

CENTRAL INFORMATION COMMISSION

(Room No.313, CIC Bhawan, Baba Gangnath Marg, Munirka, New Delhi-110067)

Before Prof. M. Sridhar Acharyulu (Madabhushi Sridhar), CIC

CIC/DOSIR/A/2017/159663

Astitva v. PIO, M/o Science & Technology

Order Sheet: RTI filed on 09.05.2017, CPIO replied on 06.06.2017, FAO on 13.07.2017, Second appeal filed on 24.08.2017, Hearing on 22.12.2017;

Proceedings on 22.12.2017: Appellant present, Public Authority represented by CPIO. Mr Vimal Kumar Varun, Mr. S.K. Deshpande, Mr. B.N. Sarkar

Date of Decisison-12.01.2018: Disposed of; penalty on Mr. Vimal Varun dropped, show-cause and compensation notice issued

ORDER

FACTS:

1. The appellant sought information relating to DSIR's approval of Rs. 15 crore on equity and loan (50-50) basis for setting up of 25 MW new solar module production facilities to Central Electronics Limited (CEL) in August, 2013. Specifically he sought for: 1) copy of sanction letter issued by DSIR for setting 25 MW new solar module production facilities to CEL; 2) copy of funds utilization certificate produced by CEL; 3) copy of completion certificate given by CEL for the said project; 4) copy of CAG letter regarding diversion of DSIR funds sanctioned for the said project; 5) copy of note sheet and correspondence with CEL regarding diversion of funds as stated by CAG and 6) action taken by DSIR regarding diversion of funds by CEL. CPIO denied information under section 8 (1) (d) of the RTI Act 2005. First Appellant Authority directed the CPIO to provide information to the appellant on point nos. 1, 2 & 3 and upheld the decision of CPIO on point nos. 4, 5 & 6. In compliance of FAA order CPIO provide enclosures to the appellant on point nos. 1, 2 & 3. Being dissatisfied, the appellant approached this Commission.

Contentions:

2. The representative of the appellant in his written submission stated that:

"This appeal arose out of the order dated 13th July, 2017 passed by the appellate authority wherein the appellate authority has upheld the order of the CPIO to the

extent of question No. 4, 5 and 6 which was on the basis of the CAG report and consequently letter if any of CAG regarding diversion of DSIR funds sanctioned for the project i.e. 25 MW new solar module production facilities and copy of correspondent of DSIR with CEL regarding diversion of funds as per CAG as ideally, correspondence of CAG after finding misappropriation of funds by CEL must be with the department and subsequent communication of department i.e DSIR with CEL regarding diversion of funds and action if any must have been taken by the department.

3. The Commission's order dated 22.11.2017:

3. The information sought pertains to cash transaction between DSIR and CEL with regard to equity and loan. On 09.05.2017, Shri B.N. Sarkar, Sc-F and In-charge CEL & NDRC forwarded an office memorandum vide no. DSIR/CEL/15(38)/2016-17 to Shri Vimal Kumar Varun, CPIO and the same was annexed and sent to the appellant denying the information under section 8(1)(d) of RTI Act, which, appellant claimed to be incorrect and illegal.

4. A simple reading of RTI request reveals that he did not ask for any information that could be of commercial confidence or protected as the IPR to be denied under Section 8(1)(d) which says: Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,—(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;

The CPIO of the respondent authority did not categorically explained in his order on RTI request of the appellant, whether is there any third party involved in the capacity of competitive position; what is the commercial confidence claimed to have been protected; and what trade secret has been supposed to be protected under section 8(1)(d) of RTI Act. The first appellate authority ordered to disclose information on point no. 1, 2 and 3 of RTI request, but and left out the substantive part of the RTI request without any consideration. It is ridiculous on the part of the respondent authority to deny the copy of CAG report objecting diversion of funds; the note sheet/correspondence with CEL and action taken on that objection on diversion of funds under the IPR clause. Those copies neither fall under the category of trade secret nor commercial confidence nor IPR. Hence, the Commission directs the respondent authority to provide point-wise information through certified copies along with the CAG report, within 21 days from the date of receipt of this Order. The Commission also directs the CPIO to **show-cause** why penalty should not be imposed against him for such illegal rejection, before 21.12.2017. The instant matter is posted on 22.12.2017 for compliance and penalty proceedings.

Decision:

4. The RTI was filed on 09.05.2017. The CPIO Mr. Vimal Kumar Varun forwarded the RTI application to Mr. B.N. Sarkar, Scientist-G and In-charge CEL & NRDC on 11.05.2017, seeking assistance under section 5 (4) of RTI Act. Mr. B.N. Sarkar, was the holder of information in the instant case, hence, the deemed CPIO. In his first response to the RTI on 05.06.2017, Mr. Sarkar denied the information sought invoking section 8 (1) (d) of RTI Act. He stated that copy

of CAG letter regarding diversion of DSIR funds sanctioned was not available. The First Appellate Authority directed the CPIO to provide the copy of sanction order, utilisation certificate and completion certificate to the appellant.

5. It is highly relevant to refer to the extracts of Audit report attached by the appellant to second appeal. The Audit observed that the Company was not paying the instalments of loan on time due to which the company would have incurred penal interest for the delay of instalment. The Company had paid instalment of principal amount which was due on 30.09.2015 with delay of four months on which approx Rs. One lakh penal interest was incurred. The Audit also estimated huge loss, hence, suggested the company to take up the matter with DSIR for lowering down the interest rates.

6. The sanction order dated 26.09.2013, copy of fund utilisation certificate produced by the CEL, copy of completion report for the I & M project entitled "Development and Up-Gradation of PV Module Manufacturing Facility" was provided to the appellant on 29.08.2017. The fact that the project had undergone delay than the estimated deadline, the Public Authority should have given the report explaining the status of the project. The sanction order and fund utilisation certificate should have been disclosed considering the fact that it did not have any content that could affect the trade or commercial factor of their project, hence, section 8 (1) (d) may not be attracted.

7. In view of the above, the Commission directs Mr. B.N. Sarkar, the deemed CPIO and holder of the information, to **show-cause** why maximum penalty should not be imposed against him for not giving information. The Commission also directs the public authority to explain why it should not be ordered to pay compensation to the appellant.

8. The Commission directs the concerned authorities of the respondent department to prepare a detailed answer to each of the adverse observations by the Audit referred above, in addition to the points raised by the appellant and furnish the same to the appellant. It is the duty of Mr B N Sarkar to provide information about reasons for delay and expected date of completion, whether there is any expenditure beyond the sanctioned budget, if so, what is the status of the expenditure, whether any officer/body monitoring or evaluating the project, if so, the details of the same, within 15 days. The Commission would

like to remind the deemed CPIO Mr. B.N. Sarkar that non-implementation of the directions in this order will attract fresh proceedings under section 20 of RTI Act

9. The explanation to the show-cause notice and compliance report on the directions shall reach the Commission before 13.02.2018 and the case is posted for compliance on 13.02.2018.

SD/-

(M.Sridhar Acharyulu)
Central Information Commissioner

Authenticated true copy

(Dinesh Kumar)
Deputy Registrar

Copy of decision given to the parties free of cost.

Addresses of the parties:

1. The CPIO under RTI,
M/o Science and Technology,
Dept of Scientific & Industrial
Research, 14 B Admn Block,
Technology Bhawan, New Mehrauli
Road, New Delhi-110016.

2. Shri Astitva,