

केन्द्रीय सूचना आयोग
Central Information Commission
बाबा गंगनाथ मार्ग , मुनिरका
Baba Gangnath Marg, Munirka
नई दिल्ली, New Delhi – 110067

द्वितीय अपील संख्या/Second Appeal No.: **CIC/ICOMR/A/2021/648579**

Prashant Reddy

.....अपीलकर्ता/Appellant

VERSUS/बनाम

Public Information Officer Under RTI,
Administrative Officer-(RTI Cell),
Indian Council of Medical Research,
Department of Health Research
(Ministry of Health & Family Welfare),
V. Ramalingaswami Bhawan,
Ansari Nagar, New Delhi-110029.

...प्रतिवादीगण/Respondents

Relevant facts emerging from appeal:

RTI application filed on	:	09.05.2021
CPIO replied on	:	10.05.2021
First appeal filed on	:	10.08.2021
First Appellate Authority order	:	13.08.2021
Second Appeal received at CIC	:	18.10.2021
Date of Hearing	:	04.10.2022
Date of Decision	:	10.10.2022

सूचना आयुक्त : श्री हीरालाल सामरिया
Information Commissioner: Shri Heeralal Samariya

Information sought:

The Appellant sought following information:

- | |
|--|
| 1. Please provide a copy of the agreement between ICMR and Bharat Biotech for the development of Covaxin, the COVID vaccine. |
| 2. Please state the development costs for this vaccine with a breakup of the investments made by ICMR and Bharat Biotech. |

- PIO furnished reply, vide letter dated 10.05.2021, as under:

RTI REQUEST APPLICATION RETURNED TO APPLICANT as on 10/05/2021
10/05/2021
Remarks :- As mentioned in the guidelines for use of this This is a third-party information of an MoU/MoA, that cannot be shared under the provisions of Section 8 (i) (d) of RTI Act, 2005.
Regards

- Dissatisfied with the response received from PIO, Appellant filed First Appeal, vide letter dated 10.08.2021.
- The FAA vide order dated 13.08.2021 held as under:

13/08/2021
Reply :- In a second appeal vide No. CIC/ICOMR/A/2021/618110, filed by Ms. Apurva Singh, on a similar issue of sharing a copy of the MoA signed between ICMR and BBIL, the CIC, New Delhi Shri Y.K. Sinha, heard the matter on 03.06.2021 and passed the decision on 07.06.2021, that the Commission concurs with the view of the Respondent and observes that the information sought would fall under the ambit of the exemption u/s 8 (1) (d) of the RTI Act, 2005. Moreover, since the contract is still in operation and as stated by the Respondent contains commercially sensitive terms and conditions, the Commission is not inclined to direct disclosure of information applying severability clause u/s 10 of the RTI Act at this stage. Hence the copy of MoA can not be shared. Regards

- Written submission has been received from AO/Nodal Officer RTI, ICMR vide letter dated 19.09.2022 :

In this connection, it is to inform you that in the earlier CIC second Appeal No. CIC/ICOMR/A/2021/618110 on the RTI matter of Ms. Apurva Singh, the CIC has passed an order dated 07.06.2021, as follows:-

The Commission concurs with the view of the Respondent and observes that the information sought would fall under view of the Respondent and observes that the information sought would fall under the ambit of the exemption u/s 8 (1) (d) of the RTI Act, 2005. Moreover, since the contract is still in operation and as stated by the Respondent contains commercially sensitive terms and conditions, the Commission is not inclined to direct disclosure of information applying severability clause u/s 10 of the RTI Act at this stage.

The Hon'ble High Court of Jharkhand in State of Jharkhand vs Naveen Kumar Singha and Anr, AIR 2008 Jharkhand 19 dated 08.08.2017 held as under

"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".

Hence, in the light of the above observations, no further intervention of the Commission is required in the matter. The instant Second Appeal stands disposed off accordingly.

The contract is still continuing for the manufacturing and sale of vaccine and the revenue sharing in the form of royalty. Further the MoU contains the commercial interest of the private company in the MoU signed by the ICMR. Hence, the copy of the MoU cannot be shared at this juncture.

- Written submission has been received from the Appellant vide letter dated 28.09.2022. The relevant extract whereof is as under :

ICMR's claim that the MOU contains 'commercially sensitive terms and conditions' is not a ground for exemption under Section 8(1)(d). The Delhi High Court in Bhagat Singh vs. Chief Information Commissioner, 146 (2008) DLT 385, held that: "Section 8 being a restriction on this fundamental right, must therefore be strictly construed. It should not be interpreted in manner as to shadow the very right itself." (emphasis added) Here, the ICMR has failed to show the terms of MOU contains information exempted under Section 8(1)(d). For one, the categories of records specified in Section 8(1)(d) is restricted to commercial confidence, intellectual property, trade secret, or the like – that have specific meaning and definition in law. Whereas, the ICMR's claim that the MOU contains 'commercially sensitive information' is neither specified in 8(1)(d) nor defined in any legal dictionary or treatise. If the term 'commercially sensitive' is allowed to pass muster under 8(1)(d) – it would allow authorities to exempt all public work contracts, PPAs, and funding agreements at their whim. In any event, two, the text of MOU – involving a public authority and executed for a public purpose – cannot be treated as 'commercial confidence' or a trade secret. This Commission in Gita Dewan Verma vs. Add. Secretary, GNCTD, (CIC/WB/A/2007/ 00830/SG/1286) held that:

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.

....

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. (emphasis added)

In effect, ICMR's refusal to disclose the MOU on the ground it contains "commercially sensitive information" or involves "commercial confidence" is without merit.

Grounds for Second Appeal:

The PIO has not provided correct information to the Appellant.

Relevant Facts emerging during Hearing:

The following were present: -

Appellant: Represented by Adv N. Sai Vinod.

Respondent: Mr. Mahesh Sabharwal, AO, ICMR

The Representative of Appellant stated the factual matrix of his case and reiterated the averments made in his written submission. He further stated that the Appellant has not received the relevant information from the PIO. The appellant's representative submitted that the reply of PIO is contrary to the full bench decision of the Commission in Navroj Mody vs. Mumbai Port Trust and others, (CIC/AT/A/2009/000964) dated 03.09.2009. He further submitted that the Commission's reasoning in Navroj Mody (supra) applies mutatis mutandis for requests seeking disclosure of agreements between ICMR and Bharat Biotech development of Covaxin. He highlighted the public interest issue and stated that the onus is on the CPIO to justify the exemption claimed.

Upon Commission's instance, CPIO submitted that a written submission enumerating all the details has been submitted for the perusal of the

Commission on 19.09.2022. He submitted that copy of agreement sought in the instant RTI Application contains commercially sensitive terms and conditions which cannot be disclosed to the Appellant. He further submitted that the issue involved has already been dealt by the Commission in the case titled as **Apurva Singh v PIO, ICMR (CIC/ICOMR/A/2021/618110) dated 07.06.2021.** He apprised the Commission that the agreement/MoU for manufacturing and sale of vaccine is still in operation. He affirmed that he would abide by the orders of the Commission.

Decision

Commission has gone through the case records and on the basis of proceedings during hearing observes that information sought by the Appellant pertained to a formal agreement executed between the ICMR (a Public Authority) and Bharat Biotech International Limited. CPIO has denied the information sought on the ground that it contains commercially sensitive terms and conditions, if disclosed it can compromise the future commercial confidence of third parties and the same can only be detrimental to the interest of the public when the vaccination is not a project already executed, it is a continuing project. Further, CPIO vide its written submission dated 19.09.2022, has justified his averred response.

Adverting to the decision of the Commission in Apurva Singh (supra), the Commission is of the considered opinion that the information sought would fall under the ambit of the exemption u/s 8 (1) (d) of the RTI Act, 2005.

In light of above, the Commission upholds the submissions put forth by the Respondent and observes that an appropriate reply has been furnished to the Appellant by the concerned PIO.

However, CPIO is directed to furnish the copy of the written submission dated 19.09.2022, to the Appellant, free of cost, via speed/registered post, within 07 days from the date of receipt of this order and accordingly compliance report to this effect be duly sent to the Commission by the CPIO.

No further action lies.

The appeal is disposed of accordingly.

Heeralal Samariya (हीरालाल सामरिया)
Information Commissioner (सूचना आयुक्त)

Authenticated true copy
(अभिप्रमाणितसत्यापितप्रति)

Ram Parkash Grover (रामप्रकाशगोवर)
Dy. Registrar (उप-पंजीयक)
011-26180514

