



Appeal No 110/09/19

Ziauddin Ahmad (Appellant)

Vs.

Trading Corporation of Pakistan(Respondent)

Date: December 24, 2019

ORDER

Zahid Abdullah: Information commissioner

A. The Appeal

1. The Appellant filed an appeal with the commission on September 05, 2019 in which he stated that he had requested information from Trading Corporation of Pakistan, (TCP) under the Right of Access to Information Act 2017.
2. The information sought by the Complainant, through application dated 05/08/19, is as under:
 - i. “The Federal Govt notification and directors’ resolution as per extract from minute book for appointment of Chief Executive Officer and Chairman BOD in TCP in 2013.
 - ii. Copy of cabinet division notification and directors’ resolutions as per extract from minutes’ book for appointment of CEO and Chairman BOD in TCP in 2017 and 2018.
 - iii. Copy of resolution of directors and shareholder meeting as per extract from minutes’ book where in any amendment in TCP Articles for incorporation of “Public Sector Companies (Corporate Governance) Rules-2013” were considered / approved or any extension in time for compliance of implementation of PSCCGR 2013 applied by TCP and approved by the commission if any.
 - iv. Copy of approval of commission for amendment in TCP Articles if sought / given.
 - v. When the post of CFO has been created and filled in TCP. A copy of working paper along with the extract from the minutes’ book of resolution passed in directors meeting for appointment of CFO.

- vi. Copies of the records including notice, agenda, working papers, proceeding meeting held, resolutions passed, extracts from minutes' book of directors' meetings held on 11-02-2019 and 26-03-2019.
- vii. Copy of working paper, resolution of directors passed for creation of post of Chief Medical Officer of TCP, prescribed qualifications, functional duties and perks approved.
- viii. Copy of working paper and director's resolution as per extract from minute book of directors meeting passed in July 2008 (office order reference date 11-07-2008) allowing various financial and other benefits to officers including deputationist. The running serial # BOD meetings held during first half of 2008 may be intimated.
- ix. Board resolution passed as per minute book of directors meeting for creation of Medical Committee in TCP, its functional responsibility etc.
- x. List of deputationist officer who were sanctioned house Loan of Rs. 1.00 Million from 2008 up-to-date in violation of Section 195 of Company's ordinance 1984, and without approval of directors, Commission and Ministry of Finance, and its recovery status as on date.
- xi. Copy of Interministerial Committee decision contained in minutes of meeting held at Islamabad on 25-06-1979 where in participants unanimously including the then Chairman TCP consented to the Interministerial committee decision.
- xii. Copy of Ministry of Commerce direction issued to TCP on behalf of Secretary Commerce division date 30-06-1979 to expeditiously implement Interministerial Committee decision on absorption of 26 employees of PEOC in TCP and send compliance report if sent to two divisions.
- xiii. Copy of extract / papers from relevant files of TCP indication as who has malafidely turn around and tampered commerce Division directions received in TCP on 2nd July 1979 within 24 hours of its receipt to implement Interministerial Committee meeting decision pertaining to absorption of 26 employees of defunct PEOC in TCP wherein their services were needed, into "fresh appointment" in violations of TCP service rules, without complying codal formalities and has not protected as per law their pay and other service benefits of PEOC in TCP despite the then Chairman TCP has categorically accepted to implement the Interministerial committee decision of June 25, 1979.
- xiv. Copy of working paper and directors' resolutions as per extract from minute book of directors meeting for appointment of 8 officers of defunct RECP in TCP in 2008 and their approved terms of appointment including payment of three years gratuity to them.
- xv. Copy of update gratuity rules of TCP."

B. Proceedings

3. Through a notice dated 13/09/19, the Commission called upon the Respondent to submit reasons for not providing the requested information.

4. Through a letter dated 20/09/19, the Respondent shared the response as under:

“This is to inform you that most of the record as requisitioned by Mr. Ziauddin Ahmad, ex-General Manager, TCP is old and was not readily traceable for provision. However, the same has been fetched and is being scrutinized to confirm admissibility thereof for provision under Section (6) and (7) of the Right of Access to Information Act 2017.

The requisite information would be provided to the applicant on payment of prescribed fees to be determined by this organisation as per Section 15 mentioned above. The same would accordingly be conveyed to the applicant for further necessary action”.

5. Through a letter dated 24/09/19, the commission provided Schedule of Cost to the Respondent directing that the public body can “charge fee according to the Schedule of Costs notified by Pakistan Information Commission”.

6. Through a letter dated 03/10/19, the Appellant shared that:

The response of the Respondent as shared with the Appellant through letter dated 30/09/19 is as under:

“Reference your Memos dated 05-08-2019 and 23-08-2019 on the subject noted above.

2- The requisite information/documents as allowed for provision under the subject Act are submitted as under : -

Sr#	Requisites information / Record	Remarks
01	The Federal Govt notification and director's resolution as per extract from minute book for appointment of Chief Executive Officer & Chairman BOD in TCP in 2013;	a) Copy of Notification No. 13(4)/2006-E-11/Admn-III dated 20-03-2014 attached. b) Provision of requisite copies is not covered under Section 7(b) of the Right of Access to Information Act, 2017.
02	Copy of cabinet division notification and directors' resolutions as per extract from minute book for appointment of CEO & Chairman BOD in TCP in 2017 & 2018;	a) Copy of Federal Government Notification No. 13(4)/2006-Admn-III/AOs dated 01-06-2018 attached b) Provision of requisite copy

		of minutes'/ director's resolution for appointment of Chief Executive Officer & Chairman BOD in TCP is not covered under Section 7(b) of the Right of Access to Information Act, 2017.
03	Copy of resolution of directors & shareholder meeting as per Provision of requisite copy of resolution of extract from minute book where in any amendment in TCP directors meeting is not covered under Articles for incorporation of "Public Sector Companies Corporate Government) Rules -2013" were considered approved or any extension in time for compliance of implementation of PSCCGR 2013 applied by TCP and approved by the Commission if any;	a) Provision of requisite copy of resolution of directors & shareholder meeting is not covered under Section 7(b) of the Right of Access to Information Act, 2017.
04	Copy of approval of Commission for amendment in TCP Articles if sought/ given;	Nil
05	When the post of CFO has been created and filled in TCP. A copy of working paper along with extract from the minute book of resolution passed in directors meeting for appointment of CFO;	Provision of requisite working paper and minute book of resolution passed in directors meeting for appointment of CFO is not covered under Section 7(b) of the Right of Access to Information Act, 2017.
06	Copies of records including notice, agenda, working papers, proceeding of meeting held, resolutions passed, extract from minute book of directors' meetings held on 11-022019 & 26-03-2019;	Provision of requisite copy is not covered under Section 7 (b) of the Right of Access to information Act, 2017.
07	Copy of working paper, resolution of directors passed for creation of post of Chief Medical Officer of TCP, prescribed qualification, functional duties and perks approved;	Provision of requisite copies is not covered under Section 7(b) of the Right of Access to Information Act, 2017.
08	Copy of working paper & director's resolution as per extract from minute book of directors meeting	Provision of requisite copies is not covered under Section 7(b)

	passed in July 2008 {Office Order reference dated 11-07-2008) allowing various financial and other benefits to officers Including deputationist. The running serial # BOD meetings held during first half of 2008 may be intimated;	of the Right of Access to Information Act, 2017.
09	Board resolution passed as per minute book of directors meeting for creation of Medical Committee in TCP, its functional responsibility etc.	Provision of requisite information is not covered under Section 7(b) of the Right of Access to Information Act, 2017.
10	List of deputationist officers who were sanctioned House Loan of Rs.1.00 Million from 2008 up-to-date in violation of Section 195 of Company's Ordinance-1984, and without approval of directors, Commission and Ministry of Finance, and its recovery status as on date;	Provision of requisite information is not covered under Section 7(b) of the Right of Access to Information Act, 2017.
11	Copy of Interministerial Committee decision contained in minutes of meeting held at Islamabad on 25-06-1979 wherein participants unanimously including the then Chairman TCP consented on the Interministerial committee decision;	Provision of requisite information is not covered under Section 7(b) of the Right of Access to Information Act, 2017.
12	Copy of Ministry of Commerce direction issued to TCP on behalf of Secretary Commerce division dated 30-06-1979 to expeditiously implement Committee decision on absorption of 26 PEOC in TCP and send compliance report to Commerce & Industries Division by 4 th July, 1979 along with a copy of compliance report if sent to two divisions.	Provision of requisite information is not covered under Section 7(b) of the Right of Access to Information Act, 2017.
13	Copy of extract/Papers from relevant files of TCP indicating as who has malafidely turn around and tampered Commerce Division direction received in TCP on el July, 1979 within 24 hours of its receipt to implement Interministerial Committee. Meeting decision pertaining to absorption of 26 employees of defunct PEOC in TCP wherein their services were needed, into "fresh appointment" in violations of TCP Service Rules, without complying codal	Provision of requisite information is not covered under Section 7(b) of the Right of Access to Information Act, 2017.

	formalities and has not protected as per law their pay and other service benefits of PEOC in TCP despite the then Chairman TCP has categorically accepted to implement the interministerial Committee Decision of June 25, 1979;	
14	Copy of working paper and director's resolution as per extract Provision of requisite information is not from minutes' book of directors meeting for appointment of 8 officers of defunct RECP in TCP in 2008 and their approved terms of appointment Including payment of three years' gratuity to them.	Provision of requisite information is not covered under Section 7(b) of the Right of Access to Information Act, 2017.
15	Copy of updated Gratuity Rules of TCP.	Requisite copy of rules is attached as Annex-1

7. Through a letter dated 22/10/19, the Appellant shared with the commission the following:

"I have received a misleading / distorted reply from DGM TCP (copy enclosed for ready reference). The said executive who has not been appointed / authorized by Directors vide Articles 115 (G) of TCP Articles to act as designated official under the act. The Article 115(G) read as follows:

"Subject to provision of section 196 of the ordinance to institute, conduct, defend any legal proceedings by or against the corporation or its officers or otherwise concerning the affairs of the corporation"

2: The TCP is functioning as head less corporation since last six years 2013-2019, there is no lawfully nominated / elected / appointed Board of Director and Chief Executive in the TCP since then therefore question of authorization / appointment to defend the TCP by the directors does not arise.

3: Secondly he has unilaterally rejected supply of almost all documents / information requisite on the pretext of section 7(B) of Act which is not relevant nor does it prohibit supply of documents to citizens therefore the denial of supply of documents is malafide, malicious and misleading act and misconduct under conduct rules of TCP. He appears to be a corporate and legally illiterate person.

4- In view of I rejected the reply dated 30th September 2019 of an illegally appointed executive who has refused to provide the required doc. / information vide Inf. Act 2017.

5- The TCP letter head contains misleading narration as Ministry of Commerce. TCP being a corporate body registered under corporate law cannot use Ministry of Commerce on its letterhead.

6- No BOD / Chief Executive officer / director has been appointed in TCP by the Federal Cabinet in pursuance of Supreme Court Law of 2016 as such there is no authority as per TCP Articles / corporate law is in place in TCP. Willful defiance of Supreme Court law is patent misconduct and violation of Articles 189 of Constitution of Islamic Republic of Pakistan-1973.

7- The required documents / information under the Information Act are mandatory to be provided by the designated official vide section 10 of Act and ensure that reuests are dealt with promoting full compliance of TCP of its obligation under the Act. Therefore, DGM TCP be called upon to submit Board resolution for his appointment as designated official of TCP vide section 9 of Act. And also that explain that under what authority he has interpreted negatively that provision is not covered under section 7(b) as all the documents requested for does not fall within the ambit of section 7(b). The interpretation of Rules and Law rest within the information commission.

8. It is worth mentioning that TCP is dragging the case for last two months with establishing breach of serval sections of act and have now came up with the novel idea of refusals, documents on the pretext of section 7(b). If the TCP fails to satisfy the info commission on above, two points the misconduct proceeding under TCP conduct Rules be directed to be initiated against him and may be disassociated with further proceeding in this request.

Finally, TCP may be directed to provide the request document / Information as per provision of Law expeditiously and without any further loss of time and if TCP sill has illegal reservation on request, it may be forwarded to Secretary Commerce Div. being shareholder and or Advisor on Commerce of orders”.

C. Discussion and Commission’s View on Relevant Issues

8. The question before this commission is whether minutes of the meetings have been given blanket exemption under the Right of Access to Information Act 2017 as claimed by the Respondent. The Section 7 (b) of the Right of Access to Information Act 2017 is as under:

“Minutes of meetings, subject to a final decision by the public body”.

9. The Section 7 (b) of the Right of Access to Information Act 2017 states that minutes of the meetings are exempted from disclosure but final decisions of the public body are not exempted from disclosure.

10. The fact that no record has been given blanket exemption under the Right of Access to Information Act 2017 is demonstrated by Section 14 (iv) and Section 16 (1) (a) (i) of the Right of Access to Information Act 2017.

11. The Section 13 depicts ‘Procedure for acceptance and refusal of requests’ and a Public Information Officer is required to inform through a notice reasons for accepting or refusing request for information. The sub-section (iv) of Section 13 makes it clear that a PIO can provide record either in whole or in part. It is as under:

“In whole or in part, on the basis that the information is exempt subject to section 7 or section 16, in which the notice shall specify the exact exception, relied upon and specifying details regarding the right of the applicant to appeal against this decision”

12. The Section 14 (iv) depicts the methodology to be adopted in case where only part of a record is exempted from disclosure under the Right of Access to Information Act 2017. It is as under:

“where only part of a record or the information falls within the scope of the exceptions provided for in this Act, that part shall be severed and the residual record or information shall be provided to the applicant”.

13. The requested information about “List of deputationist officers who were sanctioned House Loan of Rs.1.00 Million from 2008 up-to-date” in item number 10 is clearly public information under Section 6 (c) which the Respondent has sought to withhold under Section 7 (b) the Right of Access to Information Act 2017.

D. Order

14. The appeal is allowed. The Respondent is directed to sever portion of minutes of meetings containing views and opinions of the participants and provide portions of minutes of meetings containing final decisions in requested information item numbers 01,02,03,05, 06, (along with notice as requested), 07, certified copy of the approved resolution of directors for creation of post of Chief Medical Officer of TCP along with prescribed qualification, functional duties and perks approved, 08,(instead of asking the Appellant to provide running serial # of BOD meetings held during first half of 2008, the Respondent should be able to locate with the information provided by the Appellant i.e. “{Office Order reference dated 11-07-2008) allowing various financial and other benefits to officers Including deputationist”), 09, (approved resolutions are public documents), 10, List of deputationist officers who were sanctioned House Loan of Rs.1.00 Million from 2008 up-to-date, 11, certified copy of Interministerial Committee, 12, certified copy of Ministry of Commerce direction issued to TCP and the certified copy of the compliance report, 13,and 14.This information be provided to the Appellant within 10 working days of the receipt of this Order. Furthermore, the Respondent is directed to take immediate steps to proactively share through the web site all categories of information mentioned in

Section 5 of the Right of Access to Information Act 2017 and submit the compliance report to the commission by 24/01/2020.

15. Copies of this order be sent to the Respondent, Secretary Ministry of Commerce and the Appellant for information and necessary action.

Mohammad Azam
Chief Information Commissioner

Fawad Malik
Information Commissioner

Zahid Abdullah
Information Commissioner

Announced on:
December 24, 2019

This order consists of 09(nine)pages; each page has been read and signed.