

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Pronounced on: 06 November, 2015

+ **W.P.(C) 3386/2015**

R.K. JAIN & ORS

..... Petitioners

Through: Mr. Prashant Bhushan, Mr. Pranav Sachdeva, Mr. O. Kuttan and Ms. Neha Rathi, Advs.

Versus

UNION OF INDIA

..... Respondent

Through: Mr. Sanjay Jain, ASG with Mr. Jasmeet Singh, CGSC and Ms. Noor Anand, Adv. for UOI.
Ms. Indira Jaising, Sr. Adv. with Mr. Devadatt Kamat and Mr. Jawedur Rahman, Adv. for applicants / interveners in CM No.9304-06/2015.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

J U D G M E N T

: G.ROHINI, CHIEF JUSTICE

1. This petition as a Public Interest Litigation, is filed alleging inaction on the part of the respondents in filling up the vacancies of Chief Information Commissioner and three Information Commissioners in the Central Information Commission and contending that the same has frustrated the very object of the Right to Information Act, 2005 (for short 'RTI Act').

2. We have heard the learned counsel for both the parties.

3. As per Section 12 of the RTI Act which provides for constitution of Central Information Commission, the Central Information Commission shall consist of the Chief Information Commissioner and such number of Central Information Commissioners not exceeding 10 as may be deemed necessary.

4. As against the total sanctioned strength of Information Commissioners of 10, by the date of filing of the petition on 06.04.2015, three posts were lying vacant for the past one year in addition to the post of Chief Information Commissioner which was lying vacant since 23.08.2014.

5. It is explained by the Under Secretary, Department of Personnel and Training, Government of India in his affidavit dated 09.04.2015 that an advertisement was published on 28.02.2014 in two English newspapers and one Hindi newspaper inviting applications for filling up two posts of Information Commissioners that were lying vacant by that time and in response to the same, 293 applications were received. The Search Committee which met on 21.04.2014 considered the applications and recommended panels for consideration of the Selection Committee constituted under Section 12(3) of the RTI Act. Even before the Selection Committee could meet, one of the Central Information Commissioners (Shri Rajeev Mathur) was elevated to the post of Chief Information Commissioner on 22.05.2014 and thus one more vacancy of the Central Information Commissioner arose. Therefore, a fresh advertisement was issued on 16.07.2014 inviting applications making it clear that those who have applied earlier in response to the earlier advertisement need not apply afresh. In pursuance thereof, 260 fresh applications were received by the last date i.e. 19.08.2014. Thus, the total applications received were 553

(293+260). While so, the tenure of the Chief Information Commissioner (Shri Rajeev Mathur) expired on 22.08.2014 and thus the post of CIC also fell vacant. On 24.10.2014, a Circular was posted on the website of Department of Personnel and Training inviting applications for the post of CIC and in response to the same a total number of 203 applications were received. It was further stated that the Search Committee met twice on 16.01.2015 and 06.02.2015 to shortlist the applicants for the Chief Information Commissioner and Information Commissioners respectively and that the selection would be made by the Selection Committee as provided under Section 12(3) of the RTI Act after the IB/CBI inputs and Vigilance Clearances were received.

6. Having taken note of the contents of the said affidavit, we passed the following order on 09.04.2015:

“In pursuance of the order passed by us on 08.04.2015, a detailed affidavit has been filed by the Under Secretary, Department of Personnel & Training explaining the steps that have already been taken for filling up the vacancies of the posts of the Chief Information Commissioner and the 3 Central Information Commissioners and assuring that the entire process of selection and appointment would be completed expeditiously.

We have heard the learned counsel for both the parties. Having regard to the undisputed fact that the non-appointment of the Chief Information Commissioner has virtually frustrated the very purpose of the Right to Information Act, 2005, we are of the view that it is necessary for this court to monitor the steps that are being taken for filling up the vacancies in question so as to ensure that all the vacancies are filled up within a timeframe.

Therefore, let the petition be listed on 11.05.2015 by which date the respondents shall report to this court the progress made.

Since it is pointed out by the learned ASG that the respondent has been wrongly described in the memo of parties and that as a matter of fact the Union of India is represented by the Department of Personnel & Training, the respondent in the memo of parties shall stand substituted as under:-

‘Union of India through the Department of Personnel & Training, Ministry of Personnel, Public Grievances & Pensions, North Block, New Delhi’.

The amended memo of parties be filed by the petitioner within one week from today.”

7. When the petition was listed again on 21.05.2015, a status note on behalf of the Respondent – Union of India (DoPT) has been filed stating that the process of appointment of the Chief Information Commissioner and Information Commissioners is at an advanced stage and that the Search Committee met on 27.04.2015 and shortlisted the applicants. It is also stated that the selection would be made soon after the vigilance clearance from the respective Cadre Controlling Authority in respect of shortlisted serving officers and inputs from the Intelligence Bureau in respect of retired officers is received. In the circumstances, it was submitted by Shri Sanjay Jain, the learned ASG that no further orders are necessary in the petition. However, Shri Prashant Bhushan, the learned counsel appearing for the petitioner submitted that it is necessary to issue directions to complete the selection process within a time schedule in view of the fact that more than 35,000 cases are pending in the Central Information Commission as of today.

8. After we have reserved the judgment on 21.05.2015, the petitioners filed a fresh application being CM No.20965/2015 bringing to the notice of this court that on 08.06.2015 the senior most Information Commissioner by name Shri Vijay Sharma was appointed as the Chief Information Commissioner and in the vacancy arose, Shri Sudhir Bhargava was appointed as the Information Commissioner. While pointing out that the three vacancies of Information Commissioners have not been filled up so far, it is further stated that the Department of P&T has issued a fresh Circular dated 09.09.2015 inviting applications for the post of Chief Information Commissioner and the Information Commissioners. Contending that the said Circular dated 09.09.2015 is nothing but an attempt to delay the entire process of appointment of the Information Commissioners against the existing 3 vacancies, the petitioners sought a direction to forthwith appoint the remaining three Information Commissioners in CIC and to set aside the Circular dated 09.09.2015.

9. The learned counsel for the petitioners Shri Prashant Bhushan submitted that the Circular dated 09.09.2015 is bad firstly for the reason that despite the pendency of the present writ petition, the respondent failed to take the leave of this court to put up a fresh Circular inviting applications and secondly there is no reason to terminate the process of selection that was already initiated on 25.02.2014. It is also contended that the Circular dated 09.09.2015 is absolutely vague and did not even disclose the number of vacancies intended to be filled up.

10. The Circular dated 09.09.2015 issued by the Department of Personnel and Training reads as under:

**“F.No.4/2/2015 –IR
Government of India
Ministry of Personnel, Public Grievances and Pensions
(Department of Personnel and Training)**

North Block, New Delhi
Dated: 9th September, 2015

Subject: Appointment of Chief Information Commissioner and Information Commissioners in the Central Information Commission.

The Government of India has constituted a body under the Right to Information Act, 2005 (the Act) known as the Central Information Commission (Commission) to exercise the powers conferred on and to perform the functions assigned to it under the Act. It is located in New Delhi. The Commission shall have the Chief Information Commissioner and upto ten Information Commissioners. The powers and functions of the Chief Information Commissioner in the Central Information Commission are as per the RTI Act.

2. It is proposed to appoint Chief Information Commissioner and more Information Commissioners in the Commission. The Act provides that the Chief Information Commissioner and Information Commissioner shall be person of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass-media or administration and governance.

3. Further, the Chief Information Commissioner and Information Commissioner shall not be a Member of Parliament or Member of the Legislature of any State or Union Territory, as the case may be, or hold any other office of profit or connected with any political party or carrying on any business or pursuing any profession. It is clarified that cessation/termination of holding of office of profit, pursuing any profession or carrying any business is a condition precedent to the appointment of a person as Chief Information Commissioner and Information Commissioner.

4. The Chief Information Commissioner and Information Commissioner shall hold office for a term of five years from the date on which he enters upon his office or till he attains the age of 65 years, whichever is earlier. The salary and allowances payable to the Chief Information Commissioner shall be the same as that of the Chief Election Commissioner and Election Commissioner respectively, subject to adjustment of the pensionary/retirement benefits availed by him, if any, in accordance with the provisions of the Act.

5. Persons fulfilling the criteria and interested for appointment to the post of Chief Information Commissioner and/or Information Commissioner may send their particulars in the enclosed proforma by post to Under Secretary (RTI), Department of Personnel and Training, North Block, New Delhi or through e-mail to usrti-dopt@nic.in by **12th October, 2015**. Persons who are serving under the State/Central Government or any other Organization, should send their particulars through proper channel (administrative Ministry / Department / State / UTs). In case an advance copy of the application is sent before the due date the applications through proper channel should be furnished as soon as possible to be considered for further processing.

(G.S. Arora)
DS (IR)
Tel : 23092755”

11. Having perused the Circular dated 09.09.2015, we found that it is absolutely silent about the process of selection that was already initiated vide Notifications dated 25.02.2014 and 16.07.2014. It also does not disclose the number of vacancies that are sought to be filled up. In the status note dated 07.05.2015 filed by the Department of Personnel and Training, it was stated that in response to the earlier advertisements, altogether 553 applications were received. It was also stated that the said applicants were already shortlisted and vide communication dated 05.05.2015 and

02.05.2015, the vigilance clearance was sought from the respective Cadre Controlling Authority in respect of shortlisted serving officers and inputs from the Intelligence Bureau in respect of retired officers. We have taken note of the fact that during the pendency of the writ petition, the vacancy of Chief Information Commissioner has been filled up and one Information Commissioner has been appointed in the fresh vacancy that arose. That being so, we are unable to understand as to why the Respondents have again issued a fresh notification dated 09.09.2015.

12. However, the list of the Chief Information Commissioner and the Information Commissioners holding office as of today, furnished by the learned Standing Counsel for Central Government, reflects that the tenure of one of the Information Commissioners out of seven would expire on 31.12.2016 and the others have a long tenure of more than two years. As is evident, there is no likelihood of any vacancy of Information Commissioner in near future. However, the Chief Information Commissioner's tenure will be completed on 01.12.2015. In case one of the serving Information Commissioners is appointed as the Chief Information Commissioner in the vacancy that would arise w.e.f. 02.12.2015, one more vacancy of the Information Commissioner is likely to arise.

13. In these circumstances, instead of setting aside the Notification dated 09.09.2015, we consider it appropriate to issue the following directions:

- (i) The selection process that has already been commenced vide Notifications dated 25.02.2014 and 16.07.2014 shall be finalized within six weeks from today and the three vacancies of Information Commissioners existing as of today shall be

filled up amongst the 553 applications that were received in response to the said two notifications.

- (ii) The selection process pursuant to the Circular dated 09.09.2015 shall be confined for selection and appointment of the Chief Information Commissioner in the vacancy that would arise w.e.f. 02.12.2015 and one Information Commissioner which is likely to arise w.e.f. 02.12.2015.

14. The writ petition is accordingly disposed of.

CHIEF JUSTICE

RAJIV SAHAI ENDLAW, J.

NOVEMBER 06, 2015

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