

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

द्वितीयअपीलसंख्या / Second Appeal No. CIC/NCRAL/A/2018/114860

In the matter of:

Smt. Meeta Agrawal

... अपीलकर्ता/Appellant

VERSUS

बनाम

CPIO,
DGM (G) & Nodal PIO,
North Central Railway,
RTI Cell, Subedarganj,
Allahabad,
UP.

...प्रतिवादीगण /Respondent

Relevant dates emerging from the appeal:

RTI : 28.06.2017	FA : 17.10.2017	SA : 08.03.2018
CPIO : 16.08.2017	FAO : 27.11.2017	Hearing :26.08.2020

The following were present:

Appellant: Shri Avnish Pawar, Representative, heard over the phone

Respondent: Shri Santosh Kumar Saxena, Dy. Chief Engineer (Construction), North Central Railway, Subedarganj, Allahabad, UP, and Shri Rajiv Ranjan Kumar, Dy. Chief Engineer, North Central Railway, Agra, UP, heard over the phone

ORDER

Information Sought:

The appellant filed an RTI application on 28.06.2017, seeking information on five points pertaining to two tender nos. CEN00AGC0315 dated 07.08.2015 and CEN00AGC0715 dated 15.12.2015, including;

1. Elaborate the technical ground on which the above cited tender was cancelled/discharged.
2. To provide competitive rates of each participating tender.
3. To provide minutes of tender committee.
4. To provide approval of competent authority.
5. To provide the prepared on the spot summary in tender opening register.

The CPIO, vide letter dated 16.08.2017, provided information against point nos. 2 and 4. With regards to point nos. 1, 3 & 5, the CPIO denied information under section 8(d) of RTI Act, 2005. Being dissatisfied, the appellant filed **first appeal** dated 17.10.2017. FAA, vide order dated 27.11.2017, upheld the reply of CPIO.

Grounds for Second Appeal:

The appellant filed second appeal u/s 19 of the RTI Act on the ground of incomplete information from the respondent. He requested the Commission to direct the CPIO to provide the information sought for.

Submissions made by Appellant and Respondent during Hearing:

The appellant's representative submitted that the information sought vide point nos. 1, 3 and 5 has been incorrectly denied by the respondent by wrongly invoking exemption contained in Section 8(1)(d) of the RTI Act. He further submitted that the tenders, as stated in his RTI application, were called twice but remained unexecuted. Since the appellant was one of the participants in the said tenders, the reasons for non-execution must be provided to him. He furthermore submitted that as per the provisions of the RTI Act, the respondent should have approached the concerned third parties in order to seek their consent. However, the respondent failed to do so.

The respondent submitted that the information on point nos. 2 and 5 has already been provided to the appellant vide their letter dated 16.08.2017. He further submitted that due to clerical error, point no. 5 was incorrectly written as point no. 4 in the aforesaid letter. With regards to the information sought vide point nos. 1, 3 and 4, the respondent submitted that since the information sought contains personal information of other tender participants which is held by the respondent in commercial confidence and the disclosure of which would harm the competitive position of the third party concerned, hence, the said information is exempted from disclosure under Sections 8(1)(d).

The written submissions dated 20.08.2020, and 10.08.2020 filed by the respondent, were taken on record.

Decision:

The Commission, after hearing the submissions of both the parties and perusing the records, referred to the decision of the Hon'ble High Court of Delhi in the matter

of *Naresh Trehan v. Rakesh Kumar Gupta* (W.P(C) 85/2010) decided on 24.11.2014, wherein it was held as under:

*“14.Such information would clearly disclose the pricing policy of the assessee and public disclosure of this information may clearly jeopardise the bargaining power available to the assessee since the data as to costs would be available to all agencies dealing with the assessee. It is, thus, essential that information relating to business affairs, which is considered to be confidential by an assessee must remain so, unless it is necessary in larger public interest to disclose the same. **If the nature of information is such that disclosure of which may have the propensity of harming one's competitive interests, it would not be necessary to specifically show as to how disclosure of such information would, in fact, harm the competitive interest of a third party. In order to test the applicability of Section 8(1)(d) of the Act it is necessary to first and foremost determine the nature of information and if the nature of information is confidential information relating to the affairs of a private entity that is not obliged to be placed in public domain, then it is necessary to consider whether its disclosure can possibly have an adverse effect on third parties.**”*

In light of the above noted decision and considering the facts of the case, the Commission observes that the grounds for the cancellation of the tender, the minutes and approval of the competent authority must be made available to a tender participant as non-disclosure of the same would have affected the competitive as well as personal interest of the said participant. The Commission, therefore, directs the respondent to provide requisite information on point nos. 1, 3 and 4, after redacting information which relates to commercial confidence or

personal information of third parties, the disclosure of which is exempted under Section 8(1) (d), or (j) of the RTI Act, to the appellant within a period of 15 days from the date of receipt of a copy of this order under intimation to the Commission.

With the above observations, the appeal is disposed of.

Copy of the decision be provided free of cost to the parties.

The appeal, hereby, stands disposed of.

Amita Pandove (अमिता पांडव)

Information Commissioner (सूचना आयुक्त)

दिनांक / Date: 26.08.2020

Authenticated true copy
(अभिप्रमाणितसत्यापितप्रति)

B. S. Kasana (बी. एस. कसाना)

Dy. Registrar (उप-पंजीयक)

011-26105027

Addresses of the parties:

1. The First Appellate Authority (FAA)
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3. The Central Public Information Officer (CPIO)
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4. Shri Smt. Meeta agrawal

