

OFFICE OF THE FIRST APPELLATE AUTHORITY
(Appointed under the Right to Information Act, 2005)
The Institute of Company Secretaries of India ICSI House
C-36, Sector-62, Institutional Area
Noida - 201 309 (U.P.)

Appeal No.00105/2024

IN THE MATTER OF:

Mr. AJAY KUMAR GUPTA
C 25, NIZAMUDDIN EAST,
NEW DELHI,
Pin:110013
DELHI

Appellant

Vs.

Central Public Information Officer
The Institute of Company Secretaries of India
'ICSI House', 22, Institutional Area, Lodi Road,
New Delhi - 110003

Respondent

Date of Order: 19th November 2024

ORDER

- (1) The Appellant has filed first Appeal- No. ICSOI/A/E/24/00105 on 25.10.2024 under Section 19(1) of the Right to Information Act, 2005 in connection with Response vide letter dated 25.10.2024 against the Central Public Information Officer (hereinafter referred to as Respondent) of the Institute of Company Secretaries of India.
- (2) The Appellant vide his RTI Application No. ICSOI/R/E/24/12546 dated 28/09/2024 has requested the following information:

“This pertains to the office of the CPIO, Disciplinary Directorate, the Institute of Company Secretaries of India, ICSI House, 22, Institutional Area, Lodi Road, New Delhi 110003. This further pertains to the complaint of the applicant against Mr. Tarun Sharma under unique reference number DC/974/2023 as per the enclosed communication dated 26.06.2024. The following information is sought as per records:

1. Please provide copy of complete notings in the file pertaining to the complaint under DC/974/2023 as per records.
2. Please provide certified copy of the complete file as per records including but not limited to the prima facie opinion dated 30.10.2023 of the Director (Discipline).
3. Please provide copy of all records relied upon by the Board of Discipline to frame the specific opinion reflected in Point 11 of the Final Order dated 19.09.2024 wherein he states that there is a family business dispute in the management of the company.
4. Please provide copy of all standing orders / OMs/ guidelines or any such that grants immunity to the company secretaries from misconduct in case of family disputes as

per records.

5. Please provide details of the Guidance Notes that provides the immunity or lays down the guidelines in such cases as mentioned in Point 4 as per records.”

- (3) The Appellant has submitted in the instant appeal with regards to the reply provided by the Respondent to the RTI queries as under:

“CPIO seems to have omitted the fact that the RTI Act prevails over any other statute. If the rules do not provide for the supply of the information, they do not even deny the supply of the information as sought. The high handedness of the Institute has been a major concern not only for the complainant but also that of the higher government offices. The right of seeking the information based on which the complaint has been dismissed is the supreme and based on principles of natural justice. Any attempt to deny the sought information to the appellant is an infringement of his constitutional rights. FAA is requested to ensure the provision of the sought information in full transparency. Regarding the supply of information sought vide Point 4 & 5, it is imperative that the Board must have based their decision on such orders as a matter of prudence. The appellant is unable to trace any of such direct orders on the website as mentioned. CPIO should have provided the link of some such orders and mere citation of the website address is not enough unless CPIO is sure that the website link definitely carries the detailed orders as sought.”

- (4) The reply of the Respondent against the instant appeal is as under: -

“Since the RTI application pertains to Directorate of Discipline of the ICSI, therefore, the CPIO has asked for written submission from concerned directorate for the same. Their submission is mentioned below:

Reply to query numbers 1, 2 & 3 –

“Pursuant to sub rule (3) of the rule 15 of the Company Secretaries (Procedure of investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Applicant vide email and letter dated 23rd September, 2024 has been provided copy of Final Order reserved on 26th June, 2024 and issued on 19th September, 2024 by the Board of Discipline in the captioned matter (DC/974/2023).

A copy of prima facie opinion or any other document is provided to the parties as per the provisions of the Company Secretaries (Procedures of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. In the instant case, the Rules do not provide for supply of prima facie opinion. Hon’ble CIC, in the matter of CIC/MOCAF/A/2021/114451 (decided 24/08/2022) and CIC/ICSOI/A/2022/654421 (decided on 12/04/2024) has also conquered with the said position.”

Reply to query numbers 4 and 5 –

“Separate list of orders on dispute is not maintained.

The Hon’ble CIC in the matter of CIC/DOCAF/A/2018/137220 (decided on 11.2.2020) referred to the decision of Hon’ble Bombay High Court at Goa in the matter of Dr. Celsa Pinto vs. Goa State Information Commission (W.P. No. 419 of 2007, decision dated 03.04.2008) wherein it was held *“The definition of information cannot include within its fold answers to the question “why” which would be same thing as asking the reason for a*

justification for a particular thing. The public information authorities cannot expect to communicate to the citizen the reason why a certain thing was done or not done in the sense of a justification because the citizen makes a requisition about information. Justifications are matter within the domain of adjudicating authorities and cannot properly be classified as information."

In view of the above ratio, the Commission observes that at the outset it is clarified that under the provisions of the RTI Act only such information as is available and existing and held by the public authority or is under control of the public authority can be provided. The PIO is not supposed to create information that is not a part of the record. He is also not required to interpret information or provide clarification or furnish replies to hypothetical questions."

Therefore, the appeal deserves to be dismissed."

- (5) This Office has carefully considered the application, the response, the appeal and the records made available and finds that the matter can be decided based on the material available on record.

This office concurs with the submissions of the Respondent in his reply to the instant appeal.

The appeal is accordingly disposed of.

Sd/-

(Asit Kumar Rath)
First Appellate Authority

Copy to:

1. Mr. AJAY KUMAR GUPTA
C 25, NIZAMUDDIN EAST,
NEW DELHI,
Pin:110013
DELHI
2. Central Public Information Officer
The Institute of Company Secretaries of India
'ICSI House', 22, Institutional Area, Lodi Road,
New Delhi - 110003
3. Directorate of IT - For publishing on the website.