

CENTRAL INFORMATION COMMISSION

Complaint No.CIC/WB/C/2006/00230 dated 25.10.2006

Right to Information Act 2005 – Section 18

Appellant - Shri Shailesh Gandhi
Respondent - P.M.O.

Facts:

By Speed Post addressed to us of 11.8.06 Shri Shailesh Gandhi of Santacruz (W), Mumbai complained against the CPIO, Prime Minister's Office Shri Kamal Dayani, Director stating that he had asked for the following information regarding the Prime Minister's National Relief Fund (PMNRF).

- a) *Total amount disbursed in last two years from the Prime Minister's Relief Fund.*
- b) *Total number of Institutions to whom funds have been given.*
- c) *For Institutions which have been cumulatively given over Rs. 50,000/- in this period.*

Information preferably in the following format:

Sr. No. Name & address Purpose for which Amount given
of Institution funds were given

- d) *Copies of the Income and Expenditure statements for the last two years and the balance sheets.*

In a response dated 6.7.06 PIO Shri Dayani informed him that the updated information is available on the website "www.pmindia.in". However, on checking the website complainant Shri Shailesh Gandhi found that though the information asked by him in (a) & (d) above is available, information regarding (b) & (c) is not available. He, therefore, pleaded as follows:-

1. Directions be issued to CPIO to provide the information asked for under clauses (b) & (c) above and

2. Penalty be levied on the PIO for giving the false and misleading information.

He has further argued in his complaint that u/s 18(e) he is entitled to make a complaint directly to the CIC. In her letter of 30.11.06 Ms.Vini Mahajan, Director & CPIO, PMO, in responding to the complaint notice has argued as follows:

“Prime Minister’s National Relief Fund is not owned, controlled or substantially financed directly or indirectly by funds provided by the Government. It is, therefore, a private fund composed of voluntary donations and is not a business of the Government. Therefore, Prime Minister’s National Relief Fund does not fall within the purview of the definition of Public Authority as defined in Section 2(h) of the Act. As Prime Minister’s National Relief Fund is not a Public Authority, PMO is not bound to give the information on this fund. In this connection, a copy of advice dated 5.7.2006 obtained from Department of Legal Affairs is enclosed. Though PMO is not legally bound to give information on PMNRF under the RTI Act certain information has already been made available on the PMO Official website www.pmindia.nic.in

Further, no Parliament Question is allowed on PMNRF in terms of “Rules and Procedure and Conduct of Business” in Rajya Sabha and Lok Sabha. When Parliament Question is not allowed on PMNRF, furnishing of information under RTI Act is not appropriate and may be construed as a breach of privilege of Parliament.

Taking into account the legal position explained above, the complaint may be dismissed as not maintainable. Further, the complainant has rushed with the complaint with CIC, as he did not exhaust the appeal provision available under the RTI Act.”

In a further response to our complaint notice, the Prime Minister’s Office in two letters of 13th November, 2006 and December 1, 2006 forwarded to us a copy of advice received from the Department of Legal Affairs, government of India which is as follows:

“ In the facts and circumstances mentioned herein above, we agree with the views of the PMO that the application of sec. 2(f) with regard to definition of information that this information relates to public authority as defined in sec. 2(h) because the Prime minister National Relief Fund has not been established or constituted by or under the Constitution, by any other law made by Parliament, by

any other law made by State Legislature or through Notification or order made by any appropriate Government. PMNRF is also not owned, controlled or substantially financed directly or indirectly by funds provided by the Government. PMNRF is a private fund composed of voluntary donations and is not a business of the Government. Therefore, this fund does not come within the purview of definition of 'public authority' as mentioned in sec. 2(h) of the Act.

(i) As regards attention to sec. 8(2) of the Act, the PMO has rightly said that the relevant information is available on the above website.

(ii) On the question of application of sec. 6(3) and information under sec. 4(b) which relates to particulars of recipients of concessions permits or authorization granted by it, these provisions apply to public authority. Since the PMNRF is not a public authority as explained in 5(i) above, the PMO is not bound to give the information. "

The complaint was heard by us on 1.2.2007. The following are present:-

1. Shri Shailesh Gandhi
2. Ms. Vini Mahajan, Director & PIO, PMO

DECISION NOTICE

The issues before us are two –

- (1) whether the Prime Minister's National Relief Fund is an Organization that falls within the definition of Public Authority u/s 2(h) and
- (2) Whether the complainant is entitled to get the information requested by him under the RTI Act from the office of the Prime Minister.

On perusal of the documents on record and submissions made before us, together with information on the Fund provided by the Primer Minister's Office, we find that in this case the PMNRF came into existence on the basis of an appeal issued by the Prime Minister in 1948. It is neither a trust nor has it acquired any legal entity. However, information concerning this fund is under the

control of the Prime Minister's office. The Joint Secretary to the Prime Minister is Secretary of the fund. He is assisted by an officer of the rank of Director. The Joint Secretary and the Director discharge their duties concerning the Fund in addition to their other duties. At the lower level of hierarchy, the Fund is maintained by a Section, which is a part of PMO. The fund is operated by the office of the Prime Minister. Initially, there was only one Savings Bank account with the Central Bank of India, Janpath, New Delhi which was opened in 1948 but collection accounts have subsequently been opened with various banks to facilitate contributions towards the Fund.

In view of this, it stands established that PMNRF is not an organisation or a legal entity and as such it cannot be categorised as an independent public authority. We appreciate that the fund is a discretionary fund with the Prime Minister. But since the information is held by the PMO as the public authority, they are obliged to make it accessible to a citizen under the RTI Act unless such disclosure is exempted under Section 8. This issue is disposed of accordingly.

On the question of disclosure of names of beneficiaries, however, these are third parties in this matter. Whereas information regarding these third parties may be disclosed with their acquiescence u/s 11(1), unless the need for disclosing information can be demonstrated to be in the public interest, such beneficiaries will be eligible for exclusion u/s 8(1)(j). In this case the information sought is only with regard to Institutions. Such information is not excluded under any sub section of sec. 8(1). But being third parties such institutions are to be given the benefit of being so treated. While this information may, therefore, be provided taking into account the procedure prescribed u/s 11(1), it is clarified that

this decision will in no way impinge on any personal information held by the PMNRF with regard to any person. This issue is disposed of accordingly

The only remaining issue is whether penalty will lie for providing what complainant Shri Gandhi has stated in his appeal to be 'false and misleading' information. On examination of the records, we find that the PMO has made a detailed analysis of the position and has sought legal advice on the sustainability of its stand. Complainant Shri Shailesh Gandhi has also not placed before us during the hearing any point which would lead us to believe that CPIO, PMO has knowingly provided false and misleading information. The information provided has been, therefore, on the basis of what we have no reason to believe was other than a genuine conviction that this fund will not fall in the definition of public authority. Therefore, no penalty will lie.

Announced on 15/3/'07 Notice of this decision be given free of cost to the parties.

(Wajahat Habibullah)
Chief Information Commissioner
15.3.2007

Authenticated true copy. Additional copies of orders shall be supplied against application and payment of the charges, prescribed under the Act, to the CPIO of this Commission.

(L.C.Singhi)
Addl. Registrar
15.3.2007