

केन्द्रीय सूचना आयोग
Central Information Commission
बाबा गंगनाथ मार्ग, मुनिरका
Baba Gangnath Marg, Munirka
नई दिल्ली, New Delhi – 110067

द्वितीय अपील संख्या / Second Appeal No. CIC/WECRL/A/2018/173314

In the matter of:

Akhilesh Bhargav

... अपीलकर्ता/Appellant

VERSUS

बनाम

CPIO,
Sr. Divisional Personnel Officer,
West Central Railway,
Bhopal, Madhya Pradesh

...प्रतिवादीगण /Respondent

Relevant dates emerging from the appeal:

RTI : 15.05.2018	FA : 14.07.2018	SA : 20.12.2018
CPIO : 20.06.2018	FAO : 28.08.2018	Hearing : 11.11.2020

The following were present:

Appellant: Shri Akhilesh Bhargav, heard through video conferencing.

Respondent: Shri R.K.Prashar, Sr. DCM, West Central Railway, Bhopal, Madhya Pradesh, heard through video conferencing.

ORDER

Information Sought:

The appellant filed an RTI application on 15.05.2018, seeking information as under:

“दिनांक 01.04.2013 से दिनांक 30.04.2018 तक की अवधि में श्री सिंगाजी ताप विद्युत परियोजना ग्राम दोंगलिया, (बीड) जिला खण्डवा में कोयले के रैक निर्धारित समयावधि में खाली नहीं होने के कारण भोपाल मंडल के द्वारा लगायी गयी पेनल्टी से सम्बंधित सभी दस्तावेजों की सत्यापित छायाप्रतियां एवं श्री सिंगाजी ताप विद्युत परियोजना के द्वारा जमा की गई पेनल्टी की राशी से सम्बंधित सभी दस्तावेजों की सत्यापित छायाप्रतियां।”

The CPIO, vide letter dated 20.06.2018, denied information under section 8(1)(d) of the RTI Act, 2005. Being dissatisfied, the appellant filed **first appeal** dated 14.07.2018. FAA, vide order dated 28.08.2018, upheld the CPIO's reply.

Grounds for Second Appeal:

The appellant filed second appeal u/s 19 of the RTI Act on the ground of unsatisfactory reply furnished by the respondent. He requested the Commission to direct the CPIO to provide the information sought for and also take necessary action.

Submissions made by Appellant and Respondent during Hearing:

The appellant submitted that due information has been malafidely denied by the respondent by wrongly invoking Section 8(1)(d) of the RTI Act. He further submitted that the information sought for does not fall within the purview of 'third party information' and requested the Commission to direct the CPIO to provide the information sought for.

The respondent submitted that since the information sought for pertains to Shri Singaji Thermal Power Project, the party concerned was asked to provide their assent to furnish the requisite information. However, the same was denied by the concerned organization. Hence, the appellant was informed accordingly. On being queried regarding invoking Section 8(1)(d), the respondent submitted that Shri Singaji Thermal Power in its denial letter stated that the desired information shall be denied under Section 8(1)(d). He further submitted that the appellant has also not specified the details of the penalty regarding which the information is sought for. In its reply, the appellant stated that the information sought is regarding the damages imposed on Shri Singaji Thermal Power by Bhopal division. The appellant was further queried regarding the larger public interest involved therein to which the appellant raised the allegation of corruption and stated that the damages imposed have not been collected from the concerned contractor.

The written submissions dated 06.11.2020, filed by the respondent, were taken on record.

Decision:

The Commission, after hearing the submissions of both the parties and perusing the records, refers to Section 8(1)(d) of the RTI Act and notes that the said provision exempts information which includes commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party. CPIO, in its reply dated 20.06.2018, denied information under section 8(1)(d). However, no cogent justification could be offered from the respondent on being queried regarding the commercial confidence involved in disclosure of the penalties imposed on an entity by the government authority and the amount of penalty deposited by the said entity with a public authority. The only plea afforded by the respondent for denial of information is that the same pertains to a third party. It is very much apparent from the facts of the case that the respondent has, without application of mind, invoked Section 8(1)(d) as neither the respondent could establish the commercial confidence involved nor could the respondent identify the correct provision for denying third party information. *The Commission is severely vexed by the obliviousness of the respondent regarding the provisions of RTI Act.*

With regards to non disclosure of information under Section 8(1)(d) of the RTI Act, 2005, the Commission refers to the decision dated 24.11.2014 passed by the Hon'ble High Court of Delhi in the matter of ***Naresh Trehan vs. Rakesh Kumar Gupta*** (W.P(C) 85/2010) wherein it was held as under:

14. *"....Such information would clearly disclose the pricing policy of the assessee and public disclosure of this information may clearly jeopardise the bargaining power available to the assessee since the data as to costs would be available to all agencies dealing with the assessee. It is, thus, essential*

that information relating to business affairs, which is considered to be confidential by an assessee must remain so, unless it is necessary in larger public interest to disclose the same. If the nature of information is such that disclosure of which may have the propensity of harming one's competitive interests, it would not be necessary to specifically show as to how disclosure of such information would, in fact, harm the competitive interest of a third party. In order to test the applicability of Section 8(1)(d) of the Act it is necessary to first and foremost determine the nature of information and if the nature of information is confidential information relating to the affairs of a private entity that is not obliged to be placed in public domain, then it is necessary to consider whether its disclosure can possibly have an adverse effect on third parties.”

Further, the Hon'ble High Court Of Bombay in **Writ Petition Nos. 2912 and 3137 of 2011**, decided on 01.07.2011 held that:

“12.The RTI Act is an Act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority. The preamble of the RTI Act itself refers to this aspect and the constitutional principles enshrined in several articles of the Constitution. It is very clearly postulated that democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold the Governments and their instrumentalities accountable to the governed. The revelation of information in actual practice is likely to conflict with other public interests including efficient operations of the Governments,

optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information. Therefore, the RTI Act seeks to harmonize these conflicting interests while preserving the paramount nature of democratic ideals.

*14. On the own showing of the Petitioner, Clause (d) provides that the information can be disclosed if the competent authority is satisfied that larger public interest warrants such disclosure. Therefore, that clause as admitted by Mr. Manohar is not absolute. **It does not say that the information including commercial confidence, trade secrets or intellectual property, the disclosure of which, would harm the competitive position of a third party; cannot be demanded or if demanded, cannot be disclosed even if larger public interest warrants the same.***”

In view of the above noted judgements, the Commission observes that deposition of penalty by any entity with a public authority would entail involvement of public funds and every citizen has a right to know that. The Commission, therefore, directs the respondent to furnish due information to the appellant within a period of 15 days from the date of receipt of a copy of this order under intimation the Commission.

The Commission also instructs the Respondent Public Authority to convene periodic conferences/seminars to sensitize, familiarize and educate the concerned officials about the relevant provisions of the RTI Act, 2005 for effective discharge of its duties and responsibilities.

With the above observations, the appeal is disposed of.

Copy of the decision be provided free of cost to the parties.

The appeal, hereby, stands disposed of.

Amita Pandove (अमिता पांडव)
Information Commissioner (सूचना आयुक्त)
दिनांक / Date: 11.11.2020

Authenticated true copy
(अभिप्रमाणितसत्यापितप्रति)

B. S. Kasana (बी. एस. कसाना)
Dy. Registrar (उप-पंजीयक)
011-26105027

Addresses of the parties:

1. The First Appellate Authority (FAA),
West Central Railway,
Office of the Divisional
Railway Manager (P),
Bhopal Division, Bhopal,
Madhya Pradesh-462024
2. The Central Public Information Officer (CPIO)
Sr. Divisional Personnel Officer,
West Central Railway,
Office of the Divisional
Railway Manager (P), Bhopal Division,
Bhopal, Madhya Pradesh-462024
3. Shri Akhilesh Bhargav