

**CENTRAL INFORMATION COMMISSION**

(Room No.315, B-Wing, August Kranti Bhawan, Bhikaji Cama Place, New Delhi 110 066)

**Prof. M. Sridhar Acharyulu (Madabhushi Sridhar)**  
**Information Commissioner**

**CIC/SA/A/2016/000209**

**Kanchi Kohli v. PIO, M/o Environment & Forest**

**Important Dates and time taken:**

<b>RTI:</b> Nil	<b>Reply:</b> 18.03.2015	<b>FAO:</b> 09.04.2015
<b>SA:</b> 31.12.2015	<b>Hearing:</b> 03.05.2016	<b>Decided on:</b> 13.05.2016
<b>Result: disposed of with direction</b>		

**Parties Present:**

1. Appellant is present. Mr. Shard, Scientist 'D' represents Public authority.

**FACTS:**

2. Ms. Kanchi Kohli, associated with Centre for Policy Research, Namati Environment Justice Program, New Delhi sought on 22.2.2015 from the MoEFCC a copy of the report of Shailesh Nayak Committee, file notings and minutes on the Coastal Regulation Zone (CRZ). Report was denied. First appellate authority has directed the appellant to Dr Ranjini Warriar. She approached this Commission.

**Back ground & Contentions:**

3. First CRZ notification was issued in 1991 under the Environment Protection Act, 1986, which gives powers to the Central Government to restrict industrial activities and processes in an area for the protection of the environment in the over 7500-km coastline of the country. This notification was amended 25 times before it was comprehensively revised in 2011. The amendments continued to the new notification also. It was criticised that changes that have been brought about through executive orders since 2014 almost run parallel to the process of a

special committee set up to review the CRZ notification. The Ministry vide order dated 17th June, 2014, constituted a Committee to look into the issues raised by various coastal States/UTs regarding CRZ Notification, 2011 vide its order dated 17th June, 2014. Shri Shailesh Nayak, Secretary, Ministry of Earth Sciences headed the Committee and submitted report in early 2015. It is yet to be approved or acted upon.

4. Though copy of the record relating to meeting of the said Committee was provided to the Appellant, the report was denied. The PIO, Mr. Shard told Commission that the committee report was with the MoEFCC since submission that never came back. The CPIO rejected report saying it cannot be given until accepted. No other reason was furnished for rejecting. The appellant stated rejection was in violation of the CIC's orders related to a similar rejection of information related to the EIA notification in 2008 in case no. CIC/WB/A/2008/01297/AD dated 23.10.2008.

5. Her contention was that this issue was very important for implementing provisions of Environment Act. The report must have analysed the errors and inconsistencies of the CRZ notifications, without examining which, seven amendments were notified since January 2015, facilitating heavy constructions, coastal roads, monuments in CRZ areas. It is not possible to discuss, question and determine if these amendments have any scientific, administrative or legal basis or reasonable or required as per the study, analysis and recommendations of the Committee.

The appellant explained the public interest in disclosure of report:

- a) The Ministry's refusal to make the Shailesh Nayak Committee report and its proceedings public and the subsequent spate of amendments in a short span of time could lead to a situation of creating an unstable and arbitrary CRZ law that is impossible to implement on the ground. It will then be no different from the CRZ, 1991 law that also got a similar treatment by the Ministry where over 25 amendments were carried out within 20 years and most of these amendments were brought in to allow greater urbanization and industrialization of the coast. The remaining two amendments are related to extending the last date for the completion of the Coastal Zone Management Plans (CZMPs) that are the basic documents needed to take any decision related to siting of projects on the coast or compliance with the CRZ law. Several such

extensions have been made in the past too, leaving CZMPs in a state of perpetual drafts. But this has not stopped the process of grant of approvals to large projects on the coastline.

b) Such developments on the coast have a direct bearing on over 3200 marine fishing villages. As per the Marine Fisheries Census in 2005, there are 756,212 households—a total of 3.52 million people—along mainland India's coastline. Nearly half of this population (over 1.6 million people) is engaged in active fishing and fishery-related activities.

6. According to CPIO, the amendments were in accordance with the Environment (Protection) Act, 1986. He also explained general procedure of amendment such as due notification inviting objections/suggestions and their consideration. He explained validity of Coastal Zone Management Plan, as follows:

**(i)** The Coastal Regulation Zone Notification, 1991 vide no. S.O.114 dated 19<sup>th</sup> February, 1991 was for regulating developmental activities, the coastal stretches within 500 m of High Tide Line (HTL) on the landward side were classified into four categories, namely CRZ-I, CRZ-II, CRZ-III and CRZ-IV.

**(ii)** On 6<sup>th</sup> January, 2011, the Coastal Regulation Zone Notification, 2011 was notified for the purpose of conserving and protecting the coastal areas and marine waters, the coastal stretches under the CRZ Notification, 2011 have also been classified in to four zones, namely CRZ-I, CRZ-II, CRZ-III and CRZ-IV.

**(iii)** As far as CRZ classification is concerned, the CRZ-I, CRZ-II, CRZ-III as that of CRZ Notification, 1991 have been retained in the CRZ Notification, 2011. According to the CRZ Notification, 2011, the CRZ-I consist of the ecologically sensitive areas, CRZ-II are the areas developed up to or close to the shoreline, CRZ-III are relatively undisturbed and those do not belong to either CRZ-I or CRZ-II which include coastal zone in the rural areas (developed and undeveloped), CRZ-IV are the water area from the Low Tide Line to 12 nautical miles on the seaward side. The CRZ Notification, 2011 also provides for preparation of Coastal Zone Management Plans (CZMPs) by the Coastal States/UT Administrations in 1:25,000 scale maps identifying and classifying the CRZ areas within the respective territories in accordance with the guidelines given in Annexure-I of the notification, which also involves public consultation.

**(iv)** The status of preparation of the said CZMPs by the Coastal States/ UT has been reviewed in the Ministry from time to time. On 29<sup>th</sup> February, 2016, during the 30<sup>th</sup> meeting of National Coastal Zone Management Authority (NCZMA) constituted as per the CRZ Notification 1991/2011, the coastal States/UTs were asked to inform the progress regarding preparation of CZMPs under the CRZ Notification, 2011. The

minutes of the said meeting of NCZMA are available on the Ministry's website, and can be accessed at <http://www.moef.nic.in/essential-links/national-coastal-zone-management-authority-nczma>.

(v) As per the information, the coastal States have yet not prepared their CZMPs. The National Centre for Sustainable Coastal Management (NCSCM), Chennai of the Ministry has been interacting with the concerned Authorities in the States/ UTs in the subject matter. The States have been requested to prepare the CZMPs under the CRZ Notification, 2011 by September, 2016. Pending preparation of CZMPs by the coastal States, the Ministry has extended the validity of CZMPs prepared and approved as per the CRZ Notification, 1991, up to 31<sup>st</sup> January, 2017 under the CRZ Notification, 2011.

(vi) All developmental activities listed in this notification are required to be regulated by the Coastal State Government/UT Administrations, the local authority or the concerned CZMA within the framework of such approved CZMPs and in accordance with provisions of the CRZ Notification, 2011.

7. The Commission finds the issue of disclosure of report of Shailesh Naik Committee is very vital and of greater public interest. If the report of the Committee discussed the "errors and inconsistencies" of the CRZ notification, they should be made known to the public in general and appellants in particular so that there can be a fair chance of analysing scientific, administrative or legal basis of these amendments, that might have been identified by the Committee. There are series of judgments opposing unreasonable amendments of Coastal Zone Regulations. For instance, in **Indian Council for Enviro-Legal Action vs Union of India and others**, (1996(5) SCC 281) the Supreme Court held the Amendment made in 1994 empowering Central Government to permit construction in any particular case taking into account the geographical features and other relevant aspects as arbitrary, unanalyzed and unguided power, the exercise of which may result in serious ecological degradation and may make the no development zone (NDZ) ineffective is ultra virus and was quashed. By this amendment the NDZ for rivers, creeks and backwaters which was 100 metres from HTL had been relaxed to 50 metres. The Supreme Court held that amendment is contrary to the object of the Environment Act and has not been made for any valid reason as is, therefore, held to be illegal.

8. The sustainability of development in coastal zones is the serious concern. In this perspective, sustaining common use areas like beaches and creeks and access to the

shore for everyday occupations is gradually becoming a challenge for many coastal communities. When these aspects are analysed, discussed and reported by an expert committee, there appears no justification in refusing the disclosure of report.

9. The CPIO did not even mention exact grounds under Section 8(1) for denial. If the report has discussed the objectives of CZR, they should have disclosed the report before initiating process of amendment to the CZR regulations. It is the duty of MoEF to justify relaxations made without considering 'report' of Shailesh Nayak. The suppression of Shailesh Nayak report while issuing successive amendments gives rise to many suspicions, which need to be cleared. Copy of report could have been given saying it is pending for approval.

10. As per section 19(5) the onus to prove that a denial of a request was justified is on the CPIO, who denied the request. The CPIO has failed to discharge this burden. The Ministry should have explained why there was no decision on Report, either approving or otherwise.

11. The public authorities should understand that the RTI Act empowers a citizen to question such inaction. That is objective of this second appeal. Public authority has a duty to tell public how not considering the report, besides not revealing it, was in the interest or sustainable development. Both CPIO and First Appellate Authority arbitrarily rejected the RTI request. Mr. Manoranjan Hota, first appellate authority gave a one-line reply that "since the subject matter is now being looked after by Dr. Ranjini Warriar, Director, you may send your application to her for further action". This was not expected from a senior officer, designated as First Appellate Authority, who was supposed to hear the case, analyse the contentions and decide based on reasons. Instead, the FAA treated it as a simple file containing a letter and redirected the appellant to come up with fresh request addressing Dr. Ranjini Warriar. Does it mean that information could be given? Then, he should have directed the Director to give it instead of asking appellant to file a fresh RTI application. It is sad and unfortunate that FAA did not understand he was supposed to act as quasi-judicial authority under RTI Act.

12. The Commission requires the public authority, as per Section 19(8)(v) to enhance training level to its first appellate authorities and PIOs, to prevent rejecting information requests without reading provisions and also without applying mind.

13. Both of them (CPIO and FAA) could not show how suppression of report is in public interest. Whereas, the appellant has established the public interest in its disclosure saying that the refusal to make public the Shailesh Nayak Committee report and its proceedings could lead to a situation which will generate an unequal CRZ law as coastal expanses causing steady adverse impact on environment. It appears that such developments on the coast will have a direct impact on a large number of marine fishing villages. It is difficult to disbelieve contention of appellant that as per the Marine Fisheries Census in 2005, there are 756,212 households—a total of 3.52 million people—along mainland India's coastline, nearly half of this population (over 1.6 million people) is engaged in active fishing and fishery-related activities, unreasonable relaxations of CZR will be threatening the ecosystems and people living in coastal regions alike apart from degradation of many coastal habitats, and in order to rule out any possibility of unjust bearing of these amendments on the livelihoods of traditional fisher-folk communities in the name of greater urbanization and industrialization of the coast, it will be in larger public interest to disclose report of Shailesh Nayak Committee.

14. The Commission holds that the public authority cannot invent a new defence or exemption such as 'the report is under submission', 'file is pending consideration' and 'unless approved it cannot be given', etc, which are not available under RTI Act, 2005, such an illegal refusal will amount to denial of information which would invite penal proceedings under Section 20 of RTI Act, 2005. The Commission directs the CPIO to explain why penalty should not be imposed against him for refusing the copy of report for no valid reason, within 21 days from date of receipt of this order.

15. The Commission reiterates its order that each Minister in Union of India is a public authority and directs the office of Minister for Environment and Forests considering his principal secretary as CPIO to provide certified copy of the report of Mr. Shailesh Nayak, file notings, minutes and correspondence of the Shailesh Nayak Committee, from the file held by

them, along with latest action taken on that report, to the appellant within one month of receipt of this order along with a compliance report to the Commission.

(M. Sridhar Acharyulu)  
Information Commissioner

Authenticated true copy

(Babu Lal)  
Deputy Registrar

Copy of decision given to the parties free of cost.

Addresses of the parties:

- 1 . Principal Secretary to the Minister for Environment & Forest  
Indira Paryavaran Bhavan, Jorbagh Road,  
New Delhi-110003.
  
- 2 . The CPIO under RTI,  
M/o Environment & Forest,  
Paryavaran Bhawan, CGO Complex,  
Lodhi Road, New Delhi-110003 (RTI Cell).
  
- 3 . Ms. Kanchi Kohli,  
Centre for Policy Research, Dharma Marg,  
Chanakyapuri, New Delhi-110021.