

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

% **Date of decision: 2nd March, 2016.**

+ **W.P.(C) No. 2927/2015**

VIKAS VERMA

..... Petitioner

Through: Mr. Akhil Sibal, Ms. Shraddha
Deshmukh and Ms. Malavika Prasad,
Advs.

Versus

**THE DIRECTOR (MRTS-I) & CPIO, MINISTRY OF
URBAN DEVELOPMENT**

..... Respondent

Through: Mr. Vivek Goyal, CGSC with Mr.
Pradeep Kumar Sharma, CGP for
UOI.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The petition impugns the decision dated 4th February, 2015 of the Central Information Commission (CIC) constituted under the Right to Information Act, 2005 (RTI Act) of dismissal of second appeal (File No.CIC/KY/A/2014/000883) preferred by the petitioner against the order dated 10th July, 2014 of the First Appellate Authority upholding the denial dated 29th May, 2014 by the Public Information Officer (PIO) of the respondent, “The Director (MRTS-I), Ministry of Urban Development (MUD), New Delhi” of the information sought by the petitioner on the grounds under Section 8(1)(i) of the RTI Act. (Though in the order of CIC

the ground of denial is mentioned as Section 8(1)(j) of the RTI Act but both counsels agreed that it is a typographical error for Section 8(1)(i)).

2. Notice of the petition was issued and a counter affidavit has been filed. The counsel for the petitioner stated that no rejoinder is required thereto. The counsels were heard on 6th October, 2015 and judgment reserved with a direction to the counsel for the respondent Union of India (UOI) to handover the file containing the decision that all the issues relating to Airport Line be placed before the Cabinet for consideration / directions, as was argued. Liberty was also given to the parties to file written synopsis of their submissions. In pursuance thereto, a synopsis has been filed by the counsel for the petitioner and which has been perused. The counsel for the respondent UOI has also handed over the concerned file.

3. It is the case of the petitioner:

(i) that the MUD, Govt. of India constituted a two members Enquiry Committee to enquire into the defects in the civil structures of the Delhi Airport Metro Express Line;

(ii) that the petitioner, from the newspaper reports gathered that the Committee so constituted submitted its report to the MUD on 30th March, 2013;

(iii) that the petitioner on 13th May, 2014 applied to the PIO of the MUD for a copy of the report and supplementary notes submitted by the said Committee along with copies of the correspondence between the MUD and the Enquiry Committee and to also allow inspection of copy of file notings by officers of the MUD and all records relating to proceedings of the Enquiry Committee;

(iv) that the PIO of the office of Director (MRTS-I) of MUD vide response dated 29th May, 2014 informed the petitioner that the various issues relating to information sought were being put up to the Empowered Group of Ministers (EGoM) on Mass Rapid Transit System (MRTS) for its consideration and Section 8(1)(i) of the RTI Act exempts from disclosure decisions of the Council of Ministers, the reasons thereof and the material on the basis of which the decisions were taken, till the decision has been taken and the matter is complete or over;

(v) that the petitioner preferred a first appeal but the First Appellate Authority of the MUD but which also vide communication dated 10th July, 2014 informed that all issues relating to Airport Line including findings of Enquiry Committee were being placed before the Cabinet

for consideration and hence could not be disclosed under Section 8(1)(i) of the Act. In addition, it was also reasoned that the petitioner was an employee of Delhi Airport Metro Express Pvt. Ltd. (DAMEPL) and there was an arbitration going on between Delhi Metro Rail Corporation (DMRC) and DAMEPL on the issue of termination of concession agreement and that the report of the Enquiry Committee might be a part of the arbitration and for this reason also could not be given;

(vi) that the petitioner being unsatisfied preferred the second appeal, as aforesaid to the CIC and which has been dismissed by the impugned order dated 4th February, 2015 observing that the plea taken by the PIO under Section 8(1)(i) of the Act was justified in the eyes of law and there is no legal flaw in the order of the PIO and of the First Appellate Authority.

4. It is the contention of the counsel for the petitioner (a) that the exemption under Section 8(1)(i) applies to Cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers; (b) that it not the case of the respondent UOI in its counter affidavit that the information sought has even been placed for consideration by either the

Cabinet or any Committee thereof or the Council of Ministers or Secretaries or other Officers; (c) that what is borne out from the counter affidavit of the respondent UOI is that at the time when information was denied, the report of the Enquiry Committee was only being considered for being put up to the EGoM on MRTS for its consideration and directions; (d) that admittedly the report till date had not been put up to any EGoM and it is not even the case of the respondent UOI in its counter affidavit that it is still under consideration for being so put up; (e) rather, from the counter affidavit, it is borne out that the report is still under consideration of the Board of DMRC with a final view yet to be taken on the report; (f) however the respondent UOI during the hearing for the first time contended that a decision had been taken for placing the report along with the connected papers before the Cabinet—that the said oral argument beyond the counter affidavit should not be considered; (g) that a proposal or even a decision to refer the information sought to the Cabinet for its consideration cannot indefinitely provide exemption from disclosure under Section 8(1)(i); (h) without preparation of a Cabinet note or the actual placing of the matter before the Cabinet for its consideration, the exemption cannot be attracted; (i) that though this Court in *Union of India Vs. Pramod Kumar Jain* 205 (2013) DLT 613 has held that

“Cabinet Papers” have a wider meaning in the Act and includes all the papers pertaining to deliberations of the various Committees of the Cabinet apart from including the papers pertaining to ‘records of deliberations of the Council of Ministers’, ‘records of deliberations of the Secretaries’ and ‘records of deliberations of other officers’ and ‘decisions of the Council of Ministers’ and ‘material on the basis of which decision were taken’ are just a sub-set of the larger set of documents encompassed under the larger term “Cabinet Papers” but CIC in decision dated 30th August, 2014 in ***Venkatesh Nayak Vs. Department of Personnel & Training*** (2010) SCC Online 10696 has held that it is only when proposal formulated are actually taken up for consideration by the Cabinet that they become so exempted i.e. only when a Cabinet note is finally approved for submission to the Cabinet through the Cabinet Secretariat will Section 8(1)(i) apply; (j) that thus a mere proposal or decision to refer information, whose disclosure is sought, to the Cabinet cannot possibly convert that information into ‘Cabinet Papers’ and interpreted in any other way would amount to expanding the exemption from disclosure.

5. There is no need to elucidate the argument of the counsel for the respondent UOI, since the same are obvious from the recording aforesaid of

the arguments of the counsel for the petitioner.

6. The counsel for the respondent UOI during the hearing handed over copies of the file noting to the effect that a decision had been taken with the approval of the Urban Development Minister that all the issues relating to Airport Line would be placed before the Cabinet for considerations / directions and that all the issues including findings of Enquiry Committee were part of the EGoM note which would now be part of the Cabinet note. It was to satisfy myself in this regard that the directions as aforesaid for the counsel for the respondent UOI to produce the file had been issued.

7. I have perused the file and find (a) that since the Airport Metro Line Project had a huge property development component to be exploited by DMRC to generate resources and since this line was sanctioned only after it was considered vital and further since the concessionaire i.e. DAMEPL was supposed to run the line with borrowed money and since the likelihood of extending the line to Gurgaon also existed, the project was sanctioned with the permission of EGoM; (b) that considering the legal and financial consequence of taking over of the Airport Line from DAMEPL by DMRC on termination of contract by DAMEPL, a note was prepared by the MUD for consideration of the EGoM; (c) the note was returned by the Cabinet

Secretariat with the instructions that the same should be circulated to the concerned Ministers and Departments for Inter-Ministerial consultations and a supplementary note should be prepared thereafter; (d) such supplementary note was prepared and sent to the Cabinet Secretariat; (e) that the general elections intervened in between and thereafter the system of EGoM was abolished and in view thereof a note for the Cabinet was prepared; (f) that at different times inter-ministerial consultations with ministries / departments concerned including Department of Economic Affairs, Department of Expenditure, Department of Legal Affairs, Ministry of Home Affairs, Planning Commission, Department of Financial Services, Government of National Capital Territory of Delhi were held with respect to the project; (g) however the papers have not been put to the Cabinet as yet.

8. The question which arises for consideration is whether under Section 8(1)(i) of the RTI Act, exemption is available only qua papers which are actually before the Cabinet or also qua papers which though are required to be placed before the Cabinet but are under preparation and have till the date when the information is sought not been placed before the Cabinet.

9. This Court in *Pramod Kumar Jain* supra has already held i) that though there is a prohibition against disclosure of Cabinet papers, which

would include record of deliberations of the Council of Ministers, Secretaries and other officers, such prohibition as far as RTI Act is concerned, is not for all times to come and has a limited duration till the Council of Ministers takes a decision in a matter and the matter is complete or over in all respects; ii) that from the context in which the words ‘the matter is complete or over’ have been used, it appears that once the decision taken by the Council of Ministers has been given effect, by implementing the same, the prohibition contained in Section 8(1)(i) of the RTI Act is lifted and the decision taken by the Council of Ministers, the reasons on which the decision is based as also the material on the basis of which the said decision was taken can be accessed under the RTI Act; iii) a careful perusal of the proviso to Section 8(1)(i) shows that not only the decisions of the Council of Ministers and the reasons on which the said decisions are based but also the material on the basis of which the decisions are taken by the Council of Ministers are also required to be disclosed, once the decision has been taken and cannot be withheld.

10. In my opinion, the exemption granted from disclosure cannot be defeated by allowing the disclosure of that what is exempted, before it reaches the Cabinet. The time taken by the administrative and decision

making machinery, especially when several Ministries are involved, as in the present case, cannot be a reason for disclosure of what is exempt therefrom. Preparation of a note with supporting material, to be put up before the Cabinet, takes a considerable time. In fact, a perusal of the file in the present case shows the same to have taken years. However the same would in my opinion not allow disclosure, once it is found that as per the rules or the procedure or the decision already taken, the matter has to be considered and decided by the Cabinet. The matter, in the present case, is found to be at the stage of “cooking” for consumption of the Cabinet. If it were to be held that the exemption is not available till the papers are before the Cabinet, it would amount to allowing access of information which is otherwise prohibited and defeat the purpose of the exemption.

11. Where however there is no rule or procedure or an already existing decision for the papers to be put up before the Cabinet, information cannot be denied indefinitely merely by mooted a proposal for putting up the same before the Cabinet and which proposal has no basis in any earlier decision or rules or procedure.

12. Else, when it is not in dispute as in the present case, that the papers are required to be put up before the Cabinet, whatsoever the delay may be, they

cannot be disclosed under the RTI Act at the stage of preparation.

13. CIC in *Venkatesh Nayak* supra cited by the counsel for the petitioner was concerned with a draft legislation leading to policy and with respect to which draft, suggestions of the public were also invited; it was in this context that it was held that exemption under Section 8(1)(i) of the RTI Act will not apply to deliberations leading to formulation of a policy framework till such time as the draft is submitted to the Cabinet Secretariat, with all its necessary attachments for submission to the Cabinet, which would then be a final form given to the draft and thereafter the draft would remain exempt from disclosure till such time as the decision has been taken. What prevailed with the CIC was the fact that the public was being consulted on the draft. That is not the position here. Here, the project with respect to which information was sought was approved with the permission of EGoM and decisions from time to time with respect thereto are found to have the approval of the EGoM. Now that DAMEPL (the employer of the petitioner) is pitted in legal proceedings against DMRC and with respect where to a note is under preparation for putting up before the Cabinet, disclosure at this stage would make the petitioner / his employer privy to information to which they would not be entitled to once the note is finalized for preparation before the

Cabinet and nullify the exemption under Section 8(1)(i) of the RTI Act.

14. Supreme Court, as far back as in *S.P. Gupta Vs. Union of India* AIR 1982 SC 149 reiterated in *Doypack Systems Pvt. Ltd. Vs. Union of India* (1988) 2 SCC 299, though not in the context of RTI Act, held that there may be classes of documents which public interest requires should not be disclosed, no matter what the individual documents in those classes may contain—law recognises that there may be classes of documents which in public interest should be immune from disclosure. It was further held that there is one such class of documents which for years has been recognised by the law as entitled in the public interest to be protected against disclosure and that class consists of documents which it is really necessary for the proper function of public service to withhold from disclosure; the documents falling within this class are granted immunity from disclosure not because of their contents but because of the class to which they belong—This class includes cabinet minutes, minutes of decisions between heads of departments, high level interdepartmental communications, papers brought into existence for the purpose of preparing a submission to Cabinet and indeed any document which relate to the framing of Government Policy at a high level. It was thus held that Cabinet papers including papers brought into existence for the

purpose of preparing submission to the Cabinet are protected from disclosure, not by reason of their contents but because of the class to which they belong.

15. The aforesaid, in my opinion is the genesis of the exemption contained in Section 8(1)(i) and applying the same, though of an era prior to coming into force of RTI Act, no case for directing disclosure of information sought is made out.

16. I therefore hold the petitioner to be not entitled to the information sought.

17. The petition is dismissed.

No costs.

18. The file handed over by the counsel for the respondent UOI be returned to him.

RAJIV SAHAI ENDLAW, J.

MARCH 02, 2016
'bs/gsr'