

Central Information Commission, New Delhi
File No. CIC/SH/A/2014/000724

Right to Information Act-2005-Under Section (19)

Date of hearing : **14th June 2016**

Date of decision : **11th July 2016**

Name of the Appellant : **Shri Vivek Duggal,**
R/o: 301, Matrushalli Apartments, Behind
Plot No- 5 & 6, Haribahkti Extension, Old
Padraa Road, Distt-Vadodara- 390007

Name of the Public : **Central Public Information Officer,**
Authority/Respondent
Petroleum and Natural Gas Regulatory
Board, 1st Floor, World Trade Centre,
Babar Road, New Delhi- 110001

Name of the third party : **Gujarat State Petronet Limited,**
Through Advocate Shri Piyush Joshi,
Clarus Law Associates, 3rd Floor,

**Vijaya Bank Building, 17, Barakhamba
Road, Connaught Place, New Delhi - 11001**

This matter arises out of the interim order No. CIC/SH/A/2014/000724 dated 26.10.2015 in which a single member bench had recommended constitution of a larger bench to consider it. The Chief Information Commissioner constituted a division bench of the following Information Commissioners:-

1. Shri Sharat Sabharwal.
2. Shri M. A. Khan Yusufi.

2. The Division Bench heard the matter on 14.6.2016. The Appellant was represented by Shri Rashesh Sanjanwala, Senior Advocate, the third party M/s GSPL by Shri Piyush Joshi, Advocate and the Respondents by Shri Rajinder Kaul, Advocate.

3. The parties reiterated the submissions made by them before the single member bench. Shri Sanjanwala, Senior Advocate stated that no claim of confidentiality of information had been made by the third party before the RTI application was filed. He further submitted that the Respondents had not justified invocation of Section 8 (1) (d) of the RTI Act and even if this section were to apply, it could not be the case of the

Respondents that the entire information sought by the Appellant is covered by it. They could very well apply the severability clause under Section 10 of the RTI Act to sever such part of the information as attracts Section 8 (1) (d). He added that unless there is a claim of confidentiality, there is no question of invoking Section 8 (1) (d). With regard to sub-section (6) of Section 52 of the PNGRB Act, he stated that it applies only to the provisions of Section 52 and not to the remaining sections of the Act. He reiterated that the proceedings regarding tariff fixation are quasi-judicial proceedings and everything filed in the course of the same has to be in the public domain. In this context, he cited various provisions of the PNGRB Act as well as Section 30 (2) of the PNGRB (Conduct of Business, Receiving and Investigation of Complaints) Regulation, 2007 and stated that any person shall be entitled to obtain certified copies of orders, decisions, directions and reasons in support thereof given by the Board as well as the pleadings, papers and other parts of the records of the Board.

4. Speaking on behalf of the third party, Shri Piyush Joshi, Advocate stated that sub-section (6) of Section 52 of the PNGRB Act applies to any information that comes in the possession of the Board from the entities. He claimed applicability of Section 8 (1) (d) of the RTI Act to the information sought by the Appellant and stated that the Board has already put out a good deal of information regarding tariff fixation vide their order No.

TO/09/2013 dated 27.6.2013, which is already in the public domain. He submitted that the function of tariff fixation performed by the Board is a regulatory function and not a quasi-judicial function and even a quasi-judicial function does not ipso facto imply disclosure of the information submitted by the parties in the course of the same.

5. The Respondents reiterated invocation of Section 8 (1) (d) by them. Referring to the proviso to Section 11 (1) of the RTI Act, they stated that if information of trade secret is protected by law, the same is not to be provided, no matter at what stage confidentiality has been claimed or if confidentiality has at all been claimed. The treating of the information as confidential by the third party will not ipso facto make the information as exempted; it only entitles the said party to the notice of being heard and it also goes into the consideration by PIO while deciding the matter. The proviso to Section 11 makes it mandatory for PIO not to disclose information related to trade and commercial secrets, which are protected by law and in the instant case, the information in question is protected under Section 8 (1) (d) of the RTI Act. The Respondents have stated that sub-section (6) of Section 52 of the PNGRB Act does not pertain to any specific Section or provision of the Act. Section 52 and its sub-sections are in conjuncture with the entire Act. That sub-section (6) of Section 52 applies to all provisions of the Act becomes vivid by the expression “any information and record received by it from entities” mentioned in the such

Section. Determination of tariff is a regulatory function and even in a quasi-judicial proceeding before the Board, the information received by the Board, exempted from disclosure under Section 8 of the RTI Act, does not have to be provided merely because of the quasi-judicial nature of the proceedings.

Discussion and Decision

6. The submissions made by the parties have been considered carefully. The submission of the Appellant, that Section 11 can be invoked only in cases where a third party has claimed confidentiality in respect of the information at the initial stage itself, before the filing of the RTI application, is not upheld. In this context, the following observations made by the Gujarat High Court in judgment dated 16.8.2007 in Reliance Industries Ltd. vs. Gujarat State Information Commission, are as under:-

“It is contended by learned Counsel for original applicant as well as by Gujarat State Information Commission that third party cannot treat the information as confidential subsequently. The words used...‘has been treated as confidential by that third party’ do not give right to the third party to treat the information as confidential, subsequent in point of time. This contention is also not accepted by this Court, looking to the provision of [Section 11\(1\)](#) of the Act, 2005, the words, the information ‘relating to or is supplied by the third party’ are such that it is for the third party to point out to the Public Information Officer that the information sought for, to be disclosed / supplied is

treated as confidential or not. It may happen that when public body collects the information relating to or given by third party, it might not have been treated as confidential but, third party can make a submission that now it is treating the said information as confidential. More so, when information is 'relating to third party' it may not be even known to that third party when and what information relating to third party, was collected by public body. Therefore, [Section 11\(1\)](#) of the Act, 2005, gives mandate to Public Information Officer to give written notice to third party if he intends to disclose information relating to third party. Therefore, looking to nature of information to be disclosed, third party can make written or oral submission whether the information is confidential or not and whether the information should be disclosed or not, Afflux or passage of time, sometime allows that third party to treat the information as confidential.”

7. Further, sub-section (6) of Section 52 of the PNGRB Act is part and parcel of the PNGRB Act. It speaks of confidentiality in respect of “any information and record received by” the Board from the entities and does not restrict it to the information received in terms of the various sub-sections of Section 52. Therefore, Section 22 of the PNGRB Act, which begins with the words “Subject to the provisions of this Act” has to yield to the provisions of Section 52, including its sub-section (6). The entitlement of any person to obtain copies of orders and related documents under sub-section (2) of Section 30 of the PNGRB (Conduct of Business, Receiving and Investigation of Complaints) Regulation,

2007, cited by the Appellant, is also not absolute and is subject to the terms which the Board may direct from time to time under sub-section (1) of Section 30.

8. As submitted by the third party (paragraph 9 of the interim order dated 26.10.2015), the extent of information required to be submitted to PNGRB for tariff determination covers every aspect of laying of a pipeline, including capital cost and elements that constitute the capital cost such as: (a) summary of project capital cost, (b) cost of receiving terminal, (c) capital cost of compressors, (d) capital cost of intermediate terminal, (e) cost of delivery material, (f) capital cost of pipelines, (g) cash flow statement and (h) balance-sheet etc. The information is commercially sensitive as it provides a clear insight into the development of a pipeline and the financial plans for the same. All new pipelines are now authorised based on a competitive bidding process that is open to all persons and companies, the majority of which may not have had prior experience in development, laying, operation and maintenance of natural gas pipelines. This also makes the information of entities that have developed pre-existing pipelines, commercially sensitive, as disclosure of the information as to how and at what cost existing pipelines were developed, would give commercial advantage to other bidders and negate the advantage obtained through experience by the entities having pre-existing pipelines. The third party also submitted that, because of the above, the information sought by the

Appellant is a matter of commercial confidence for GSPL and its disclosure would harm their competitive position. In our view, the above submission of the third party, reiterated by the Respondents, justifies invocation of Section 8 (1) (d) for denial of information in this case. No larger public interest has been established by the Appellant for disclosure of the information. In so far as the tariff determined by the Board is concerned, we note that a good deal of information concerning the same has already been put out in the public domain by PNGRB by way of their order No. TO/09/2013 dated 27.6.2013. This information includes: Regulatory Framework, Details of Tariff Filing of Low Pressure Gujarat Gas Grid submitted by GSPL and further processes, the salient features of the revised tariff proposal effective from 20.11.2008 for the Low Pressure Gujarat Gas Grid submitted by GSPL, capacity determination and volume divisor, common carrier volumes, date of effectiveness of transportation tariff, some other important aspects of verification of the tariff filings by GSPL, Net Block including Capital-Work-In-Progress (CWIP) as on 20.11.2008, total Capex from 1.4.2009 to 22.11.2025, Opex for the entire economic life, unaccounted gas and working capital etc.

9. In view of the above findings, we do not consider it necessary to make a determination regarding whether the tariff fixation process by PNGRB is a regulatory or quasi-judicial function.

10. In view of the foregoing, we uphold the decision of the Respondents to deny the information sought at point 2 (ii) (a) to (h) of the RTI application dated 4.12.2013.

11. The appeal is accordingly disposed of.

12. Copies of this order be given free of cost to the parties.

Sd/-

(M. A. Khan Yusufi)

Information Commissioner

Sd/-

(Sharat Sabharwal)

Information Commissioner

Authenticated true copy. Additional copies of orders shall be supplied against application and payment of the charges prescribed under the Act to the CPIO of this Commission.

(Yogesh Kumar Singhal)

Registrar