CENTRAL INFORMATION COMMISSION
Room No.307, B wing, August Kranti Bhawan, Bhikaji Cama Place, New Delhi-110066

Appeal No. CIC/MA/A/2008/01178

Appellant: Ms. Archna Pandey

Public Authority: Ministry of Woman & Child Development, Government of India, New Delhi (through Ms. Manjula Krishnan, Adviser, MWCD(AA); & Ms. Anju Bhalla, Deputy Secretary, MWCD(CPIO))

Date of Hearing: 04/09/2009
Date of Decision: 16/09/2009

FACTS:-

The matter, in short, is that Ms. Archna Pandey, an ex-UNICEF staffer, vide her letter dated 04/12/2007 had complained to the Hon’ble Minister for Woman & Child Development regarding sexual harassment and sexual assault against the Country Representative of UNICEF, India. The Ministry appears to have caused an inquiry into the matter. It is in this connection that the Appellant had sought the following information from the Ministry:-

“i) The findings of the Investigation Report;

ii) Letter written by Hon’ble Minister of WCD to the Hon’ble Minister of External Affairs with its recommendations;

iii) Any other communication between the two Ministries regarding this subject; &

iv) Any other relevant communication between the WCD Ministry and UNICEF/any other organization or individual.”

2. Miss Nandita Misra, CPIO, vide her letter dated 01/01/2008 had refused to disclose this information. The relevant para of her letter is extracted below:-

“In this context, it is stated that in view of the international sensitivity and ramifications of the matter at this particular juncture, it is regretted that it may not be feasible to release the above mentioned material at this point in time as per the provisions of 8(1)(a) of Right to Information Act, 2005.”
3. Aggrieved with the order of the CPIO, the Appellant had filed an Appeal before this Commission. The matter was decided by the Bench of Prof. M.M. Ansari, Information Commissioner, vide his order dated 15/10/2008. The order of the Commission is reproduced herebelow:-

“1. Both the parties were heard on 15/10/2008.
2. In the course of hearing it emerged that the first Appellate Authority should provide an opportunity of personal hearing to the appellant.
3. As agreed between the parties, the case is remitted back to the first Appellate Authority to examine the application for disclosure of information and dispose of the matter within one month from the date of issue of this decision.
4. The appellant would be free to approach the Commission again if she is not satisfied with the decision of the respondent.
5. With these observations, the appeal is disposed of.”

4. In compliance of the decision of the Commission, Miss Manjula Krishnan, Appellate Authority decided the matter vide her order dated 05/03/2009, which is reproduced below:-

“WHEREAS, Ms. Archana Pandey, Ex-employee, Unicef in an appeal under the RTI Act, 2005 requested for copies of the findings of the information enquiry conducted by the Ministry of Women and Child Development into her representation of sexual harassment against the Country Representative of Unicef India country Office. The CPIO denied the information in view of the international sensitivity and ramifications of the matter, as per, the provisions of 8(1)(a) of the RTI Act, 2005. Ms Pandey approached the Central Information Commission (CIC) for redressal of her grievance. The CIC directed the first Appellate Authority to examine and dispose the matter within the prescribed time limit.

2. WHEREAS, a personal hearing was given to the Appellant by the undersigned, that is, the Appellate Authority on 7.11.2008. The Appellant challenged orally as well as in writing the tenability of the exemption under 8(1)(a) of the RTI Act, 2005 to deny her the information she has sought.

3. Taking into consideration all the relevant opinions and the fact that the issue concerns the relations with Unicef which is an International Body under the United Nations, the undersigned upholds the decision of the CPIO that releasing the information to her would not be feasible as per the provisions of Section 8(1)(a) of the RTI Act, 2005.
The Appellant may, if she so desires, prefer second appeal to the CIC.

5. Aggrieved with the order of the Appellate Authority, the Appellant has filed the present Appeal dated 09/06/2009 before this Commission. She has adduced the following ground in her Appeal Memo:-

   a) that the Appellate Authority failed to comply with the order of the Commission inasmuch as the AA did not decide the matter in 30 days and took much longer time;

   b) that the Appellate Authority failed to appreciate the law in the right perspective by way of wrongfully denying information without clearly specifying that part of sub clause (a) of Section 8(1) under which the information was being denied to her; and

   c) that the Appellate Authority failed to give her an effective hearing etc.

6. The Appellant also prayed for expeditious hearing by a Full Bench of the Commission.

7. In this background, a Full Bench consisting of the following was constituted to hear the matter:-

   • Prof. M.M. Ansari, Information Commissioner
   • Shri M.L. Sharma, Information Commissioner
   • Shri Shailesh Gandhi, Information Commissioner.

   The Bench heard the matter on 04/09/2009. Appellant Ms. Archana Pandey is present along with her assistants Shri Sarabjit Roy and Shri C.J. Karira. The public authority is represented by Ms. Manjula Krishnan, Adviser, MWCD(AA) & Ms. Anju Bhalla, Deputy Secretary, MWCD.

8. During the hearing, Ms. Manjula Krishnan would justify her stand on the ground that the information has been denied u/s 8(1)(a) of the RTI Act. When queried as to under which part of clause 8 (a) the information has been denied, she would submit that the information has been denied on the ground that disclosure of requested information would prejudicially affect the relations of India with Unicef which is an International Body under the United Nations which, according to her, may be deemed to be a foreign State.

9. Appearing for the appellant, Shri Sarabjit Roy would submit that the information has been wrongly denied inasmuch as clause (a) of section 8(1) is not applicable in the facts and circumstances of the case. He would also submit that the Ministry of Woman and Child Development is the Nodal Ministry for Unicef, and yet, ironically, the officers of the Ministry, i.e., the CPIO & AA, have
denied this information in a matter of sexual harassment. He would also dispute whether Unicef can be deemed to be a foreign state as defined in clause (a) of section 8(1). He strongly deprecates the decisions of the CPIO and the AA and requests that these be set aside, being bad in law.

10. He would also submit that due to the incident of sexual harassment, the appellant had to give up her job and remained unemployed, resulting in financial detriment to her. He requests for adequate compensation for it.

11. Shri C.J. Karira, in his brief submissions, adopts the pleadings of Shri Sarabjit Roy. He, in particular, submits that the right to human dignity emanates from the Universal Declaration of Human Rights and sexual harassment is violation of such dignity. He, therefore, urges the Commission to factor in the International Conventions while deciding this matter.

12. The Commission also briefly heard appellant Smt. Archna Pandey. She would plead that grounds adduced by her in Appeal Memo were not addressed by the AA and that adequate opportunity of hearing was not given to her before passing the order dated 05/03/2009, dismissing her appeal.

13. Before coming to the merits of the case, we think it appropriate to refer to the law laid down by the Supreme Court in the matters of sexual harassment. The Hon’ble Supreme Court of India has laid down the law in its landmark judgment in Vishakha & Ors. Vs State of Rajasthan & Ors (AIR 1997 Supreme Court 3011). The Apex Court has categorically held that any incident of sexual harassment results in violation of fundamental rights of gender equality and the right to life and liberty and, thus, any such incident is a clear violation of rights guaranteed under Articles 14, 15, 19(1)(g) and 21 of the Constitution of India which are enforceable under Article 32 of the Constitution. It may be pertinent to extract from this judgment:-

“10. Gender equality includes protection from sexual harassment and right to work with dignity, which is a universally recognized basic human right. The common minimum requirement of this right has received global acceptance. The International Conventions and norms are, therefore, of great significance in the formulation of the guidelines to achieve this purpose.”

14. The Supreme Court of India has further observed as follows:-

“23. Sexual harassment includes such unwelcome sexually determined behaviour as physical contacts and advances, sexually coloured remarks, showing pornography and sexual demands, whether by words or actions. Such conduct can be humiliating and may constitute a health and safety problem; it is
discriminatory when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment, including recruiting or promotion, or when it creates a hostile working environment. Effective complaints procedures and remedies, including compensation, should be provided.”

15. In short, the Supreme Court has categorically held that sexual harassment at workplace is violation of the fundamental rights of the victim as enshrined in Article 14, 15, 19(1)(g) and 21 of the Constitution of India and that safeguards against sexual harassment are implicit therein.

16. In this context, it may also be pertinent to refer to Article 11 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Article 11 of the Convention is extracted below:-

“(i) State parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

a) the Right to Work is an inalienable right of all human beings.”

17. Needless to say, equality in employment can be seriously impaired when women are subjected to gender specific violence, such as sexual harassment at the workplace.

18. In our view, the matter in hand needs to be decided in the light of the Constitutional mandate as interpreted by the Hon’ble Supreme Court of India referred to hereinabove and the provisions of the RTI Act, 2005. It is noteworthy that both CPIO and AA have denied the requested information under section 8(1)(a) of the RTI Act without specifying that part of the clause which, according to them, is applicable in the facts and circumstances of the case. Clause (a) is extracted below:-

“(a) Information, disclosure of which, would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the state, relation with foreign state or lead to incitement of an offence.”

It would, thus, appear that this clause has the following sub clauses or parts:-

(a) Sovereignty and integrity of India;
(b) security, strategic, scientific or economic interest of the state;
(c) relation with foreign state; and
(d) lead to incitement of an offence.

As mentioned above, neither CPIO nor AA have specified that part of the clause under which information has been denied. During the hearing, the AA, however, has taken the stand that the information was denied under the part “relation with foreign state”. In other words, it is her stand that disclosure of information would prejudicially affect relations of India with Unicef which is an International Body of UNO.

19. It is also to be noted that material on record indicates that before denying information, the AA had taken written opinion from Shri M. Koteshwar Rao, Legal Officer of the Legal and Treaties Division of the Ministry of External Affairs wherein he had opined that clauses (a) & (f) of section 8(1) of the RTI Act could be liberally interpreted “so as to include GOI’s relations with the United Nations International Organisations etc., notwithstanding omission of references to these bodies/entities.” Earlier to that, AA had also received an opinion from Miss Parmita Tripathi, Under Secretary(UNES-II) of the UNES Division of MEA, wherein she had advised that “the Appeal may be defended for the time being.”

20. From the above, it is evident that the AA has not denied the information on her own free will and free judgment but she appears to have been guided by the advices referred to above. This raises an important legal issue, i.e., whether the AA, while functioning in her quasi-judicial capacity, should have formally made consultations with the officials of MEA?

21. In the light of foregoing, the Commission would like to reiterate and re-emphasise that sexual harassment is violation of the fundamental rights of the victim under Articles 14, 15, 19(1)(g) and 21 of the Constitution of India. Further, the International Conventions, particularly CEDAW, also cannot be ignored while dealing with matters of sexual harassment. In this background, the question before us is whether information has been correctly denied under clause (a) of section 8(1) of the RTI Act.

22. Notwithstanding the fact that this plea is an after-thought as it has been advanced only at the hearing before the Commission and was not incorporated in the orders passed by the CPIO and AA and taking this plea at its face value, we are constrained to remark that no evidence has been produced before us to establish that disclosure of information in the matter in hand would prejudicially affect relations of India with foreign state. On the contrary, denial of information is not only contrary to the constitutional mandate but also out of line with the Declaration of Human Rights and CEDAW. Ironically, denial of information is also not in conformity with the law laid down by the Supreme Court of India in Vishakha case. Needless to say, the matter in hand involves the dignity of a working woman. All that she has requested for is a copy of the Inquiry Report
submitted to the Ministry of Woman and Child Development and some other related material. In our considered opinion, disclosure of this information cannot be said to be covered under the ambit of clause (a), in the absence of any cogent material on record. We also do not take kindly to the consultations made by the AA with the officials of MEA before arriving at her decision. In our opinion, both CPIO and AA fell into error in misapplying the law. Their orders, therefore, are not sustainable in law and deserve to be set aside.

23. As regards the question of payment of compensation to the appellant, we are of the opinion that compensation can be paid u/s 19(8)(b) if any detriment is suffered by the appellant due to non-supply of information. This is not the case in the matter in hand inasmuch as the RTI application was filed on 04/12/2007 and CPIO decided the matter on 01/01/2008, i.e., within a period of 30 days and the first Appeal was decided by the AA, in compliance of the orders of this Commission. We, therefore, find no ground to sustain the claim for compensation.

DECISION

24. In view of the above discussion, the orders of the CPIO and the AA are set aside. The CPIO is hereby directed to provide the documents and other information requested for by the appellant, in two weeks time.

Pronounced on 16th Day of September, 2009.

Sd/-
(M.L. Sharma) Information Commissioner

Sd/-
(Shailesh Gandhi) Information Commissioner

Sd/-
(Prof. M.A. Ansari) Information Commissioner

Authenticated true copy:

(M.C. Sharma)
Assistant Registrar
Address of the parties:

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