

CENTRAL INFORMATION COMMISSION

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Decision No. CIC /WB/A/2007/00830/SG/ 1286
Appeal No. CIC/WB/A/2007/00830

Relevant Facts emerging from the Appeal

Appellant : Gita Dewan Verma
1356 D-I, Vasant Kunj,
New Delhi-110070

Respondent : Additional Secretary (UD)
Govt. of NCT Delhi
10th Level, Delhi Sachivalaya,
I.P.Estate, New Delhi-110002

RTI filed on : 23/04/2007
PIO replied : 03/05/2007
First appeal filed on : 04/06/2007
First Appellate Authority order : 16/07/2007
Second Appeal filed on : 25/07/2007

Detail of information required: Information Sought.

The PIO replied.

The First Appellate Authority replied:

1. Copy on CD of Delhi Govt's CDP, along with authentication letter and authorization for private publication.	The CDP is also available on the website of this Department; hence, it is not advisable for private publication. The copy of CDP may be obtained after depositing the prescribed fee.	“ After going through the records of the case and appeal of the appellant, I am of the opinion that nothing more could have been provided to the appellant than what has already been informed to appellant vide latte dated22/06/2007 In view of the above, Appeal stands disposed off.
2. For each of the 102 individuals name in “List of Individuals invited for CDP workshop” at Annexure – 15.3 of the CDP, information related to decision to invite (including decision to prefer over others similarly qualified/ experienced / situated).	Is regarding inviting individuals for consultation workshop was organized by M/s IL&FS Ecosmart Limited as a part of the preparation of CDP. The firm was free to select the individuals for the workshop. It may be one of the reasons for not inviting you that the firm was unknown about you.	
3. For each of those besides IL&FS who responded to CDP tender dt. 23/02/06 information relating to decision to involve / not involve in the consultation process described in Chapter 15 of CDP. (I specifically request full information relating to decision not to invite me. Text of my response to CDP tender is in Box below).	As Point 2	
4. List of all others named in the list of 102 invitees at Annexure- 15.3 besides Centre for Civil society (Whose Director is named at no. 65) who have given copies of CDP with and without publication authorizations.	As point 2&3	

<p>5. Particulars (date, number, from, to , subject) / copies of the following: a) Letter commissioning CDP to IL&FS Ecosmart Limited. b) Letter by which IL&FS submitted final CDP to Urban Devpt. Deptt. c) Letter /OM by which Deptt submitted the CDP for State Govt. approval. d) resolution/OM by which State Govt. approved the CDP. e) Letter by which State Govt submitted the CDP to GOI</p>	<p>Particulars/copies of the following are enclosed herewith: a, b,c,d,e,.</p>	
<p>6. Particulars of official publication of CDP.</p>	<p>The CDP Delhi is available on the website of this Department at www.delhigovt.nic.in/dept/ud/index.asp. Hence, the applicant may be given information after depositing the fee as per rules.</p>	

Relevant Facts emerging during Hearing:

The following were present

Appellant: Gita Dewan Verma

Respondent: Mr.Hansraj representing PIO Mr. S.K. Saxena and Mr. Manoj Kumar

The first hearing was held on 5th November, 2008, when considering the points raised by the appellant it was decided to adjourned the hearing to 14th November, 2008 at 2.00PM.

On 14th November, 2008 the following persons were present:

Appellant: Gita Dewan Verma

Respondent: Mr.Hansraj representing PIO Mr. S.K. Saxena and Mr. Manoj Kumar

The key issues identified in the appellant’s second appeal on page 3 are as follows:

- (a) Does the agreement between GNCTD and CDP Consultant come under S.8(1)(d) or could it have been given with the Work Order (based on / in continuation of the Agreement) for complete reply to my request no. 5a (‘Letter commissioning CDP to IL&FS Ecosmart Ltd.’) ?

= The Commission asked the respondent to justify our Section 8(1)(d) would apply to the agreement between GNCTD & CDP Consultants. The respondent stated that agreements are matters where commercial information of the Consultant is shared. The Commission asked the respondent to give a note giving its arguments in support of using this exemption. The Commission did not see this exemption as very obvious as made out by the respondent. Besides the respondent has not given any reasoning as to how Section 8(1)(d) applies in this case.

- (b) Do CDP Consultant submissions for various stages of payment come under S.8(1)(d) or could copies/particulars have been given in reply to my request no.5b (‘Letter by which IL&FS submitted final CDP’) ?

= The appellant seeks to know if there were covering letters attached to various submissions. The Commission is asked the PIO to supply the covering letters accompanied with any of the submissions. In case there are no covering letters with some of the submissions this will be stated categorically.

- (c) Does information about ‘State Level Steering Committee’ and its procedures (whereby notice for its meeting is channel of submission and its ‘endorsement’ in unconfirmed minutes is approval) come under S.4(1)(b) and should it have been given for complete reply to my request nos.5c, d&e (records of submission and approval of CDP)

= The PIO has been asked to give the information to the appellant whether there is any written procedure for the State Level Steering Committee. If there is no such procedure the PIO will state this clearly.

(d) Was GNCTD obliged to obtain under S.2(f) and supply on my requests nos.2 & 3 information “for each of” who were consulted or submitted EOI/myself rather than general remarks about all, as given.?

= The PIO has been asked to send the letter to IL&FS asking if there was any written down criteria by which participants were selected or rejected for the work shop and provide the answer to the appellant.

(e) Is supply of CDP on CD “subject to condition” of no publication (to me) same “without publication authorization” (to Centre for Civil Society, on website of which CDP is published and which has also distributed further copies on CD) and, if CDP copyright “is with the Government”, ought copy on CD to have been refused (to all) under Section 8(1)(d)?

= The appellant’s query insisting that the PIO must give a reply authorising her to publish the CD given to her can not be considered as a request for information as defined under the Act. The appellant is actually seeking a decision from the PIO and the way she has worded it can not be construed as seeking information under the Act.

The PIO has been asked to send the answers to a,b,c& d to the appellant with a copy marked to the Commission by 30th November, 2008. The appellant may send the rejoinder to the Commission and to the Respondent by 10th December, 2008. After this matter will be decided finally by the Commission. Notice of this be given free of cost to the parties.

Decision on 27 January 2009:

As directed by the Commission in its interim order of 14 November 2008, the respondent had given written submissions on all the four points. The appellant has also given her rejoinder. The appellant has been given the information on point b), c) and d) as per her rejoinder. On point a) the respondent claimed exemption under section 8 (1) (d) on the following grounds. Section 8 (1) (d) of the Act states:

“ information including commercial confidence, trade secrets or intellectual property, the 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;”

In its written submission dated 28/11/2008, the respondent has reiterated its stand and stated that

“In terms of section 8 (1) (d), of the RTI Act, 2005, there is no obligation to give any citizen an information, the disclosure of which could harm the competitive position competitor. The IL & FS Ecosmart Limited for preparation of plan providing for a perspective and reason for the development of the city of Delhi under the Jawaharlal Nehru National Urban Renewal Mission (JNNURM), sponsored by the Gov. of India, a copy of which has been asked for by the appellant, is one of the ten firms of the consultant empanelled by the Ministry Of Urban Developments, Gov. of India, which has applied for the job and was invited to make the presentation. The terms and conditions of the said agreement were settled after negotiations. These terms and condition were much more favourable to the Government as compared to those as offered by the other consultancy firm. If such terms are made public, the firm may be put at disadvantage in negotiating the terms in the matter of any other similar job for which it may be competitor in future. It is with this aspect in view that the copy of the agreement was denied to the appellant. The IL & FS Ecosmart Limited was bound of confidentiality that it shall not at anytime, without the consent of the government, disclose or divulge or make public any information regarding the city development plans prepared by it as one of the terms of the reference. Therefore, as a gesture of reciprocity, the Urban Developments department also considered itself morally bound not to divulge any information on the agreement, which may harm the interest of the consultancy firm.

However the Commission is of the view that the stand taken by the respondent is not tenable in law.

The PIOs contention that 'If such terms are made public, the firm may be put at disadvantage in negotiating the terms in the matter of any other similar job for which it may be competitor in future.' is not supported by any reasoning. If the terms are not in the interests of the Public good, this argument could well be used to hide corrupt dealings and agreements which are against Public interest. Even if we take the argument that some very favourable terms have been obtained by the Public authority, there certainly is a larger Public interest in disclosing these, so that the Public authority could get such favourable terms from others as well. The objective of the RTI act is to promote transparency and accountability and contain corruption. The objectives of the Act would be defeated if Public authorities claim exemption based on a claim that 'terms and condition were much more favourable to the Government', and therefore these must be kept away from the Public. Infact Public feels that quite often the contrary is the case. Citizens own the Government and all information belongs to them. The claim of 'commercial confidence' in denying access to agreements between private parties and the masters of the Public authorities, - Citizens, - runs counter to the principles of the Right to Information.

The second reason for not disclosing the information given by the PIO is that since IL & FS Ecosmart Limited was bound of confidentiality not to disclose the city development plans prepared by it, the Urban development department also felt obliged to reciprocate, has not been justified by any law. The Public authority cannot read exemptions into the RTI act which do not exist.

Under the Constitution of India which is the paramount law of the land it is the people of India who are supreme and the Government is nothing more than a legal agent of the people who have given to themselves the Constitution and the methodology of governance prescribed therein. Any agreement entered into by the Government is an agreement deemed to have been entered into on behalf of the and in the interest of "We the people" hence if any citizen wants to know the contents of such an agreement he is in the position of a principal asking his agent to disclose to him the terms of the agreement entered into by the agent on behalf of the principal. No agent can refuse to disclose any such information to his principal. Hence it is inconceivable that the Government should deny a citizens request for disclosure of an agreement entered into by the Government. Such a denial goes against the established constitutional principles apart from being untenable under the provisions of the Right to Information Act, 2005.

Any so called imaginary moral or reciprocal obligation cannot be permitted to subvert a solemn constitutional and legal obligation.

The appeal is allowed.

The Commission directs the PIO to supply the copy of "the agreement between GNCTD and CDP Consultant" to the appellatant before 15 February 2009.

Notice of this be given free of cost to the parties.

**Shailesh Gandhi
Information Commissioner
27 January 2009**