

OFFICE OF THE
ASSAM INFORMATION COMMISSION

JONAKEE COMPLEX, SHILPGRAM ROAD, PANJABARI, GUWAHATI- 781037

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Case No. : SIC/KPM 109/2022
Complainant/ Appellant : Sri S K Sarma
Respondent : SPIO, O/o the Assam Mineral Development Corporation, Khanij Bhawan, R.P.Road, Dispur, Guwahati 06
Date of Hearing : 27/06/2022
Date of Order : 11/07/2022
Complaint/ Second Appeal heard by : Dr. A.P.Rout, State Chief Information Commissioner, Assam

O R D E R
11/07/2022

1. In continuation of earlier order dated 21.5.2022, the matter was taken up for hearing.
2. The petitioner Sri S K Sarma is present.
3. The Public Authority is represented by Sri Amit Kumar, Mining Engineer & SPIO. He is accompanied by Sri N. Anand, IFS, Managing Director, Assam Mineral Development Corporation & 1st Appellate Authority
4. The petitioner Sri S K Sarma has filed his RTI petition before the SPIO,O/o the Mineral Development Corporation Dispur, Guwahati on 18.12.2021 seeking following information:
 - (i) How much coal extracted from Garampani Coal Mines by AMDC or some other party. If coal extraction done by other party, please provide full details of the contractor along with the certified copy of each agreement with them and detail of how much coal extracted from 2012-13 to 2020-21 area wise, year wise and quantity wise.
 - (ii) Provide the details of challan issued by AMDC to the contractor from 2012-13 to 2020-21.
 - (iii) If AMDC has issued transit pass to any contractor, please provide at least five no's. of certified copy of such transit pass issued to each contractor each year from 2012-13 to 2020-21 yearwise.
5. The SPIO of AMDC has sent a reply to the petitioner vide letter dated 27.1.2022 as follows:
 - (i) Please read Section 8(d) of the RTI Act, 2005.
 - (ii) Please read Section 8(d) of the RTI Act, 2005.
 - (iii) Certifying for the purpose of replying to RTI & provision of certified copy is beyond the scope of RTI Act. Also please read section 8(d) of the RTI Act,2005.
6. (A)The petitioner has produced a copy of earlier letter dated 9.10.2017 of the SPIO of Assam Mineral Development Corporation Ltd. Dispur, Guwahati wherein is mentioned as follows:
 - (i) AMDC Ltd. provided full and complete information to the RTI queries dated 27.4.2015 vide letter dated 13.5.2015. AMDC confirms that is supplied only 700.00 MT of limestones to M/s H.M.Cement Ltd. Meghalaya between 1.2.2006 to 31.3.2006.
 - (ii) AMDC had not supplied any quantity of limestone to M/s H.M. Cement Ltd., Meghalaya during 2008.
The sale price of limestone per MT at AMDC project during the year are as follows:
January to March 2008 Total Rs 242.00/-

April to December 2008 Total Rs. 262.00/-

- (iii) AMDC supplied limestone directly to cement plants and not to any other party having no valid cement plant registration certificate. As such AMDC supplied limestone to few cement plants including M/s. H.M.Cements Ltd., Meghalaya during the period. Thus, AMDC did not receive any amount from any limestone suppliers of Meghalaya.
 - (iv) The 4% GST against C Form vide no. 0097799 was submitted by M/s H.M. Cements Ltd., Meghalaya against supply of 700.00 Mt of limestone from AMDC. Photocopy of form was provided vide letter dated 13.5.2015.
 - (v) As stated at point no.3 above, AMDC had not supplied any quantity of limestone to any suppliers from Meghalaya. As such, copies of transit pass issued to those suppliers do not exist.
- (B) Further, he has submitted copy of the enquiry report of Shri C. Lyngdoh, Functional Manager, District Commerce & Industries Centre, Ri-Bhoi District, Nongpoh mentioning *Quote* As per scrutinization of available records and information viz. Annexure, Transit Pass, Debit cum receipt vouchers & Delivery challans, it was found that limestone was transported from AMDC, Umrangshu, Assam through the different suppliers as mentioned at "Note A" to the destination address i.e., M/s H.M.Cements Ltd. at Byrnihat. AMDC has issued transit pass for the consignments of the concerned suppliers mentioning the name of the customer, quantity, description of the material, vehicle no. destination etc., on the transit passes. The suppliers as mentioned appears to have purchased Limestone from AMDC, Assam and transported the same to the Byrnihat through the different carriers duly supported by the receipts where payment was made by M/s. H.M.Cements Ltd. as transportation charges to the owners/drivers of the vehicles.'

Hence the allegation made that the other source of purchase for limestone other than that directly procured by M/s. H.M.Cements from AMDC is from within the state of Meghalaya does not hold water. *Unquote*.

Hence, the petitioner prayed for sack of transparency as mandated by the RTI Act,2005, the information be given to him.

7. (A) Sri N. Anand, Managing Director, Assam Mineral Development Corporation who also attended the hearing stated that records pertaining to question no. 1 and 2 relates to section 8(1)(d) of the RTI Act,2005 which *quote* 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; *Unquote*.
- (B) As regards to point no.3 of the RTI petition, the SPIO mentions that Certifying for the purpose of replying to RTI & provision of certified copy is beyond the scope of RTI Act. Also please read section 8(d) of the RTI Act,2005.
- (C) The 1st Appellate Authority in quoting the Delhi High Court Order, W.P.(C) 6634/2011 & CM No. 13398/2011, The Registrar, Supreme Court of India vs. Commodore Lokesh K.Batra and Ors on 4th December,2014 incorporating the observation of Supreme Court of India in Aditya Bandhopadhyay (supra) *Quote*. At this juncture, it is necessary to clear some misconceptions about the [RTI Act](#). [The RTI Act](#) provides access to all information that is available and existing. This is clear from a combined reading of [Section 3](#) and the definitions of "information" and "right to information" under clauses (f) and (j) of [Section 2](#) of the Act. If a public authority has any information in the form of data or analysed data, or abstracts, or statistics, an applicant may access such information, subject to the exemptions in [Section 8](#) of the Act. But where the information sought is not a part of the record of a public authority, and where such information is not required to be maintained under any law or the

rules or regulations of the public authority, the Act does not cast an obligation upon the public authority not supposed to collect or collate such non-available information and then furnish it to an applicant....." *Unquote* pointed out that the Public Authority not supposed to collect or collate such non available information.

8. However, the Commission in reply to the above would like to refer to Delhi High Court order vide case no. W.P. (C) 900/2021 Rakesh Kumar Gupta Vs Central Information Commission (Delhi High Court) which quotes PIO/CPIO cannot function merely as "post offices" but instead are responsible to ensure that the information sought under the RTI Act is provided; *unquote*

9. The 1st Appellate Authority also quoted the order of Central Information Commission, Mrbharat Jhunjhunwala vs Tehri Hydro Development... On 17th February,2016 in seeking exemption under trade secret by quoting observation as follows *quote* The information is intellectual property of THDC and Competitive position In this reference, it is to mention that the hydrographic report is a trade secret. A trade secret is a formula, practise, process, design, instrument, pattern or compilation of information which is generally known or reasonably ascertainable, by which a business can be obtained on economic advantage over competitors or customers. Hydrographic survey is carried out utilising the latest state-of-the-art hydrographic survey equipments and technology. It is an intellectual property which contains information of highest quality and precision. Moreover, THDCIL is also providing consultancy services to various organisations. So, disclosure of technology trade secret shall affect competitive position. It is also to inform that the study report contains water levels at different period of the year based on THDCIL strategise the operation of reservoir for commercial use.

Further, it is to mention that there is no larger public interest which warrants the disclosure of complete hydro graphic study. *Unquote*.

10. The 1st Appellate Authority submitted that the compilation of data is not permissible as per Court judgement:-The Registrar, Supreme Court of India vs. Commodore Lokesh K.Batra and Ors on 4th December,2014

11. In light of the above, the Commission would like to analyse the gamut of the RTI petition and defence taken by SPIO and 1st Appellate Authority as follows:-

- (a) Regarding the information: As per section 2(f) of the RTI Act, 2005 "information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force;
- (b) Since the AMDC comes under 2(i) and 2(h) of the RTI Act 2005 which states as follows:

Section 2(i) of the RTI Act, 2005 which *quotes* "record" includes—

- (i) any document, manuscript and file;
- (ii) any microfilm, microfiche and facsimile copy of a document;
- (iii) any reproduction of image or images embodied in such microfilm (whether enlarged or not); and
- (iv) any other material produced by a computer or any other device; *unquote*.

Section 2(h) of the RTI Act, 2005 which *quotes* (h) "public authority" means any authority or body or institution of self-government established or constituted,— *unquote*.

Hence, the information sought by the petitioner falls under the definition of information as per the RTI Act,2005 and Assam Mineral Development Corporation is a public authority as per the definition of the RTI Act, 2005.

12. By enclosing the earlier enquiry report of Shri C. Lyngdoh, Functional Manager, District Commerce & Industries Centre, Ri-Bhoi District, Nongpoh, the petitioner pointed out that there is greater public interest involved as per his allegation that Transit Permit of AMDC are forged and used by supplier to transport coal in Assam and thereby causing huge loss to the people of Assam.
13. Further in earlier letter dated 9.10.2017 the petitioner stated that since AMDC has given the information how can they deny it stating to be trade secret.
14. The Commission in this regard refers to some website of following coalfields the details of coal production as follows:-

Nevyali Lignite Production Performance

Details	Unit	2018-2019	2017-2018	2016-2017	2015-2016	2014-2015	2013-2014
		Actual	Actual	Actual	Actual	Actual	Actual
Overburden	Lakh Cubic Metre	1708.94	1851.35	2060.70	1702.76	1592.98	1681.72
Lignite	Lakh Tonne(LT)	242.49	251.53	276.21	254.51	265.43	266.09
Power Generation (Gross)	Million Unit (MU)	20673.52	20740.84	22340.59	19182.21	19729.13	19988.65

Mahanadi Coalfield Coal Production

Category	Coal Prod. (M.T.)	O.B. Removal (M.Cu.M)
2008-09	96.34	51.85
2009-10	104.08	66.07
2010-11	100.28	88.70
2011-12	103.12	85.67
2012-13	107.89	90.36
2013-14	110.439	96.028
2014-15	121.379	89.221
2015-16	137.901	98.414
2016-17	139.21	123.34
2017-18	143.06	138.18
2018-19	144.15	130.00
2019-20	140.36	124.51
2020-21	148.01	173.15

Korba Coalfields Coal production performance during 2020-21

<u>UG(Lakh Tons)</u>	<u>OC(Lakh Tons)</u>	<u>Total(Lakh Tons)</u>	<u>OBR(Lakh Tons)</u>	<u>Off-Take(Lakh Tons)</u>
12.54	1300.4	1313	1583.24	1195.64

15. From the above, it is clear that the extraction of coal yearwise from 2012-13 to 2020-21 cannot be considered to come under trade secret.
16. Since AMDC has already provided certain information vide letter dated 9.10.2017, the same Corporation cannot seek exemption under the provision of exception under Section 8(1)(d) of the RTI Act,2005 however, as requested by the 1st Appellate Authority (on the issue of competitive pricing), the Commission decides that the figure for last three years need not be given, only the figure for the remaining period be given.
17. Regarding point no.2 of the RTI petition, as ordered above copy of the challan to be given, except for the last three years.
18. Regarding point no.3 of the RTI petition, Copies of Transit Permit are available with the truck drivers during the transit of the consignment and subject to inspection by any Authority on the road be it police, be it transport, be it in any other Authority, hence it cannot be claimed that this will come under the exemption as per Section 8(1)(d).
Therefore, the Commission directs to provide photocopies (five) of such Transit Passes of each contractor from 2012-13 onwards, except for the last three years.
19. The case is disposed off.
Authenticated copies to be given to all concerned.

Sd/-
(Dr. A.P. Rout)

Authenticated true copy.

Sd/-
Registrar
Assam Information Commission

Copy to:

1. The SPIO, Office of the Assam Mineral Development Corporation, Khanij Bhawan, R.P.Road, Dispur, Guwahati 6 for information and necessary action.
2. The 1st Appellate Authority, O/o the Assam Mineral Development Corporation, Khanij Bhawan, R.P.Road, Dispur, Guwahati 6 for information and necessary action.
3. The petitioner Sri S K Sharma, 89, Jayanagar Chariali, Beltola Road, Guwahati 28 for information.
4. Computer Section for uploading in the Website.
5. Office File.
6. Order Book.

Registrar
Assam Information Commission