

## CENTRAL INFORMATION COMMISSION

Appeal No. CIC/WB/A/2006/00128

Dated : 24/25.2.2006

### **Appeal u/s 19 of RTI Act**

Name of the Applicant : Shri Nizamuddin

Name of the Public Authority : Delhi Development Authority, New Delhi.

### **Facts**

Shri Nizamuddin of Vasant Kunj, New Delhi had filed an application on 24/25.2.2006 to PIO, Delhi Development Authority Shri S.P.Padhy, Director (LM)-I, asking for the following information: -

1. Copy of the applicant's survey by the DDA and DDA's assessment of it.
2. Copy of notice for demolition of Pushta settlement
3. Details of the Re-housing Scheme covered in view of affidavit of Sept. 2005 filed in the Supreme Court by Secretary, MoUD about the Pushta Re-housing Scheme at Tehkhand and order of 25.11.2005 that Lt. Governor, Delhi will decide the site for Tehkhand Re-housing Scheme. The applicant had further stated that in view of incidents of deaths including of children during the Pushta clearance in resettlement in 2004 the demolition proposed constituted a threat to life and liberty, and information be therefore provided within 48 hours under Proviso to Sec. 7(1).

This application followed an earlier application of 13.1.06 made to Director (Planning) for planning for clearance and re-housing to which a response had been received on 25.1.06 from PIO Shri P.M.Parate, Director (RYP) indicating the program was covered by the Land Management Department of the D.D.A., and, therefore, no information was available in the Planning Department.

On 2.2.06 applicant together with Shri Harphool Singh and Mohd. Intezar sent an appeal to Appellate Authority Shri R.K.Vats, Commissioner (LM), DDA referring to their earlier application and the request for the 48 hours Proviso to Sec. 7(1) and the reasons for their invoking this Proviso. However, taking the plea of Court Orders, no information was provided to the applicant asking for the information to be disclosed before any precipitate demolition action was taken. A response was received under orders of 16.3.06, which the appellant considers “patently invalid in terms of RTI Act “, while making his Second Appeal on 27.3.06. In not accepting the plea for 48 hours proviso the impugned order simply stated, “sufficient reason has not been furnished”. Appellants argued in their second appeal that the impugned order had in fact refused the prayer for information before demolition. In his second appeal, the appellant, therefore, prayed as follows: -

- a) Direct DDA to disclose the requested information (Para 8 of First Appeal) before any precipitate demolition action, as per prayer (a) of First Appeal, free of charge.
- b) Impose penalties on Appellate Authority for persistent denial/obstruction of information, including by willful violations of sections 19(1) and 19(6).
- c) Direct for purpose of prayer- (a) above, DDA through its Vice Chairman, who is member of Monitoring Committee that the impugned Order, reiterating reply dated 8.2.2006, alleges has directed the non-transparent actions underway/proposed.
- d) Grant the Appellant urgent hearing on this Second Appeal as well as his Complaint dated. 27.1.2006, jointly with the Appellant in Second Appeal dated. 13.3.2006 who has also sought urgent and joint hearing, and
- e) Pass any other directions as this Commission may deem fit.

Appellant Shri Nizamuddin is present at the hearing on 6/7/'06 together with his authorized representative Ms. Gita Dewan Verma. PIO Shri S.P.Padhy, Director (LM) and Appellate Authority Shri R.K.Vats, Commissioner (LM), DDA are present. We have examined the file. We find that in the covering note to his Second Appeal addressed to the Registrar, Central Information Commission, appellant Shri Nizamuddin has sought an urgent hearing. He has also sought confidentiality as his resort to RTI has caused antagonism. It was explained to the appellant and his authorized representative that there is no confidentiality in regard to appeals made before this Commission, the process of which and the decisions arrived at are all open to public scrutiny. The appellant acknowledged this. The authorised representative of the appellant argued that because in the meantime demolition had been affected, points (a), (c) and (d) raised above in the prayer for directions in the Second Appeal had become infructuous. She, therefore, prayed for directions under Para (b) of the Second Appeal for imposition of penalty on the Appellate Authority.

In his response to the appeal notice Shri K.S.Budgujar, Dy. Director (LM) of the DDA has pleaded that in First and Second Appeal the appellant has raised new issues seeking information beyond that sought in earlier applications. When asked by the Commission to identify which these new issues were, the representatives of the DDA in the hearing were unable to do so. Since the issues raised are in any case no longer in contention in the present hearing the following two issues are framed :

1. Whether the Public Authority and the Appellate Authority specifically was justified in rejecting the plea of concern for life and liberty .
2. Whether the public authority has met the requirements of Sec. 4.

Regarding Issue at 1. above, on a question of life and liberty the Commission has held in the Appeal No CIC/WB/C/2006/00066 OF 19/4/'06, Sh. Shekhar Singh and Arun Roy vs. P.M.O. that an application of this nature be accompanied with substantive evidence that a threat to life exists (e.g. medical report)". This decision did not touch directly upon the issue raised in the present

appeal. Here, during the hearing, appellant has cited deaths in Bawana in identical circumstances, in which it was argued in the hearing that complaints made have been forwarded for investigation by the PM's Office to the Central Vigilance Commission in 2004. It has also been argued that the response of the Appellate Authority to the appeal of Shri Nizamuddin went beyond even the limit of 30 days.

On issue 2, Sec. 4(1)(c) requires that the Public Authority 'publish all relevant facts while formulating important policies or announcing the decisions which affect public', while sub sec. (d) provides that the Public Authority 'provide reasons for its administrative or quasi judicial decisions to affected persons.' There can be little doubt that the instant case falls clearly under both sub sections.

### **DECISION NOTICE**

On the question of life and liberty, Article 21 of the Indian Constitution reads as follows:

"No person shall be deprived of his life or personal liberty except according to procedure established by law."

Similarly proviso to sec. 7(1) deals with information sought being described as one that concerns the life or liberty of a person. Whereas matters of an administrative nature may not necessarily be considered a threat to life or liberty, programmes for demolition of inhabited structures must surely be so construed. It is open to the CPIO to rule that since structures are no longer inhabited, the application is of no concern for life & liberty, he or she must satisfy himself/herself of this fact before so ruling, while the applicant can do so by providing substantive evidence of this, as held by us in the above cited case. In the present case, therefore, not taking account of the application under the proviso to sec. 7(1) by the PIO and the summary disposal by the Appellate Authority that "present case does not fall in the ambit of the provisions of sub section 1 of section 7 of the Act" without giving reasons as to why it does not do so, cannot be construed as being in consonance with the requirements of the Act.

The DDA is directed that in cases of this nature adherence to sections 4(1) (c ) and (d) must be ensured by publication of all relevant facts and provisions of reasons for decisions to affected persons. The question that now arises therefore is whether the decisions above call for invocation of sec. 20(1) against the PIO and Appellate Authority. Sec. 20(1) has no provision for penalty imposed on the Appellate Authority, since this requires only that penalty can be imposed on the CPIO or SPIO, qualified by the Sec. 5(5). The basis for imposing penalty financial or administrative on the CPIO u/s 20 (1) and (2) is:-

- a) Refusal to receive an application for information.
- b) Not furnishing information within the time specified u/s 7(1)
- c) Malafidely denying the requested information.
- d) Knowingly giving incorrect, incomplete or misleading information.
- e) Destroying information on the subject of the request or obstructing in any manner the furnishing of information.

In the present case the CPIO could have been held responsible under (b) above had the 48 hours proviso been applied. In this case, however, the manner of application of 48 hours proviso has not been formalized and this can be taken as reasonable cause to the CPIO to provide information sought within the 30 days time limit in Sec 7(1), in a matter, which is also sub-judice. PIO Shri Parate Director (RYP) Planning is also in violation of the Act for having refused information even though he is part of the same public authority, as averred in his letter of January 25, 2006 cited above. We have held in Appeal No. 10/1/2005-CIC, Sarbajit Roy vs DDA of 20/2/'06 that in a single public authority, matters concerning adjustments within the same public authority the CPIO who had received the request from the complainant, was, as per section 7(1) of the ACT, under obligation to seek information from his/her colleague and provide it to the complainant. The colleague who was to provide the information as per Section 5(5) of the RTI ACT, would become deemed CPIO and expected to provide the information sought by the Complainant. However, we made the above ruling after PIO Shri Parate had written his letter of 25/1/'06. While, therefore, no penalty is imposed in this case, the Appellate Authority Shri Vats has committed before this

Commission that his department is willing to work with all those who are affected by eviction orders to ensure mitigation of the rigors of dislocation inevitable in such an enterprise. Both parties are, therefore, advised to work together in this salutary objective.

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

(Wajahat Habibullah)

Chief Information Commissioner

18.7.2006

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

18.7.2006