

CENTRAL INFORMATION COMMISSION

Appeal: No. CIC/OK/A/2006/00163

Dated, the 7th July, 2006

Name of the Appellant : Shri Dhananjay Tripathi
D-25/21-22, Gangal Mahal
Raja Ghat
VARANASI - 221001

Name of the Public Authority : Banaras Hindu University, Varanasi.

ORDER

Background:

Shri Yogesh Roy, a student of the Banaras Hindu University (BHU), died on the night of 11.1.05 at Sir Sunder Lal Hospital attached to the University, where he was admitted during the day. The students alleged that Yogesh Ray died due to the negligence of the doctors on duty in the Emergency Ward. This led to rioting at the Hospital leading to police intervention. The then Vice Chancellor of the University asked Prof. Harikesh Singh on 12.1.05 to hold an inquiry into the incidents. He along with the Deputy Registrar (Academic) started the inquiry on 17.1.06 and submitted his report to the Vice Chancellor/Rector on 31.3.05.

2. Shri Dhananjay Tripathi applied to the PRO, BHU, on 14.10.05 for access to the Prof. Harikesh Singh Inquiry Report into the incident. His application was rejected due to non-submission of the application fee and he was asked on 15.10.05 to address his letter to the Registrar, BHU. He ultimately succeeded in filing his application on 11.11.05 under the RTI Act 2005 when the application fee receipts became available. The PIO forwarded his application to the Registrar, BHU on 22.11.05 for supply of information within a fortnight so that a reply could be sent to the Requester within the statutory period of thirty days. In his communication, the PIO also drew the Registrar's attention to the penal provisions of Section 20 of RTI Act. On 6.01.06, the PIO was asked to communicate the denial of the information to the Requester under section 8(1)(g) of the Act. The PIO sought clarification from the Registrar as to how Section 8(1)(g) was

applicable. Instead of reconsidering the matter, the Registrar reprimanded the PIO. Under the Registrar's direction, a reply was sent to the Requester on 31.01.06 denying him the information and thus disposing of both, his application dated 14.11.05 and his appeal to first Appellate Authority filed on 26.12.05. He actually received the reply on 6.2.06 i.e 86 days after the date of his application and 56 days after the expiry of the statutory period of 30 days. The Commission admitted the appeal and issued directions to the Registrar, BHU, to produce all documents related to the matter by 26.6.06 and fixed the hearing on 30.6.06.

3. Dr. O. P. Kejariwal, Information Commissioner, heard the matter on 30.6.06. Shri N. Sundaram, Registrar, BHU, represented the University and Shri Dhananjay Tripathi, Appellant, appeared in person.

DECISION:

4. The Commission perused the documents submitted by both the parties including the comments of the BHU in their letter dated 20.6.06 and the case file of BHU dealing with the application of Shri Dhananjay Tripathi. The Commission heard both the parties in detail. The Registrar/Respondent accepted the delay in giving a reply to the Appellant but tried to apportion the blame to the PIO, who, in fact, had shown his understanding and sincerity in applying the provisions of the RTI Act in the present case. The fact that his communication was treated with scant respect by the Registrar bears witness to his negative mindset, one which is just the opposite of that of the PIO.

5. The file on the subject, called for by the Commission, also shows a tendency on the part of the Registrar to shift the blame for his own shortcomings on the Vice Chancellor of the University. Thus in a note dated 8.12.2005, he says that the concerned file is with the Vice Chancellor, whereas the VC's Office in reply to his note clarified that the Inquiry Report had been with the Registrar himself since 27.4.05 - obviously implying that he should not have sat over it for so long without taking any action whatsoever.

6. In his reply to the Appellant in which he should have considered the remarks of the PIO, the Registrar has maintained that the information is denied because the case is covered by exemptions under section 8(1)(g) and 8(1)(h) of the Act.

7. These two clauses read as under:

(g) information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;

(h) Information which would impede the process of investigation or apprehension or prosecution of offenders;

The reply given to the Appellant on 31.01.06 mentioned section 8(1)(g) as the clause under which information was denied [without giving reasons for rejection as laid down in Section 7(8)(i) of the Act]. The reply also stated that 'the disciplinary authority is seized with the matter and at this level no information can be given to any person'. In their comments to the Commission, the BHU added an additional ground, i.e. Section 8(1)(h) for denial of information. Why no reasons for denial were given and only the bare provisions of the Act were cited while conveying the rejection? The Registrar had no answer. Moreover, the fact that the Registrar added another clause of the RTI long after the initial denial had been sent to the applicant points towards the callous and casual approach of the BHU Registrar while dealing with the applications under the RTI Act.

8. The Commission, therefore, was compelled to observe that the Registrar had taken recourse to the provisions of Section 8(1)(g) and 8(1)(h) merely as a pretext to deny the information. It is difficult to comprehend why the Registrar sat over the fact-finding Committee's small report for fifteen months without taking any action even after there was an RTI application. Through this Order the Commission now wants to send the message loud and clear that quoting provisions of Section 8 of the RTI Act *ad libitum* to deny the information requested for, by CPIOs/Appellate

Authorities without giving any justification or grounds as to how these provisions are applicable is simply unacceptable and clearly amounts to malafide denial of legitimate information attracting penalties under section 20(1) of the Act.

9. The Commission hereby directs the Registrar, BHU, to make available a copy of the Inquiry Report of Prof. Harikesh Singh to the Appellant within 15 days and report compliance to this Commission within 21 days of the issue of this Order. This Order shall also be deemed to be a Notice under Section 20(1) of the RTI Act to the Registrar of BHU to show cause within 30 days of the issue of this Order as to why the penalties envisaged in this Section be not imposed upon him. The next date of hearing is fixed for 9th August, 2006, under first proviso to Section 20(1) of the RTI Act, 2005, when the Registrar is directed to be personally present to explain his case.

10. The Commission ordered accordingly.

(O.P. Kejariwal)
Information Commissioner

Authenticated true copy:

(L.C. Singhi)
Additional Registrar

CC:

1. Shri Dhananjay Tripathi, D-25/21-22, Gangal Mahal, Raja Ghat, VARANASI - 221001
2. Shri N. Sundaram, Registrar, Banaras Hindu University, VARANASI - 221005
3. Officer Incharge, NIC
4. Press E Group, CIC