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## **Before the Hon'ble West Bengal Information Commission**

Complaint u/s 18 of RTI Act against

SPIO [Deputy Secretary] and Ld First Appellate Authority [Special Secretary] of Backward Classes Welfare Dept, Administrative Building, Bidhannagar Sector-II, Kolkata-700091-

- 1) I made an RTI Application dated 28/02/2024 and sent it by speedpost vide EW342485665IN and it was delivered to the SPIO of BCW Dept on 29/02/2024. It contained seven (7) points, including copies of Govt Notifications, reports etc.
- 2) An identical RTI application on the same date was addressed to SPIO of WB Commission for Backward Classes [WBCBC] and it was delivered on 29/02/2024.
- 3) The SPIO of WBCBC forwarded all the seven points u/s 6(3) to his counterpart in the BCW Dept vide letter dated 13/03/2024 saying 'you are the appropriate public authority'.
- 4) There was absolute silence on the part of the SPIO, BCW Dept. in blatant contravention of section 7(1).
- 5) This complainant made appeal u/s 19(1) before the Ld FAA of BCW Dept vide letter dated 22/04/2024
- 6) The Ld FAA of BCW Dept in his kind order dated 03/05/2024 directed the SPIO of his dept to provide information
- 7) The SPIO of BCW Dept in his letter dated 20/05/2024 - stated to be in compliance with the order of the Ld FAA – intimated without making any reasoned or speaking order that five out of seven points of query do not fall under the 'Definition' of 'Information' u/s 2(f). One is exempted u/s 8(1)(b) because it is sub-judice and the remaining one is replied in a piece of advice that I 'should' ask for information what are available with the said public authority.

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- 8) In my second round appeal u/s 19(1) against this reply of the SPIO, I made a detailed submission dated 22/04/2024, referring to the facts and the case laws pertaining to the case. I referred to section 2(f) read with section 2(i) and the decisions of the Hon'ble Courts including the Hon'ble Supreme Court to drive home the point that they squarely fall under the definition of Information. With regard to 'sub-judice' matter as a ground of exemption, it is utterly perverse and abuse of law. Section 8(1)(b) has attached so many conditions to strike a balance between the discretion of the court and the right of a citizen. The clause provides for existence of 'expressly forbidden' element or something that 'constitutes contempt of court'. Nothing is shown that such thing exists, or what is the order of the court, if it has so expressed. In W.P.(C) 14120/2009, Municipal Corporation of Delhi -v- Shri R.K. Jain, dated 23/09/2010, at para-6 of the text of the order, the Hon'ble Delhi High Court has interpreted section 8(1)(b), saying, *'The disclosure of the information sought could not have been withheld only on the ground that the matter was sub judice before this Court.'* So saying, the Hon'ble High Court has upheld the penalty imposed – to be recovered from salary - on the SPIO by the Hon'ble CIC.
- 9) Despite my solid arguments, the Ld FAA in a cryptic order dated 24.06.2024 extended the blocking of information on the sole ground and sweeping remark that these are sub-judice without addressing my specific argument that exemption u/s 8(1)(b) have to abide by the conditions straitjacketed by the Parliament. Even we are in the dark as to what that case reference no is and what status of the case is that has prompted them to block information. The judicial interpretation of the law is also conveniently and malafidely ignored. The end justified the means. And the end was to block the information.
- 10) Both the SPIO and the Ld FAA have deliberately overstepped the jurisdiction and attempted to soften the rigors of law. They cannot revise the provision of a law passed by the Parliament to their own convenience.

Submitted

[Sandipan Khan]

Complainant

To

28 February 2024

The SPIO,  
WB Backward Classes Welfare Dept,  
Govt of West Bengal,  
Administrative Building, SDO  
Bidhannagar, DJ-4, Saltlake,  
Sector-II, Kolkata – 700091

Sub:- Seeking information under RTI Act 2005

Sir,

Please provide the following information to me, under the Right to Information Act 2005:-

1. Copy of notification of division of OBC into OBC-A and OBC-B in West Bengal [hereafter, implying West Bengal only].
2. Copies of file notes on the point no 1 above.
3. Definition of 'Class' or 'Classes' in the term 'Other Backward Classes' and the reference made to.
4. The parameters of determining OBC-A and those of OBC-B and the conditions to be satisfied for the respective categories.
5. Copies of representation, if any, survey report, or any other report, data, record, file notes etc. that examined the fulfilment of parameters/conditions of OBC-A in respect of 'Muslim Barujibi/Barui', 'Muslim Biswas', 'Muslim Haldar', 'Muslim Mandal', 'Naiya (Muslims)' and 'Sekh/Seikh'. Please also supply the copies of notifications to the effect these Classes were categorised as OBC-A.
6. Copies of representation, if any, survey report or any other report, data, record file notes etc. that examined the fulfilment of parameters, conditions etc. of OBC-B, and found the shortcomings in fulfilling the parameters/conditions of OBC-A in respect of 'Barujibi', 'Scheduled Castes converts to Christianity and their progeny', 'Napit', 'Khan(Muslim)', 'Sarkar (Muslim)', 'Kazi/Kaji/Quazi/Quaji (Muslim)' and 'Chowdhury/Chowdhuri (Muslim)'. Please also supply the copies of notifications to the effect that these Classes were categorised as OBC-B.

7. Please supply the copy of notification by which 'Napit' was incorporated as Backward Class for the first time - in a single list at that point of time - and the documents to reflect the process of categorizing it as 'OBC-B'.

Yours sincerely,

*Sandipan Khan*  
28/2/24

[Sandipan Khan]

5/2 Sastitala Lane, PO-Rishra-712248, Dist-Hooghly



PS - The requisite information may be sent to my email id - [san72k@gmail.com](mailto:san72k@gmail.com)

*Sandipan Khan*

To  
The Special Secretary & Appellate Authority [with respect to RTI Act],  
Backward Classes Welfare Dept,  
Govt of West Bengal  
Admin Building, SDO  
Bidhannagar, DJ-4, Salt Lake  
Sector-II, Kolkata-700091

Sub:- Appeal u/s 19(1) of RTI Act 2005  
Ref:- Date of RTI application 28/02/2024

Sir,

Enclosed, kindly find the copy of the application made under RTI Act 2005 on 28/04/2024 in which I prayed for information on the following points:-

“

1. Copy of notification of division of OBC into OBC-A and OBC-B in West Bengal [hereafter, implying West Bengal only].
2. Copies of file notes on the point no 1 above.
3. Definition of 'Class' or 'Classes' in the term 'Other Backward Classes' and the reference made to.
4. The parameters of determining OBC-A and those of OBC-B and the conditions to be satisfied for the respective categories.
5. Copies of representation, if any, survey report, or any other report, data, record, file notes etc. that examined the fulfilment of parameters/conditions of OBC-A in respect of 'Muslim Barujibi/Barui', 'Muslim Biswas', 'Muslim Haldar', 'Muslim Mandal', 'Naiya (Muslims)' and 'Sekh/Seikh'. Please also supply the copies of notifications to the effect these Classes were categorised as OBC-A.
6. Copies of representation, if any, survey report or any other report, data, record file notes etc. that examined the fulfilment of parameters, conditions etc. of OBC-B, and found the shortcomings in fulfilling the parameters/conditions of OBC-A in respect of 'Barujibi', 'Scheduled Castes converts to Christianity and their progeny', 'Napit', 'Khan(Muslim)', 'Sarkar (Muslim)', 'Kazi/Kaji/Quazi/Quaji (Muslim)' and 'Chowdhury/Chowdhuri (Muslim)'. Please also supply the copies of notifications to the effect that these Classes were categorised as OBC-B.

7. Please supply the copy of notification by which 'Napit' was incorporated as Backward Class for the first time - in a single list at that point of time - and the documents to reflect the process of categorizing it as 'OBC-B'."

The said application was sent by speedpost vide EW3424856651IN on 28/02/2024 and it was delivered to the SPIO of your Dept on 29/02/2024. Although more than 30 days have elapsed, there is no response from him.

Simultaneously, a similar RTI was sent to the SPIO of the WB Backward Classes Commission. The SPIO of that public authority has forwarded the same to the SPIO of your Dept vide letter no WBCBC-16099/1/2022-SEC-WBCBC/DFA/746396 dated 13/03/2024 [copy enclosed]. And there is no response to it as well.

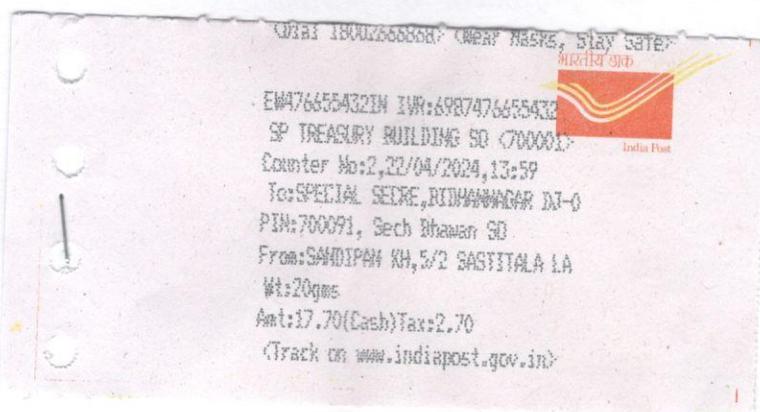
Aggrieved at the non-receipt of information from the SPIO of your Dept, I hereby make this appeal u/s 19(1) of RTI Act 2005 and request your goodself to kindly take necessary steps to immediately supply the requisite information.

Yours sincerely,

  
Sandipan Khan

Encl:- As stated

5/2 Sastitala Lane, Rishra-712248  
22<sup>nd</sup> April, 2024



ORDER

No. BCW-16012/5/2024/DFA/ 767578

Dated- 03/05/2024

Sandipan Khan, 5/2 Sasitala Lane, Rishra-712248 has submitted a 1<sup>st</sup> Appeal dated 22.04.24 which has been received in this department on 23.04.24.

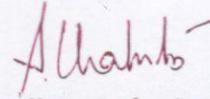
Perused the 1<sup>st</sup> appeal petition alongwith the two identical RTI applications of Sandipan Khan dated 28.02.24 addressed to the SPIO, Backward Classes Welfare Department and another one was transferred by the SPIO, West Bengal Commission for Backward Classes to on 13.03.24.

On perusal, it appears that the appellant has not received any response to his RTI applications from the SPIO, Backward Classes Welfare Department within the stipulated timeframe. Consequently, the appellant has expressed his dissatisfaction. on not receiving reply from the State Public Information Officer.

Therefore, In the instant case the SPIO of this department is further directed to revisit the RTI applications as per the provisions of the RTI Act, 2005 and provide the information sought for by the appellant concerned in his two identical RTI applications dated 28.02.24 within the stipulated timeframe. She is also further directed to provide reply to the other RTI applications as expeditiously as possible and in any case within thirty days of the receipt of the request as specified in the RTI Act, 2005.

The appeal is disposed of accordingly.

Second Appeal will lie with the West Bengal Information Commission, Khadya Bhawan, 11A Mirza Ghalib Street, Kolkata-700087.



Appellate Authority

Backward Classes Welfare Department

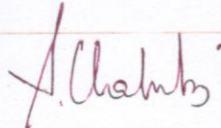
No. BCW-16012/05/2024/DFA/ 767578

Dated- 03/05/2024

Copy forwarded for information & necessary action to:-

1) Sandipan Khan, 5/2 Sasitala Lane, Rishra-712248.

2) The Registrar & SPIO, Backward Classes Welfare Department with the direction to comply with the above orders.



Appellate Authority

Backward Classes Welfare Department.

भारत सरकार  
वित्त मंत्रालय  
आयकर विभाग



GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
INCOME TAX DEPARTMENT



वैध तिथि  
VALID UPTO FEB 2028



नाम  
Name:

SANDIPAN KHAN, IRS

पद

Designation:

DEPUTY COMMISSIONER

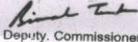
मंत्रालय / कार्यालय

Ministry / Office:

FINANCE / CBDT

रक्त वर्ग

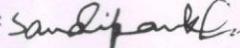
Blood group: O+

  
Deputy Commissioner  
Hqrs. (Admin. & Vig.), Kolkata  
Authorised Signatory

No. : WBG/GEN/00004836

धारक के हस्ताक्षर

Signature of the Holder :



पहचान चिह्न

Identification Mark : MOLE ON LEFT CHEEK

जन्म तिथि  
Date of Birth : 09-04-1972

दूरभाष नं

Mob. No. : 9433946199

वैधता समाप्त होने पर इस कार्ड को वापस करें। इसके खो जाने की सूचना पुलिस तथा आयकर उप आयुक्त, मुख्या. (प्रशा. व सतर्कता) कोलकाता को तत्काल दी जानी चाहिए। इसके खो जाने पर २५० रु० दंड है।

Please surrender this card on expiry. Its loss should be reported immediately to the Police and DCIT, Hqrs., (Admin. & Vig.), Kolkata.

Penalty for loss is Rs. 250/-

Date of issue: 16/02/2023

BCW-16012/5/2024-SECTION(BCW)-Dept. of BCW  
Government of West Bengal

1/516496/2024

Backward Classes Welfare Department  
Administrative Building, DJ-4, Sector-II, Salt Lake City, Kolkata-700091  
[www.anagrasarkalyan.gov.in](http://www.anagrasarkalyan.gov.in)

No. BCW-16012/5/2024/ DFA/ 776835

Dated: 20/05/2024

From: Deputy Secretary & State Public Information Officer  
Govt. of West Bengal.

To: Sandipan Khan, 5/2 Sastitala Lane,  
PO-Rishra, Dist- Hooghly, Pin- 712248.

Sub:- Complying with the decision directed by the First Appellate Authority & Special Secretary, Backward Classes Welfare Department vide Order No. BCW-16012/05/2024/DFA/767578 Dated- 03 /05/2024 in respect of the petitioner's First Appeal petition dated 22.04.24 made against the RTI applications both dated 28.02.24 and in response to the petitioners two identical RTI Applications both dated 28.02.24.

Sir,

In compliance with the order of the First Appellate Authority of this department the reply to the 7 queries as depicted in the above mentioned RTI Applications both dated 28.02.24 are as follows:-

**Regarding query Sl. No. 1:** This does not come under the "Definition" of "Information" under section 2(f) of the RTI Act, 2005.

**Regarding query Sl. No. 2:** Same as query Sl. No. 1.

**Regarding query Sl. No. 3:** Same as query Sl. No. 1 and Sl. No. 2.

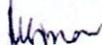
**Regarding query Sl. No. 4:** This is a sub-judice matter. Therefore exempted from disclosure under section 8(b) of the RTI Act, 2005.

**Regarding query Sl. No. 5::** This does not come under the "Definition" of "Information" under section 2(f) of the RTI Act, 2005.

**Regarding query Sl. No. 6 : :** Same as query Sl. No. 5.

**Regarding query Sl. No. 7::** The applicant is advised to specify the desired information which should be available with the respondent in any material form and accordingly submit the application to the undersigned.

Yours faithfully,

  
State Public Information Officer

No. BCW-16012/5/2024/DFA/776835 /1(1) Dated: 20/05/2024  
BCW-16012/5/2024-SECTION(BCW)-Dept. of BCW

Copy forwarded for information to:  
1/516496/2024

The First Appellate Authority & Special Secretary, Backward Classes Welfare Department  
w.r.t her Order bearing No. BCW- 16012/05/2024/DFA/767578 Dated- 03 /05/2024 .

*Ushra*

State Public Information Officer

To  
The Special Secretary & Appellate Authority [under RTI Act],  
Backward Classes Welfare Dept,  
Govt of West Bengal  
Administrative Building, DJ-4, Sector-II, Bidhannagar  
Kolkata-700091

Sub:- Appeal u/s 19(1) of RTI Act 2005 against SPIO of BCW Dept's reply dated 20/05/2024

Sir,

Enclosed, kindly find a copy of the reply, of the SPIO & Dy Secretary of your Dept, issued vide BCW-16012/5/2024/DFA/776835 dated 20/05/2024.

This reply is stated to have been given in compliance with your kind direction vide no 16012/05/2024/DFA/767578 dated 03/05/2024, which was passed in view of my first round of First appeal u/s 19(1) when no response whatsoever was given u/s 7(1) against my RTI petition dated 28/02/2024 made before the SPIO of your Dept.

My present appeal u/s 19(1) of RTI Act 2005 [hereafter, implying this Act], is against the SPIO's reply dated 20/05/2024 [hereafter, referred to as 'RTI reply'] that leaves me utterly aggrieved.

### **1. Introduction – a few general issues**

Sir, a copy of your order dated 03/05/2024 was endorsed to – besides me – the Registrar & SPIO of your Dept. The RTI reply came from Dy Secretary & SPIO of your Dept. It is not clear if the officer who had refrained from furnishing any reply in blatant and brazen contravention of section 7(1) – and then you issued kind direction - is the same officer who has now provided the RTI reply.

The RTI reply does not contain the name of the SPIO. As per standard practice, the author of a letter usually reveals his/her name along with designation. This piece of information is also required, for example, in the format of the appeal or complaint as prescribed by the Hon'ble WB Information Commission, both name and designation of the SPIO and the FAA are to be

inserted. Any fresh RTI for such trivial matter would be an exercise in redundancy.

## **2. Basic feature of the RTI reply and my counter submission**

To my utter disappointment, I find the SPIO of your Dept has laboured hard under a prejudiced mind not to furnish the information by whatever means possible. In the first round of appeal before you, it was a case where the SPIO maintained absolute silence. And in the present one, when your kind direction was issued disposing of appeal u/s 19(1) to the effect to 'provide information', he/she remarked all but one queries as not falling under the scope of the term 'information' u/s 2(f) and thus no information was made available to me. In this way, she or he has overruled your direction too. However s/he is charitable only in one case, at point no 4 as it is seen 'to be sub-judice' and 'therefore, exempted from disclosure' and thus one of my points I asked for at least qualified as 'information' in the eyes of the SPIO. The intention of the SPIO is mala fide when seen in entirety. As a result, I have suffered detriment in not being able to take further action before the appropriate forum with the information in hand.

*Post* your kind direction, s/he is not dealing with my RTI petition in its virgin form. The disposal on his/her part is made subject to the direction of the appellate authority. My entire set of RTI prayer was reproduced in the appellate prayer u/s 19(1) dated 22/04/2024. You enjoy plenary power as the First Appellate Authority. Had the sought-for information appeared to you to be not coming under the definition of 'information', this would have found mention in your order itself. So, when your goodself gave the direction to the SPIO to provide 'information', it inherently means that points sought are 'information'.

I would like to request you to kindly refer to the reply of the SPIO [Shri Amal Sarkar, the name is disclosed] of the WB Backward Classes Commission [WBBCC], on 13/03/2024 vide no WBCBC-16099/1/2022-SEC-WBCBC/DFA/746396 by which my RTI query was forwarded by him u/s 6(3) to his counterpart SPIO i.e., the SPIO of your Dept. Section 6(3) reads as under:-

*"Where an application is made to a public authority requesting for an information,—*

*(i) which is held by another public authority; or*

in  
(ii) the subject matter of which is more closely connected with the functions of another public authority,

the public authority, to which such application is made, shall transfer the application or such part of it as may be appropriate to that other public authority and inform the applicant immediately about such transfer:

Provided that the transfer of an application pursuant to this sub-section shall be made as soon as practicable but in no case later than five days from the date of receipt of the application.”

A transferor SPIO can invoke section 6(3) in order to transfer an RTI application to a transferee only and only when an applicant has requested for ‘information’. This ‘information’ is the basic ingredient. Conversely, if the points requested for are not ‘information’ at all; the question of resorting to section 6(3) will not and cannot arise. Whether something is ‘information’ or not u/s 2(f) is a general criterion and cannot generally differ from authority to authority. Only its availability can. The transferor SPIO would have rejected the application *ab initio* if the points asked for are not ‘information’ u/s 2(f) at all. So, within the public authorities of the same State Government or a state-aided institute, what is ‘information’ to one SPIO is not ‘information’ to other! This is unreasonable, to say the least, unless the authority replying in the negative establishes his/her view in a reasoned and speaking order.

### 3. Point-wise rebuttal

Kindly allow me to register my humble rebuttal of the RTI reply, point by point.

3.1 **Request no 1-** Copy of notification of division of OBC into OBC-A and OBC-B in West Bengal [hereafter, implying West Bengal only].

Reply no 1 – This does not come under the ‘Definition’ of ‘Information’ under section 2(f) of the RTI Act, 2005.

Rebuttal no 1 – The Act defines ‘information’ under section 2(f) as

*‘2- Definition - In this Act, unless the context otherwise requires –*

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*(f) ‘Information’ means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force’*

The definition of ‘Information’ is inclusive, as against being exclusive or exhaustive. ‘Notification’ of government squarely comes under ‘records’ or ‘documents’ maintained in the office of the public authority. They may also mean ‘circulars’ or ‘orders’. The definition of ‘record’ in the section 2(i) is also inclusive in nature. And it reads,

*‘2- Definition - In this Act, unless the context otherwise requires –*

*(i) "record" includes—*

*(a) any document, manuscript and file;*

*(b) any microfilm, microfiche and facsimile copy of a document;*

*(c) any reproduction of image or images embodied in such microfilm (whether enlarged or not); and*

*(d) any other material produced by a computer or any other device;’*

The Oxford Advanced Learner’s Dictionary [OUP] 7<sup>th</sup> edition, gives the meaning against the word ‘notification’ as – “noun –[U,C] – (formal) –the act of giving or receiving official information about sth [read, something]: advance/prior notification, - *written notification - You should receive (a) notification of our decision in the next week.*”

In the light of the above discussion, a notification of a public authority is essentially a public record or document, and hence, ‘information’ u/s 2(f) read with section 2(i).

The Hon’ble Supreme Court in Civil Appeal No.6454 of 2011 CBSE &Anr –v- Aditya Bandopadhyay &ors has been pleased to hold, ‘At this

*junction, it is necessary to clear some misconceptions about the RTI Act. The RTI Act provides access to all information that is available and existing. This is clear from a combined reading of section 3 and the definitions of 'information' and 'right to information' under clauses (f) and (j) of section 2 of the Act.'* Here sir, I am asking for information that is already available and existing. The SPIO cannot deny something that is already available and existing on the concocted ground that the 'notification' does not come under the definition of 'information'.

I am prompted to refer to the observation of the Hon'ble Calcutta High Court in WPO 60 of 2011 in Amal Chandra Das -v- State of WB and others along with a bunch of other petitions, *'If history and realities of life provide any guide it would be axiomatic to say that human ingenuity has no limits in finding out the ways of avoiding and circumventing the provisions of law much more in cases where confidence of the people at large rests upon the government.'*

The denial of information in the RTI reply is a one-liner. It is difficult to believe that the reply has come from the SPIO, a deputy secretary, of a secretariat department, the highest policy making body of a government in the matter of OBC Welfare. No speaking order to substantiate that my requisition did not fit into the definition of 'information'! It is a settled position of law that an order passed by an executive, or a quasi-judicial authority or judiciary must be reasoned and speaking.

The Hon'ble Supreme Court in Jt. Commissioner of Income Tax, Surat vs Saheli Leasing & Industries Ltd civil appeal no.4278 of 2010 has kindly observed on 07/05/2010, *'No doubt, it is true that brevity is an art but brevity without clarity likely to enter into the realm of absurdity, which is impermissible.'* In the light of the above discussion, the order of the SPIO in denying the information is perverse, arbitrary and *mala fide*.

Thus I make the appeal to your goodself to kindly take necessary steps to make the requisitioned public document/information available to me.

**3.2 Request no 2-** Copies of file notes on the point no 1 above.

Reply no 2- Same as Query sl no 1.

Rebuttal no 2- At the risk of repetition, the file notes are essentially record, document. The beginning of the definition of section 2(f) is 'any

*material in any form*'. The file notes are material and in the form of file pages. So, they are very much 'information' in terms of section 2(f) read with section 2(i).

The rest of the arguments would be the same as above.

**3.3 Request no 3** - Definition of 'Class' or 'Classes' in the term 'Other Backward Classes' and the reference made to.

Reply no 3 – Same as query sl no 1 and sl no 2.

Rebuttal no 3. A citizen has the right to access these terms as defined or meant by the public authority in discharging their duties. The preamble to the RTI Act asserts '*WHEREAS democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments are their instrumentalities accountable to the governed*'.

If the public authority keeps the 'meaning' under wraps, transparency becomes the first casualty. It is absolutely difficult for a citizen to hold the government to account. This is beyond the jurisdiction of the public authority to work whimsically, and defy the requirement of RTI Act. The word 'classes' forms a part of the nomenclature of the Department. And as a citizen I must know the meaning of the said 'classes'. It also comes under suo motu disclosure u/s 4(1)(b)(i).

**3.4 Request no 4** - The parameters of determining OBC-A and those of OBC-B and the conditions to be satisfied for the respective categories.

Reply no 4 – This is a sub-judice matter. Therefore exempted from disclosure under section 8(b) of RTI Act, 2005

Rebuttal no 4 – Perhaps, the SPIO meant section 8(1)(b) and not 8(b). And if so, at last, and at least, the SPIO has been generous enough not to term this point of request as not having come under the 'Definition' of 'information'.

The section 8(1)(b) is reproduced as under:-

"8. Exemption from disclosure of information.—(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,—

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*(b) information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;”*

With respect, the RTI reply does not specify ‘expressly forbidden’ by court or tribunal or the disclosure may constitute contempt of court, as is specified in the clause 8(1)(b). The Parliament in its wisdom has attached so many conditions, spent so many words so as not to allow the SPIO to make a summary rejection of a request which is merely ‘sub-judice’. To speak plainly, the law does not use the word ‘sub-judice’ to exempt disclosure. An SPIO is not entitled to add a new provision to the law passed by the Parliament. This is an affront to law.

In W.P.(C) 14120/2009, Municipal Corporation of Delhi -v- Shri R.K. Jain, dated 23/09/2010, at para-6 of the text of the order, the Hon’ble Delhi High Court has interpreted section 8(1)(b), saying, *‘The disclosure of the information sought could not have been withheld only on the ground that the matter was sub judice before this Court.’* So saying, the Hon’ble High Court has upheld the penalty imposed – to be recovered from salary - on the SPIO by the Hon’ble CIC. It can be searched at <https://dhcappl.nic.in/dhcorderportal>. [followed by Case wise > case type W.P. (C), Case number 14120, year 2009, then date 23/09/2010, as given]

This policy affects a wide section of the society. So, information on all relevant facts [yes, I repeat, all relevant facts] formulating this policy and reasons ought to have been published proactively in terms of section 4(1)(c) and 4(1)(d). So, the ground cited to reject my query, made against fees, as not coming under ‘information’ is nothing but an abuse of authority.

**3.5 Request no 5-** ‘Copies of representation, if any, survey report, or any other report, data, record, file notes etc. that examined the fulfilment of parameters/conditions of OBC-A in respect of ‘Muslim Barujibi/Barui’ ‘Muslim Biswas’, ‘Muslim Haldar’, ‘Muslim Mandal’, ‘Naiya (Muslims) and ‘Sekh/Seikh’. Please also supply the copies of notifications to the effect these Classes were categorised as OBC-A.’

Reply no 5 – ‘This does not come under the ‘Definition’ of ‘Information’ under section 2(f) of the RTI Act, 2005.

Rebuttal no 5 – In addition to what is given in the above rebuttal 1 to 4, I would again like to reproduce a portion of definition of section 2(f).

*'Information' means any material in any form, including records, documents, memos, e-rnails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force; [emphasis supplied].*

The word 'report' finds mention in the inclusive definition of 'information'. So, the copy of survey report cannot be held as outside the purview of 'Information'. Similarly, the copy of 'representation', 'any other report', 'data', 'record' all come under the definition of 'information u/s 2(f) read with section 2(i), as all being the record, or document maintained by your Dept. as well as in the light of the judgment of the Hon'ble Supreme Court in Civil Appeal No.6454 of 2011 CBSE & Anr –v- Aditya Bandopadhyay & ors [supra].

In short, the SPIO cannot deny the right of a citizen so contemptuously and so arbitrarily!

**3.6 Request no 6** - Copies of representation, if any, survey report or any other report, data, record file notes etc. that examined the fulfilment of parameters, conditions etc. of OBC-B, and found the shortcomings in fulfilling the parameters/conditions of OBC-A in respect of 'Barujibi', 'Scheduled Castes converts to Christianity and their progeny', 'Napit', 'Khan(Muslim)', 'Sarkar (Muslim)', 'Kazi/Kaji/Quazi/Quaji (Muslim)' and 'Chowdhury/Chowdhuri (Muslim)'. Please also supply the copies of notifications to the effect that these Classes were categorised as OBC-B.

Reply no 6 – Same as Query sl no 5.

Rebuttal no 6 – Same as Rebuttal no 5

**3.7 Request no 7**-Please supply the copy of notification by which 'Napit' was incorporated as Backward Class for the first time - in a single list at that point of time -and the documents to reflect the process of categorizing it as 'OBC-B'.

Reply no 7 – The applicant is advised to specify the desired information which should be available with the respondent in any material form and accordingly submit the application with the undersigned.

Rebuttal/admission 7 – I admit I possess poor insight as to what ‘should be’ available with an SPIO. Perhaps, the SPIO of WB Backward Classes Commission too does, as while forwarding the information u/s 6(3) vide letter dated 13.3.2024 to the SPIO of your Dept, he mentioned, ‘...you are the appropriate Public Authority’.

Contrary to the piece of ‘advice’, it is also humbly stated that the desired information is very much specified to the effect, ‘the copy of notification by which ‘Napit’ was incorporated as Backward Class for the first time’. I wonder if the BCW Dept does not possess this, then which Dept of the Govt of WB does.

#### **4. Grounds of Appeal:-**

I humbly pray u/s 19(1) before your goodself to kindly-

- Take necessary steps so that the desired information is provided to me at the earliest.
- Ensure that I get the information free of charge by virtue of section 7(6) of RTI Act. [My RTI application was received in the office of the SPIO of your Dept on 29/02/2024 vide speedpost no EW342485665IN. And till date, I have not got the requisitioned information. The prescribed maximum time limits of 30 days u/s 7(1) have long elapsed.]

With regards,

Enclo:- As stated

Yours sincerely,

*Sandipan Khan*  
[Sandipan Khan]

5/2 Sastitala Lane, PO- Rishra-712248, Dist- Hooghly  
Email id- san72k@gmail.com  
4<sup>th</sup> June 2024

BCW-16012/5/2024-SECTION(BCW)-Dept. of BCW  
Government of West Bengal

Backward Classes Welfare Department

Administrative Building, DJ-4, Sector-II, Salt Lake City, Kolkata-700091

[www.anagrasarkalyan.gov.in](http://www.anagrasarkalyan.gov.in)

1/516496/2024

No. BCW-16012/5/2024/ DFA/ 776835

Dated: 20/05/2024

From: Deputy Secretary & State Public Information Officer  
Govt. of West Bengal.

To: Sandipan Khan, 5/2 Sastitala Lane,  
PO-Rishra, Dist- Hooghly, Pin- 712248.

Sub:- Complying with the decision directed by the First Appellate Authority & Special Secretary, Backward Classes Welfare Department vide Order No. BCW-16012/05/2024/DFA/767578 Dated- 03 /05/2024 in respect of the petitioner's First Appeal petition dated 22.04.24 made against the RTI applications both dated 28.02.24 and in response to the petitioners two identical RTI Applications both dated 28.02.24.

Sir,

In compliance with the order of the First Appellate Authority of this department the reply to the 7 queries as depicted in the above mentioned RTI Applications both dated 28.02.24 are as follows:-

Regarding query Sl. No. 1: This does not come under the "Definition" of "Information" under section 2(f) of the RTI Act, 2005.

Regarding query Sl. No. 2: Same as query Sl. No. 1.

Regarding query Sl. No. 3: Same as query Sl. No. 1 and Sl. No. 2.

Regarding query Sl. No. 4: This is a sub-judice matter. Therefore exempted from disclosure under section 8(b) of the RTI Act, 2005.

Regarding query Sl. No. 5:: This does not come under the "Definition" of "Information" under section 2(f) of the RTI Act, 2005.

Regarding query Sl. No. 6 : : Same as query Sl. No. 5.

Regarding query Sl. No. 7:: The applicant is advised to specify the desired information which should be available with the respondent in any material form and accordingly submit the application to the undersigned.

Yours faithfully,



State Public Information Officer

1/527285/2024

**BCW-16012/5/2024-SECTION(BCW)-Dept. of BCW**  
**Government of West Bengal**  
**Backward Classes Welfare Department**  
**Administrative Building, DJ-4, Sector-II, Salt Lake City, Kolkata-700091**  
**[www.anagrasarkalyan.gov.in](http://www.anagrasarkalyan.gov.in)**

**ORDER**

**No. BCW-16012/ 5/2024/DFA/ 791699**

**Dated- 24/06/2024**

Sandipan Khan, 5/2 Sastitala Lane, Rishra-712248 has submitted a 1<sup>st</sup> Appeal dated 04.06.24 which has been received in this department on 05.06.24.

Perused the 1<sup>st</sup> appeal petition alongwith the two identical RTI applications of Sandipan Khan dated 28.02.24 addressed to the SPIO, Backward Classes Welfare Department and another one was transferred by the SPIO, West Bengal Commission for Backward Classes to the SPIO, Backward Classes Welfare Department on 13.03.24.

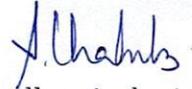
On perusal, it appears that the appellant has earlier submitted an RTI Appeal dated 22.04.24 regarding this matter and Order was issued vide this department's No. 16012/05/2024/DFA767578 dated 03.05.24 and in compliance of the order the SPIO has issued a compliance letter Vide No. BCW-16012/5/2024/DFA/776835 dated 20.05.24. But the appellant has expressed his dissatisfaction on the reply he received from the State Public Information Officer, Backward Classes Welfare Department.

In the instant case it may be seen here that the information sought under the RTI Application of the appellant concerned dated 28.02.24 are sub-judice matters therefore disclosure of such information are exempted from disclosure u/s 8(1)(b) of the RTI Act, 2005.

Therefore, The SPIO of this department is further directed to intimate the appellant concerned that the information sought under the RTI Application of the appellant concerned dated 28.02.24 are sub-judice matters therefore disclosure of such information are exempted from disclosure u/s 8(1)(b) of the RTI Act, 2005.

The appeal is disposed of accordingly.

Second Appeal will lie with the West Bengal Information Commission, Khadya Bhawan, 11A Mirza Ghalib Street, Kolkata-700087.



Appellate Authority

Backward Classes Welfare Department

**No. BCW-16012/ 5/2024/DFA/ 791699 /1(2)**

**Dated- 24 /06/2024**

Copy forwarded for information & necessary action to:-

- 1) Sandipan Khan, 5/2 Sasitala Lane, Rishra-712248.
- 2) Deputy Secretary & State Public Information Officer, Backward classes Welfare Department.  
Govt. of West Bengal.



Appellate Authority

Backward Classes Welfare Department.

To

28 February 2024

The SPIO,  
West Bengal Commission for Backward Classes  
Tantuja Bhawan (7th Floor),  
DD-18/4, Salt Lake,  
Kolkata - 700 064

Sub:- Seeking information under RTI Act 2005

Sir,

Please provide the following information to me, under the Right to Information Act 2005:-

1. Copy of notification of division of OBC into OBC-A and OBC-B in West Bengal [hereafter, implying West Bengal only].
2. Copies of file notes on the point no 1 above.
3. Definition of 'Class' or 'Classes' in the term 'Other Backward Classes' and the reference made to.
4. The parameters of determining OBC-A and those of OBC-B and the conditions to be satisfied for the respective categories.
5. Copies of representation, if any, survey report, or any other report, data, record, file notes etc. that examined the fulfilment of parameters/conditions of OBC-A in respect of 'Muslim Barujibi/Barui' 'Muslim Biswas', 'Muslim Haldar', 'Muslim Mandal', 'Naiya (Muslims)' and 'Sekh/Seikh'. Please also supply the copies of notifications to the effect these Classes were categorised as OBC-A.
6. Copies of representation, if any, survey report or any other report, data, record file notes etc. that examined the fulfilment of parameters, conditions etc. of OBC-B, and found the shortcomings in fulfilling the parameters/conditions of OBC-A in respect of 'Barujibi', 'Scheduled Castes converts to Christianity and their progeny', 'Napit', 'Khan(Muslim)', 'Sarkar (Muslim)', 'Kazi/Kaji/Quazi/Quaji (Muslim)' and 'Chowdhury/Chowdhuri (Muslim)'. Please also supply the copies of notifications to the effect that these Classes were categorised as OBC-B.

7. Please supply the copy of notification by which 'Nalit' was incorporated as Backward Class for the first time - in a single list at that point of time - and the documents to reflect the process of categorizing it as 'OBC-B'.

Yours sincerely,

*Sandipan Khan*  
[Sandipan Khan] 28/2/2024  
5/2 Sastitala Lane, PO-Rishra-712248, Dist-Hooghly



PS- The requisite information may be sent  
to my email id - [san72k@gmail.com](mailto:san72k@gmail.com)  
Sandipan Khan

I/495664/2024

**WEST BENGAL COMMISSION FOR BACKWARD CLASSES**

Tantuja Bhawan, 7<sup>th</sup> floor, 18/4, "DD" Block, Sector-1, Salt Lake City, Kolkata-700064

No. WBCBC-16099/1/2022-SEC-WBCBC/ DFA/746396

Date: 13.03.2024

From: Amal Sarkar, WBSS  
State Public Information Officer  
West Bengal Commission for Backward Classes

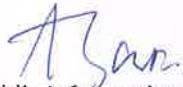
To: The SPIO, Backward Classes Welfare Department.

**Sub: Transfer of all the (7) Seven queries of the RTI application dated 28.02.2024 of Sandipan Khan.**

Sir,

I am to transfer all the Seven (7) queries of the RTI application dated 28.02.2024 **U/S 6 (3) of the RTI Act, 2005** to your end and to request you to meet the queries as depicted in the RTI application directly to the Petitioner within the stipulated time frame as envisage in the RTI Act, 2005 as you are the appropriate Public Authority in this regard.

Yours faithfully,

  
State Public Information Officer

No. WBCBC-16099/1/2022-SEC-WBCBC/ DFA/746396

Date: 13.03.2024

Copy forwarded for information to:

1. Sandipan Khan, 5/2 Sastitala Lane, PO- Rishra, Dist.- Hooghly, Pin- 712248

  
State Public Information Officer