

IN THE PAKISTAN INFORMATION COMMISSION ISLAMABAD

APPEAL NO. 888-02-2021

Kashif Ali

Vs

Oil & Gas Development Company Limited

Date: 7.6.2021

Fawad Malik: Information Commissioner

A. APPEAL

1. Mr. Kashif Ali has filed his appeal on 8.2.2021 before the Pakistan Information Commission alleging therein that his request for information filed under the Right of Access to Information Act, 2017 in the office of the Managing Director Oil & Gas Development Company Limited, Islamabad has not been responded with in the stipulated frame of time provided in the Act.
2. The detail of the requested information through application dated 22.1.2021 is reproduced as under;

- I. *“Firstly to provide me certified rate-list of existing annual land lease/compensation rates per Acre per Annum (to be paid to land owners against their hired lands) of all categories / phases i.e. producing phase, drilling phase, settled, unsettled lands etc of all the regions/districts/fields or otherwise under the Administration Control of OGDCL throughout Pakistan.*
- II. *Secondly to provide me certified copy of Annual land lease/compensation enhancement Agreement (duly enhanced after every three years) reached between Field Manager OGDCL Gas field Qaderpur/OGDCL Officers, Committee & Land Owners of Qaderpur Gas Field in the year 2002/2003 or otherwise.”*

B. PROCEEDINGS.

3. The Manager, Director Oil & Gas Development Company Limited vide letter dated 10.02.2021 was directed to provide reasons in writing within seven working days as to why the requested information has not been provided to the applicant as under section 14 of the Right of Access to Information Act 2017, each public body are bound to respond to a request as early as possible and in any case not later than ten working days of the receipt of the request.
4. The reply was not submitted therefore the appeal was fixed for hearing before the Commission on 17.03.2021 and both the appellant as well as the respondent were informed accordingly vide notices dated 02.03.2021
5. On 17.03.2021, respondent submitted the reply of the queries. The text of the reply by the public body is reproduced hereunder:-

Preliminary Objections:

1. *“That the appeal under reply is not maintainable in law and on facts, hence same is liable to be dismissed.*
2. *That the appellant has no locus standi to file the appeal, hence same merits dismissed.*
3. *That the appellant, through instant appeal has required certified information, however same is exempted in terms of section 16 of The Right of Access to Information Act, 2017 hence the appeal merits dismissed on this scored alone.*
4. *The information requested for in the above mentioned appeal falls under exceptions contained in Section 16- (d) (ii & iii) and (g) (i & ii), therefore, the above mentioned appeal is not maintainable in the eyes of law, hence should be dismissed.*
5. *That it is transparent from the appeal that the appellant has already entered into a contract with respondent of the same nature regarding which he required the information. Thus there is reasonable possibility that the appellant seeks such information for the sake to gain unreasonable advantage and cause damage to the exchequer of the company. If the requested information is ordered to be supplied to the appellant this will clearly amount to damage to lawful commercial activities of the public body, which is strictly barred and exempted in section 16 (d) (iii) of the Act of 2017.*
6. *The information requested for in the above mentioned appeal is confidential and third party rights are involved in it. If ordered to be supplied, it will constitute an actionable breach of trust in the eyes of law.*
7. *That section 16 of the Right of Access to Information Act 2017 bars the provision of such information which contains a trade secret and disclosure of which can certainly cause damage to financial and commercial interests of the public body.*
8. *That it is settled law that the right to information is not an absolute right. There are certain cases in which the government may not share the information with the citizens, privacy and other legitimate private interests; commercial and other economic interests, be they private or public are some of the instances on the basis of which information cannot be provided.*
9. *That the appellant is requiring the disclosure of amount paid to different landlords under different lease agreements. The respondent is under privacy and confidential obligation to maintain secrecy of the information claimed.”*

PARA-WISE COMMENTS:

1. *“Paragraph No.1 pertains to record, hence same warrant no comments from answering respondents.*
2. *That paragraph No.2 is incorrect as stated, hence same is denied. Appellant is not entitled to have access to the information mentioned in paragraph under reply, in view of legal and factual position detailed in preliminary objection.*
3. *Paragraph No.3 is admitted as matter of record.*
4. *That paragraph No.4 as it relates to payment of annual lease is concerned is admitted as matter of record. However remaining part of paragraph is denied. There is no law which prescribes the rate of rent for a particular piece of land. Similarly, OGDCL is obtaining land at different parts of Pakistan for its business operations. The information claimed, relates to the commercial interest of OGDCL, hence same is protected under the commercial interest of OGDCL, hence same is protected under the law.”*

6. The reply and information through letter dated 17.03.2021 was shared with the appellant but he through his rejoinder dated 24.03.2021, addressed to the Commission conveyed his dissatisfaction with the information. The relevant part is reproduced as under

1. *“It is submitted that what is mentioned in written reply dated 16.03.2021 on behalf of the company received through Registrar’s letter dated 17.03.2021 is totally unsatisfactory, not warranted by the law & denial to access to information held by public body in transparent and effective manner; it means OGDCL does not believe in transparency denying our fundamental right of access to information; it appears OGDCL is not accountable to people denying people participation in public affairs, human rights are not being respected and not ready to take steps towards transparency as well as good governance in Company hence written reply is strongly objected.*
2. *Instant Appeal is maintainable under the law/facts as the company did not provide requested information in time hence I had to file instant appeal, since the OGDCL is a public sector company, under dominative control of the state to be funded by federal government, performing functions in connections with affairs of state as held and reported in 2016 CLC 1152 (Sindh ; According to section 2 (ix) (d) of information Act 2017, public body may be requested for any information/record hence appeal may be filed hence maintainable*
3. *That Appellant has locus standi to file instant appeal as appellant himself is land lord/owner at Sukkur region receiving annual land lease/compensation against my/his acquired lands on meager rates in comparison to Hyderabad district and other regions etc of Pakistan being aggrieved person, however according to section 11 of the act 2017 any citizen of Pakistan may make request to a public body also it is mentioned in permeable of act 2017 that everyone shall have the right to have access to all information held by public body; it is well settled law that High Court under writ may direct state owned company to treat equally in conduct of its Commercial Operations; hence all objections are baseless and not warranted by law.*
4. *That requested information/record is not exempted at all U/S 16 as alleged, transparency, people’s participation etc is the mandate of information Act 2017.*
5. *That the purpose of instant appeal is not to damage the financial interests of the public body or taking any unreasonable advantage or to damage any commercial activities of the company but my main purpose is to bring transparency in OGDCL affairs in relations to disbursing annual leases to regions/ districts etc throughout Pakistan on just basis in accordance with law like article 25 of Constitution but no on the wishes of company’ executives/officers, it is also the mandate of information act 2017 hence not exempted U/S 16(D) (ii & iii).*
6. *That I have not requested for any individual information of land owners I was also part of rate enhancement agreement hence I may apply for copy thereof hence there is no loss to third party interests accordingly not exempted U/S 16 (g) (I & ii).*
7. *That As for as information requested in first part of para No.2 of memo of instant appeal is concerned, according to the company in case of disclosure of information it may damage to lawful commercial activities of public body as mentions section 16 (d) (iii); but law says as reported in 2021 CLC 323*

Sindh “....High Court refrained Pakistan state oil from according preferential treatment to an entity, including national logistics cell and directed to treat all eligible person equally, equitably and without any discrimination in the conduct of its commercial operations...petition was allowed accordingly.” ; As far as second part of the para No.2 of memo of appeal is concerned ; the said agreement was signed in my presence being part of said rate enhancement agreement hence I request for copy of said agreement hence third party interest does not arise.

8. *That requested information is not confidential at all as it is open secret said information about annual lease rates are centrally fixed from Islamabad on region, district wise etc throughout Pakistan and only nominally written in annual lease agreements, is in knowledge of all the land owners of their respective regions/districts etc copies of Sukkur region and Hyderabad/Badin/Thata districts of Sindh are annexed herewith for perusal of the commission however I am land owner hence question of third party interest does not arise as I have not requested for any individual's information or any third party agreement.*
9. *That the requested information/record is in accordance with the mandate of information act 2017; its denial is denial to human rights, Article 19-A, 25 etc of constitution of Pakistan 1973 and instant appeal is not barred by any law; if access to information/record is denied it means company/public body is not accountable to people, there is no damage to company's financial/commercial interests but the people have to face discriminatory treatment from OGDCL.*
10. *That seeking access to information/record of public body is fundamental right in accordance with mandate of constitution and information act 2017 also commercial activities are to be dealt in accordance with law.*
11. *That I have not requested disclosure of any amount paid to individual land owners nor any third party lease agreement but I have clearly requested information as embodied in instant appeal, inter alia Company misleads this commission on this score hence all the objection in respect of denial to access to information/record of public body are not warranted by law hence hereby strongly condemned.”*

C. COMMISSION'S VIEW.

7. The appellant has requested the certified rate-list of existing annual land lease/compensation rates per Acre per Annum of all categories / phases i.e. producing phase, drilling phase, settled, unsettled lands etc of all the regions/districts/fields or otherwise under the Administration Control of OGDCL throughout Pakistan and the Annual land lease/compensation enhancement Agreement (duly enhanced after every three years) reached between Field Manager OGDCL Gas field Qaderpur/OGDCL Officers, Committee & Land Owners of Qaderpur Gas Field in the year 2002/2003. The respondent public body in the written reply has disputed the maintainability of appeal challenging the *locus standi* of the appellant in the preliminary objections while on merits has claimed the exemption from disclosure of the requested information under sections 16(d)(ii)(iii) and (g)(i)(ii) of the Act.
8. Firstly the issue of maintainability needs to be resolved to proceed further on the merits of the appeal. The public body has objected the *locus standi* of the appellant to ask for the requested record. The section 11(5) of the Act has removed the obstacle of providing the reason for seeking the information. Nor the appellant can be asked to prove his *bonafiedy* therefore any citizen of the Islamic Republic of Pakistan may make a request for permissible information to any public body. Be that as it may, the

Appellant is a land owner in Sukker region receiving lease against his acquired lands and is feeling aggrieved for being awarded lesser rates. The objection is answered in negative the application to the public body and the instant appeal is therefore maintainable and within the cognizance of the Commission.

9. On merits the public body has claimed exemption from disclosure of the requested information while referring sections 16(d)(ii)(iii) and (g)(i)(ii) of the Act. It needs appraisal to evaluate whether it will damage the financial interests of the public body for taking any unreasonable advantage or is likely to damage any commercial activity of the company or there is any likelihood of damaging the third party privacy interest or whether will provide improved transparent mechanism in the OGDCL affairs. Section 5(e) of the Act emphasis all the agreements and contracts along with the particulars about the recipients of any concession, to be published including uploading over the internet to ensure the accessibility. The rate-list of annual land lease/compensation rates per acre per annum of all categories for different regions are under the administration control of OGDCL are the category of public document that ought to have been made public proactively. The agreement for enhancement in the lease reached between OGDCL & Land Owners of Qaderpur Gas Field in the year 2002/2003, demanded by the appellant in the later part of the request is also category of record that is required to be disclosed proactively as mandated in section 5(e) of the Act. Since the lease or the enhancement in lease is being paid from the public funds hence the citizens have the right to know under the right of access to information guaranteed by the Art. 19A of the Constitution of Pakistan and the Right of Access to Information Act of 2017.
10. Transparency in the working of the government departments is the essence for the enactment of the Act 2017. Its spirit is to ensure that the people of the Islamic Republic of Pakistan have access to the records held by the federal public bodies for making the government accountable to the people. This practice would improve the participation of the people in the public affairs aimed at reducing corruption, nepotism and the culture of favoritism in the lease agreements by the public body.
11. It is noticed by the Commission that the respondent has not notified the designated officer as mandated in section 9 of the Act.

D. ORDER.

12. The appeal is allowed. The Managing Director, OGDCL is directed to provide the requested information to the appellant forthwith but not later than seven days of the receipt of this order.

He is further directed to implement sections 5 & 9 of the Act in letter and spirit without any further delay under intimation to the Commission by or before 15.7.2021.

Mohammad Azam
Chief Information Commissioner

Fawad Malik
Information Commissioner

Zahid Abdullah
Information Commissioner
Announced on 7.6.2021

Certified that this order consists of five pages, each page has been read and signed.