

Central Information Commission
2nd Floor, August Kranti Bhawan
Bhikaji Cama Place, New Delhi-110066

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F.No.CIC/SM/A/2012/000835,836,837,966, 1050,1114,
1183, 1257, 1394,1397,1618,
1844, 1806 and CIC/SG/A/2012/001408
(14 cases)

Present:

Appellants : 1. Dr. D. Dhaya Devadas

2. Shri V. Sundaram

(On VC at NIC, Chennai)

Respondents : 1. Shri Anupam Nandi,
CPIO, IBM

(On VC at NIC, Chennai)

2. Dr. T.S. Sunilkumar,
PIO & Scientific Officer 'G'
Department of Atomic Energy

(On VC at NIC, Hyderabad)

None on behalf of the Ministry of Mines.

Date of Hearing : 13.08.2014

Date of decision : 30.11. 2015

ORDER

1. These cases were heard on 13th August, 2014.
2. This order will dispose of 14 cases. These are 13 cases filed by Dr. D. Dhaya Devadas (12 cases against the Indian Bureau of Mines and the other case against the Department of Atomic Energy) and one case filed by Shri V. Sundaram against the Indian Bureau of Mines.
3. An important issue pertains to the disclosure of the mining plans submitted by various entities for grant of mining leases by the Government. This information is sought in public interest under the Right to Information Act, 2005 (the Act). Therefore, it was decided to hear the matters in the light of the facts and circumstances of case No. CIC/SM/A/2012/000835 filed by Dr. Devadas.
4. The relevant brief facts of case No.CIC/SM/A/2012/000835 are that:
 - A. Dr. Devadas, by a request dated 10.12.2011, sought the following information under the Act from the Central Public Information Officer (CPIO) of the Indian Bureau of Mines (IBM), Chennai related to certain mining leases :
 - (i) details of the lessee wise, lease wise scheme of mining submitted for approval with name of the Recognized Qualified Person (RQP), mining lease order No. and date, area, mineralogy, in situ and replenishable reserve, yearly mineable area and quantity shown in the draft scheme mines during the period from 01.01.2010 to till date;
 - (ii) details of the lessee wise, mining wise and scheme of mining wise remarks/clarifications called for approval of scheme of mining from the Controller of Mines and the Chief Controller of Mines; and
 - (iii) whether any heavy minerals are deposited away from the high Tide Line.
 - (a) If yes, copies of the details/findings/reports/references available with Indian Bureau of Mines to substantiate the heavy minerals are deposited away from High Tide Line.
 - (b) If No,
 - (i) copies of the details/findings /reports/references on which the concerned official of Mines relied upon during the process of approving the mining plan covering the mining lease areas located away from High Tide Line by wind action with replenishable reserve; and

- (ii) copies of the details/finds /reports/references with which the concerned official of IBM relied upon during the process of approving a mining plan covering the mining lease area located away from high tide line without any replenishable reserve.

B. In a reply dated 28.12.2011, the CPIO, IBM informed Dr. Devadas that the IBM was not maintaining record on mineralogy, in situ and replenishable reserves, yearly minable area and quantity shown in the draft scheme of mining and approved scheme of mining. Regarding point A(i), copy of lessee-wise, lease-wise scheme of mining submitted for approval with name of RQP, village, area taken out from TMIS data base containing information after 2002 were provided to Dr. Devadas. Information prior to 2002 was maintained in a register of large size and it was not possible to xerox it. He was also informed that the register was available for physical verification and information. Regarding point A(ii), it was informed that the information was not available. Regarding point A(iii) (a), it was informed that there was no record in the matter. Regarding A(iii) (b), it was informed *inter alia* that the mining plan/SOM was processed based on field inspection/ technical expertise of the inspecting officers. The details provided in the mining plan/SOM by the mine owners/RQP are checked and verified at the time of inspection of the mine along with reference from orders/circulars from Chief Controller of Mines Office, guidelines of mining plan/SOM.

C. The appellant's first appeal dated 13.01.2012 was disposed of on 17.02.2012 by the Controller of Mines (SZ) and Appellate Authority and the reply by the CPIO was held as justified.

D. In the present appeal dated 06.03.2012, the appellant has stated *inter alia* that the reply of the CPIO is not correct and that the requested information is available with the CPIO. The reasons given by the CPIO are neither reasonable nor acceptable. The appellant has prayed that the CPIO may be directed to supply the requested information/copies of the documents mentioned in point A (i) above.

Hearing:

5. During the hearing, the appellants submitted *inter alia* that –

- (a) the minerals are not private property but belong to the Government and are national wealth;
- (b) the officers concerned do not inspect the area before granting mining area;

- (c) there is no sufficient staff in the State and Central Government to monitor the mining operations to ensure that the mining is done strictly in the leased areas only;
- (d) if the information regarding details of the lease etc. is provided and put on website, the public can monitor the procedure followed in granting a lease. The public can also monitor as to how mining is done and whether the same is carried out in accordance with the instructions of the Government;
- (e) this Commission has already ordered to furnish similar details in some cases; and
- (f) the country's interest has to be protected. Hence, the information should be made available to the appellant in public interest so as to enable him to take up the matter with concerned departments.

6. Dr. Devadas referred to his case No. CIC/SG/A/2012/ 001408, and said that he had sought information from the Department of Atomic Energy, *inter alia*, regarding (a) details of the authenticated exploration report published by the Beach Sand and Offshore Investigation Group, Atomic Minerals Directorate for Exploration and Research, Department of Atomic Energy related to heavy mineral deposits in three districts, namely, Tirunelveli, Thoothukudi and Kanyakumari, and (b) details of the mineral of the highest and lowest deposits of heavy minerals available in each village of the above said three districts as per the approved mining plan from the year 1990 onwards.

7. Shri V. Sundaram, appellant in case no. CIC/SM/A/2012/ 001806 submitted *inter alia* that –

- (a) he is a senior citizen. He has been a senior civil servant and a whistle blower;
- (b) the IBM officers are violating the known-norms in granting mining leases and are acting against public interest; and
- (c) the mining plans have been given a go-by by the government officers as well as by the persons who have been granted mining leases.

8. Shri Anupam Nandi, CPIO, IBM, Chennai submitted *inter alia* that –

- (a) all the available information has already been provided to the appellants and that the concerned data is in public domain;
- (b) the IBM only examines and verifies the facts mentioned in the documents. The examination of the documents is site specific. The IBM only sends the recommendations to the States/Collectors for further action regarding grant of mines;
- (c) the mining agreements/leases are entered into by the State Governments as per the approved mining plans, after obtaining approval of the Central Government;
- (d) the appellants are filing many RTI applications under the Act which engage much of the office staff in dealing them. The result is that the alleged illegal mining carried on, if any, cannot be strictly monitored; and
- (e) as all the relevant information has already been provided to the appellants and nothing more can be provided as the appellants have not made out a case of larger public interest.

9. Shri Sunil Kumar, CPIO, Department of Atomic Energy, Hyderabad submitted *inter alia* that –

- (a) the exploration reports are not published documents and are only for academic interest. These are not used for exploration purposes;
- (b) the exploration reports may be provided on a specific request made;
- (c) the relevant information has already been provided to the appellant through a series of requests to the extent possible;
- (d) the geological and scientific details cannot be parted with; and
- (e) as all the relevant information has already been provided to the appellants and nothing more can be provided as the appellants have not made out a case of larger public interest.

Discussion:

10. We have taken into account the arguments made by the parties during the hearing and have gone through the contents of the appeals and the written submissions of the parties.

11. The issue for consideration is whether a case of public interest is made out to disclose the requested information to override the commercial confidence and third party interest.

12. The Supreme Court in its judgement dated 13.12.2012 in Appeal No. 9052 of 2012 - Bihar Public Service Commission vs Saiyed Hussain Abbas Rizwi has, inter alia, observed that:

“23. The expression “public interest” has to be understood in its true connotation so as to give complete meaning to the relevant provisions of the Act. The expression “public interest” must be viewed in its strict sense with all its exceptions so as to justify denial of a statutory exemption in terms of the Act. In its common parlance, the expression “public interest”, like “public purpose”, is not capable of any precise definition. It does not have a rigid meaning, is elastic and takes its colour from the statute in which it occurs, the concept varying with time and state of society and its needs. [State of Bihar v. Kameshwar Singh (AIR 1952 SC 252)]. It also means the general welfare of the public that warrants recommendation and protection; something in which the public as a whole has a stake [Black’s Law Dictionary (Eighth Edition)]

24. The satisfaction has to be arrived at by the authorities objectively and the consequences of such disclosure have to be weighed with regard to circumstances of a given case. The decision has to be based on objective satisfaction recorded for ensuring that larger public interest outweighs unwarranted invasion of privacy or other factors stated in the provision. ... Thus, the public interest has to be construed while keeping in mind the balance factor between right to privacy and right to information with the purpose sought to be achieved and the purpose that would be served in the larger public interest, particularly when both these rights emerge from the Bihar Public Service Commn. vs Saiyed Hussain Abbas Rizwi & Anr.”

13. The High Court of Madras in its judgement dated 30.04.2013 in W.P.No.1253 of 2010 - the Registrar, Thiyagarajar College of Engineering vs the Registrar, Tamil Nadu Information Commission has , inter alia, observed that:

“38. In Black's Law Dictionary (Sixth Edition), 'Public Interest', is defined as follows:

Something in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected. It does not mean anything so narrow as mere curiosity, or as the interest of the particular localities,

which may be affected by the matters in question. Interest shared by citizens generally in affairs of local State or national government...

41. Public Interest means an act beneficial to the general public. Means of concern or advantage to the public should be the test. Public interest in relation to public administration includes honest discharge of services of those engaged in public duty. To ensure proper discharge of public functions and the duties, and for the purpose of maintaining transparency, it is always open to a person interested to seek for information under the Right to Information Act, 2005. Therefore, the petitioner-College, a person discharging public duty, in aid of the State, can be brought within the definition of, public authority. Right to Information has been recognised as a Fundamental Right and that the only condition to be satisfied is that the information sought for, should foster public interest and not encroach upon the privacy of an individual or it should be exempted under the Act..."

14. This Commission in its order dated 16.07.2010 in case No.CIC/SM/A/2010/000114 etc. – Shri D. Dhaya Devadas vs CPIO, Department of Atomic Energy has, inter alia, observed that:

“4. Competent authorities grant mining leases based on proposals from various Applicants including the Mining Plans submitted by them. In the present, these Mining Plans are to be vetted and approved by the AMD, Department of Atomic Energy, Government of India, as required under the relevant statute. The Mining Plan submitted to the AMD for its vetting and approval includes many components, some of which are in the nature of Trade Secret or Commercial Confidence. Unless any larger public interest is to be served, there is no reason why such components should be disclosed. Needless to say, in the background of widespread controversies raging in the country regarding the illegal mining by private lease owners, it is important that the exact area of the lease, the quantum of mineral to be extracted, the environmental implications of mining and the plan for rehabilitation of displaced persons as well as the environment, etc. should be placed in the public domain so that the mining activity is carried out strictly according to the approved plan.

...6. We advised the AMD to disclose such part of every Mining Plan that they vet and approve in their website once the mining lease for the corresponding plan is sanctioned by the competent authority.”

15. This Commission in its order dated 14.07.2011 in Appeal No.CIC/AT/A/2010/000817/SS – Shri D. Dhaya Devadas vs Ministry of Mines, held that the information relating to the relevant portion of the mining lease-wise Mining Plan details

containing the year-wise production schedules directed the IBM and has, *inter alia*, observed that:

“9. ...there are certain parts of the Mining Plan comprising certain details about the finances, flow of funds, share of partners, etc., which can be said to comprise the private information relating to commercial confidence of the third-party. But most other information contained in the Mining Plan cannot be said to be entirely personal to the third-parties, or assuming the characteristics of those parties’ commercial confidence. It is necessary to compartmentalize information contained in the mining plan which had a public persona and cannot be said to belong to the domain of commercial confidence of the third-party(ies).

10. The touchstone for such determination is whether the requested information relates to maintaining mining standards, safety of mines and minerals, environment, public safety, etc. because if it does, then such information cannot be exempted under clause (d) of section 8(1) of the RTI Act.”

16. The High Court of Jharkhand in its judgment dated 8.8.2007 in the matter of State of Jharkhand vs Navin Kumar Sinhga, has observed, *inter alia*, that:

“26. Section 8(1)(d) ... provides that the authority may refuse to give information relating to commercial confidence, trade secret or intellectual property, 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 question, therefore, that falls for consideration is as to whether disclosure of various documents submitted by the bidders is a trade secret or commercial confidence or intellectual property. Prima facie, we are of the view that once a decision is taken in the matter of grant of tender, there is no justification to keep it secret. People have a right to know the basis on which the decision has been taken. If tenders are invited by the public authority and on the basis of tender documents, the eligibility of a tender or a bidder is decided, then those tender documents cannot be kept secret, that too, after the tender is decided and work order is issued on the ground that it will amount to disclosure of trade secret or commercial confidence. If the authorities of Government refuse to disclose the document, the very purpose of the Act will be frustrated. Moreover, disclosure of information, sought for by the petitioner, cannot and shall not be a trade secret or commercial confidence;

rather disclosure of such information shall be in public interest, inasmuch as it will show the transparency in the activities of the Government.

27. ...The document, disclosure of which sought for, is the experience certificate issued by one company in favour of successful bidder and also the document related to turn over and profit of the limited company. Since the tender process is completed and contract has been awarded, it will not influence the contract. Besides the above, a citizen has a right to know the genuineness of a document submitted by the tenderer in the matter of grant of tender for consultancy work or for any other work. As noticed above, the tender process is completed and the contract has been awarded, therefore, it will not influence the contract. In any view of the matter, the document in question cannot be treated as trade secret or commercial confidence. In our considered opinion a contract entered into by the public authority with a private person cannot be treated as confidential after completion of contract.”

17. This Commission recognizes the perspective brought out on public interest during the course of the hearing. The appellants had underlined convincingly the dimensions of public interest overriding the commercial confidence and third party interest in disclosing the requested information.

18. The appellants have emphasized the need for disclosing the requested information. In so far as the information sought from the IBM is concerned, we agree with the appellants that (i) the disclosure of the requested information is in public interest because such disclosure would help in ensuring that the mining leases are granted as per the government instructions and the approved mining plans and (ii) the disclosure would also control the illegal mining activities.

19. However, as regards the information sought from the Department of Atomic Energy, the appellant, Dr. Dhaya Devadas could not advance any convincing grounds as to how the disclosure of the requested information pertaining to deposits of any heavy mineral away from the High Tide Line would serve any public interest. Therefore, we are of the view that a concrete and tangible case of public interest has been made out by the appellants with respect to points A (i) and (ii) of para 4 above which may be described as overriding the protected interests. We are not convinced with the submissions of the appellants that the disclosure of the requested information at point A (iii) of para 4 would be in public interest.

Decision:

20. In view of the above facts and circumstances, the respondents are directed to:

- (a) enable the appellants to inspect the concerned records pertaining to the requested information in the context of their RTI applications except the exploration report and unpublished documents by the Beach Sand and Offshore Investigation Group including the geological and scientific details; and
- (b) provide copies of the documents which may be indicated by the appellants after inspection of the records.

21. The respondents are directed to comply with the above directions within four weeks from the date of receipt of this order.

22. Accordingly, all the appeals are disposed of.

(M.Sridhar Acharyulu)
Information Commissioner

(Yashovardhan Azad)
Information Commissioner

(Vijai Sharma)
Chief Information Commissioner

Authenticated true copy.

(Dr. M.K. Sharma)
Registrar

