

CENTRAL INFORMATION COMMISSION
Appeal No.CIC/WB/A/2009/000266 dated 30.12.2008
Right to Information Act, 2005 – Section 19

PARTIES TO THE CASE:

Appellants : Z.U. Alvi
Public Authority : Ministry of Home Affairs, GOI
Date of Hearing : 19.01.2011
Date of Decision : 31.01.2011

FACTS OF THE CASE:

1. Vide his RTI Application dated 26.07.2008, the Applicant sought the following information:
 - (a) The letter dated 14.08.1955 from the his highness Nawab Hamidullah Khan of Bhopal to the then Hon'ble Minister of Home Affairs Government of India, New Delhi Mr. G.B.Pant, along with its enclosures.
 - (b) The letter dated 15 June 1956 from His Highness Nawab Hamidullah Khan of Bhopal to the then Hon'ble Minister of Home Affairs Government of India along with its enclosures e.g deed of gift of “ Riaz Manzil” together with its compound, out houses, furniture and other fitting by H.H Nawab of Bhopal to his wife Her Highness Aftab Jahan Begum.
 - (c) Office copy of the letter No.431/56 HN dated 6/8th January from Shri A.D Dande I.A.S Secretary to the Home Minister to the Private Secretary, H.H Nawab of Bhopal acknowledging receipt by "Pantji" of "His Highness Aftab Jahan Bagum together with its enclosure..."
 - (d) Copy of the letter dated 30th April 1949 from Mr. V.P Menon Advisor to G.O.I Ministry of States G.O.I New Delhi to H.H. Nawab of Bhopal.
 - (e) Copy of Agreement dated 30th April 1949 executed between H.H. Nawab of Bhopal and Advisor/G.O.I New Delhi.

- (f). List of Properties recognized as H.H (Nawab of Bhopal)'s personal properties that constituted Annexure to the Agreement dated 30th April 1949 and referred to in article V(2) of the said Agreement.
2. The CPIO vide his order dated 02.09.2008 denied the disclosure of the requested information citing the provisions of Section 8(1)(j) of the RTI Act, 2005 (hereinafter “the RTI Act”).
 3. Not satisfied with the CPIO’s reply, the Applicant preferred first appeal dated 29.09.2008 before the First Appellate Authority (hereinafter “the FAA”) who adjudicated upon it and dismissed the appeal vide his order dated 19.11.2008 by upholding the order of the CPIO.
 4. The Applicant has come before this commission in second appeal.

DECISION NOTICE:

5. I have carefully considered the submissions made by the Appellant as well as the Respondent. First of all the Commission would like to deal with the matter of the property of the Navab /Ex-ruler. It is apposite to mention the overall circumstances prevailing at the time when various princely states were in the process of acceding to the Dominion of India. One of such states was Bhopal who was under the rule of H.H. Nawab Hamidullah Khan until the execution of the merger agreement of April 30th, 1949 (hereinafter “the Bhopal Merger Agreement”) when Bhopal was merged to the Madhya Bharat state of India.
6. The eleven judges constitutional bench of the Hon’ble Apex Court speaking through Hidayatullah, C.J. has made observations in its decision of **H.H. Maharajadhiraja Madhav Rao Jivaji Rao Scindia Bahadur of Gwalior vs. UOI (AIR 1971 SC 530)** wherein special regard was given to the accession procedure of Bhopal. Following paragraphs are pertinent for the purpose of the case before us as it shall act as a beacon to guide the ship of contentions to the port of reasoning.

7. The relevant paragraphs are as follows :

“16. In the Bhopal Merger Agreement the Nawab was to receive Rs. 11,00,000/- as Privy Purse but each of his successors was to receive only Rs. 9,00,000/-. **Article IV however provided** that the income derived annually from the share of the Nawab in the original investment by Qudsia Begum in the Bhopal State Railway, which share was agreed to be Rs. 5,50,000, was to be treated as the personal income of the Nawab and to be paid by the Government of India to the Nawab and his successors. **Article VII provided that** the succession to the throne of Bhopal State would be governed by and regulated in accordance with the provisions of the Act known as "The succession to the Throne of Bhopal Act of 1947, and then in force in the Bhopal State. **The Government of India further agreed that all rights and privileges secured by the Agreement to the Nawab would be continued to his successor.”**

“74. I shall now consider Article 366(22). That is only a definition clause. It is intended to point out who is the Ruler of which State. It does so by saying that a Ruler is a person (a) who entered into a Covenant or Agreement before the commencement of the Constitution and the payment of any sum free of tax had been guaranteed or assured by the Government of the Dominion of India as privy purse or (b) the successor of such Ruler. For purposes of (a) the same repetition is again avoided by the same legislative device of referring to Article 291 for brevity. This Article renders the certainty of assumption of Rulership to depend upon recognition and that recognition is worked out primarily under Covenants and Agreements. The dominant and immediate purpose and application of the Article depends upon Covenants and Agreements. I have earlier said that the President in recognising a Ruler or withdrawing his recognition does not act arbitrarily but in the light of Covenants and Agreements. All such instruments mention law and custom of the family except the Bhopal Agreement where a local statute has to be observed. The selection of a Ruler's successor thus has to be worked out under a Covenant or Agreement. **The Article, therefore, has for its dominant purpose the selection of Rulers through the application of the Covenants and Agreements.”**

“200. For instance, **the Nawab of Bhopal executed a Merger agreement on the 30th April, 1949** whereby the administration of the State of Bhopal was to be taken over and carried on by the Government of India and for a period of five years next after the date of transfer the State was to be administered as a Chief Commissioner's Province. The personal rights and privileges and the privy purse were secured as in the case of other Rulers. With regard to succession to the throne of Bhopal State it was agreed that the same would be governed and regulated in accordance with the provisions of the Act known as the Succession to the Throne of Bhopal Act 1947. It may be mentioned that in the case of Bhopal **Article III of the agreement provided that** although the then Ruler was to get a sum of Rs. 11 lakhs per annum free of all taxes, each of his successors with effect from the date of succession was to be entitled to receive for his privy purse a sum of Rs. 9 lakhs per annum free of all taxes.”

“288. Under the Merger Agreement entered into between the Governor-General and the Nawab of Bhopal, the Nawab was entitled to receive the privy purse stipulated therein from the Government of India. **It is not stated in the agreement**

that the same has to come out from the revenues of Bhopal State.”

*“289. Under the Merger Agreement executed by the Nawab of Bhopal, the State of Bhopal was merged into the Dominion of India for a period of five years only. **Article IV of the Merger Agreement provided that** the income derived annually from the share of the Nawab in the original investment by Qudsia Begum in the Bhopal State Railway, which share was agreed to be Rupees five lakhs and fifty-five thousand, shall be treated as the personal income of the Nawab and shall be paid by the Government of India to the Nawab, and his successors. **Article VII of the Agreement provided that** the succession to the Throne of Bhopal State shall be governed by and regulated in accordance with the provisions of the Act known as **'the Succession to the Throne of Bhopal Act of 1947'** which was in force in the State at the time of the agreement.”*

8. The foregoing observations made by the Hon'ble Apex Court clearly reveal that the Hon'ble Court had evidence before it while it “specifically” pin-pointed out the gist of various Articles of the Bhopal Merger Agreement. This leaves us without even an iota of doubt to infer that the Apex Court had the material before it on the basis of which it made those observations notwithstanding the fact that the case before them was not specifically pertaining to the state of Bhopal. In our view, while respectfully noting the observations of the Apex Court, it leaves no doubt that the contents of Bhopal Merger Agreement and the enclosures thereto are public documents. Hence, in the spirit of the RTI Act, such documents should also be furnished to the Appellant.(Decision announced on 15.12.1970).
9. Another issue which we find pertinent to address before allowing the present appeal is one as raised under its contention by the Respondent. Respondent contends that the GOI has been taking a consistent view that the details of private properties of former rulers of princely states are not to be disclosed to the public being unpublished document. The Respondent has cited a document which is the “Reply to Unstarred Question No.655” dated November 15th, 1967 through which Shri Y.B. Chavan, Home Minister, UOI (as he was then) has said that the details of the property recognized as the private property of the ruler should not be a matter for public disclosure.

10. It may be noted that the observations made by the CIC in the matter of **Basanti Lal Singhvi vs. Ministry of Home Affairs (Appeal No. CIC/WB/A/2007/00518)** are apt to answer the contentions raised by the Respondent before us. In that case, the Home Ministry (Respondent as it was there) made a reference to the Speaker, Lok Sabha on 29.09.2008 seeking certain clarifications regarding the Unstarred Question No.655. The reply sent by Lok Sabha Secretariat was received on 06.01.2009 wherein it was stated as follows:

“As the USQ No.655 answered in the Lok Sabha on 15th November 1967 pertained to properties of rulers of Indore and Gwalior, it cannot be contended that the specific information denied to Lok Sabha in reply to that question would be divulged if the request of Shri Basanti Lal Singhvi seeking information regarding property of erstwhile Maharaja of Udaipur were to be acceded to.”

The foregoing reply itself is the reason why the Respondent’s contentions fall flat on the ground because the reply in Lok Sabha was specific only to Indore and Gwalior unlike Bhopal in the appeal before us. There is no similarity in the two situations as Bhopal’s merger agreement is a separate and peculiar document. Hence, the Respondent’s contentions are devoid of any merit and thus, dismissed. Moreover, the list of properties are not exempted in view of the Section 8(1)(3) of the RTI Act.

11. Regarding the points (a), (b) and (c) of the RTI application (that is the correspondence between ex-ruler / the Nawab and the M/o Home Affairs) the Commission, while keeping in view the facts and circumstances of the present case and also keeping in view the fact that the letters in question relate to property, is of the view that the information sought by the Appellant is not exempted under Section 8(1)(j) of the RTI Act. Moreover, the sought for information is 20 years old and exemption clause under Section 8(1)(j) of the RTI Act is not applicable in view of the Section 8(1)(3) of the RTI Act, which reads as follows:-

“Subject to the provisions of clauses (a), (c) and (i) of sub-section (1), any information relating to any occurrence, event or matter which has taken place, occurred or happened twenty years before the date on which any request is made under section 6 shall be provided to any person making a request under that section

12. Regarding the submission of the Respondents that requisite information pertains to very old records which can be traced only when there is a proper reference number/file number etc. we are of the opinion that the National Archives of India is the custodian of Records which in older than 30 years, under Public Records Act, 1998 but the records are held by the Ministry of Home Affairs. The Ministry of Home Affairs will procure the documents from the National Archives by giving them the proper reference number to identify the document numbered by them, if they do not have the custody of documents at present, and supply the same to the Applicant. In case, the efforts to trace the records and documents bear no fruit, the Ministry of Home Affairs will file an affidavit for the perusal of the Commission regarding the efforts made along with the instructions issued to trace the records.

13. Appeal is allowed.

sd/-
(Satyananda Mishra)
Chief Information Commissioner

sd/-
Sushma Singh
Information Commissioner

sd/-
Shailesh Gandhi
Information Commissioner

Authenticated True Copies

(Aakash Deep Chakravarti)
Additional Registrar

Case no. CIC/WB/A/2009/000266

Address of the parties:

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