

IN THE PAKISTAN INFORMATION COMMISSION ISLAMABAD

APPEAL NO. 239-12-2020

Zahid Ahmad

Vs

Trading Corporation of Pakistan (Pvt.) Limited
Ministry of Commerce

Fawad Malik: Information Commissioner

Date: 24.8.2020.

APPEAL:

1. The brief facts of the appeal are that Mr. Zahid Ahmad, General Manager (Retd) filed an information request under the Right of Access to Information Act 2017 before the Principal Officer, Trading Corporation of Pakistan (Pvt) Limited Karachi with a copy to the Secretary Commerce Division, being the head of the Commerce Division. It has been complained therein that since two years has elapsed but neither TCP nor the Ministry of Commerce has appointed designated officer. He has requested the following information and documents in his application dated 10.12.2019.
 - i. Copy of Federal Government Directive for import of urea during 2009 by TCP and its transportation from Port/Wharf.
 - ii. Copy of Board Resolution for shifting of Urea from port to Landhi Godowns instead of direct delivery from port to avoid unnecessary expenses vides Article 114 of Association and Section 196 of Companies Ordinance 1984.
 - iii. Copy of Director, TCP orders for acceptance of Urea without weighment at Landhi Godowns.

- iv. Copy of Board Resolution for constitution a committee of three members on 24.3.2010 to find out the facts and circumstances of the shortage of Urea at Landhi Godown and the Committee shall also hold detailed inquiry under TCP E&D Rules 1975.
- v. How TCP constituted committee for inquiry in which one member was equivalent to my grade and two other were junior to me whereas Court has given verdict that equivalent officer or junior cannot conduct inquiry against seniors.
- vi. Copy of Federal Government nomination, selected by the Board and approved appointment of Mr. Anjum Bashir as Chairman, TCP by Federal Government.
- vii. Copy of Federal Government nomination, elected by the Board of Directors and appointed Mr. Ghufran Memon as Director TCP in compliance of TCP article and Companies Ordinance 1984.
- viii. Copy of Rules/ Authority under which multiple inquiries were conducted against alleged shortage of Urea at Landhi Godowns.
- ix. Copy of rules / authority under which rules Chairman, TCP ordered for a fresh inquiry just before my retirement.
- x. Copy of Federal Government nomination, election by the Board of Directors and appointment of Mr, Agha Wasif Abbass as Director TCP made by Federal Govt as per TCP Articles and Companies Ordinance 1984.
- xi. .
- xii. .
- xiii. .
- xiv. .
- xv. .
- xvi. .
- xvii. .
- xviii. .
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- xxiv. .
- xxv. .
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- xxx. .
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- xxxii. .
- xxxiii. .
- xxxiv. .

2. The appellant filed his appeal before the Pakistan Information Commission against the TCP and Secretary Commerce Division for non-provision of the documents on 26.12.2019.

Along with the appeal the appellant has submitted his affidavit to the effect that no suit, appeal, petition or any judicial proceedings in connection of above appeal has been filed/ pending in any court of law or any other legal forum.

PROCEEDINGS:

- 3. The Commission vide notice dated 1.1.2020 directed the respondent to provide reasons in writing within ten days as to why the requested information has not been provided to the applicant as under section 14 of the Act, each federal public body is bound to respond to a request as early as possible and in any case within ten days of the receipt of the request.
- 4. In response the respondent submitted the information which was transmitted to the appellant through information sharing letter dated 12.2.2020. The appellant being not satisfied reiterated the provision of the documents and information as requested in his application.
- 5. The appeal was fixed for hearing before the Commission on 25.3.2020 and both the appellant as well as the respondent were informed accordingly vide notices dated 4.3.2020. The hearing on the said date was postponed due to the wake of the pandemic corona virus outbreak. The appeal was re fixed for 19.8.2020.

6. Mr. Amjad Ali Baloch, Manager Incharge represented the Trading Corporation of Pakistan at the time of hearing. He argued that the application filed by the Mr. Zahid Ahmad Ex-General Manager TCP is frivolous and not maintainable and that TCP under legal obligations is unable to provide the requisite documents/information as the matter relating to the shortage of urea against the appellant is sub judice before the Court. He submitted the written reply annexed with a copy of the order dated 28.11.2019 passed by the Senior Civil Judge (ii) Karachi (East). The relevant text of the reply is reproduced below;

In the year 2009, TCP

COMMISSION'S VIEW:

7. The respondent has disputed the maintainability of the appeal for the reason that a suit for damages filed by TCP against Zahid Ahmad is decreed in favour of TCP vide judgement dated 28.11.2019 passed by the learned Senior Civil Judge (ii), Karachi (East) and that the Execution Application has been filed before the concerned Court for the recovery of the decreed amount. The argument advanced by the respondent that during the pendency of the litigation between the parties the seeking of the requested information by the appellant is frivolous is ill founded and do not carry weight. The pendency of the litigation is not a bar for the provision of the information under the Act.
8. The appellant admittedly is former General Manager in TCP and the reply reflects that the civil litigation has been initiated against him after his retirement. The appellant has asked for the provision of the documents/information *prima facie* to defend the charge levelled against him by the department after his retirement. Article 10.A of the Constitution of Pakistan provides right of fair trial for the determination of civil rights and obligations.
9. The Right of Information is considered as "key to all rights". Every citizen has been provided the Right to have access to the information held by the public bodies under the Right of Access to Information Act 2017. This right cannot be denied during the pendency of the litigation between the parties rather it provides the right to have

access to the necessary information required for the perusal of the litigation. The respondent has failed to point out the relevant proviso of the Act that bars the public body to share the requested information during the pendency of the suit.

10. Article 19.A of the Constitution of Pakistan provides every citizen right of access to information subject to reasonable regulations and restrictions. This is fundamental right guaranteed by the Constitution, cannot be denied.
11. The respondent has not claimed the requested information as exempted from disclosure under the Act, in the reply submitted before the Commission nor has argued during the course of the arguments.
12. The public bodies are required to make arrangement for the publication and computerization of record for voluntary disclosure, including uploading over the internet, all categories of information and record mentioned in section 5 of the Act, within six months of the commencement of the Act.
13. The appellant has also complained in his appeal that the designated officer for the respondent public body has not been appointed despite the lapse of two years from the filing of the appeal. Each public body is required under section 9 to notify one or more designated officials, within thirty days of the commencement of the Act.

ORDER:

14. The appeal is allowed. The respondent is directed to provide the appellant the requested information forthwith but not later than seven days of the receipt of this order.

The copy of this order be sent to the Secretary Commerce Division for the appointment of the designated officer as required under section 9 of the Act.

Mohammad Azam
Chief Information Commissioner

Fawad Malik
Information Commissioner

Zahid Abdullah
Information Commissioner

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