

केन्द्रीय सूचना आयोग
Central Information Commission
बाबागंगनाथमार्ग, मुनिरका
Baba Gangnath Marg, Munirka
नईदिल्ली, New Delhi – 110067

File No : CIC/MPOTR/A/2020/684757

Savio J F Correia

.....अपीलकर्ता/**Appellant**

VERSUS
बनाम

CPIO,
Mormugao Port Trust,
RTI Cell, Headland, SADA,
Goa – 403804.

....प्रतिवादीगण /**Respondent**

Date of Hearing : 06/01/2022
Date of Decision : 25/04/2022

INFORMATION COMMISSIONER : Saroj Punhani

Relevant facts emerging from appeal:

RTI application filed on : 30/05/2020
CPIO replied on : 26/06/2020
First appeal filed on : 19/07/2020
First Appellate Authority order : 17/08/2020
2nd Appeal/Complaint dated : 07/09/2020

Information sought:

The Appellant filed an online RTI application dated 30.05.2020 seeking information as follows:

(1) Details of funds invested by MoPT in mutual fund schemes from 01.04.2019 to date. Amount invested, date of each investment, name of scheme and name & address of mutual fund company may be furnished.

The CPIO denied the information to the appellant on 26.06.2020 under section 8(1)(d) of the RTI Act, 2005.

Being dissatisfied, the appellant filed a First Appeal dated 19.07.2020. FAA's order dated 17.08.2020 upheld the reply of CPIO and further stated as under -

" However, it is informed that Mormugao Port Trust has invested in SEBI regulated Public Sector Mutual Funds having AAA ratings as per the Ministry of Shipping Guidelines."

Feeling aggrieved and dissatisfied, the appellant approached the Commission with the instant Second Appeal on the ground of denial of information by the CPIO.

Relevant Facts emerging during Hearing:

The following were present:-

Appellant: Present through audio-conference.

Respondent: Anant V.P. Chodnekar, Financial Advisor/CAO & CPIO present through audio-conference.

The Appellant reiterated the contents of his instant Appeal as under -

I. "...The refusal of information sought by invoking sub-section 1 (j) of Sec 8 of RTI Act is misconceived and is contrary to the intent and spirit of the law that seeks to promote transparency in the functioning of and handling of public monies by the concerned public authority i.e. Mormugao Port Trust.

II. commitment of the public authority's financial resources and hence the information relating thereto falls squarely within the ambit of the transparency law. The claim of 'commercial confidence' in denying access to agreements

between the public authority and private parties in investment of public monies in securities runs counter to the principles of the Right to Information Act.

III. Any investment in mutual funds and other securities made by a government-owned and public funded entity like Mormugao Port Trust out of public monies is an investment deemed to have been entered into on behalf of the and in the interest of the citizens. Hence if any citizen wants to know the details of such investments, he is in the position of a principal asking his agent to disclose to him the nature of the investments made by the agent on behalf of the principal. No agent can refuse to disclose any such information to his principal

IV. In case of rejection of a request under the guise of commercial confidence, it was incumbent on the CPIO to substantiate in what manner disclosure of the information would harm the competitive position of the third party i.e. the mutual fund company/ies.

V. Disclosure of the information is in the larger public interest as it involves the investment of large sums of public monies (₹. 27 crore credibility of the fund managers, the terms of the investments such as expense ratio, sales charges, etc. and the possibility of commissions having been paid by the mutual fund companies or their agents to Mormugao Port Trust officials.

VI. M/s SBI DFHI Ltd, appointed for providing investment advisory services, is classified as a “non-Government company” in its registration with Registrar of Companies, Mumbai and eligible to act as a “broker” and consequently, to pay brokerage.

VII. Furnishing of the information would also enable the appellant to further ascertain and inquire in public interest whether M/s. SBI DHFI Ltd was appointed after calling of tenders and terms and conditions thereof; whether M/s. SBI DHFI Ltd acted as broker in the mutual funds applied for; whether it received consultancy fees or brokerage or both for the investments; and whether such brokerage or part thereof was surreptitiously passed on to key officials of Mormugao Port Trust.

VIII. The provision for investment in mutual fund schemes made by Board of Trustees of Mormugao Port Trust is ₹. 27 Crore; hence transparency in matters of investment of such large sum of surplus public funds is definitely in the public interest.

IX. Disposal of the first appeal without hearing the appellant despite specific request for personal hearing is a violation tangent....”

Per contra, the CPIO reiterated the contents of the averred reply and FAA’s order. He further invited attention of the bench towards his written submission dated 04.01.2022, relevant portion of which is as follows -

“...4. The Appellant under point 4: Grounds of Appeal (VII) has stated that furnishing of the information would enable the appellant to further ascertain and inquire in public interest whether M/s. SBI DHFI Ltd. was appointed after calling of tenders and terms and conditions thereof; whether M/s. SBI DHFI LTD acted as broker in the mutual funds applied for; whether it received consultancy fees or brokerage or both for the investments; and whether such brokerage or part thereof was surreptitiously passed on to key officials of Mormugao Port Trust.

However the information sought was for the details of funds invested by MoPT in mutual fund schemes from 01.04.2019 to date such as amount invested, date of each investment, name of scheme and name & address of mutual fund company. Hence it is not clear as to how the information sought in the RTI is relevant in arriving at the information as stated in the Grounds of Appeal. If the Appellant had sought the information as stated in Grounds of Appeal directly, the same would have been furnished to him.

5. It is also informed that, the books of accounts of MPT are audited by C&AG which has a full fledged Resident Audit Office in the MPT premises itself.

6. Hence in view of above, it is humbly submitted that prayers made by the appellant for imposing penalty and cost of this appeal and recommending disciplinary action against the respondents is unjust and improper....”

Decision:

The Commission upon a perusal of the facts on record and after hearing the submissions of both the parties is of the considered opinion that the denial of the information sought for in the RTI Application under Section 8(1)(d) of the RTI Act is untenable. The CPIO has not justified as to how the disclosure of the averred general information will harm the competitive position of the Respondent office or other related third parties as envisaged under Section 8(1)(d) of the RTI Act.

Further, it is pertinent to note that the CPIO has himself refuted the contentions of the Appellant that the disclosure of the averred categories of information will lead to any further disclosure as regards *'whether M/s. SBI DHFI Ltd. was appointed after calling of tenders and terms and conditions thereof; whether M/s. SBI DHFI LTD acted as broker in the mutual funds applied for; whether it received consultancy fees or brokerage or both for the investments; and whether such brokerage or part thereof was surreptitiously passed on to key officials of Mormugao Port Trust'*.

In other words, if the disclosure of the information as sought for in the RTI Application were to lead to disclosure of either of the above categories of information, the applicability of one or the other exemption clauses of the RTI Act would have been pertinent. But it is not the case here, rather by the own admission of the CPIO, these categories of information will not lead to any extended conclusion regarding the investment policy of the MPT.

Moreover, since the Respondent office has harped on the aspects of having invested in SEBI regulated Public Sector Mutual Funds having AAA ratings as per the Ministry of Shipping Guidelines and that the books of accounts of MPT are audited by C&AG, which in any case would be in the public domain; hence these considerations leave little room for advocating opacity or apprehension of any harm to MPT's competitive position, instead, disclosure of the information on the other hand will bolster probity and transparency in the investments of MPT and put to rest any aspersions being cast by the public at large.

Concededly, the investments being made at the cost of the public exchequer calls for basic accountability on the part of MPT when information of such generic nature is sought for by the citizens. Here, it may not be out of place to cite the observation of the Apex Court in the matter of *Sate of UP Vs. Raj Narain (1975) 4 SCC 428* as under:

"(1) In a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can but few secrets. The people of this country have a right to know every public act, everything, that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing. The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security (2). To cover with veil secrecy the common routine business, is not in the interest of the public..."

The Commission is thus unable to appreciate the square applicability of Section 8(1)(d) of the RTI Act to the specific information sought for in the RTI Application in the absence of any justification to this effect by the CPIO as required under Section 19(5) of the RTI Act, and therefore the denial of the information is not acceptable. The CPIO's submission focus upon how the disclosure of information will not lead to the conclusions apprehended by the Appellant **instead of** justifying as to how disclosure of the *amount invested, date of each investment, name of scheme and name & address of mutual fund company* will harm the competitive position of any third party.

Having observed as above, the Commission directs the CPIO to provide the available information under the categories mentioned in the RTI Application in the form of a written reply or an extract wherein only these heads of information figure, as per the provisions of the RTI Act.

The above direction shall be complied with by the CPIO within 15 days from the date of receipt of this order under due intimation to the Commission.

The appeal is disposed of accordingly.

**Saroj Punhani (सरोजपुनहानि)
Information Commissioner (सूचनाआयुक्त)**

Authenticated true copy
(अभिप्रमाणित सत्यापित प्रति)

(C.A. Joseph)

Dy. Registrar

011-26179548/ ca.joseph@nic.in

सी. ए. जोसेफ, उप-पंजीयक

दिनांक /