

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/2017/159662

Astitva v. PIO, M/o Science & Technology

Order Sheet: RTI filed on 23.05.2017, CPIO replied on 13.06.2017, FAO on 13.07.2017, Second appeal filed on 24.08.2017, Second Appeal Hearing on 28.09.2017

Proceedings on 22.11.2017: Show-cause issued for illegal rejection of information

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 Decision-12.01.2018: Disposed of; penalty on Mr. V.K. Varun dropped; show cause and compensation notice issued.

ORDER

FACTS:

1. The appellant sought information regarding Department of Scientific and Industrial Research (DSIR), Government of India who sanctioned a project Train Protection Warning System (TPWS) submitted by Central Electronics Limited (CEL) under S&T plan scheme in the year 2013. Specifically appellant asked:

- "1. Kindly state the total cost of the project sanctioned by DSIR.
2. Copy of sanction letter of the said project.
3. Copy of Utilization certificates for the said project submitted by CEL for release of funds.
4. Copy of details of payment released to CEL for the said project time to time.
5. Copy of completion certificate of the said project submitted by CEL.
6. If the project is not completed, kindly state the reasons for the delay and expected date of completion.
7. The project is completed within sanctioned budget. If not, the copy of approval for over expenditure and the amount sanctioned as over expenditure.

8. The project must have been monitored by Technical Evaluation Committee. Kindly provide the copy of any discrepancy (financial and technical) observed during evaluation of the project at various stages.”

2. CPIO denied information under section 8 (1) (j) of the RTI Act 2005. First Appellant Authority directed the CPIO to provide information to the appellant. In compliance of FAA order CPIO provided enclosures to the appellant on point nos. 2, 3, 4. Being dissatisfied, the appellant approached this Commission.

Contentions:

3. 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 ordered that the respondent was not appropriate in denying the information sought by the appellant under section 8(1)(j) of the RTI Act, 2005 and gave decision that the respondent may provide precise information to the appellant**, however, the respondent, despite the receipt of the order/direction of the appellate authority and has grossly failed to comply with the orders of the appellate authority, therefore, respondent be directed to provide the information as per the order passed by the appellate authority. What is protected under this section is personal information which has no relationship to any public activity or interest, however, perusing the appeal and RTI application, and going through the information which was sought does not seem to be personal as the same is related to the cost of the project i.e. Train Protection Warning System, utilization certificate for the said project, payments released to CEL, completion certificate, if not complete then reason for the delay, if project completed then whether completed within sanctioned budget, if not then approval for over expenditure etc. therefore perusing all this demonstrate that same seems to be of public activity and interest and therefore, information cannot be withheld".*

4. The Commission's order dated 22.11.2017:

3. The information sought clearly pertains to a project sanctioned by the Department of Scientific and Industrial Research with regard to a project called Train Protection Warning System. Eventually, on 13.06.2017, 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. The appellant alleged that the denial under section 8(1)(j) of RTI Act is incorrect, illegal and arbitrary. The project in question is official in nature and the same cannot be considered as personal or third party information.

4. The information about implementation of a project undertaken by a public authority cannot be considered as personal information. While contending that it is personal information, CPIO has a duty to explain whose personal information it was. An institution or an organization dealing with a project cannot claim privacy, because privacy is available only for individual persons. It is highly unreasonable for the CPIO to claim privacy without naming any individual, to hide vital information about progress of a project, which was undertaken with public money

for public purpose. Under no circumstances section 8(1)(j) could be invoked in this case. This reflects the intention of the CPIO to deny the information without any basis. The appellant sought information pertaining to "Train Protection Warning System, utilization certificate for the said project, payments released to CEL, completion certificate, if not complete then reason for the delay, if project completed then whether completed within sanctioned budget, if not then approval for over expenditure etc." How can this be categorised as personal information? At least the first appellate authority should have examined how this information is personal information. Though he ordered disclosure on three points, the substantive part of RTI request was left without positive response. The first appellate authority did not examine the legality of CPIO's claim. Though copies of annexure were given to the appellant, he claimed that they were not certified. Using privacy clause to deny such information is nothing but abuse of authority of CPIO. Hence, the Commission finds that the respondent authority has illegally denied the information sought, without considering that the project is a public activity and information about it cannot be rejected. The Commission directs the respondent authority to provide complete information sought by the appellant in the form of certified copies, free of cost, within 15 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:

5. The RTI was filed on 23.05.2017. Mr. Vimal Kumar Varun forwarded the RTI application to Mr. B.N. Sarkar, Scientist-G and In-charge CEL & NRDC on 25.05.2017, 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, Mr. Sarkar denied the information sought invoking section 8 (1) (j) of RTI Act claiming that it was personal information. He considered even the letter of sanction, copy of utilisation certificate and details of payment, total amount of cost involved in the project as personal information until the FAA ordered him on 13.07.2017. Mr. Sarkar provided some information in response to FAO and some more after in compliance of the order of CIC. Still, the appellant complained that the information furnished was incomplete.

6. In response to the order of CIC dated 22.11.2017, Mr B N Sarkar on December 13, 2017 gave point-wise information to the appellant along with relevant certified copies, and on December 18, he wrote to the CIC as follows:

1. The Department is providing financial support to CEL for research and development under S&T scheme for development of specific product(s) keeping in view the future market demand, which will get commercialized by CEL and generate business.

2. On directions of First Appellate Authority, Department has provided the information to the appellant.

3. The certification of documents was left unintentionally.

4. *The Department has provided the information as certified copies to the appellant as directed by the commission on 13 December, 2017.*

That the information against said RTI was denied as the same was found to be in violation of S.8(1)(d) as CEL is a company incorporated under the Companies Act 1956, is a commercial organization, which competes with other private companies for business and therefore financial sources and arrangements with CEL are retained by DSIR in commercial confidence. However, the clause 8 (1) (d) was mistakenly typed as 8(1)(j). The denial of information was neither mala-fide nor deliberated. It is requested to the commission that in view of the above, penalty may not be imposed.

7. On December 13, 2017, Mr B.N. Sarkar, the deemed CPIO gave point-wise information. But still response to point numbers 5, 6, 7 and 8 is either denial or incomplete. On point number (5) they agree that the project was yet to be completed but did not give reasons for the delay, what is the probable time of completion etc. On point (6) the reply was 'delay under consideration', what does this mean? Next point (7) is whether the project is within the sanctioned budget, is there an over expenditure and the amount sanctioned as over expenditure, if any, the response was 'not applicable'. Why it is not applicable? The CPIO should inform the appellant whether it was over expenditure or not, which was not done. To point (8) "The project must have been monitored by Technical Evaluation Committee. Kindly provide copy of any discrepancy (Financial and technical) observed during evaluation of the project at various stages" the response is "there is no such committee as TEC. Further there no discrepancy has been observed by any committee". Does it mean there is no evaluation at all? The RTI points 5 to 8 do not attract exception under commercial confidence clause of 8(1)(d) or any other clause under Sections 8 or 9 of RTI Act.

8. Mr. B.N. Sarkar, orally submitted during the hearing that the Department of Scientific and Industrial Research supported Central Electronic Limited (CEL) financially but the company had complete control over the details regarding sanctioning of Research & Development project. He explained that the project had innovative development involved in Railways project Train Protection Warning System (TPWS) and he genuinely believed that the disclosure of crucial files and documents which contain information regarding the project might hamper the competitive spirit and affect the trade secret, which is exempted under section 8 (1) (d) of RTI Act, and by mistake it was typed as Section

8(1)(j) in the reply given to the appellant. He explained that non-certification was accidental lapse for which he regretted.

9. 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.

10. From the response of Mr. Vimal Kumar Varun, CPIO, it is clear that he wrote to Mr. B.N. Sarkar asking him to give information asked by the appellant, and thereafter, Mr. Sarkar continued corresponding with the appellant including furnishing part information in response to FAO and CIC. The copies of the letters submitted by Mr. Vimal Kumar Varun shows that he was not responsible for denial of information. Hence, the penalty proceedings against Mr. Vimal Kumar Varun are dropped.

11. It is highly relevant to refer to the extracts of Audit report attached by the appellant to second appeal. That Audit report reflects the delay caused by the Management and that there is no development to the project though estimated to be completed by October 2016. Audit observed that as per Ministry of Railways, Kakodhkar Committee report issued on 17.02.2012 in connection with high level safety of railway system, the recommendations included European Train Control Systems Level-2 (ETCS-2) functionalities, however, the TPWS does not provide extra line capacity, also the European design is not going to work well under the Indian Railways condition. Audit also observed that the CEL does not have expert officials for taking up the project. Thus due to non-clear vision of the management regarding development of TPWS and disregard to the Railway Committee report findings the scarce funds of Rs. 4.50 crore of Government of India was blocked without any benefits.

12. The Audit also noted that: The project has not only witnessed a departure from its estimated deadline of 2016, the funds allotted have not been properly utilised by DSIR. The raw material purchase/hardware verification and field trail cost in 2014-15 and Rs. 1.5 crore and other contingencies had to be achieved through their in-house R & D programme without outsourcing/PPP and hiring consultants, CEL further requested DSIR to release 5 crore as grant-in-aid

during the year 2013-14 for capital equipments. There are no records to reveal the efforts taken by the Management from October 2013 till date to procure other balance equipments. Audit observed that as the capital equipments were interlinked to each other, how the management ensured for completion of the project within three years of sanction of the project without buying the same in time as of April 2016 as questionable. Audit further noticed that the major parts of the capital equipments are being used for the production of other products of the company.

13. In view of the above observations of the Audit, the RTI application assumes greater public interest because it deals with most significant matter for the passengers of Indian Railway, the world biggest Railway, since it deals with Train Protection Warning System (TPWS). We are seeing the ghastly railway accidents killing hundreds of people simply because they were travelling on Indian trains. We are still struggling to evolve Train Protection Warning Systems. When the project is being implemented, it has several defects besides lack of clear vision. The Audit made serious observations on the way this project is being implemented. It is not known whether these remarks of Audit or recommendations of Kakodhkar Committee report were being considered by the department or not. They refer to high security of Indian Railways, whether European design works for our Railways, lack of experts with CEL and above all, the non-clear vision. It also referred to blocking of Rs 4.5 Crore of public money. The department has a duty to explain each and every adverse remark of the Audit report.

14. The Public Authority has a duty to answer these remarks: a) "European design is not going to work well under the Indian Railways condition. Audit also observed that the CEL does not have expert officials for taking up the project. Thus due to non-clear vision of the management regarding development of TPWS and disregard to the Railway Committee report findings the scarce funds of Rs. 4.50 crore of Government of India was blocked without any benefits", and b) "Audit observed that as the capital equipments were interlinked to each other, how the management ensured for completion of the project within three years of sanction of the project without buying the same in time as of April 2016 as questionable. Audit further noticed that the major parts of the capital

equipments are being used for the production of other products of the company”.

15. These two paragraphs reflect the pathetic state of implementation of project and also indicate impossibility of completion of project within the deadline. The respondent authority and CPIO have ignored the vital questions of the RTI applicant. The Audit report also shows that CEL has sought Rs. 5 crore additional sanctions from the department. How can a public authority dodge over the questions on this point? The information sought about this project is supposed to be given on its own by CEL, DOSIR and the Ministry. They have not given any bit of information even after it was rightly asked under RTI Act by the appellant, until the CIC intervened and directed the disclosure. It is very sad that the public authority has ignored its own appellate authority's recommendation to give precise information.

16. 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.

17. 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,