



In The Pakistan Information Commission, Islamabad

Appeal No 890-02/21

Naeem Sadiq

(Appellant)

Vs.

Ministry of National Heritage and Culture
Resident Engineer, Quaid-i-Azam Mazar Management Board

(Respondent 1)

(Respondent 2)

ORDER

Date: April 12, 2021

Zahid Abdullah: Information Commissioner

A. The Appeal

1. The Appellant filed an appeal, dated 08-02-2021, to the Commission, stating that he submitted an information request to Secretary, Ministry of National Heritage and Culture on January 01, 2021 under the Right of Access to Information Act 2017 but did not received any response from the public body.

2. The information sought by the Appellant is as follows:

"I am a Citizen of Pakistan and request the following information regarding Contracted employees (employed by contractor of Quaid's Mazar), is provided to me as defined in the above-mentioned legislation.

1. Contracted horticulture, janitorial and security guards employed for work at QA Mazar thru Contractor, duty hours of each category and salary paid for each category in the month of December 2020.

2. Contracted horticulture, janitorial and security guards employed for work at QA Mazar thru contractor, duty hours of each category and salary paid for each Category in the month of January 2021.

3. Please state the exact backlog that must be paid for each guard, each gardener and each janitor for compensate for less than legal minimum Wages paid for them during the past 2 years.

4. Please state if each contracted guard, gardener and janitor Is NOW registered with EOBI or not. If registered with EOBI please mention the name of Worker, EOBI number and when registered with EOBI.

5. Please send evidence of the amount paid as Salary in January 2021 to contracted guards, gardeners and janitors and the cheque number by which the amount was paid.

6. As the minimum legal wage changes from time to time, Please confirm if your contract with contractor clearly states that the wages paid shall always Comply With the latest minimum legal Wage announced by the government.

Kindly ensure that information on above 6 points is verified for accuracy and provided within 10 working days as stipulated in the law.”

B. Proceedings

3. Through a notice dated December 21, 2020, sent to Deputy Secretary (Admn), National Heritage and Culture Division, the Commission called upon the Respondent to submit reasons for not providing the requested information.
4. The respondent through a letter vide No. 6(35)/2021-QMMB dated February 26, 2021 submitted its response which is as under:
“Kindly refer to the Pakistan Information Commission's Appeal No. 890-02/21. dated 18-02-2021 on the subject cited above.
 2. *It may be mentioned that the applicant has sent a request to this Division on January, 2021 for provision of certain information (Annex-I) regarding contracted employees (Janitorial, Horticulture and Security staff) of Quaid-i-Azam Mazar Management Board (QMMB) with regard to minimum legal wages.*
 3. *The same applicant simultaneously made a request to Resident Engineer, QMMB for provision of said information. QMMB on 12th January, 2021 replied to the queries of applicant in an annotated form (Annex-II). It was also informed that like other civil organizations, Operation & Maintenance and Security Services of Bagh-e-Quaid-1-Azam have been outsourced. The employees of outsourced company are not paid through National Exchequer, the QMMB pays to the outsourced contractor which eventually is responsible for payment of salaries to its employees, hence the complaint relates to outsourced contractors pertaining to janitorial, horticulture labour && security guards employed by the outsourced contractors. All outsourced contractors have submitted their written undertaking on stamp paper and assured to pay Rs.17500/- per month to their employees and will provide proof of payment of minimum wages to each employee to QMMB for eight hour shift (Annex-III).*
 4. *It is also worthy to mention here that another complaint of the same nature was submitted by one namely Mst. Romana Khan with Wafaqi Mohtasib (Ombudsman)'s Secretariat and the representative of the agency has submitted a report stating therein that no inhumanity, illegality and cruelty is carried out to the employees of QMMB and the same complaint was closed in terms of Regulation 23(1)(1), (a) and (v) of the Wafaqi Mohtasib (investigation and Disposal of Complaints) Regulations, 2013 (Annex-IV). Farther, the queries of the applicant have already been addressed by the QMMB which is an autonomous body working under this Division for ensuring the accuracy of information which specifically pertains to QMMB.*
 5. *According to the Section 14 of Right to Information Access Act, 2017 time limit to respond to such a request as soon as possible and in any case is ten working days of receipt of the request. The period can be extended by maximum of further ten working days, where it is necessary when the request requires a search through a large of records or consultation is required with third party or other public bodies. In the instant case the response to the applicant was sent by QMMB within 07 working days, hence the appeal filed by applicant does not hold weight and hence may be turned down by PIC.*
 6. *This issues with the approval of the Secretary, NH&C Division.”*
5. Response of the Respondent was shared with the Appellant on March 09, 2021.
6. The Appellant on March 13, 2021 submitted rejoinder to the response of the Respondent which is as under:
“Ref. your letter Appeal 890-02/2021 dated March 09, 2021, that includes a response from the Ministry of Heritage and Culture .

The response of the Ministry of Heritage and Culture IS NOT SATISFACTORY. It was requested for some specific information and it has NOT PROVIDED any of that.

On the contrary it has added some false and some irrelevant information, of which the details are placed below.

1. The Ministry of Heritage letter says "THE EMPLOYEES OF OUTSOURCED COMPANY /CONTRACTOR ARE NOT PAID THRU NATIONAL EXCHEQUER.". THIS IS FALSE AND A LIE. The contractor and QMMB (a govt organisation) are under a contract. QMMB pays govt money to contractor. The contractor in turns pays this money to his employees. So the entire project and wages are paid by government / tax payers money.

2. The Heritage Ministry says that QMMB has already provided this information. This is false. The QMMB is also taking the pretence of having nothing to do with contractors' employees. QMMB failed to provide the info and give a copy of the contract.

3. The Ministry of Heritage has unnecessarily referred to the story of Ms. Romana Khan and Ombudsman. This is ENTIRELY IRRELEVANT and nothing to do with my case.

4. Kindly refer to the Sindh High Court judgment D-852 of 2019 dated 10 March 2021 which in no uncertain words describes the EMPLOYER responsibility of meeting all legal requirements (wages, EOBI, social security etc) for the employees of the contractors.

In light of these, kindly take disciplinary action against the Ministry of Heritage for failing to provide the requested information and to kindly enable us to receive this information at the earliest."

C. Discussion and Commission's View on Relevant Issues

7. This commission holds that employment/service contracts entered into by public bodies with third parties are public documents under Section 6 (c) of the Right of Access to Information Act 2017.
8. This commission is of the view that the requested information about the steps taken by the Respondents to protect legal rights of the contracted *guards, gardeners and janitors* to minimum wages and access to allied facilities is of public importance and hence be made available to the Appellant.
9. The Respondent 1, Ministry of National Heritage and Culture stated: "*The employees of outsourced company are not paid through National Exchequer, the QMMB pays to the outsourced contractor which eventually is responsible for payment of salaries to its employees, hence the complaint relates to outsourced contractors pertaining to janitorial, horticulture labour && security guards employed by the outsourced contractors. All outsourced contractors have submitted their written undertaking on stamp paper and assured to pay Rs.17500/- per month to their employees and will provide proof of payment of minimum wages to each employee to QMMB for eight hour shift (Annex-III)*".
10. While Respondent 1, Ministry of National Heritage and Culture maintains that "all contractors have submitted written undertaking on stamp paper and assured to pay Rs.17500/- per month to their employees", this undertaking only shows the existence of a commitment and not whether this commitment is carried out. This commission is of the view that it is responsibility of the public bodies to keep records of all the transactions to ensure that public funds, spent directly, or, through contractors, to perform official functions, are utilized in accordance with the laws of the land.
11. Though the Affidavits signed by Resident Engineer, QMMB and the contractor mention that the contractor will ensure that "allied facilities to the employees as per the Government of Pakistan Regulations" will be provided, these facilities have not been

specifically mentioned. Furthermore, the Respondent, QMMB has not spelled out means of verification and the provisions of relevant records to ensure that the contractor is actually providing the facilities. It is tantamount to throwing the employees at the mercy of market forces.

12. The disclosure of the requested information will shed light on how public funds are being spent through the contractor and the extent to which the Respondent has ensured that these public funds are spent in line with the laws of the land. Therefore, the disclosure of the contract signed by the QMMB and the contractor is in public interest. It is a matter of public importance as the disclosure of contract and the information about the provision of allied services mentioned in the affidavits will shed light on how the Respondent, QMMB has protected interests of janitors and the security guards who protect and ensure cleanliness at the final abode of the Father of the nation.
13. In the instant Appeal, Sindh High Court Constitutional Petition No. D-852 of 2019 Dated 10 March 2021 is also relevant. While dealing with the question as to whether the employees of a labour contractor can be considered as the employees of the establishment, where they work through labour contractors, the Honourable Sindh High Court refers to the Honourable Supreme Court judgment (2013 SCMR 1253) by saying, “ In the case where an employer retains or assumes control over the means and method by which the work of a Contractor is to be done, it may be said that the relationship of employer and employee exists between him and the employees of the contractor. Further, an employee who is involved in the running of the affairs of the company; under the direct supervision and control of the company; working within the premises of the company, involved directly or indirectly in the manufacturing process, shall be deemed to be employees of the company. The Honourable Sindh High Court judgment further declares, “Keeping in view the rule of parity and equity, all the janitorial staff even if considered to be the employees of the contractor, which is not the correct position, they have been performing duties of permanent nature ought to have been on regular strength of respondent-cantonment boards.”.

D. Order

14. Appeal is allowed. Secretary, Ministry of National Heritage and Culture, Resident Engineer, Quaid-i-Azam Mazar Management Board are directed to provide the Appellant following requested information within 7 working days of the receipt of this Order:

“1. Contracted horticulture, janitorial and security guards employed for work at QA Mazar thru Contractor, duty hours of each category and salary paid for each category in the month of December 2020.

2. Contracted horticulture, janitorial and security guards employed for work at QA Mazar thru contractor, duty hours of each category and salary paid for each Category in the month of January 2021.

3. Please state the exact backlog that must be paid for each guard, each gardener and each janitor for compensate for less than legal minimum Wages paid for them during the past 2 years.

4. Please state if each contracted guard, gardener and janitor Is NOW registered with EOBI or not. If registered with EOBI please mention the name of Worker, EOBI number and when registered with EOBI.

5. Please send evidence of the amount paid as Salary in January 2021 to contracted guards, gardeners and janitors and the cheque number by which the amount was paid.

6. As the minimum legal wage changes from time to time, Please confirm if your contract with contractor clearly states that the wages paid shall always Comply With the latest minimum legal Wage announced by the government”.

15. Copies of this order be sent to Secretary, Ministry of National Heritage and Culture, Resident Engineer, Quaid-i-Azam Mazar Management Board and the Appellant for information and necessary action.

Mohammad Azam
Chief Information Commissioner

Fawad Malik
Information Commissioner

Zahid Abdullah
Information Commissioner

Announced on:

April 12, 2021

This order consists of 5 (five) pages, each page has been read and signed