

CENTRAL INFORMATION COMMISSION

Appeal No. CIC/WB/A/2007/001401 dated 8-11-2007

Right to Information Act 2005 – Section 19

Appellant: Ms. Gita Dewan Verma

Respondent: Prime Minister's Office (PMO)

FACTS

By an application of 17-8-07 Ms. Gita Dewan Verma of Vasant Kunj, New Delhi applied to the CPIO, Shri Kamal Dayani, Director, PMO seeking the following information:

- “1. Copy of the CVC's letter No. 001/W&H (DDA) 121 dated 10.9.2004 as on PMO record i.e. with the markings/ notings thereon.
2. Inspection of file(s) on which CVC's letter No. 001/W&H (DDA) 121 dated 10.9.2004 was kept on record in PMO (and if my further representations to PMO in the matter were kept on record on other file(s), then also inspection of those file(s).
3. Inspection of PMO records relating to 'reference received from the Primer Minister's Office' that is mentioned in the CVC's letter No. 001/W&H (DDA) 121 dated 10.9.2004.
4. Inspection of PMO records relating to 'then PM's advice to the Lt. Governor of Delhi' pursuant to CVC's letter to Chief Minister of Delhi mentioned in CVC's letter No. 001/W&H (DDA) 121 dated 10.9.2004.
5. Inspection of all PMO records relating to response dated 19.10.01 of DDA Commissioner (Planning) to PMO 'reference numbers 5228, 5231, 5268, 5269 dated 4th & 5th October 2001' (copy enclosed).
6. Inspection of all PMO records relating to National Common Minimum Programme commitments concerning hawkers/ informal sector retail (including records relating to formulation and implementation as well as to representations received in PMO on the subject).”

To this she received a response from CPIO Shri Kamal Dayani on 11-9-07 as follows: -

- “1-4 CVC's letter No. 001/W&H (DDA) 121 dated 10.9.2004 is filed in this office File No. 500/31/C/30/2004-ES-2. You

may inspect this file to see the CVC's letter and other information sought by you.

5. Records relating to reply received from DDA to this office references mentioned in your application have since been weeded out, as it outlived its retention period.
6. There is no National Common Minimum Programme commitment concerning hawkers.”

This response did not address the issue of the informal sector retail or the question of representations received in the PMO on the subject. Ms. Gita Dewan Verma, therefore, moved her first appeal on 21-9-07 before Ms. Vini Mahajan submitting as follows:

- “1. On S. No. 1 Provide u/s 7 (6) by post the copy specifically requested separately therein but and not offered with fee computation in Reply.
2. On S. No. 2-4: Identify all records for inspection because inspection offer in Reply is incomplete since response to S. No. 6 (Recent initiatives continuing from the specific records mentioned in rest of the application) is incorrect, as shown later.
3. On S. No. 5 (a): transfer u/s 6 (3) to authorities that might have held and retained copies, and (b) provide the procedure/ record relating to weeding out of the DDA reply (to a PMO reference on letters about item mentioned in S. No. 3 & 4 for which inspection has not been refused i.e. which have not been weeded out).
4. On S. No. 6: Provide reply, as my request for ‘records relating to National Common Minimum Programme commitments concerning hawkers/ informal sector retail.’ has been evaded by claiming ‘There is no National common Minimum Programme commitment concerning hawkers’ which is incorrect.”

Upon this she received the following response from 1st Appellate Authority Shri Jawed Usmani, Jt Secretary, PMO dated 24-10-07:

- “(a) CPIO seems to have correctly followed the procedure laid down for processing the application and provided information as available with him within the time frame admissible under the Act;
- (b) However, in the light of the submissions made by the appellant in her appeal, the application is remanded back

to CPIO to have a re-look on the submissions made by the appellant and provide the information/ appropriate response on each of the specific points listed in the application dated 17.8.2007 within 7 days of the issue of this Order.”

Consequently in his letter of 29-10-07 Shri Kamal Dayani gave the following further response:

- “1-4 CVC’s letter No. 001/W&H (DDA) 121 dated 10.9.2004 is filed in this office File No. 500/31/C/30/2004-ES-2. You may inspect this file to see the CVC’s letter and other information sought by you. To obtain the copy of the letter, you may deposit an amount of Rs. 2 towards document copying charges.
5. Records relating to reply received from DDA to this office references mentioned in your application have since been weeded out, as it outlived its retention period. Therefore, the question of inspection does not arise.
6. There is no specific commitment in the National Common Minimum Programme concerning hawkers/ informal retail sector. However, there are following commitments regarding welfare of workers in the unorganized sectors:
- (i) The UPA Government will establish a National Commission to examine the problems facing enterprises in the unorganized, informal sector. The Commission will be asked to make appropriate recommendations to provide technical, marketing and credit support to these enterprises. A national Fund will be created for this purpose Household and artisanal manufacturing will be given greater technological, investment and marketing support. (Nodal Ministry: Ministry of Micro, Small and Medium Enterprises).
- (ii) The UPA Government is firmly committed to ensure the welfare and well being of all workers, particularly those in the unorganized sector who constitute 93% of our workforce, Social Security, health insurance and other schemes for such workers like weavers, handloom workers, fishermen and fisherwomen, toddy tapers, leather workers, plantation labour, beedi workers etc., will be expanded. (Nodal Ministry: Ministry of Labour and Employment).”

Appellant’s prayer before us in her second appeal is as below:

“I reiterate my First Appeal requests.”

Ms Verma has also submitted a list of dates including the date of application and its disposal as below:

29.6.07 to 8.8.07	On 8.8.2007 I received from PMO PIO a response to an application that I had made to GNCTD on 29.6.07 that had been transferred to PMO on 23.7.07.
17.8.07	Further to and enclosing his response dated 8.8.07i made an application to PMO, PIO for 1 copy and inspection of records relating to 5 items.
11.9.07	PIO's reply offered no copy and inspection of one file and said 1 items did not exist and record of 1 had been weeded out.
21.9.07	In First Appeal I requested the copy free of charge, procedure clarifying the weeding out and transfer for relating records and, citing/ enclosing documents to dispute that 1 items did not exist, correct and complete inspection offer.
24.10.07	First appeal order remanded my application to PIO to have a re-look on my submissions and provide the information/ appropriate response on each of the points in my application.
29.10.07	PIO issued a further letter that rejects all my appeal requests without giving any reason.
8.11.07	Second Appeal.

The appeal was heard on 19-3-2009. The following are present.

Appellants

Ms. Gita Dewan Verma

Respondents

Shri Amit Agrawal, Director, PMO

CPIO Shri Amit Agrawal submitted written arguments dated 18-3-09. In this he has responded to points (A), (B) and (C) which constitute the grounds on which appellant has moved her second appeal as follows:

- “(A) It appears from the record that since the appellant had also sought inspection of PMO's record regarding this matter, the copy was perhaps not offered in the first reply dated 11.9.07 since appellant's generally seek copies of documents following inspection. Subsequently, pursuant to the appellate authority's decision dated 24.10.07, CPIO in his reply dated 29.10.07 offered copy of the letter upon payment of fee. In view of the delay, a copy of the CVC's letter No. 001/W&H/(DDA) 121 dated 10.9.04 (copy enclosed) is now being sent to the appellant enclosed with endorsed copy of this letter.
- (B) Information sought in the original application has already provided. As regards the point raised in the instant

appeal seeking clarification on “how a reply from DDA in response to PMO reference of 2001 was weeded out from among similar references of same time (offered for inspection on S. No. 3 & 4)”, it is submitted that there were two sets of files in different sections and each section undertakes weeding out of the set of papers maintained by it in accordance with its record retention schedule with the approval of competent authority in charge of that section. Therefore, there is no inconsistency in the information already furnished.

As regards the appellant’s submission regarding transferring the application under section 6 (3) of the Right to Information Act for the purpose of accessing the record weeded out, it is submitted that the information held by the office in response to the application has been furnished and under section 6 (1), a person desiring information under the Act is required to make the request to the PIO) of the Public Authority concerned. In case the appellant desires information held by DDA, she may apply to the PIO of DDA.

- (C) it was informed in the PIO’s original reply dated 11.9.07, there is no commitment concerning hawkers in the National Common Minimum Programme (NCMP). The appellate authority in PMO upheld this decision of the CPIO, while taking note of additional submission made by the appellant at the appeal stage regarding some NCMP excerpts and directing the CPIO to provide information/ appropriate response. The subsequent reply dated 29.10.07 of the CPIO Was by way of appropriate response on the submissions made by the appellant at the appeal stage. It gave information that clarified the submission of the appellant at appeal stage, while also advising regarding the appropriate authority in respect of the appeal stage submission. Thus, since the record specified in the original application did not exist, the question of offering the same for inspection does not arise.

However, the office has no objection to making available the files relating to the appeal stage submissions for inspection. A list of the relevant 13 files, as identified and prepared by the office, is enclosed.”

A copy of the list “relevant 13 files” stated to have been enclosed was not found attached. A further copy was made available in the hearing and handed over to the appellant Ms. Gita Dewan Verma .

Appellant, Ms. Gita Dewan Verma submitted that she was not aware of the subject regarding which the 13 files had been offered for inspection referred. Her request for inspection of files referred to in serial No. 2 of her application was with regard to those concerning the CVC's letter and related questions including her own submissions on the subject to the PMO. On the question of National Common Minimum Programme (NCMP) she sought clarification if there was any commitment concerning both hawkers and the informal sector retail outlets, and also the references containing her correspondence with the PMO on the subject.

CPIO Shri Amit Agrawal admitted that the copy of the letter of the Secretary, CVC addressed to the Chief Secretary, Delhi that was received in the PMO, had not been provided. This was because programmes under the CMP are listed as programmes and referred to as such through different records of which this particular letter was part. Hence, copy of the separate letter had not been provided but this was now being sought to be rectified through CPIO's response to the appeal notice. On the other hand, he further clarified that the 13 files offered for inspection related specifically to the NCMP commitment, and not to questions arising from question 2. But he was firm that there was no such commitment related to hawkers and information sector retail in the CMP. He, however, needed to determine once more whether in fact any of the appellant's correspondence on the subject were included in these 13 files or included only in the files already offered for inspection in the first instance by the CPIO.

Appellant Ms. Gita Dewan Verma, however, responded with a degree of emotion by stating that Ms. Poonam Prakash who works for an NGO Manushi Sanghathan has received a copy of file noting in the PMO together with response to an RTI application through a letter of Shri Satish Kumar, Section Officer dated 12-2-08 which indicates specifically as follows:

"The credentials of Manushi and the laudable effort of the pilot project for street vendors are not in doubt. Therefore, the Government's commitments, voiced through NCMP and other policy announcements needs to be demonstrated by ensuring that implementation of the project gets done in the shortest possible time. For the purpose, it is desirable to nominate an

officer in the Ministry of HUPOA jointly with Jt. CP (Delhi Police) to oversee implementation of the project in a fixed time frame. This officer may also be required to give a report on the issues raised by Manushi. The pilot project implementation may be directed to be reviewed by Secretary, HUPA on a monthly basis while hinting at the possibility of a review in the PMO.”

A copy of this letter was also submitted and taken on record. Ms Verma also submitted that if, in fact, there was no commitment regarding hawkers/street vendor retail what was the basis for the details provided by CPIO, in his letter to her of 29-10-07 in purported compliance to the orders of the 1st Appellate Authority. Her lips quivering with indignation, Ms. Gita Dewan Verma also protested the manner of disposal of her first appeal in which 1st Appellate Authority Shri Jawed Usmani has not gone into the merits of the plea submitted by appellant but has simply recorded that what the CPIO had followed are the correct procedures, when she has specifically referred to the information provided as being “incorrect”. And although Ms Verma had sought that the information not provided be now provided u/s 7 (6), the then CPIO Shri Dayani has, in supposed compliance of the orders of the appellate authority, bluntly asked her to deposit Rs 2/-

DECISION NOTICE

We have heard the parties and examined the record. We find that this application, which required some thought and application of mind has been disposed of somewhat summarily. Appellant has specifically asked for the copy of a letter, the possession of which is admitted in the very first instance by CPIO Shri Kamal Dayani in his letter of 11-9-07, yet no copy was provided. If indeed part of the information sought by Ms. Gita Dewan Verma had been de-weeded under Rules for that purpose, because information is the right of any citizen under the Constitution of India, any plea taken with regard to refusal of information on this ground must be accompanied by justification for such refusal, which would indicate when and under what rules the record has been deweeded.

Besides as already observed the question on the NCMP, which was key to the whole RTI application has not been fully answered by the CPIO. The 1st Appellate Authority Shri Jawed Usmani on the other hand has failed altogether to apply his mind to the application and appears to have relied on his sensibilities rather than his good sense in disposing of the appeal, failing to address even a single of the very detailed points raised by Ms. Gita Dewan Verma in her appeal. Taking a cue from his senior the CPIO Shri Dayani, in compliance with this vague 'order', if it can be called that, has loaded his letter with information drawn from the NCMP unrelated to the question asked.

Taking the above into account we have, therefore, decided as follows:

- (1) CPIO Shri Amit Agrawal will re-visit the files offered for inspection and those that concern the correspondence of Ms. Gita Dewan Verma with regard to the letter of CVC addressed to Chief Secretary Delhi with a copy among others to Ms Vidyavathi DS, PMO and its collateral information mentioned in questions 2, 3, 4 and 5 and offer these for inspection on a mutually convenient date and time, to appellant Ms. Gita Dewan Verma. It appears from the arguments that this correspondence will be found in one file and not in 13 files now offered for inspection. If this is the case appellant will be so informed.
- (2) CPIO Shri Amit Agrawal will inform the appellant Ms. Gita Dewan Verma within 10 working days of date of issue of this decision notice as to when the documents sought by her and stated to have been de-weeded were actually de-weeded and under what rules and which orders.
- (3) CPIO Shri Amit Agrawal is firm in that the CMP contains no content on street hawkers/informal sector retail. He may, therefore, take note of the reference to the government's commitment voiced through NCMP on implementation of projects regarding street vendors so as to ensure that apparent contradictions are not retained in future pronouncements on policy documents so as to avoid misleading with regard to information on the contents of the NCMP.

On the other hand, we have found that the information provided in the first instance was incomplete in that the copy of the letter sought in the very first question was not provided, and not provided even in compliance with orders of the appellate authority. However, given the explanation of CP Shri Agrawal we agree that there is no malafide or an attempt at 'knowingly' providing incomplete implementation that would have warranted imposition of a penalty. We have already taken adverse note of the lackadaisical manner of disposal of this application. The appeal is thus, allowed in part.

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

(Wajahat Habibullah)
Chief Information Commissioner
19-3-2009

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.

(Pankaj K.P. Shreyaskar)
Joint Registrar
19-3-2009