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

+ **W.P.(C) 12745/2023, CM APPL. 50240/2023**

**DOMINIC SIMON**

.....Petitioner

Through: In person.

versus

**PIO MINISTRY OF EXTERNAL AFFAIRS & ANR. ....Respondents**

Through: Mr. Vijay Joshi and Mr. Tarveen  
Singh, Advocates.

**CORAM:**

**HON'BLE MR. JUSTICE SANJEEV NARULA**

**ORDER**

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**12.09.2024**

1. The Petitioner filed an application dated 27<sup>th</sup> July, 2020, under the Right to Information Act, 2005<sup>1</sup>, seeking the following information pertaining to W.P.(C) 14819/2020 pending before the Kerala High Court:

*“1. In the statement of ASG in court, it is stated that this statement is prepared on the basis of instructions received from CPV division, Ministry of External Affairs, Please provide certified copy of the instructions received.*

*2. Certified copy of the inflammatory/political posts allegedly uploaded by Mr. Dominic Simon*

*3. Certified copy of derogatory posts against the government of India and embassy officials allegedly made by Mr. Dominic*

*4. Certified copy of any decision of any competent authority that adjudged the posts of Mr. Dominic as inflammatory/political or derogatory.”*

2. The CPIO/DS (Consular), Ministry of External Affairs, through communication dated 18<sup>th</sup> August, 2020, decided as under:

*“2. Similar RTI request submitted by you has earlier been replied by the Embassy of India, Riyadh.”*

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<sup>1</sup> “RTI Act”



3. The copy of reply dated 14<sup>th</sup> June, 2022, sent by CPIO, Embassy of India, Riyadh, has also been attached, which reads as under:

*“Please refer to your RTI Application No. MEARI/R/T/22/00012 dated 17.05.2022 seeking certified copy of information provided to or based on which the ASG submitted statement(s) in Kerala High Court in Claramma Simon Vs Uol and others WP(C) NO. 14819 of 2020 under RTI Act, 2005.*

*No information was provided by this Mission with respect to the above case to ASG.”*

4. Dissatisfied with the response received from CPIO, the Petitioner preferred a first appeal dated 23<sup>rd</sup> October, 2020. The First Appellate Authority (FAA)/Jt. Secretary (CPV), MEA, through order dated 22<sup>nd</sup> February, 2021, observed as under:

*“2. You have requested for information regarding the reply submitted to Court by ASG on behalf of Government in the matter relating to WP (C) No. 14189 of 2020.*

*3. I have studied the matter in detail including the RTI request and the reply given by CPIO. The response submitted by him in Hon'ble High Court was prepared on basis of instructions received from Ministry as is the usual practice for handling court cases by ASG on behalf of Government. The response filed by ASG is already available with you. However, a copy of the same is being attached for your convenience.”*

5. Dissatisfied, the Petitioner approached the Central Information Commission (CIC) through a second appeal No. CIC/MOEAF/A/2022/664489. On consideration of the same, the CIC passed the following order:

***“Decision***

*The records of the case have been examined and it is noted that while the response filed by the ASG has already been furnished to the Appellant, he has specifically sought “instructions received by the ASG from CPV division, Ministry of External Affairs”. This information exchanged by a client viz. the MEA with the lawyer representing their case is confidential in nature and held in fiduciary capacity. Thus such information qualifies for*



*exemption under the RTI Act, particularly in the instant case where the Appellant has not explained what larger public interest will be served by such disclosure of information.*

*In the light of the foregoing discussion, there appears no merit in disclosure of information sought by the Appeal and hence the appeal is disposed off with no further direction.”*

6. At the outset, it must be noted that the impugned order dated 14<sup>th</sup> July, 2023 is a common order deciding two appeals filed by the Petitioner. However, the Petitioner has limited his grievance only to the decision rendered in second appeal No. CIC/MOEAF/A/2022/664489. The Petitioner’s contention is that the CIC has committed an error by not following this Court’s decision in order dated 18<sup>th</sup> May, 2020 in W.P.(C) 3169/2020<sup>2</sup>. Reliance is also placed on the judgment of the Supreme Court dated 13<sup>th</sup> November, 2019 in Criminal Appeal No. 1167/2022<sup>3</sup>.

7. Pertinently, the Petitioner contends that the ground of fiduciary relationship, which has been cited as a ground for refusing the information sought by the Petitioner, was never raised by the Respondents – i.e. the CPIO and/or the FAA – at a prior stage. Consequently, the Petitioner was not afforded an adequate opportunity to address this ground of the fiduciary capacity of the ASG and the exemption under the RTI Act on the aforementioned basis. Further, it is emphasised that the written submissions dated 26<sup>th</sup> June, 2023, which was filed by CPIO Embassy of India, Riyadh, also does not raise the objection of fiduciary capacity.

8. In light of the above, it emerges that the Petitioner has not been afforded an opportunity to contest the objection of fiduciary capacity, on the

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<sup>2</sup> *United Nurses Association Through its President v. Union of India and Ors.*

<sup>3</sup> *Reliance Industries Limited v. Securities and Exchange Board of India & Ors.*



basis of which the CIC has rendered the impugned decision. There is thus a denial of the principles of natural justice. Accordingly, in the opinion of the Court, the present petition can be disposed of with the following directions were passed:

8.1 The impugned order dated 14<sup>th</sup> July, 2023 is set aside *qua* CIC appeal No. CIC/MOEAF/A/2022/664489.

8.2. The matter shall now be remanded back to the CIC for fresh consideration of the appeal.

8.3 The Petitioner shall be afforded an opportunity to put forth his response to the contentions pertaining to fiduciary capacity by way of additional submissions/ affidavit. Let the same be filed within four weeks from today. Respondents are also permitted to file an additional response thereto within three weeks thereafter.

8.4 After hearing both the parties, the CIC shall render a fresh decision in accordance with law, within a period of three months from today. None of the observations made hereinabove will influence the CIC and the decision shall be rendered independently, in accordance with law.

9. It is clarified that the Court has not examined the merits of the case or commented on the correctness of the allegations advanced by the Petitioner. All rights and contentions of the parties are left open.

10. With the above directions, the petition is disposed of along with pending application.

**SANJEEV NARULA, J**

**SEPTEMBER 12, 2024/nk**