



## STATE INFORMATION COMMISSION, KERALA

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**C.P. No. 149, 150 & 151(3)-2019-SIC**

**(File No.4045, 4050 & 4055-SIC-G1-2019)**

***Present***

***Sri. S. Somanathan Pillai, State Information Commissioner***

Sri. K. Padmakumar,  
11 F, Samrudhi Thampurans,  
Thampuramukku,  
Near General Hospital,  
Thiruvananthapuram – 695 035.

Complaint Petitioner

**Vs**

The State Public Information Officer &  
Malabar Cements Limited,  
Walayar, Palakkad – 678 624.

Respondent

### **ORDER**

Date of application u-s 6(1)	22.01.2019, 17.01.2019
Date of reply from the SPIO	20.02.2019, 16.02.2019
Date of filing Complaint	12.03.2019
Date of receipt of Complaint Petition in the Commission	13.03.2019
Hearing Date	02.04.2019, 27.04.2019
Venue	State Information Commission, Thiruvananthapuram
Present	1. Sri. M. Muralidharan General Manager 2. Sri. T. Matty Joseph Deputy General Manager

As the Complainant and Respondent in these three complaint petitions are the same and subject matter also similar, these three complaints are taken together for consideration.

2) The issue to be decided in these three complaint petitions are whether the information sought by the complainant - applicant, which were denied by the respondent on the ground of clause (d) and (j) of sub-section (1) of Section 8 of the RTI Act, 2005 deserve to be treated as such; and whether there exist any peculiar situation or a larger public interest to disclose these information even if such information falls under Sec.8(1) (d) and(j).

3) No doubt, the information asked by the complainant – applicant, through the request made by him under Sec.6(1) of the RTI Act vide his applications dated 17.01.2019 and 23.01.2019, relates closely to the commercial activity of the public authority by name M/s. Malabar Cements Ltd. (MCL for short) and domestic enquiry conducted by that public authority against some of its employees as part of its move against corruption. Those information includes interalia the following – copy of a Government order directing MCL to take departmental action against an employee; copy of Domestic Enquiry Report, witness list and files regarding charges leveled against certain employees; copy of Note Files and Correspondence Files relating to the purchase of Limestone, Block bottom bag, imported coal; copy of estimates with technical details of 2 clinker - Limestone sheds that collapsed during 2017; stock of limestone and clinker ; production of limestone, clinker and cement, Month-wise, District-wise sale of cement, its selling price and freight reimbursement; Fixed and Variable costs per 50Kg. of cement and value of its production; Net profit of MCL; Copy of Internal Audit Report; Copy of Audited Financial Statements; Copy of Physical Verification Report of bulk materials; Copy of Marketing Policy approved by the Board of Directors of MCL in 2017 and Market Development Committee meeting; and copy of Audit query from CAG and its reply from MCL.

4) For information sought by the complaint - applicant about the details of domestic enquiry against the employees of MCL, the SPIO has relied on the protection of Sec.8(1)(j) of the RTI Act on the ground that they were personal information, the disclosure of which would harm the reputation of the employees concerned. As regards to the information sought about the purchase of Raw materials, transportation, production, sale of cement, stock, Marketing policy etc. they were denied on the ground of Sec.8(1) (d) citing risk to their competitive advantage. He has flagged an order of this Commission itself in an identical appeal to substantiate his stand.

5) I have heard these complaint petitions twice, the first one was on 02.04.2019 through Video Conference which was attended by the SPIO and the Appellate Authority. The complainant was not present for that hearing. As I felt that a perusal of the records, which the complainant was asking, was highly essential for arriving at a decision as to whether the objection raised by the SPIO would stand the test of public interest and whether Sec 8(1) (d) and (j) can block the disclosure of information to the complainant - applicant of this complaint petition, as he is none other than the previous Managing Director, who had hassle free access to any information, how so ever classified those were, till the recent past, these complaint petitions were again heard on 27.04.2019 when the SPIO and FAA and also the complainant were present.

6) Heard both sides and perused the files containing the documents asked by the complainant, which were directed to be produced for the perusal of the Commission.

7) Let me first test the strength of Sec.8(1) (j) to assess its efficacy to block the disclosure of information treated by the SPIO as personal

information falling within the meaning of Sec.8(1)(j). Those are the information relating to domestic enquiry conducted by MCL against some of its employees Viz. M/s. Shaji T. Balan, Soorya Narayanan, Matty Joseph, Ananda Narayanan and Sulaiman. Except that of Mr. Matty Joseph and Mr. Ananda Narayanan, the domestic enquiry against the others were initiated and chargesheeted by this complainant while he functioned as the Managing Director of MCL. He had already accessed all the documents which the SPIO now hold that allowing access to those documents would cause unwarranted invasion into the privacy of the individuals concerned.

8) M/s. MCL is a public sector company under the Department of Industries in the Government of Kerala. Government of Kerala had invested huge funds in the company. It is fully owned by Government. So the public has tremendous interest into the affairs of the company. So-many undesirable incidents happened in the company in the recent past which aroused concern in the minds of people. So they have a right to know how the affairs of their company was being dealt with by the management. The domestic enquiries, about which the information was sought by the complainant - applicant, were instituted on charges of corruption done by its employees, due to which the reputation of the company is being deteriorated to its lowest abb. In such a situation, protection of privacy of employees charged with corruption must have the least priority in the face of larger public interest. Here in the present situation the defense built upon the foundation of Sec.8(1)(j) has already been shattered compelling throwing open of the window of secrecy and privacy to the public.

9) Let me now examine the defense built on Sec.(1)(d) of the RTI Act to deny disclosure of information to the requestor. Section 8(1) (d) reads as follows:-

Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen, -

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(d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a **third party**, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information.

10) It is pertinent to note that disclosure of information which would harm the competitive position of a third party is protected in this Sub section – not that of the public authority whose information is requested. By using the term ‘third party’ in this sub section the legislative intent is made clear that the concern of the law makers was the competitive position of third party other than the public authority who is always the second party, the first party being the requestor of information. Here in the present case the applicant’s request was for information relating to that of MCL who is the second party or a directly affected public authority. Hence the immunity provided to the commercial confidence of a third party in this sub section will not be available to MCL.

11) Even if the argument of the SPIO is accepted, without admitting, that the protection of Sec. 8(1)(d) is available to MCL against disclosure of information relating to the commercial activity, the peculiar situation existing in this case drain out the force exerted by the said section, held in defence. The peculiar situation mentioned above is that the requestor for such information is none other than the previous Managing Director of MCL. The commercial confidence which the SPIO intends to keep protected from the applicant was no longer commercial confidence as far as this requestor is concerned. He had seen, accessed and instrumental in formulating all such

information including marketing policy, tender document etc. which were now being sought by him. It is not that I am propagating the theory 'Show me the man I will show you the Rule', I am simply following a great dictum propounded by the seven Judge Constitution Bench of the Hon'ble Supreme Court in S. P. Gupta Vs. Union of India (1981 Supp SCC 87) where in it was held that, 'in deciding whether or not to disclose the contents of a particular document, a judge must balance the competing interests and make his final decision depending upon the particular facts involved in each individual case'. This is the answer to the SPIO's defence raised supra holding an order of this Commission in an identical appeal early.

12) Public has a right to know about the functioning and working of public authorities including lapses in regulatory compliance crept in with the ulterior interest of undue enrichment of private individuals at the expense of public good, which may be inferred from correspondences made by the public authority. Merely because disclosure of such information may adversely affect commercial confidence or competitive edge of a third party or even of that public authority itself, cannot be a reason for non-disclosure of information. The best check on arbitrariness, mistake and corruption is transparency. Sunlight is the best disinfectant. Glasnost is the best cheek to corruption. There needs transparency in the dealings of all public authority, where public is the stake holder and he has an interest in it. In view of the same, I am of the considered opinion that even if the information sought by the applicant is exempt under Sec.8(1) (d) or (j) of the RTI Act as claimed by the respondent, Sec 8(2) of the RTI Act would mandate disclosure of the information sought, and I order accordingly.

13) This order to be implemented within a period not latter than 15 days from the date of receipt of a copy of this order.

14) Dated this, the 27<sup>th</sup> day of April, 2019.

Sd/-  
**S. Somanathan Pillai**  
**State Information Commissioner**

Authenticated Copy

Joint Secretary

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