

From,
Venkatesh Nayak
B-117, 2nd Floor
Sarvodaya Enclave
New Delhi- 110 017
Email: venkateshnayak.ss@gmail.com

To,
The Central Public Information Officer
National Thermal Power Corporation
Core 6, 6th Floor, SCOPE Complex
7- Institutional Area, Lodi Road
New Delhi- 110 003

Dear sir,

Sub: Request for information under Section 6(1) of the *Right to Information Act, 2005*

I would like to obtain the following information about the Sampur Coal Power Project in Sri Lanka from your public authority:

- 1) A list of all records including documents held in electronic form, in relation to the said project; and
- 2) The following documents in relation to the said project:
 - a) Joint Venture Agreement;
 - b) Implementation Agreement;
 - c) Board of Investment Agreement;
 - d) Land Lease Agreement;
 - e) Coal Supply Agreement; and
 - f) Power Purchase Agreement (PPA).

Form of information required: All the aforementioned information be uploaded on your public authority's website and the respective URLs be intimated to me by post or email.

Kindly note that all the information sought above is in the nature of information that must be proactively disclosed under Section 4(1)(b), (c) and (d) of the RTI Act. As I am unable to find this information on your website, I am constrained to submit this formal request. Kindly note, with the exception of the PPA mentioned at para #2(f) above, none of the remaining documents sought are included in the list of exempt/confidential

information displayed on your website. Without prejudice to my right to raise further arguments highlighting the public interest in support of disclosure at a later date, I request you to take into consideration the following arguments as to how public interest will be served better by disclosing all the requested information:

- 1) The existence of a PPA clearly indicates that some portion of the electricity generated by the Sampur Coal Power Project will be supplied to consumers in India. As your public authority has invested in the equity of the Joint Venture Company to the extent of 50%, it is in effect the taxpayer's money that has been invested in the said project. For these twin reasons, taxpayers and consumers in India have the right to scrutinize all the information sought above; and
- 2) As official information about this project is hardly available in the public domain, the citizens of India have the right to know the information sought above in order to be able to better understand the measures taken by your public authority to augment India's energy security status.

Should you decide not to disclose any or all of the information sought above, I request you to place the aforementioned arguments before the appropriate authority to make a decision of disclosure of all information sought, in terms of Section 8(2) of the RTI Act in order to avoid lengthy appeal processes.

I am a citizen of India. I have enclosed an IPO (bearing #23F 433307) for Rs. 10/- towards payment of the prescribed application fee.

Thanking you,
Yours sincerely,

S.S. Venkatesh Nayak
11/6/14
Venkatesh Nayak

उपपत्रिका COUNTERFOIL
इसे फाड़कर प्रेषक अपने पास रखें।
To be detached and kept by the Sender.

पोस्टल आर्डर
रुपए 10.00Rs.
POSTAL ORDER


कितने अदा करना
To whom payable *A/O*
N.T.P.C.

किस दफ्तर में
At what Office *CPD, N.D.L.H.*

क्या इसे क्रास किया है
Whether crossed *NP*

पेसने की तारीख
Date sent *11/6/14*

23F 433307

भारतीय डाक

India Post

SF LODHI ROAD HD <110003>
ED350014915IN
Counter No:2, CP-Codes:RKU
To: THE C P I OFFICER, SCOP LODHI ROAD
NEW DELHI, PIN:110003
From: VINKATASH NAYAK, NEW DELHI 17
Wt: 20grams,
Amt: 17.00, 11/06/2014, 15:43
Taxes: Rs. 2.00 <<Track on www.indiapost.gov.in>>



एन टी पी सी लिमिटेड

(भारत सरकार का उद्यम)

NTPC Limited

(A Govt. of India Enterprise)

केन्द्रीय कार्यालय/Corporate Centre

Ref: 01:CP: RTI-6464/2014

Date: 03/07/2014

From:

The Central Public Information Officer,
NTPC Limited, NTPC Bhawan,
Core -6, 6th Floor, SCOPE Complex,
Lodhi Road,
New Delhi-110 003.

To

Shri Venkatesh Nayak,
B-117, 2nd Floor,
Sarvodaya Enclave,
New Delhi-110017.

Sir,

Sub: Seeking information under 'The Right to Information Act-2005'

This is with reference to your letter dated 11.06.2014, seeking information under RTI Act, 2005 which was received in NTPC-CPIO's Office on 12.06.2014 regarding information related to Sampur Coal Power Project in Sri Lanka.

Information Sought:

I would like to.....Sampur Coal Power Project in Sri Lanka from your public authority:

Para- (1)

List of all record including documents held in electronic form, in relation to said Project.

Reply: Para- (1)

The query is not clear.

Para- (2)

The following documents in relation to the said project:

1446
31/7/14

1/3

Para- (2)(a)

(a) Joint Venture Agreement;

Reply: Para- (2)(a)

NTPC signed a Joint Venture Agreement (JVA) with Ceylon Electricity Board (CEB) of Sri Lanka on 06th Sept. 2011 in Colombo to develop a 2x250 MW coal based power project at Muttur-East (near Trincomalee, Sri Lanka with equal (50:50) equity participation. The joint venture company "Trincomalee Power Company Limited (TPCL)" was incorporated in Sri Lanka on 26th Sept. 2011 under the laws of Sri Lanka.

The JVA is a private agreement between NTPC and CEB with built in confidentiality clause and hence can not be shared with anybody without the consent of CEB.

Para- (2)(b),(c),(d),(e)&(f)

- (b) Implementation Agreement;
- (c) Board of Investment Agreement;
- (d) Land Lease Agreement;
- (e) Coal Supply Agreement; and
- (f) Power Purchase Agreement (PPA)

Reply: (2)(b) to (f)

Implementation Agreement (IA), Board of Investment (BoI) Agreement, Land Lease Agreement (LLA), Coal Supply Agreement (CSA) and Power Purchase Agreement (PPA) were signed on 07.10.2013 by TPCL with respective authorities in Sri Lanka. NTPC is not a party to these agreements. Hence, NTPC is not in a position to accede to the request.

It may, however, be noted that as per PPA signed by TPCL with CEB the entire capacity and generation from the Project will be sold to CEB. It is not envisaged to supply any power from the Project to India. Hence, it is not going to impact Indian Power Consumers in any way.

Appeal, if any, may be sent within 30 days of the receipt of this letter.

MM
3/7/14

Following is the details of the Appellate Authority of NTPC Limited,
New Delhi:

Shri Manash Sarkar,
ED to CMD & ED(CA&CC),
NTPC Limited, Core-5, 3rd Floor,
SCOPE Complex, 7, Institutional Area, Lodhi Road,
NEW DELHI - 110 003.

Thanking you,

Yours faithfully,

Myd
3/12/14

(Pramod K. Yadav)
CPIO, NTPC Ltd.



Shri M.K. Ganguly
Pl. check. Returned back

Address is de.
7/11/14

11/11/14

Shri M.K. Ganguly
7-9-14
7-11-14

FLAG 'E'

एन टी पी सी लिमिटेड
(भारत सरकार का उद्यम)

NTPC Limited
(A Govt. of India Enterprise)

केन्द्रीय कार्यालय/Corporate Centre

Date : 11.09.2014

Ref : RTI/6464/14/AA

From :

The Appellate Authority,
NTPC Limited,
Core 7, 1st Floor,
Scope Complex, Lodhi Road,
New Delhi – 110 003

To :

Shri Venkatesh Nayak,
B-117, Second Floor,
Sarvodya Enclave,
New Delhi – 110 017

Respected Sir,

Sub : Appeal under the Right to Information Act, 2005

This is in reference to your appeal dated 06.08.2014 on the above subject which was received in our office on 12.08.2014. The appeal under reference and the reply of CPIO, NTPC Limited has been perused.

The Reply of CPIO is in order. Therefore, the appeal is hereby disposed off.

Thanking you,

Yours sincerely,

(S.N. Ganguly)
Appellate Authority, NTPC Limited

CC : CPIO, NTPC Limited

Before the Central Information Commission

2nd Floor, 'B' Wing, August Kranti Bhawan, Bhikaiji Cama Place, New Delhi- 110 066

Appeal submitted under Section 19(3) of *The Right to Information Act, 2005*

In the matter of

Venkatesh Nayak

vs

The CPIO, NTPC Ltd.

Date of submission: 02/12/2014

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भारतीय डाक
India Post

REMOTE1STSM
SP SARVODAYA ENCLAVE <110017>
ED393036428IN
Counter No:1, OP-Code:SK
To: THE REGISTRAR, CENTRAL INF. COMMISS
NEW DELHI, PIN:110066
From: VENKATESH NAYAK, B-117, S. ENCLAVE ND
Wt:120grams,
Amt:28.00, 03/12/2014, 12:37
Taxes:Rs.3.00<<Track on www.indiapost.gov.in>>

भारतीय डाक
India Post

भारतीय डाक
India Post

REMOTE1STSM
SP SARVODAYA ENCLAVE <110017>
ED393036555IN
Counter No:1, OP-Code:SK
To: THE FIRST APPELLATE, 5/7, INSTITUTE AREA
LODHI ROAD, NEW DELHI, PIN:110003
From: VENKATESH NAYAK, B-117, S. ENCLAVE ND
Wt:100grams,
Amt:28.00, 03/12/2014, 12:36
Taxes:Rs.3.00<<Track on www.indiapost.gov.in>>

Before the Central Information Commission

2nd Floor, 'B' Wing, August Kranti Bhawan, Bhikaiji Cama Place, New Delhi- 110 066

Appeal submitted under Section 19(3) of *The Right to Information Act, 2005*

Date: 02/12/2014

- 1) Name and address of the appellant :** Venkatesh Nayak
B-117, 2nd Floor
Sarvodaya Enclave
New Delhi-110017
- 2) Name and address of the Public Information Officer to whom the application was addressed :** The Central Public Information Officer
National Thermal Power Corporation Ltd.
Core-6, 6th Floor, SCOPE Complex
7-Institutional Area, Lodi Road
New Delhi- 110 003
- 3) Name and address of the Public Information Officer who gave reply to the application :** Shri Pramod Yadav
CPIO, NTPC Ltd.
NTPC Bhawan
Core-6, 6th Floor, SCOPE Complex
7-Institutional Area, Lodi Road
New Delhi- 110 003
- 4) Name and address of the First Appellate Authority to whom first appeal was submitted :** The Designated First Appellate Authority &
ED to CMD and ED (CA&CC)
NTPC, Ltd.
Core-5, 3rd Floor, SCOPE Complex
#7, Institutional Area, Lodhi Road
New Delhi- 110 003
- 5) Particulars of the RTI application :**
- a) Date of submission of the RTI application :** No. RTI/GOI/NTPC/2014/1
dated 11/06/2014
- b) Date of payment of additional fee (if any) :** Not applicable
- c) Date of submission of first appeal :** 06/08/2014
- 6) Particulars of the order(s) including number, if any against which the appeal is preferred :** Communication No. 01:CP:RTI-6464/2014
dated 03/07/2014

7) Brief facts leading to the appeal :

7.1) On 11/06/2014, I despatched by Speed Post, an RTI application along with the prescribed application fee, to the CPIO mentioned at para #2 above, stating as follows: (**Annex 1/colly**):

"I would like to obtain the following information about the Sampur Coal Power Project in Sri Lanka from your public authority:

- 1) A list of all records including documents held in electronic form, in relation to the said project; and*
- 2) The following documents in relation to the said project:*
 - a) Joint Venture Agreement;*
 - b) Implementation Agreement;*
 - c) Board of Investment Agreement;*
 - d) Land Lease Agreement;*
 - e) Coal Supply Agreement; and*
 - f) Power Purchase Agreement (PPA).*

Form of information required: All the aforementioned information be uploaded on your public authority's website and the respective URLs be intimated to me by post or email.

Kindly note that all the information sought above is in the nature of information that must be proactively disclosed under Section 4(1)(b), (c) and (d) of the RTI Act. As I am unable to find this information on your website, I am constrained to submit this formal request. Kindly note, with the exception of the PPA mentioned at para #2(f) above, none of the remaining documents sought are included in the list of exempt/confidential information displayed on your website. Without prejudice to my right to raise further arguments highlighting the public interest in support of disclosure at a later date, I request you to take into consideration the following arguments as to how public interest will be served better by disclosing all the requested information:

- 1) The existence of a PPA clearly indicates that some portion of the electricity generated by the Sampur Coal Power Project will be supplied to consumers in India. As your public authority has invested in the equity of the Joint Venture Company to the extent of 50%, it is in effect the taxpayer's money that has been invested in the said project. For these twin reasons, taxpayers and consumers in India have the right to scrutinize all the information sought above; and*
- 2) As official information about this project is hardly available in the public domain, the citizens of India have the right to know the information sought above in order to be able to better understand the measures taken by your public authority to augment India's energy security status.*

Should you decide not to disclose any or all of the information sought above, I request you to place the aforementioned arguments before the appropriate authority to make a decision of disclosure of all information sought, in terms of Section 8(2) of the RTI Act in order to avoid lengthy appeal processes."

7.2) On 07/07/2014 I received a reply of number and date captioned above from the CPIO mentioned at para #3 above stating as follows (**Annexe 2**):

"... Information Sought:

I would like to Sampur Coal Power Project in Sri Lanka from your public authority:

Para- (1)

List of all record [sic] including documents held in electronic form, in relation to said Project.

Reply: Para- (1)

The query is not clear.

Para- (2)

The following documents in relation to the said project:

Para-(2)(a)

(a) Joint Venture Agreement;

Reply: Para- (2)(a)

NTPC signed a Joint Venture Agreement (JVA) with Ceylon Electricity Board (CEB) of Sri Lanka on 06th Sept. 2011 in Colombo to develop a 2x250 MW coal based power project at Muttur-East (near Trincomalee, Sri Lanka with equal (50:50) equity participation. The joint venture was incorporated in Sri Lanka on 26th Sept. 2011 under the laws of Sri Lanka.

The JVA is a private agreement between NTPC and CEB with built in confidentiality clause and hence cannot be shared with anybody without the consent of CEB.

Para- (2)(b),(c),(d),(e)&f)

a) Implementation Agreement;

b) Board of Investment Agreement;

c) Land Lease Agreement;

d) Coal Supply Agreement; and

e) Power Purchase Agreement (PPA)

Reply: (2)(b) to (f)

Implementation Agreement (IA), Board of Investment (BoI) Agreement, Land Lease Agreement (LLA), Coal Supply Agreement (CSA) and Power Purchase Agreement (PPA)

were signed on 07/10/2013 by TPCL with respective authorities in Sri Lanka. NTPC is not a party to these agreements. Hence NTPC is not in a position to accede to the request.

It may, however, be noted that as per PPA signed by TPCL with CEB the entire capacity and generation from the Project will be sold to CEB. It is not envisaged to supply any power from the Project to India. Hence, it is not going to impact Indian Power Consumers in any way."

7.3) Aggrieved by the CPIO's reply, on 06/08/2014, I filed a first appeal with the designated First Appellate Authority mentioned at para #4 above with the following prayers supported by several specific grounds **(Annexe 3)**:

"The Appellant respectfully prays that this Hon'ble First Appellate Authority be pleased to:-

- 1) admit my appeal and conduct a hearing into the matters raised herein;*
- 2) summon/call for the records containing the information sought in my RTI application;*
- 3) examine the contents of the said records in light of the information sought in my RTI application; and*
- 4) direct the CPIO to disclose all the information in the form sought in my RTI application."*

7.4) I have not received any communication or order from the designated First Appellate Authority mentioned at para #4 above despite the passage of more than two months since the filing of my first appeal.

8) Prayers or relief sought :

This Appellant respectfully prays:

- 1) that this Hon'ble Commission be pleased to admit my second appeal and to hold an inquiry into the matters raised herein.**
- 2) that this Hon'ble Commission be pleased to set aside the orders of the CPIO for reasons explained in the 'Grounds' section of this second appeal given below;**
- 3) that this Hon'ble Commission be pleased to direct the CPIO to disclose all the information sought in my RTI application after giving an opportunity of being heard to any third party that may be related to my information request;**
- 4) that this Hon'ble Commission be pleased to direct the CPIO to supply to me all the information sought in my RTI application free of charge as is my right under Section 7(6) of the RTI Act; and**

5) that this Hon'ble Commission be pleased to issue a written warning to the First Appellate Authority who failed to communicate an order against my first appeal within the stipulated time limit requiring him to dispose all first appeal promptly henceforth.

9) Grounds for the prayer or relief :

9.1) According to Section 19(3) of the RTI Act a second appeal against a First Appellate Authority's decision lies with the Central Information Commission within ninety days from the date on which such decision should have been made. I submitted my first appeal to the designated First Appellate Authority on 06/08/2014. The said First Appellate Authority ought to have passed an order on my first appeal within the time limit of 30 days stipulated in Section 19(6) of the RTI Act and in no case later than 45 days for reasons for the delay in disposal to be recorded in writing. The 45-day time limit expired on 19/09/2014. I am submitting this second appeal to this Hon'ble Commission on the 74th day of the date on which the order of the First Appellate Authority ought to have been made as per the outer limit stipulated in Section 19(3) of the RTI Act. As this second appeal is being submitted within the stipulated deadline, this Hon'ble Commission may be pleased to admit the same for reasons given below:

9.1.1) First and foremost, in my first appeal letter I had contended that the CPIO had without sufficient cause dubbed my request for information specified at para #1 of my RTI application as an "unclear query". It is an accepted fact that the NTPC is a 'public authority' within the meaning of that term as defined under Section 2(h) of the RTI Act. Being a public authority, NTPC has an obligation to proactively disclose through various means, including display on its dedicated website, all information specified under Section 4(1)(b) of the RTI Act. Section 4(1)(b)(vi) of the RTI Act requires every public authority to voluntarily publicise "a statement of the categories of records that are held by it or are under its control".

Further, I had argued that under Section 4(1)(b)(xiv) NTPC is duty bound to disclose "details in respect of information available to or held by reduced in an electronic form." The Explanation of the term "disseminate" provided under Section 4(4) of the RTI Act clearly includes the Internet as a mode of disclosure of such information. Under both clauses of Section 4(1)(b) of the RTI Act, the NTPC has a statutory duty to disclose the complete list of categories of records held in hard copy or electronic form in relation to the Sampur Coal Power Project. By its own admission, NTPC has signed a JVA relating to this project in 2011 with CEB and has also opened up a company in Sri Lanka with 50:50 equity participation. Even though some records relating to this project may not held by the NTPC physically, they would all be available to it by virtue of its equal status in the equity share of TPCL – a company that it has jointly ventured to set up with CEB. NTPC has a duty to publicly disclose the categories of information relating to the Sampur Coal Power Project that are held by it as well as those records that are available to it by virtue of its equity participation in TPCL. I had pointed out that the CPIO has not paid attention to these twin mandatory obligations under the RTI Act while replying to my query at para #1 of my RTI application.

I had also explained that the Supreme Court of India has pointed out that obligation of disclosure of information under Section 4 of the RTI Act is mandatory and strict. There can

be no escape from this requirement as the citizen has the right to receive this information as a matter of right. IN the matter of *Central Board of Secondary Education and Anr. vs Aditya Bandopadhyaya and Ors.* (2011) 8SCC 497, the Hon'ble Court held as follows:

"36. ... If the 'information' enumerated in clause (b) of section 4(1) of the Act are effectively disseminated (by publications in print and on websites and other effective means), apart from providing transparency and accountability, citizens will be able to access relevant information and avoid unnecessary applications for information under the Act."

37. The right to information is a cherished right. Information and right to information are intended to be formidable tools in the hands of responsible citizens to fight corruption and to bring in transparency and accountability. The provisions of RTI Act should be enforced strictly and all efforts should be made to bring to light the necessary information under clause (b) of section 4(1) of the Act which relates to securing transparency and accountability in the working of public authorities and in discouraging corruption..." [emphasis supplied]

I had pointed out that the CPIO had simply not paid attention to this important judicial pronouncement about the importance of Section 4(1)(b) of the RTI Act, which he is expected to know in order to discharge his duties as the designated officer under the Act, effectively and efficiently. I pointed out that I was aggrieved by this vague and dismissive reply of the CPIO as it indicated a lack of application of mind to the contents of my RTI application. The designated First Appellate Authority has deemed it fit not to pass any order on my first appeal despite my raising these substantial grounds. I am aggrieved by the inaction of the First Appellate Authority. ***Hence the submission of this second appeal before this Hon'ble Commission.***

9.1.2) Further, in my first appeal I had argued that the CPIO had contended that the information sought at para #2(a) of my RTI application, namely the JVA, cannot be shared with anybody without the consent of CEB because it has a built-in confidentiality clause. I had pointed out that according to Section 7(1) of the RTI Act, a CPIO who receives an RTI application has only two courses of action open to him- he must either supply the information sought, to the Applicant, on payment of the prescribed additional fee, or reject the request for any of the reasons stated in Sections 8 and 9. No other course of action is open to a CPIO under Section 7 while making a decision on an RTI Application. I had pointed out that the CPIO had not rejected my application, instead he had merely indicated that the document contains a confidentiality clause and cannot be shared without the consent of CEB.

Subsequently, I had contended that the response of the CPIO clearly indicated that he had not arrived at a decision to reject my request for the information sought at para #2(a) of my RTI application. Conversely, his decision implied that the contents of the JVA may be publicised with the approval or clearance of CEB. As he had referred to the confidentiality clause contained in the JVA the next course of action open to the CPIO under the RTI Act is to seek a clearance or 'no objection' statement from CEB for the purpose of disclosing the JVA in the form sought by me. I had argued that the CPIO was therefore duty bound to take action according to the procedure laid down under Section 11 of the RTI Act by treating CEB

as a 'third party' within the meaning of that term as defined under Section 2(n) of the RTI Act.

According to Section 11 of the RTI Act:

"11. (1) Where a Central Public Information Officer or a State Public Information Officer, as the case may be, intends to disclose any information or record, or part thereof on a request made under this Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within five days from the receipt of the request, give a written notice to such third party of the request and of the fact that the Central Public Information Officer or State Public Information Officer, as the case may be, intends to disclose the information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party shall be kept in view while taking a decision about disclosure of information:

Provided that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party.

(2) Where a notice is served by the Central Public Information Officer or State Public Information Officer, as the case may be, under sub-section (1) to a third party in respect of any information or record or part thereof, the third party shall, within ten days from the date of receipt of such notice, be given the opportunity to make representation against the proposed disclosure.

(3) Notwithstanding anything contained in section 7, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within forty days after receipt of the request under section 6, if the third party has been given an opportunity to make representation under sub-section (2), make a decision as to whether or not to disclose the information or record or part thereof and give in writing the notice of his decision to the third party.

(4) A notice given under sub-section (3) shall include a statement that the third party to whom the notice is given is entitled to prefer an appeal under section 19 against the decision." [emphasis supplied]

I had contended that as the CPIO has not rejected my RTI application for any of the reasons specified under Section 8 and 9 of the RTI Act, it implied that he intended to disclose the information subject to receiving clearance from CEB which is the 'third party' in the instant case. Nothing in the CPIO's communication cited above indicates that he has embarked on such a course of action. I was therefore aggrieved by this inaction of the CPIO. The designated First Appellate Authority has deemed it fit not to pass any order on my first appeal despite my raising these substantial grounds. I am aggrieved by the inaction of the First Appellate Authority. ***Hence the filing of this second appeal before this Hon'ble Commission.***

9.1.3) Further, the claim of the CPIO that the details of the JVA cannot be disclosed because they contain a confidentiality clause is also untenable in the light of the pronouncement of

the Hon'ble Supreme Court in the matter of *Ram Jethmalani and Ors. vs Union of India and Ors.* (2011) 8 SCC 1:

"70. *Withholding of information from the petitioners by the State, thereby constraining their freedom of speech and expression before this Court, may be premised only on the exceptions carved out, in Clause (2) of Article 19, "in the interests of sovereignty and integrity of India, security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence" or by law that demarcate exceptions, provided that such a law comports with the enumerated grounds in Clause (2) of Article 19, or that may be provided for elsewhere in the Constitution.*

71. *It is now a well recognized proposition that we are increasingly being entwined in a global network of events and social action. Considerable care has to be exercised in this process, particularly where governments which come into being on account of a constitutive document, enter into treaties. The actions of governments can only be lawful when exercised within the four corners of constitutional permissibility. No treaty can be entered into, or interpreted, such that constitutional fealty is derogated from. The redundancy, that the Union of India presses, with respect to the last sentence of Article 26(1) of the double taxation agreement with Germany, necessarily transgresses upon the boundaries erected by our Constitution. It cannot be permitted."[emphasis supplied]*

In the instant case the Hon'ble Supreme Court was adjudicating over a matter relating to the request under the RTI Act made by the Petitioners for some information that was supplied to the Government of India by foreign governments. The Respondent took the plea that this information was received in confidence and were subject to the confidentiality clause contained in the Double Tax Avoidance Treaties that India had entered into with them. The Hon'ble Court refused to accept this plea and ruled that the information be disclosed to the Petitioners. Later in October, 2014 the Hon'ble Apex Court rejected a plea for review filed by the Government of India against the directive requiring disclosure of the information. So the *ratio decidendi* quoted above stands as the law of the land under Articles 141 and 144 of the Constitution. When the Supreme Court is not willing to countenance a confidentiality clause in an agreement that the Government of India has signed in the performance of its sovereign functions, there is no reason why a confidentiality clause contained in a development project-related agreement signed by the Respondent Public Authority in the performance of its routine functions must be treated as an impediment to disclosure of the JVA under the RTI Act. The CPIO has not adequately appreciated this point and the designated First Appellate Authority has elected not to pass any order on my first appeal. I am aggrieved both by the reasoning of the CPIO and the inaction of the First Appellate Authority. **Hence the filing of this second appeal before this Hon'ble Commission.**

9.1.4) Further in my first appeal I had contended that the CPIO had reasoned that as NTPC is not a party to the remaining agreements specified in my RTI application at paras #2(b) to (f), he is unable to accede to the request for disclosure. However I had pointed out that while

communicating this reply, the CPIO had not applied his mind adequately to the definition of the phrase 'right to information' provided in Section 2(j) of the RTI Act. Section 2(j) is reproduced below:

"(j) "right to information" means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to—

- (i) inspection of work, documents, records;
- (ii) taking notes, extracts or certified copies of documents or records;
- (iii) taking certified samples of material;
- (iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device;" [emphasis supplied]

I had contended that Section 2(j) of the RTI Act makes it clear that a citizen's "right to access information" is not limited only to such information that a public authority readily holds in its custody. This right extends to all such information that is under the control of the public authority. By the CPIO's own admission, NTPC is an equal participant in the equity structure of TPCL. It is not subordinate to CEB- the other partner in TPCL, in any way. The NTPC by virtue of this position in TPCL can summon the information requested at paras #2(b) to (f) of my RTI application and make it public in the form sought in my RTI application. I had pointed out that the CPIO had not paid attention to this pre-eminent position of NTPC and that he had merely thrown up his hands expressing helplessness to accede to my information request. I had argued that this action of the CPIO indicated a lack of application of mind to the request contained in my RTI application in the light of the provisions of the RTI Act and was consequently aggrieved by the response of the CPIO. The designated First Appellate Authority has deemed it fit not to pass any order on my first appeal despite my raising these substantial grounds. I am aggrieved by the inaction of the First Appellate Authority. ***Hence the filing of this second appeal before this Hon'ble Commission.***

9.1.5) Further in my first appeal I had stated that the CPIO had contended that Indian consumers will not benefit from the power purchase agreement (PPA) signed as part of the Sampur Coal Power Project. As the CPIO is better placed to know the contents of PPA, I had deferred to his knowledge and conceded that point. However, I had pointed out that that is not adequate ground for dismissing my request for information about the PPA. While the Indian consumer may not directly benefit from the PPA, it is the Indian taxpayer's money that is invested by NTPC in the 50% equity share of TPCL. NTPC is an 'instrumentality of the State' as understood within the meaning of that phrase under Article 12 of the Constitution. Further, the Preamble of the RTI Act clearly states that this law is being brought in to ensure that Government and its instrumentalities are accountable to the governed, namely the citizenry of India. Therefore as a taxpaying member of this citizenry, I have every right to know the contents of the PPA that has been signed by a company in which NTPC has invested 50% of the taxpayers' money. I had contended that the CPIO has not adequately applied his mind to these dimensions of the information request contained in my RTI application and has instead been dismissive of the same without valid and legitimate cause. Consequently, I

had pointed out that I was aggrieved by the response of the CPIO. The designated First Appellate Authority has deemed it fit not to pass any order on my first appeal despite my raising these substantial grounds. I am aggrieved by the inaction of the First Appellate Authority. ***Hence the filing of this second appeal before this Hon'ble Commission.***

In light of the reasons and averments made above this Appellant believes that this is a fit case for directing the disclosure of all information sought in the RTI application in the larger public interest.

10) I hereby verify that the aforementioned facts are true to the best of my knowledge. I also declare that I have authenticated the Annexes to this appeal. I also affirm that I have transmitted a copy of this appeal along with Annexes to the Respondent mentioned at para #4 of this appeal letter.

Signature of the Appellant:

S. S. Venkatesh Nayak
12/12/14
(Venkatesh Nayak)

CENTRAL INFORMATION COMMISSION

August Kranti Bhawan, Bhikaji Cama Place,
New Delhi-110066

F. No.CIC/CC/A/2014/002901-YA

Date of Hearing : 08.01.2016

Date of Decision : 15.02.2016

Appellant/Complainant : Shri Venkatesh Nayak
Delhi

Respondent : Shri P.K.Yadav, CPIO
NTPC, Delhi

Information Commissioner : Shri Yashovardhan Azad

Relevant facts emerging from appeal:

RTI application filed on : 11.06.2014

PIO replied on : 03.07.2014

First Appeal filed on : 06.08.2014

First Appellate Authority (FAA) order on : 11.09.2014

Second Appeal/complaint received on : 05.12.2014

Information sought:

Vide RTI application dated 11.06.2014; the appellant sought the following information regarding the Sampur Coal Power Project, Sri Lanka:

- 1 . *A list of all records including documents hel in electronic form, in relation to the said project; and*
- 2 . *The following documents in relation to the said project:*

- a) *Joint Venture Agreement*
- b) *Implementation Agreement*
- c) *Board of Investment Agreement*
- d) *Land Lease Agreement*
- e) *Coal supply Agreement; and*
- f) *Power Purchase Agreement (PPA)*

Relevant facts emerging during hearing:

Both parties are present and heard.

The appellant filed the present RTI on 11.06.2014. The CPIO furnished information sought in part. The reply of CPIO is extracted hereunder:

“Reply to para 1 : the query is not clear

Reply Para 2(a) : NTPC signed a Joint Venture Agreement (JVA) with Ceylon Electricity Board (CEB) of Sri Lanka on 06.09.2011 in Colombo to develop a 2x250 MW coal based power project at Muttur-East (near Trincomalee, Sri Lanka with equal (50:50) equity participation. The joint venture company “Trincomalee Power Company (TPCL)” was incorporated in Sri Lanka on 26th September, 2011 under the laws of Sri Lanka.

The JVA is a private agreement between NTPC and CEB with built in confidentiality clause and hence can not be shared with anybody without the consent of CEB.

Reply para 2 (b) to (f): Implementation Agreement (IA), Board of Investment (BoI) Agreement, Land Lease Agreement (LLA), Coal Supply Agreement (CSA) and Power Purchase Agreement (PPA) were signed on 07.10.2013 by TPCL with respective authorities in Sri Lanka. NTPC is not a party to these agreements. Hence, NTPC is not in a position to accede to the request.

It may, however, be noted that as per PPA signed with TPCL with CEB the entire capacity and generation from the project will be sold to CEB. It is not envisaged to supply any power from the Project to India. Hence, it is not going to impact Indian Power Consumers in any way.”

The CPIO informs the Commission that NTPC Ltd., India and Ceylon Electricity Board, Sri Lanka have incorporated a 50:50 Joint Venture company by the name ‘TRINCOMALEE POWER COMPANY LTD. (TPCL) in Colombo under the laws of Sri Lanka. A copy of the certificate of incorporation is placed before the Commission and the same is taken on record.

The CPIO further informs the Commission that the object of the aforesaid Joint Venture Company was to set up a 500 MW coal based power project at Trincomalee. The CPIO places a copy of the project synopsis before the Commission and relevant extracts are produced hereunder:

- “December, 2005: During State visit of President of Sri Lanka, Bilateral Understanding Reached between India and Sri Lanka to set up a 500 MW coal based station in Sri Lanka*
- December, 2006 Memorandum of Agreement signed in Colombo NTPC, Govt. of Sri Lanka (GoSL) and Ceylon Electricity Board (CEB)*
- September 6, 2011 Joint Venture Agreement signed in Colombo to develop 2x250 MW coal based power project in Trincomalee, Sri Lanka with equal (50:50) equity participation*
- September 26, 2011 Joint venture Company by the name “Trincomalee Power Company Limited (TPCL)” incorporated with equal (50:50) equity partnership between NTPC & CEB*
- December 2012 Feasibility Report for project finalised*
- October 7, 2013 TPCL signed key project agreements like power purchase agreement (PPA) implementation Agreement (IA), Board of Investment (BoI), Agreement and Coal Supply Agreement (CSA) with respective Authorities/Parties in Sri Lanka in the presence of Hon’ble Foreign Minister, GoI and Ministers of Sri Lanka.*
- May 31, 2014 Generation Licence granted to TPCL”*

The appellant submits that since the Trincomalee Power Project (hereinafter referred to as TPCL) is a joint venture and involves a major stake of NTPC Ltd., hence the public at large have a right to know about the mutual contractual obligations as well as the outcome of the joint venture project. It is further contended by the appellant that existence of a Power purchase agreement between NTPC & CEB indicates that some portion of electricity generated by the TPCL will be supplied to consumers in India. The appellant asserts the right to scrutinize the information sought on the aforesaid grounds.

Per contra, the CPIO negates the contention advanced by appellant and informs the Commission that entire output generation by TPCL will be sold to Ceylon Electricity Board and the Indian Power consumers are not affected by the same.

On 08.01.2016, the parties were directed to submit written submissions. The relevant extract from the submissions received from CPIO, NTPC is extracted hereunder:

“We reiterate our position on the matter:

Further, it is submitted tht the project is going througha critical phase. Environment Clearance for the project from Central Environmental Authority, Sri Lanka is awaited. The Agreements sought by the applicant are commercially sensitive documents with built-in confidentiality clause. The disclosure may harm the commercial and intellectual interest of the JV Company in Sri Lanka as well as co-promoter, Ceylon Electricity Board and may be detrimental to the Indo-Sri Lanka ties which are currently under strengthening. Thus, we seek exemption under Section 8(1)(d) of RTI Act, 2005”

Decision:

The Commission after hearing both the parties and perusal of documents notes that the appellant has sought information regarding Joint Venture Agreement which is a private agreement between the NTPC and the Ceylon Electricity Board (CEB) with a built in confidentiality clause. The appellant has cited public interest in release of information about Sampur Coal based power project to be established by the JVA, since power was also to be supplied to the Indian consumers. The respondents have, however, clearly denied that the power generated will be supplied to the Indian consumers. In fact, the entire power generated is for the consumers in Sri Lanka. It has also been brought to the knowledge of the Commission that the project is now entering a critical phase and environmental clearance from the Central Environment authority, Sri Lanka is awaited. The contention of the respondent is that the information sought relates to documents which have been prepared investing a lot of man hours and expertise on the part of the commercial organisation like NTPC and deserves due consideration. Further, the disclosure may harm the commercial and intellectual interests of the JV Company in Sri Lanka as well as co-promoter, Ceylon Electricity Board.

The Commission takes note of the decision of a coordinate bench in **CIC/SG/A/2011/02664/17150** dated 30.01.2012 wherein the expression “Commercial Confidence” is summarised as follows:

“In the opinion of this bench, the term ‘commercial confidence’ comprises of commercial financial or business or financial information which entities keep as confidential, or do not display or bring to the knowledge of the public, mostly with an intention to maintain an advantage over its competitors”.

The Commission concurs with the stand of the public authority that disclosure of information sought may harm the commercial and intellectual interests of the JVA Company in Sri Lanka as well co promoters, Ceylon Electricity Board.

The appellant’s query regarding information to be furnished in public interest by public sector organisation can be well addressed by the consolidated information given in the form of project

synopsis by the respondent in its submission to the Commission. A copy of the same may be furnished to the appellant.

The appeal is disposed of with the above direction.

(Yashovardhan Azad)
Information Commissioner

Authenticated true copy. Additional copies of orders shall be supplied against application and payment of the charges prescribed under the Act to the CPIO of this Commission.

(V.D.Naniwadekar)
Designated officer to IC(YA)

Copy to:-

Central Public Information Officer under RTI

(Shri Pramod K. Yadav),

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NTPC Bhawan, SCOPE Complex,

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Shri Venkatesh Nayak

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