

CENTRAL INFORMATION COMMISSION
2nd Floor, 'B' Wing, August Kranti Bhawan,
Bhikaji Cama Place, New Delhi -110066
Tel : +91-11-26717355

Appeal No. CIC/VS/A/2015/000660

Appellant: Shri Himanshu Pathak
C-1/122, First Floor, Lajpat Nagar-I, New Delhi.

Respondent: Central Public Information Officer
Wagon Directorate, RDSO, Railways, Lucknow.

Date of Hearing: 02.12.2016

Dated of Decision: 02.12.2016

ORDER

Facts:

1. The appellant filed RTI application dated 20.10.2014 seeking information on 12 points relating to Tender No. 2004/DEV/CELL/IGRI/6 opened on 28.06.2005 and awarded in 2006 for design, development and supply of bogie mounted brake system with respect to Stone India Pvt. Ltd. including copy of technical bid, copy of Tender Committee recommendation and acceptance by the competent authority, copy of contract etc.

2. The CPIO responded on 19.08.2014, 20.10.2014. The appellant filed first appeal on 21.11.2014 with the First Appellate Authority (FAA). The FAA responded on 01.12.2014. The appellant filed appeal on 04.03.2015 before the Commission with the plea that the sought for information has not been provided to him.

Hearing:

3. The appellant participated in the hearing personally. The respondent was heard through audio.

4. The appellant stated that he had filed his RTI application dated 28.7.2014 with the Railway Board and sought certain information.

5. The appellant further stated that the PIO/Wagon Directorate, RDSO Lucknow vide letter dated 19.8.2014 had demanded Rs. 10,858/- for copying

fee which he deposited on 3.9.2014 with the PIO, RDSO, Lucknow. The appellant stated that that the PIO, RDSO, Lucknow vide letter dated 20.10.2014 had denied substantial information u/s 8 (1) (d) and also stated that the information is not available in the said office and should be obtained from the Railway Board. The appellant stated that the CPIO, RDSO, Lucknow, vide letter dated 1.12.2014 had transferred RTI application to the CPIO Railway Board after 4 months.

6. The appellant stated that the respondent has transferred following points to the Railway Board:-

1. Copy of technical and commercial bid submitted by M/s Escorts Ltd.
2. Copy of Tender Committee recommendations and acceptance by the competent authority.
9. Whether the contracts were executed within the specified time?
10. If not, how many extensions were given to the contractors? Copy of extension letters be provided.
11. Whether any liquidated damages were levied and recovered.

7. The appellant stated that he has not received any response from the CPIO Railway Board. The appellant stated that the Railway Board and the RDSO is the same public authority and providing information is intra departmental matter. The appellant stated that the respondent has not taken plea that the Railway Board is a different public authority. The appellant stated that the respondent has failed to provide the information within time prescribed under the Act. The appellant stated that PIO, RDSO, Lucknow should refund his deposited amount of Rs. 10,858/- and information should be provided to him, free of cost. The appellant stated that the respondent had denied the information stating that its release would give information on trade secret. The appellant stated that after the tender was approved, then it becomes the public document.

8. The respondent stated that vide letter 20.10.2014 they have informed the appellant that they are returning an amount of Rs. 10,858/-.

9. The appellant stated that he has not received any letter regarding refund of fee.

10. The respondent stated that Railway Board deals with the tender process and they are concerned only with the designing work. The respondent stated that all tender related information is available with the Railway Board. The respondent stated that the information with regard to designing is intellectual property of third party and cannot be provided in terms of section 8(1)(d) of the RTI Act.

11. The appellant stated that the disclosure of Technical Bid , in no manner, harms the competitive position. It only establishes that the successful bidder meets the technical specifications as provided in the tender documents.

12. The appellant stated that the copies of approval of changes of designs or its intimation to the contractor, in no manner, can be said to be trade secret or intellectual property or breach of commercial confidence.

13. The appellant stated that information relating to brake cylinder used in modified design (of which full trials are underway) is neither a trade secret nor breaches the commercial confidence or intellectual property.

14. The appellant stated that acceptance of tender and award of contract involves financial repercussions and may lead to loss to the exchequer. For any award of the contract, the Public Authority has to ensure that the bids submitted are strictly in accordance with and fully comply with the terms and conditions of the tender. The technical requirement with regard to the product for which tender is floated is contained in the tender document and is within the public domain. The Technical Bid furnished by tenderers participating in the tender cannot be denied after finalization of the tenders/award of contracts nor can it be said the same is prohibited under section 8(1)(d) of the RTI Act. The appellant stated that it is admitted that the said tender has been finalized. The appellant stated that the disclosure of sought for information is in public interest.

15. The appellant stated that sought for information is not related to 'why and what' and hence the DoPT's Memorandum No. 01/07/2009-IR dated

01.06.2009 and CIC/AT/A/2006/00045 dated 21/04/2006 is not applicable in his case.

Discussion/ observation:

16. The sought for information is related to the respondent RDSO, Railway Board and Third party Company. It would not be appropriate to decide the matter without hearing all the concerned parties.

17. As the amount deposited by the appellant is yet to be refunded, the respondent may return the amount within 15 days of this order.

Decision:

18. The matter is adjourned and matter may be listed after 30 days of this order. The Dy. Registrar is directed to issue notice of hearing to respondent RDSO, Railway Board and Stone India Pvt. Ltd.

19. The respondent is directed to serve a copy of hearing notice upon the M/s Stone India Pvt. Ltd within 7 days of receipt of this order.

The appeal is disposed of. Copy of the order be given to the parties free of cost.

(Radha Krishna Mathur)
Chief Information Commissioner

Authenticated true copy

(S.C. Sharma)
Dy. Registrar