on without a proper appreciation of its deleterious consequences, it would lead to an irreversible destruction of the environment with valuable resources being lost. This would be against the tenet of 'sustainable development', as elaborated above.

It is not denied that the government while formulating policy decisions is guided by its wisdom and priorities for the nation. However, in a democracy, the masters of the government are the citizens and an argument that public servants will decide policy matters by not involving the them, -without disclosing the complete reasons to the masters, - is specious. The government from time to time sets up various commissions, committees and panels to examine pressing issues facing the nation and provide solutions and recommendations for the same. The Government sets such panels, committees, commissions or groups and selects members whose expertise and wisdom is recognized by it. Significant amounts of public funds are deployed for this purpose in order to address the nation's concerns. It is obvious that the Government sees the need for such advice and has given some thought to its composition, so that its findings may be significant and useful. Citizens individually are the sovereigns of democracy and it is their funds which are used for constituting such commissions, committees and panels and preparation of reports. Therefore it is imperative for citizens to know about such reports. Moreover, such reports are instrumental in influencing policy decisions and it is only reasonable that citizens have a say in it. Even if the Government decides not to accept the findings or recommendations, their significance as an important input for policy making and taking decisions cannot be disregarded arbitrarily. If such reports are put in public domain, citizens' views and concerns can be articulated in a scientific and reasonable manner. If the Government has reasons to ignore the reports, these should logically be put before people. Otherwise, citizens would believe that the Government's decisions are arbitrary or corrupt. Such a trust deficit would never be in the interest of the Nation.

The RTI Act recognises the above mandate and in Section 4 contains a statutory direction to all public authorities "to provide as much information suo moto to the public at regular intervals through various means of communications, including internet, so that the public have minimum resort to the use of this Act to obtain information". More specifically, Section 4(1)(c) of the RTI Act mandates that all public authorities shall- "publish all relevant facts while formulating important policies or announcing the decisions which affect public". It follows from the above that citizens have a right to know about the WGEEP report, which has been prepared with public money, and has wide ramifications on the environment. Disclosure of the WGEEP report would enable citizens to debate in an informed manner and provide useful feedback to the government, which may be taken into account before finalizing the same. It is claimed by the PIO that the policy is being formulated

and hence the report cannot be disclosed. The law requires suo moto disclosure by the public authority 'while' formulating important policies and not 'after' formulating them. Obviously, the thinking was that our democracy is improved and deepened by public participation in the process of decision-making, and not when a policy is finalised and then merely announced in the name of the people.

The disclosure of the WGEEP report would enable citizens to voice their opinions with the information made available in the said report. Such opinions will be based on the credible information provided by an expert panel constituted by the government. This would facilitate an informed discussion between citizens based on a report prepared with their/public money. MOEF's unwillingness to be transparent is likely to give citizens an impression that most decisions are taken in furtherance of corruption resulting in a serious trust deficit. This hampers the health of our democracy and the correct method to alter this perception is to become transparent. Such a move would only bring greater trust in the government and its functionaries, and hurt only the corrupt.

The PIO has not been able to give any reason how disclosure would affect the scientific interests of the State. The PIOs claim for exemption is solely based on Section 8 (1) (a) of the RTI Act. The Commission has examined this claim and does not find any merit in his contention that disclosure would impact the economic interests of the Nation. The Commission therefore rejects the PIOs contention that the information sought by the appellant is exempt under Section 8 (1)

(a) of the RTI Act.

The preceding arguments lead to the conclusion that all reports of Panels, Experts, Committees, and Commissions which are set up by Government by spending public funds must be displayed suo moto as per the mandate of Section 4 (1) (c) & (d) read with 4 (2). If parts of such report are exempt as per the RTI Act, this should be stated and the exempt parts could be severed, after providing the reasons for such severance. If the entire report relates to the security or strategic interest of India, this should be stated. Such a practice would be in accordance with the provisions of Section 4 of the RTI Act and would result in greater trust in the Government and its actions.

The Appeal is allowed.

The PIO is directed to provide an attested photocopy of the summary of the WGEEP report and the report on the Athirappilly HEP, Kerala to the Appellant before 5 May, 2012.

Further, the PIO will also ensure that the complete WGEEP report is placed on the Ministry of Environment and Forest's website before 10 May, 2012.

The Commission directs that the Ministry of Environment and Forests should publish all reports of commissions, special committees or panels within 30 days of receiving them, unless it feels that any part of such report is exempt under the provisions of Section 8(1) or 9 of the RTI Act. If it concludes that any part is exempt, the reasons for claiming exemptions should be recorded and the report displayed on the website within 45 days of receipt, after severing the parts claimed to be exempt.

There should be a declaration on the website about the parts that have been severed, and the reasons for claiming exemptions as per the provisions of the RTI Act. This direction is being given by the Commission under Section 19(1)(b)(iii) of the Act to the Secretary, Ministry of Environment and Forests.

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

Any information in compliance with this Order will be provided free of cost as per Section 7(6) of RTI Act.

Shailesh Gandhi Information Commissioner 9 April 2012 (In any correspondence on this decision, mention the complete decision number.) (PG)