

IN THE PAKISTAN INFORMATION COMMISSION

ISLAMABAD

APPEAL NO. 522-8-2020

Ch. M. Ashraf Gujjar
Vs
Zarai Taraqiati Bank Limited

Date: 21.10.2020

Fawad Malik: Information Commissioner

A. APPEAL:

1. The brief facts of the appeal are that Ch. M. Ashraf Gujjar, Advocate feeling aggrieved of the non-provision of the requested information/documents within the stipulated period has preferred appeal against the President, Zarai Taraqiati Bank Limited before the Pakistan Information Commission invoking his right under the Right of Access to Information Act 2017.
2. The application dated 07.04.2020 addressed to the President, Zarai Taraqiati Bank Limited at its head office, Islamabad is reproduced as under;

“That during the proceedings of writ petition No. 52503/19 Shahid Aslam AVP legal through council of the Bank produced a letter dated 05-01-2018 wherein he has shown that the Board of Directors has delegated its powers to the President of the Bank whereas ZTBL Board of Directors had been dissolved and is not functional since August 2017.

In the fitness of things and for the removal of doubts you are requested to please provide us the copy of the above said authorization letter / minutes of the meeting of the Board of Directors in this regard which we intend to produce before the Honourable Judge of the High Court.

Simultaneously Anjum Abbas SVP Head office has shown in his letter dated 17-09-2019 that the Bank has delegated disciplinary powers to few executives. We shall also be obliged if the copy of the same is also supplied to us for producing in the Honourable High Court. According to our view the letter dated 12-12-17 has been camouflaged and shown that the Bank issued a letter in their favour which seems to be incorrect.”

B. PROCEEDINGS:

3. The President, Zarai Taraqiati Bank Limited Islamabad vide letter dated 31.8.2020 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 13.10.2020 and both the appellant as well as the respondent were informed accordingly.
5. Sayed Asad Abbas Naqvi, Advocate appeared before the Commission on behalf of the respondent. Along with the power of attorney he filed application for adjournment on account of his indisposed condition therefore the appeal was adjourned for 20.10.2020. On 20.10.2020 he argued at length and filed the written reply on behalf of ZTBL seeking dismissal of appeal on the following reasons;
 1. *“That a writ petition is pending adjudication before Honourable Lahore High Court Lahore, which was filed by Mr. Agha Hassan Khurshid titled as “Agha Hassan Khurshid Versus Federation of Pakistan”.*
 2. *That instant application is filed by the complainant with malafide intentions just to prejudice the proceedings pending before the Honourable Lahore High Court, Lahore.*
 3. *That it is pertinent to mention here, that as the complainant already alleged in his application regarding submission of such documents before the Honourable Lahore High Court Lahore, hence he has appropriate remedy to get attested copy from the Lahore High Court, Lahore.*
 4. *That information Act 2017 also provides some exception to provide documents to public i.e. S. 16 s.s. 1(h) (v). In accordance with mentioned section any document which prejudice any court proceedings that document cannot provided to any other party.”*

C. COMMISSION’S VIEW:

6. Admittedly a writ petition filed by Mr. Agha Hassan Khurshid against the bank is pending adjudication before the Honourable Lahore High Court at Lahore. The appellant in his application has requested letter dated 5.1.2018 along with the minutes of meetings of the Board of Directors in this regard and letter dated 17.9.2019. It is

- not denied by the bank in its reply that the required documents were produced by the bank before the Honourable Lahore High Court during the proceedings of the writ petition.
7. The basic and core issue before the Commission is to determine whether the requested documents are the category of information enlisted as public record or is exempted from disclosure under sub sections (h)& i(v) of section 16 of the Act, as claimed by the bank in its reply. The reading of the referred section reveals that the information may be exempted if it is privileged from production in legal proceedings, unless the person entitled to the privilege has waived it or if it may prejudice the proceedings in a court or a tribunal. The representative of the bank himself has produced the requested information before the Honourable High Court during the proceedings of the writ petition as such it is no more a privileged document. Even otherwise the documents and record that become a part of the judicial proceedings in any court are public document.
8. Article 85 of the Qanoon-e-Shahadat order 1884 deals with public documents and reads as follows:-
- “85. Public documents. The following documents are public documents.*
- (1) documents forming the acts or records of the acts.*
- (i) of the sovereign authority.*
- (ii) of official bodies and tribunals, and*
- (i) of public officers, legislative, judicial and executive, of any part of Pakistan, or of a foreign country,*
- (2) Public records kept in Pakistan of Private documents.*
- (3) Documents forming part of the records of judicial proceedings.*
- (4) documents required to be maintained by a public servant under law, and*
- (5) registered documents the execution whereof is not disputed.*
- (6) Certificates deposited in a repository pursuant to the provisions of the Electronic Transactions Ordinance 2002”.*
9. The appellant is seeking letter dated 5.1.2018 through which the Board of Directors have delegated the powers to the President of the bank along with the minutes of meetings. This is category of record that ought to have been disclosed and published including uploading over the internet to the availability of the citizens and since decision has been finalized therefore the minutes of the meeting through which it is finalized are also public record within the meanings of the Act. The noting and minutes of meetings of the matter that has been finalizes are the category of record that make part of the public record.

10. The argument of the learned counsel that the sharing of the requested documents will prejudice the proceedings of writ petition pending adjudication before the Honourable High Court do not carry weight. Pendency of the writ petition does not bar the appellant from seeking the record that has been produced by the opposite side during the court proceedings. Article 10.A of the Constitution of Pakistan provide right of fair trial to the citizens. All the documents that have been produced by the respondent before the Court, for and against the writ petitioner are part of the judicial proceedings and the writ petitioner has the right to ask for its copy to defend his plea.
11. Article 19.A of the Constitution of Pakistan and Right of Access to Information Act 2017 has provided the citizens the fundamental and statutory rights respectively to have the access to the public record and information which cannot be denied or delayed at the whims of the government hierarchy.
12. While dealing with the matters related to information and record sought by the citizens under the Act 2017, the public bodies are under obligation to respond the applications as mandated in the Act. In the case in hand the respondent has not acknowledged and processed the application as mandated in section 13 of the Act, information is not provided to the applicant in the stipulated time frame and the notice of the Commission is waived.
13. It is mandatory for the public bodies to publish including uploading over the internet and computerization for the voluntary disclosure of the categories of record and information mentioned in section 5, within six months of the commencement of the Act.
14. The respondent public body has not notified the designated officer within thirty days of the commencement of the Act. In such eventuality the Principal Officer of the public body is considered as the designated officer within the meanings of the Act 2017.

D. ORDER:

15. The appeal is allowed. The President, Zarai Taraqiati Bank Limited is directed to provide the appellant letter dated 05.01.2018 along with the minutes of meetings and letter dated 17.9.2019, forthwith but not later than seven days of the receipt of this order.

The President, Zarai Taraqiati Bank Limited is further directed to take measures for the proactive disclosure of all the information and record mentioned in section 5 and notify the designated officer under section 9 of the Act.

Fawad Malik
Information Commissioner

Zahid Abdullah
Information Commissioner

Announced on 26.10.2020

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