

CENTRAL INFORMATION COMMISSION

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

Decision No. CIC/YA/A/2016/002327/SB Dated 09.10.2017

**Shri Venkatesh Nayak v. The Central Public Information Officer (CPIO),
National Hydroelectric Power Corporation (NHPC) Limited**

Relevant dates emerging from the Appeal:

RTI: 24.02.2016	FA: 25.04.2016	SA: 19.07.2016
CPIO: 17.03.2016	FAAO: 23.05.2016	Hearing: 26.09.2017

ORDER

1. The appellant filed an application under the Right to Information Act, 2005 (RTI Act) before the Central Public Information Officer (CPIO), Ministry of Power (MoP), seeking information on four points, including, inter alia, (i) a clear copy of all the correspondence (s) received by the MoP from the Government of Jammu & Kashmir (Govt. of J&K) regarding the buy-back of the hydro-power projects situated in the State of J&K till the date of the RTI application, and (ii) a clear copy of all the documents relating to the feasibility of the proposal of the buy-back of the projects as aforesaid, including the reports of the Expert Committee, if any, as per the available records. The Ministry of Power transferred the RTI application to the NHPC (NHPC) Limited.

2. The appellant filed a second appeal before the Commission on the grounds that the information sought was wrongly denied by taking recourse to the exemption clause as contained in Section 8(1) (d) of the RTI Act, 2005. The appellant is also aggrieved by the Order of the First Appellate Authority (FAA) which had upheld the reply provided by the CPIO. The appellant requested the Commission to direct the CPIO to provide the information sought for by him.

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Hearing on 15.09.2017:

3. The appellant, Shri Venkatesh Nayak and the respondent, Shri Deepak Saigal, CE (C) and CPIO, National Hydroelectric Power Corporation (NHPC) Limited, were present in person.

4. Due to some unforeseen circumstances, the matter could not be taken up for hearing. The matter was adjourned to **26.09.2017**.

Hearing on 26.09.2017:

5. The appellant, Shri Venkatesh Nayak and the respondent, Shri Deepak Saigal, CE (C) and CPIO, National Hydroelectric Power Corporation (NHPC) Limited, were present in person.

6. The appellant submitted that he had sought the information concerning the buyback of the hydel power projects by the Govt. of J&K from the Govt. of India. However, at first the MoP abdicated their responsibility and transferred the RTI application, under Section 6 (3) of the RTI Act, vide letter dated 04.03.2016, to the NHPC Limited. The NHPC Limited vide its reply dated 17.03.2016, obstructed his right to access information by stating that the issue raised in the RTI application is between the parties viz. the MoP/ NHPC and the State Government concerned i.e. the Govt. of J&K and was not resolved. It was also stated by the respondent organization that the disclosure of the said information would affect their commercial interests and therefore, the information sought was withheld by taking refuge under the exemption clause as contained in Section 8 (1) (d) of the RTI Act. In this regard, the appellant highlighted that as per Section 8 (1) (d) of the RTI Act, the information which is expected to be exempt from disclosure is the “information including commercial confidence, trade secrets or intellectual property, *the disclosure of which would harm the competitive position of a third party...*” [Emphasis added]. Clearly, Section 8 (1) (d) exempts the disclosure of information that may harm the competitive position of a “third party” and therefore, a public authority cannot, as a matter of rule, claim the exemption for itself and withhold the information sought. A public authority, within the meaning of the RTI Act, cannot be

both a second party/ the respondent, being the recipient of the RTI application and also a “third party”. This would be an incongruous interpretation of the law and will, in all eventuality, defeat both the purpose and the intention of the legislature. The appellant also emphasised that water, being a social and cultural good, in terms of the General Comment No. 15 of the Committee on Economic, Social and Cultural Rights (CESCR), the human right to water includes the access to information about water-related issues (Para 48 of the General Comment No. 15). Therefore, the matter at hand directly relates to the right of the people of India to know the status of the ongoing negotiations between the respondent organization and the Govt. of J &K about the transfer back of the hydro- power projects maintained and managed in the State by the NHPC Limited.

7. The respondent submitted that the NHPC Limited is a Central Public Sector Undertaking (CPSU) and is a listed company in the stock market. The respondent further submitted that the information sought by the appellant is in the nature of commercially sensitive information and directly related to the business of the company. Therefore, vide the CPIO’s reply dated 17.03.2016, the appellant was informed that since the subject matter of the information sought was only privy to the parties concerned i.e. the MoP/ NHPC and the State Government concerned i.e. the Govt. of J&K and not to the appellant, and was not resolved, the revelation of the information would affect the commercial interest of the NHPC Limited. Therefore, the information sought by him was stated to be exempted from disclosure under Section 8 (1) (d) of the RTI Act. The respondent also stated that the disclosure of the information sought shall lead to unwarranted speculations and confusion amongst the shareholders and shall affect the commercial confidence of the NHPC Limited. The respondent also underlined that the FAA vide its Order dated 23.05.2016, had upheld the reply furnished by the CPIO.

Decision:

8. The Commission, after hearing the submissions of both the parties and perusing the records, notes that the information sought by the

appellant pertains to the buyback of the hydel power projects by the Govt. of J&K from the Govt. of India. The Commission observes that the technical information held by the the NHPC Limited/ the MoP is only privy to the MoP/ NHPC Limited and the Govt. of J&K and not to the appellant. The Commission further observes that Section 2 (n) of the RTI Act states that:

“.... (n) “third party” means a person other than the citizen making a request for information and includes a public authority”

Clearly, the definition of a “third party” as given under Section 2 (n) includes a “public authority”. Thus, the term “third party” wherever it is used in the RTI Act shall ipso facto include a “public authority”. Therefore, the applicability of the exemption under Section 8 (1) (d) of the RTI Act to the information prejudicially affecting the commercial interest of a third party would include the information held by a public authority itself that could harm its commercial confidence in the market. Pertinently, a three member Bench of the Commission in its Decision No. CIC/AT/C/2008/00025 dated 27.7.2009 while dealing with the issue of a respondent public authority being treated as a third party under Section 2 (n) of the RTI Act observed as follows:

“....32. The inclusive definition provided under section 2 (n) certainly covers a Public Authority and as such in cases where the CPIO intends to disclose an information or record or part thereof to an applicant which “relates to” a 3rd party (Public Authority in this case) and has been treated as confidential by that 3rd party, CPIO is duty bound to hear and consider the objections before deciding whether to allow disclosure. In this case, this situation did not arise as the PIO decided not to disclose the information. But if ever a PIO decides to disclose such information, which relates to a Public Authority and has been treated as confidential by such Public Authority the PIO before deciding to disclose such information must at least take the view of the HOD.”

In view of the foregoing observations, the Commission discerns that the information sought by the appellant is in the nature of commercially

sensitive information, the disclosure of which would not serve any public interest and would lead to unwarranted speculations amongst the shareholders of the respondent PSU and shall affect the commercial confidence of the NHPC Limited. The information sought is, therefore, exempted from disclosure under Section 8 (1) (d) read with Section 11 (1) of the RTI Act. In view of this, the information sought by the appellant cannot be provided.

9. With the above observations, the appeal is disposed of.

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

Authenticated true copy

(S.S. Rohilla)
Designated Officer



(Sudhir Bhargava)
Information Commissioner

Addresses of the parties:

1. The Central Public Information Officer,
National Hydroelectric Power Corporation (NHPC) Limited,
NHPC Complex, Sector-33, Faridabad
- ✓ 2. Shri Venkatesh Nayak
55A, 3rd Floor, Siddharth Chambers-I,
Kalu Sarai, New Delhi-110016