

CENTRAL INFORMATION COMMISSION
Appeal Nos. CIC/AT/A/2007/00274 dated 23.02.2007
CIC/AT/A/2008/00726 dated 24.05.2008 &
CIC/AT/A/2009/000732 dated 06.10.2009
Right to Information Act 2005 – Section 19

PARTIES TO THE CASE:

Appellants	:	(1) Shri Manohar Parrikar (2) Shri Jayanta Kumar Routray (3) Shri Gurbax Singh
Public Authority	:	(1) Accountant General, Goa (2) Accountant General (Civil Audit), Orissa (3) Accountant General (Audit), Punjab
Date of Decision	:	10.06.2010

FACTS OF THE CASE:

These are three second-appeals (viz.CIC/AT/A/2007/00274, CIC/AT/A/2008/00726 and CIC/AT/A/2009/000732) filed by appellants, viz. Shri Manohar Parrikar, Shri Jayanta Kumar Routray and Shri Gurbax Singh against the orders of the Appellate Authorities of the office of Accountants General of Goa, Orissa and Punjab, respectively.

2. Earlier, the second-appeal filed by Shri Manohar Parrikar (Appeal No. CIC/AT/A/2007/00274) came up for hearing before the Single Bench of the Central Information Commissioner, Shri A.N. Tiwari on 17.05.2007

and 28.06.2007. After hearing the initial submissions of the parties in the appeal, the Single Bench referred the case to be decided by a larger bench observing that apart from the points brought up by the parties, there were other issues about parliamentary / legislative privilege, which needed to be addressed in the matter before the Commission.

3. Accordingly, the Chief Information Commissioner constituted a Full Bench comprising the following members:-

- (i) Shri Wajahat Habibullah, Chief Central Information Commissioner
- (ii) Shri A.N. Tiwari, Central Information Commissioner and
- (iii) Shri Satyananda Mishra, Central Information Commissioner.

4. The full bench of the Commission so constituted conducted a hearing of the second-appeal on 16.01.2009 and decided to solicit the assistance of Secretary General of Lok Sabha regarding the scope of Parliamentary privilege in the light of the request for disclosure of information made by the appellant. Written-submission was also requested from the Comptroller and Auditor General of India.

5. In the meantime, the two second-appeals filed by Shri Jayanta Kumar Routray (Appeal No.CIC/AT/A/2008/00726) and Shri Gurbax Singh (Appeal No.CIC/AT/A/2009/000732), which were heard by the Single Bench of Shri A.N. Tiwari on 11.12.2008 and on 04.12.2009 respectively, were also referred to the Full Bench already constituted in Shri Manohar Parrikar case, for its consideration.

6. The above three second-appeals were bunched together for hearing as they all had broadly common requests for disclosure of information which went into the making of an Audit Report such as audit observations, marginal notes, audit notes and audit memos, etc.

7. The appeal filed by Shri Manohar Parriker, related to his RTI-application dated 06.09.2006, in which the following queries were made:-

- “1. All the documents including correspondence, notings explanations between office of Accountant General (Audit) Goa and Goa State Infrastructure Development Corporation.*
- 2. All the documents including correspondence, notings explanations between office of Accountant General (Audit), Goa and Entertainment Society of Goa.*
- 3. All the documents including correspondence, notings, explanations between office of Accountant General (Audit), Goa and Government of Goa including Department of Information & Publicity and Finance Department.*
- 4. All the documents including correspondence, notings,*

explanations between o/o Accountant General (Audit) and GSIDC which have been rebutted and therefore not incorporated in the report.

5. *All the documents including correspondence, notings explanations between o/o Accountant General (Audit) and Entertainment Society of Goa which have been rebutted and therefore not incorporated in the report.*
6. *All the documents including correspondence, notings explanations between o/o Accountant General (Audit) and Government of Goa including Department of Information & Publicity and Finance Department which have been rebutted and therefore not incorporated in the report.*
7. *Correspondences between CAG and GOG regarding CAG's request to convene an ARCPSE meeting to discuss the findings.*
8. *Whether CAG had sought any explanation from the Consultant / Contractors / Auditor appointment by the Goa State Infrastructure Development Corporation? Give details. If not, why not?"*

8. CPIO's reply dated 14.09.2006, while declining to disclose the information, stated the following:-

"The audit findings in the Review were based on, inter alia, documents available in files of various Government entities / departments such as GSIDC Limited, Entertainment Society of Goa, Kala Academy, Public Works Department and the Finance Department of the Government of Goa. Your request, so far as it relates to these documents generated or held in original by these Government entities, has been transferred to the concerned entities in accordance with the Section 6, Sub-Section 3 of the Right to Information Act, 2005, for further necessary action at their

end. Copies of the communication sent to them in this regard are enclosed.”

9. Thereafter, through another communication dated 28.09.2006, CPIO further responded to the appellant on the following lines:-

“1. Regarding point No.1 to 6 in your letter, it is stated that initial audit queries and draft audit observations in any form are a part of the process of generating the information (i.e. Inspection Report / Audit Report) and therefore do not come within the ambit of the term information. Therefore these documents are not being furnished to you. Similarly notings on the file are internal in nature and hence cannot be disclosed. The following document which is in the nature of information will be furnished to you.

➤ *Relevant Extract of the Inspection Report on the audit of accounts of GSIDC Limited for the year ended 31 March 2004 issued to the Managing Director under covering letter No.AG/Goa/CAW/GSIDC.IR/2003-04/33/127 dated 22 March 2005 with a copy to Finance Secretary, Government of Goa (26 pages).*

2. Regarding point No.7 in your letter the following documents will be furnished to you.

➤ *Copy of this Office DO Letter from the Accountant General, Goa, No.AG/Goa/CAW/ARCPSE/2005-06/189 dated 6-10-2005 addressed to the Chief Secretary with a copy to the Finance Secretary (4 pages)*

➤ *This Office DO letter from the Sr. Deputy Accountant General No.DG/AG/Goa/CAW/ARCPSE/2005-06 dated 6-*

10-2005 addressed to the Managing Director, GSIDC requesting him to attend the ARCPSE Meeting (2 pages).

- *This Office DO letter from the Accountant General, Goa No.CAW/ARCPSE/2005-06/118 dated 12-12-05 to the Finance Secretary in reply to his letter DO No.1-17-2005/Fin (Bud) dated 21-11-2005 regarding ARCPSE meeting (2 pages).*

3. Regarding point No.8 in your letter it is stated that as per the practice, audit seeks necessary explanation from the auditees. This office had not sought any explanation from the consultant / contractors / Auditors appointed by the GSIDC.

4. You are requested to remit an amount of Rs.68 for 34 pages for the copies of the documents mentioned above and arrange to collect the same from this office.”

10. Appellant carried the matter in first-appeal before Appellate Authority, Shri Y.N. Thakare, Accountant General (Audit), Goa, through a petition dated 27.10.2006. In his decision dated 13.11.2006, Appellate Authority noted that part of the information requested by the appellant was already provided to him by the CPIO. For certain other parts, action was taken by CPIO to transfer the request to the offices of the Government of Goa, where the information was known to be held.

11. As regards the disclosure of what the Appellate Authority described as “intermediary documents” such as initial audit queries, draft audit

observations and notings and the like, Appellate Authority concurred in the finding of the CPIO, noting

“4. As you would be aware, the Audit Report submitted by CAG to the Parliament and State Legislature goes through various process before its finalization. The initial audit findings in the form of audit memos, half margin etc. are taken up with the appropriate authorities of the government for comments / clarification / remedial action. On the basis of response received from the Departments, such initial audit observations are reviewed and important findings are reported in Audit Reports, that are placed before the Parliament and State Legislatures under Article 151 of the Constitution. The Department also issues ‘Inspection Report’ to the State Government in respect of other audit observations. Further action on such report is taken by the State Government department. It is only the final audit report and the inspection report that can be said to be the final findings of the audit and the information contained in such report can be said to reflect the findings of the audit. The intermediary documents are merely working papers and may not come within realm of ‘Information’ under the RTI Act.”

12. Appellant challenged this order of the Appellate Authority in second-appeal before the Central Information Commission.

13. The advice of the Secretary General of Lok Sabha and the Comptroller & Auditor General of India were sought and received in the Commission.

14. The Lok Sabha Secretariat communicated its advice, vide its reference dated 26.02.2009 from the Additional Secretary, in which, inter-alia, the following points were made:-

(a) The phrase “which have not been submitted” was presumed to be “documents which have not yet been presented to / laid before the Legislature”.

(b) Article 151 of the Constitution provides that the reports of the C&AG relating to accounts of a State shall be laid before the Legislature of the State. However, the Constitution does not speak of draft report, half margins or draft audit notes. Since these documents are not required to be laid before the Legislature, they cannot comment on the effect, if any, of their disclosure to the appellants.

(c) Whether such documents at-all come in the category of ‘information’ is for the Central Information Commission to decide.

(d) Premature disclosure of reports, etc. which are required to be laid before the House does not amount to breach of privilege, as is the case with leakage of Budget.

(e) It is doubtful that the Report of C&AG qualifies to be treated as a Report of the Parliamentary Committee or evidence tendered before a Parliamentary Committee.

(f) Half margins, draft audit notes, etc. do not have any relevance insofar as parliamentary papers are concerned.

(g) Only the Parliament and the State Legislature have the right to judge what amounted to breach of privilege in a particular case.

15. The C&AG, through its communication dated 20.06.2007, has briefly explained the process of preparation of Audit Reports,

emphasizing that a variety of intellectual inputs variously described as audit observations, marginal notes, audit notes and audit memos, etc. went into its making. The Audit Reports are then presented before the Parliament/the State Legislatures, from where these are referred to the respective Public Accounts Committees and the Committees on Public Undertakings for examination and reporting back to the Parliament / State Legislatures.

16. The C&AG conceded the point that the above-mentioned documents comprised 'information' under the RTI Act, but claimed that being intellectual input for preparation of the audit reports, exclusively meant for review by the Parliament or the State Legislatures, as the case may be, these were privileged information.

17. In the C&AG's view *"audit notes, etc. are work papers and do not contain the final view of the Accountant General. The information therein is based on the document obtained from the auditee only. Such information would come within the scope of Section 8(1)(c) of the Act and disclosing such information may cause a breach of privilege of Parliament. This would be against the oath taken by the C&AG to uphold the Constitution and the laws of the land."*

18. C&AG clarified that it was on their instruction that items such as work papers, audit notes, audit memos, half margins, etc. were held confidential by their respective Audit Officers and Accountants General. C&AG urged that the demands of transparency under the RTI Act and the responsibilities constitutionally cast upon the C&AG needed to be harmoniously balanced “to serve public purpose”.

19. C&AG also pointed out that based upon the Audit Report, the CBI had launched a criminal proceeding against the appellant, Shri Manohar Parrikar in Case No.RCO0015A/2007. It was, therefore, mentioned that any disclosure at this stage would impede the process of ongoing investigation/prosecution and thus bring the matter within the scope of Section 8(1)(h) of the RTI Act.

20. C&AG’s note also cited a passage from the U.K. Freedom of Information Act, 2000, in which audit-related matters were exempt from disclosure. It argued that the logic of the UK Act would also apply in the Indian context as United Kingdom and India were both Parliamentary systems.

21. The appeal was heard on 09.06.2010. The following are present:-

Appellants

Shri Manohar Parrikar, assisted by counsel
Shri Jayanta Kumar Routray
Shri Gurbax Singh

Respondents

Shri KC Behra Sr DyAG and CPIO, o/o AG Orrissa
ShriR Srinivasan, Director (Legal) & CPIO o/o CAG

22. The appellant countered the respondents' arguments pointing out that that the disclosure of the requested information attracting Section 8(1)(c) of the RTI Act was only an afterthought because such issue never figured in the replies either of the CPIO dated 14.09.2006 or of the Appellate Authority, dated 13.11.2006. As a matter of fact, the latter had treated the request as not relating to any identifiable information, while the C&AG has treated it as 'information' under Section 2(f) of the RTI Act, but has argued that it was an exempt variety of information. According to the appellant, these were contradictions inherent in the respondents' submissions.

23. Appellant has argued that C&AG's constitutional obligation to carry out a specific mandate could not be treated as a bar on the disclosure of the information, which undoubtedly, is held in the control either of itself or

the office subordinate to it. Learned Counsel for appellant cited an order of the Delhi High Court, in which it was held that authorities entrusted with constitutional obligations also carry a moral responsibility of transparent conduct. He urged that the information given to the Accountant General by the departments or the authorities under the Government — Central or State — was neither fiduciary nor was it confidential. To call any information as immature, preliminary, intellectual input, unfinished and so on, could not be a reason to withhold such information from disclosure when Section 2(f) of the RTI Act defines all such items of information — and much more — as “information” within the meaning of the Act. The stage of an evolving information was not a reason to bar its disclosure. Appellant’s Counsel further pointed out that this particular Accountant General’s Report was already placed before the Legislative Assembly of Goa State and was thereby an open document.

24. The C&AG’s representative, Shri R. Srinivasan, Director (Legal), during his oral-submission before the Commission on 09.06.2010, made the point that all reports placed before the Parliament were in fact the property of Parliament. As such, all material connected with such a report should also be treated as the property of Parliament, which could be disclosed only if Parliament so authorized it. He pointed out that all Accountant General and C&AG Reports placed before the Parliament are

examined by the Public Accounts Committee, whose deliberations are not open to public and thereby are confidential. All material relating to the C&AG or the AG Reports are, therefore, inferentially before the Public Accounts Committee and thereby become confidential as the deliberations before the Committee are held to be confidential.

25. He, however, pointed out that the points regarding the disclosure in this matter coming under Section 8(1)(h) of the RTI Act would not be pressed by the respondents. These objections, therefore, were taken as dropped.

26. In second-appeal No.CIC/AT/A/2008/00726 by the appellant, Shri Jayanta Kumar Routray, the RTI-application dated 17.01.2008 comprised the following queries:-

- “(1) Please furnish the copy of compliance report of the Govt. of Orissa, Dept. of Forest & Environment pursuant to D.O. No.OAD-1 (DP Cell) Part-11/17/06-07 19 dated 24.05.2007 of DAG (Inspection Civil)-III.*
- (2) Whether any action has been taken by the AG Orissa pursuant to compliance report submitted by F&E Department, Government of Orissa ? If yes, then please furnish in detail.”*

27. The second-appeal No.**CIC/AT/A/2010/000732** by Shri Gurbax Singh relates to matters broadly identical to those asked for by appellant, Shri Manohar Parrikar, through Appeal No.**CIC/AT/A/2006/00274**, but it also had certain additional items for disclosure of information. Appellant's RTI-application dated 4.12.'08 reads as follows:-

- "1. Copy of orders issued for Special Audit.*
- 2. Report / Outcome of Special Audit with supporting documents on the basis of which report has been written / finalized.*
- 3. Copies of all Audit Memos issued for the purpose of Special Audit.*
- 4. Copy of forwarding letter, written by Pr. AG Office to SLIET regarding sent of Special Audit Report to SLIET.*
- 5. Report of latest five years Performance Audit of SLIET."*

28. Both these requests for information were denied by their respective CPIOs through replies dated 04.02.2008 and 01.01.2009 respectively on grounds of their attracting Section 8(1)(c) of the RTI Act and that the report of the C&AG was confidential.

DECISION NOTICE:

29. We wish to straightaway state that the three requests for information did not attract Section 8(1)(c) of the RTI Act. As has been

pointed out by the Secretary General of Lok Sabha, the Constitution does not mention items such as draft reports, half reports, half margins or draft audit notes and so on. If these are information within the RTI Act, their disclosure liability has to be determined in terms of the provisions of the Act. On the subject of whether disclosure of this variety of information would constitute premature revelation of matters before the Parliament or the State Legislature, the Secretary General, Lok Sabha citing Kaul & Shakdher in 'Practice and Procedure of Parliament', stated that premature publicity in the Press to notices of questions, adjournment motions, resolutions, answers to questions and other similar matters connected with the business of the House did not comprise breach of privilege, although it may be "improper". It was no-doubt breach of privilege to publish any part of the proceeding or evidence given before a Parliamentary Committee before such proceedings or evidence or documents had been reported before the House, unless the Committee itself decides that either all or part of its proceedings may be publicized. According to the Secretary General, *"it is doubtful whether the report of C&AG qualifies to be treated as the report of Parliamentary Committee or evidence tendered before a Parliamentary Committee. Half margins, draft audit notes, etc., as already stated, do not have any relevance insofar as Parliamentary papers are concerned"*.

30. The Secretary General has pointed out that the authority to decide whether a matter comprised Parliamentary privilege was that of the Presiding Officer of any House of the Parliament or the Parliament itself.

31. We have also seen Clauses 1.4 (xii) and (xiv) of the Parliamentary Procedure, which states as follows:-

“(xii) All Parliamentary Committees are empowered to send for persons, papers, and records relevant for the purpose of the inquiry by a Committee. A witness may be summoned by a Parliamentary Committee who may be required to produce such documents as are required for the use of the Committee.”

“(xiv) The evidence tendered before a Parliamentary Committee and its report and proceedings cannot be disclosed or published by anyone until these have been laid on the Table of the House.”

32. It is then obvious from a reading of the Secretary General’s note to the Commission as well as the extracts of the Parliamentary Procedure, that while all evidences and depositions before the Parliamentary Committees are no-doubt held secret as well as all proceedings before it, it cannot be stretched to mean that every single item of information, held anywhere, that may, now or in future, become part of the proceeding before the Parliamentary Committee, or may be required to be produced as evidence before it, should also come under the exemption from

disclosure. While all evidence or material, which is part of a proceeding before a Committee of Parliament, has to remain secret until the Committee wills otherwise, every other material, which does not answer that description, is beyond the bar. In other words, while the actual material in a proceeding before a Parliamentary Committee is prohibited from disclosure, such prohibition would not apply to such material, which is not yet part of an ongoing proceeding. The audit notes, marginal notes, etc. come decidedly in the latter category.

33. As has been rightly suggested by the Secretary General, Lok Sabha, it was not possible that disclosure of audit notes, audit paras, marginal notes, etc. could be said to constitute a breach of privilege of the House.

34. We are also not persuaded by the C&AG's argument that these items of information were at a very preliminary stage and should not be allowed to be disclosed for that reason. According to C&AG's own averments, these are items of information within the meaning of Section 2(f) of the RTI Act. And if it were so, the only reason why it should be prohibited from disclosure, was that it attracted one of the exemption Sections of the RTI Act 2005. That is not the case in the present matter. Therefore, in our view, these items of documents and records, being

information in themselves, merit disclosure as they do not fall within any of the exemption Sections in the RTI Act.

35. The above discussion was mainly regarding disclosure of audit notes, audit paras, marginal notes, etc., which was the thrust area in Shri Manohar Parrikar's Appeal No.CIC/AT/A/2006/00274, in the other two second-appeals by Shri Jayanta Kumar Routray (Appeal No.CIC/AT/A/2008/000726) and Shri Gurbax Singh (Appeal No.CIC/AT/A/2009/000735), certain other items of information have also been requested. We presume that the respondent-Accountants General have no objection to disclosure of these items of information in view of their several averments. In any case, it is our view that audit-related items would not attract Section 8(1)(c) of the RTI Act except in such special cases where it is manifest that a request of disclosure concerned a proceeding extant before a Committee of Parliament or the State Legislature.

36. In view of the above, we direct that within two weeks of the receipt of this order, the CPIOs of the Accountant General, Goa; Accountant General (Civil Audit), Orissa and the Accountant General (Punjab) respectively shall disclose all information requested by these three appellants through their RTI-applications dated 06.09.2006, 17.01.2008 and 04.12.2008.

37. The Commission wishes to express its thanks to the Secretary General, Lok Sabha, Shri P.D.T. Achary for his valuable assistance to us in deciding these appeals. We also wish to thank the Comptroller & Auditor General of India, Shri Vinod Rai for his cooperation. Appeals are allowed with these directions.

38. Announced on this tenth day of June 2010. Notice of this Decision be given free of cost to the parties.

(WAJAHAT HABIBULLAH)
Chief Information Commissioner

(A.N. TIWARI)
Information Commissioner

(SATYANANDA MISRA)
Information Commissioner

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.

(D.C. SINGH)
Deputy Registrar
10.06.2010