

Er. Sarbajit Roy vs Delhi Development Authority (Dda) on 1 June, 2009

CENTRAL INFORMATION COMMISSION
Complaint No. CIC/LS/C/2009/00322 dated 8-5-2009
Right to Information Act 2005 - Section 19

Complainant: Er. Sarbajit Roy
Respondent: Delhi Development Authority, (DDA)

FACTS

In a complaint of 12-8-08 against Secretary, DDA Er. Sarbajit Roy of Dwarka, New Delhi submitted that the orders of this Commission in Appeal No. 10/1/2005-CIC announced on 25-2-2006 have still not been complied with. In that decision we had directed as follows:

"1. The DDA is a single public authority. Since this is a matter concerning adjustments within the same public authority Sec 6 (3) cannot apply. Accordingly the CPIO Ms. Neemo Dhar, who had received the request from the complainant, was, as per section 7(1) of the ACT, under obligation to seek information from her colleague and provide it to the complainant. Her colleague who was to provide the information as per Section 5(5) of the RTI ACT, would become deemed CPIO and expected to provide Ms. Dhar the information sought by the Complainant.

2. The CPIO of DDA Ms. Neemo Dhar is directed to provide the information sought by the Applicant within 15 days. The information shall be provided to the applicant in the particular form requested to the extent it is available within DDA in such form. Where the information is not available in the particular form requested, the applicant may be allowed if he desires to inspect the original records at DDA and information specifically asked for provided in the form of printouts / copies of original documents or records etc. of DDA duly certified. However, any information requested having been supplied to DDA by a third party, which has been treated as confidential by that third party, shall be dealt with as per Sec 11 of the ACT. Sec 7(9) of the Act does not authorize a public authority to deny information. It simply allows the authority to provide the information in a form easy to access. We agree that providing the information on all responses to the public notice of the Board of Enquiry and Hearings, even if they number only 7000 as claimed by the DDA and more than 10,000 according to the complainant, in the form of certified copies will attract the provisions of Sec 7 (9) as averred by DDA. But this provision does not exempt disclosure of information, only adjustment of the form in which it is provided. And given our findings as per Para 12 above that there was a positive inference that the information had actually been provided or was liable to be provided, we cannot agree with the afterthought that this would impede the preparation of the Master Plan, which in any case does not fall within the exemptions of Sec 8 of the Act. Providing

the complainant an opportunity to examine the responses giving him certified copies of those identified by him, will meet the provisions of the Act.

3. The Principal Commissioner cum Secretary, DDA is directed to ensure that acceptance of all applications irrespective of any administrative unit for which PIOs are responsible in routine, is brought into accordance with the requirements of Sec 5 of the Act. The Counsellor system is a good innovation, but cannot be used to as a substitute for the APIO. He is also directed to provide the Commission a compliance report for the Commission's record, with respect to Section 4 of the Act.¹ The Acts and Rules relevant to the functioning of the public authority may be published on the website as expeditiously as possible and in any case within 30 days.

4. Since the DDA has failed to provide the information requested to the applicant within the time limit prescribed under Sec 7, the information sought shall be provided free of charge to the applicant Mr. Roy as per Sec 7(6). However we are not convinced of malafide intent and provision of incorrect, incomplete or misleading information by the PIO. Hence no penalty is imposed, but it is expected that this will be taken as a warning to expedite provision of information to all future applicants for information to DDA."

Subsequently, in an e-mail of 14-1-09 Er. Roy recounted the salient grounds of his complaint of 12.8.'08 seeking action against Secretary, DDA in which he has summarised the issues as follows:

"4) For the publication of which Rules along with other norms/procedures/ powers of the authority and it's officers etc. the Secretary, DDA was repeatedly ordered since 25-2-2006 to publish u/s 4 (d) of RTI Act by binding directions of this Hon'ble Commission in several decided matters of complaint, and

5) For which binding directions concerning the "Right to Information" delivered under this Hon'ble Commission's Underlined by us for emphasis statutory powers for this special subject, the Respondent has cared 2 hoots and never cared to implement, deeming himself to be above the law, and

6) For which deliberate and malafide failure on the part of the respondent, I have suffered great loss and detriment, as briefly specified below, and also others including persons like me who are technical professionals long resident in Delhi who had filed certain responses jointly with me as well as other citizens of Delhi known to me have suffered all or some of the specified loss and detriment."

The Decision of 25.2.'06 is one of the earliest cases decided in the Commission. We have inter alia directed the Principal Commissioner cum Secretary, DDA to comply with the provisions of Section 4 of the Act in r/o DDA within 30 days (see quotation above) It is indeed a fact that the relevant portion of Section 4 (1) (b) of the DDA is not available on its website, which has been reiterated by the appellants in a recent hearing in appeal No. CIC/S/A/2008/00006. The Commission by its

order dated 9-2-2009 has again directed the Secretary, DDA to put the DDA Act and the rules framed hereunder on DDA's website.

In consequence of the present complaint a report on action taken on the decision of the Commission dated 25-2-06 was invited by our letter of April 13, 2009. In a letter of 11-5-09 PIO Dr. K. Srirangan, Dy. Director (Plg.)- 1/MPPR has responded as follows:

"In representation dated 14-1-09 submitted to CIC Shri Sarbajit Roy sought information on Zonal Development Plans prepared by the concerned Planning Units of various zones. This information is to be provided by the concerned Planning Units and therefore the CIC notice along with enclosures herewith forwarded to the concerned Units dealing with Zonal Development Plans for providing Para-wise comments to the Commission."

This case was, therefore, registered as a fresh complaint and notice issued accordingly to the Secretary, DDA and CPIO. The Division Bench of this Commission on 1st June, 2009 heard the complaint. The following are present:

Appellant:

Mr. Sarbajit Roy Mr. A.K. Dhawan Respondents:

Ms. M.Z. Bawa, Director (Plg.) MPD-2021 Mr. Anil Barai, OSD (Plg.) DDA Dr. K. Srirangan, Dy. Director (Plg.) MPMR Mr. K.G. Kashyap, Dy. Director, DDA Mr. U.K. Sharma, AD (GH), DDA Ms. Aparna Raghuram, Sr. R.O. (RTI), DDA Mr. H.S. Dhillon, Jt. Director, Plg. DDA We have also received submissions from Shri Chandu Bhutia PIO and Dy. Director (Plg.) DDA dated 15-5-09 and Shri Tapan K. Mondal, Jt. Director (Plg.) and PIO of 18-5-09. In his submission Shri Chandu Bhutia has stated as follows:

"I am to inform that the Draft Zonal Development Plan of Zone 'J' was approved by the authority in its meeting held on 17.12.2008 for onward submission to the Ministry for its approval the same is awaited from the Ministry of Urban Development, GOI."

Shri Tapan K. Mondal on the other hand has submitted as below:

"The request of the applicant has been examined and following is submitted:

i. This office is dealing with Zones K-1, K-II and L. ii. Draft Zonal Development Plans for these zones were notified for inviting objections/ suggestions as per the provisions of DD Act and placed on DDA Website. iii. Individuals/ Organizations who submitted the objections/ suggestions were invited to present their case before the Board of Enquiry & Hearing under the chairmanship of VC, DDA.

iv. In the letter there is no specific reference to the Zones mentioned above, being dealt by this office."

Shri A.K. Dhawan is also present having been a party in a case in file No. CIC/LS/A/2009/00293 heard by this Commission on 21-5-09, wherein he had requested for a copy of the DDA Management and Disposal of Housing Estate Regulations 1968 and the Delhi Apartment Ownership Act, 1986. In this case this Commission has observed as follows:

"It is really sad that these basic laws/ regulations which are central to the functioning of DDA are reported to be not available with the DDA. This is unbelievable. Perhaps, no serious effort has not been made to trace them out with the help of the Legal Division of DDA or, for that matter, the DDA Library."

Mrs. Aparna Raghuram, Sr. R.O. (RTI) submitted that she was representing Secretary and that in accordance with instructions of this Commission the DDA Act 1987 has been uploaded on the DDA website. Appellant Er. Sarbajit Roy conceded that this has indeed been done but only recently and not in compliance with the orders of the Commission of 25-2-2006, even though that order had directed that the "Acts and Rules relevant to the functioning of the public authority be published on the website and as expeditiously as possible and in any case within thirty days". Mrs. Raghuram stated that such information that she has been able to obtain has been uploaded. On the question of DDA Management and Disposal of Housing Estate Regulations 1968 also the information is available on the website but the Delhi Apartment Ownership Act, 1986 has not been uploaded because this has not yet been adopted by the DDA. This latter submission was challenged by Shri Dhawan who submitted copies of the Housing Guidelines issued by the DDA itself in which this act has been described as the basic legislation of reference.

DECISION NOTICE:

We find that not only in the decision of 25-2-2006 which is quoted above but also in decisions in file Nos. CIC/WB/C/2008/00115/LS and 50 others disposed of in the same order of 9.4.'09 including Ms. Parminder Kaur Vs. Vigilance Department, Chandigarh (through Shri R.S. Ghuman, Supdt. of Police, Shri Roop Ram, Supdt-III and Shri Promod Kumar, OSD (Vig.) and File No. CIC/WB/A/2007/00731/LS dated 17.3.'09- Shri Rajinder Singh Vs. Ministry of Urban Development (through Dr. M.M. Kutty, JS and Smt. Sujata Chaturvedi, Director, MOUD) this Commission has dealt in detail with the question of implementation of sub-Section (1) of Section 4 of the Act. In the decision of 17-3-09, which has specifically referred to DDA, this Commission has held as follows:

"42. In view of the above discussion ,the following decision is recorded:-

i. The information sought at Sr. No. 3 of RTI Application falls in the ambit of the section 2 (f) of the RTI Act and therefore, the decision of CPIO in this regard is set aside. It may be recalled that the appellate authority had allowed inspection of the

relevant documents.

ii. Sr. No. 4 (a) of RTI application is more concerned with MOUD and should have been responded to by MOUD rather than being transferred to DDA under section 6 (3) of the RTI Act.

iii. MOUD is hereby advised to amend the Rules for inviting objections and suggestions for modification of the Master Plan and for the consideration of such objections and suggestions, u/s 11 A and 41 (3) of the DD Act, including an opportunity of hearing, where necessary, and to give wide publicity to such amendments in terms of clause (vii) of section 4 (1) (b) of the RTI Act. This is necessary for transparency in the manner of consideration of such objections and suggestions.

iv. No irregularity/ illegality appears to have been committed by MOUD by allowing the appellant to carry out inspection of the relevant records containing the objections/ suggestions filed by Shri Sarbajit Roy. However, whether the objections and suggestions in general are to be treated as confidential or not at any stage needs to be clarified by the MOUD in the Rules suggested in (iii) above.

v. The Appellate Authority is expected to pass clear and detailed orders under his signatures in future with a view to avoiding any ambiguity therein."

The decision of 9-4-2009 is more comprehensive in its examination of implementation of Sub Section 1 of Section 4 in which this Commission has directed the concerned public authorities as follows:

"Be it as it may, in exercise of its powers conferred under section 19 (8) (e) of the Act, the Commission hereby requires the Public Authorities to, inter-alia, take the following steps in this regard:-

(i) Since a reasonable time has now passed from the time of promulgation of the Act in 2005, the Public Authorities should now take urgent steps to have their records converted to electronic form, catalogued, indexed and computerized for easy accessibility through the network all over the country, as mandated in section 4 (1) (a) of the Act. The computerization, dissemination and updating of record is an ongoing and continuous process and all Public Authorities should put a proper system in place to make such sharing of records an automatic, routine and continuous process, so that access to such records is facilitated.

(ii) The Public Authorities are required to take immediate steps to publish detailed, complete and unambiguous information under the 16 categories, as on 31.3.2009 (if already not done or partially done) and thereafter update the information as and when necessary, but definitely every year, as mandated under section 4 (1) (b) of the

Act.

(iii) While formulating important policies or announcing the decisions affecting the public, the Public Authorities are required to publish all relevant facts about such policies and decisions for the information of public at large, as mandated under section 4 (10) (c) of the Act.

(iv) The information disclosed by the Public Authorities under section 4 (1) (b) & (c) of the Act is required to be disseminated through multiple means as provided under sub sections 2, 3 and 4 of Section 4 of the Act and as also suggested in Para 17.1 of the template prepared by the Tata Consultancy Service Ltd (Reference Para 14 above)/ or as per the practice adopted by the Government of Andhra Pradesh and the Andhra Pradesh State Information Commission (reference Para 13 above).

(v) Needless to say, the information disclosed by the Public Authorities under section 4 (1) (b) & (c) of the Act is a proactive disclosure and the Public Authorities are required to provide immediate access to this material as and when so requested, without the requirement of filing of any written request and the charging of any fee.

(vi) The notice board (s) in the offices of all the public Authorities should display as much information as practicable about suo motu disclosures under section 4 (1)

(b) & (c). Further, this information could also be placed in the Library or Reading Room, if such facility exists, for the public convenience. The Public Authorities would, however, be at liberty to take any other steps that may be necessary and expedient for fulfilling the mandate of section 4 of the Act in the matter of suo motu disclosures of information and dissemination thereof, depending on the specific requirements of such Public Authorities.

(vii) The names, room numbers, telephone numbers, e-mail addresses of the CPIOs/ACPIOs and Appellate Authorities may be prominently displayed in each office for the convenience of the public at large. If the complete disclosures of 4 (1) (b) & (c) are also available with any other officer (s) other than the CPIOs/ ACPIOs, the names, designations, room numbers and telephone numbers of such officers must be prominently displayed in the offices for easy contact ability."

In light of the above Secretary DDA Shri Bansal is directed to ensure that the orders of this Commission of 25-2-2006 are complied with in full within 30 working days of the date of issue of this decision notice. It is noted that this is a repetition of an earlier order buttressed by subsequent elaboration in the Commission's orders of 17-3-09 and 9-4-09. If the compliance is not complete by the end of the period now given any CPIO found to be in non-compliance will be liable for penalty under sub Section 1 of Section 20 on the ground that furnishing the information in the manner directed has been obstructed by that CPIO.

To ensure that this is done, therefore, this Commission will hold a further hearing in this matter on 13th July, 2009 at 4.00 p.m. when all parties are directed to be present including Secretary, DDA Shri Bansal who is the coordinating authority for dissemination of information under the RTI Act so nominated by the DDA. The complaint is disposed of accordingly.

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

(Wajahat Habibullah)
Chief Information Commissioner
1-6-2009

(M.L. Sharma)
Information Commissioner
1-6-2009

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 1-6-2009