

IN THE PAKISTAN INFORMATION COMMISSION ISLAMABAD

APPEAL NO. 951-3-2021

Naeem Sadiq

Vs

Cantonment Board Clifton

Date: 18.6.2021

Fawad Malik: Information Commissioner

A. APPEAL.

1. Mr. Naeem Sadiq, a citizen, through an application dated 29.1.2021, under the Right of Access to Information Act, 2017 read with Article 19A of the Constitution of Pakistan sought the following information/record from the office of the Cantonment Executive Officer, Cantonment Board Clifton, Karachi:

1. *“Kindly provide complete copies of the latest current contracts between your Cantonment Board and Janitorial Contractors for cleaning / sweeping / garbage collection / waste disposal etc performed in the Cantonment areas.*
2. *Please provide the following factual information after practically checking with janitors employed by the contractors:*
 - (a) *Actual salary received by those janitors who perform 8 hour duty.*
 - (b) *Actual salary received by those janitors who perform 12 hour duty.*
 - (c) *Please provide a list of names of all contracted janitors and their EOBI numbers, in case they are registered with EOBI, if not registered, please say so.*
 - (d) *Please provide a list of names of all contracted janitors and their Social Security numbers, in case they are registered with Social Security, if not registered, please say so.”*

2. The public body vide letter dated 8.2.2021 required the applicant to deposit copying fee which was repelled by the applicant on 13.2.2021. The relevant part is reproduced as under:

..... *“The rules ACT placed on the website of Pakistan Information Commission at <http://rti.gov.pk/wp-content/uploads/2020/08/Schedule-of-Costs.pdf> Pakistan Information Commission, Schedule of Costs Islamabad. August 24, 2019 Notification PIC/N-24/08/2019, state the following:*

- *Cost of computer printed papers or photocopy charges for information involving up to 50 pages ...Nil*
- *Cost of computer printed papers or photocopy charges for information involving pages in excess of 50 pages ... Rupees 2 per page”.*

3. The requested information was not provided by the respondent public body within the mandatory period provided in the Act, hence the appeal before the Pakistan Information Commission on 9.3.2021.

B. PROCEEDINGS.

4. The Commission after taking the cognizance issued notice to the respondent. The Chief Cantonment Engineer / designated officer vide letter dated 24.3.2021 informed the Commission that upon receipt of the letter from the applicant the office has provided the requisite information to the applicant. The information furnished is reproduced as under:

- i) *“As per Rule 42 C (iv) of PPRA Rules 2004 (as amended upto date) existing contracts with all its terms & conditions have been extended to the extent of 15% as “repeat order”.*
- ii) *CBC Conservancy services are outsourced. The conservancy contractors are bound as per existing conservancy agreement 2018-2020 to pay minimum wages as announced by the Government from time to time to their (labour/staff). Any data pertaining to para 3 of your letter may be obtained directly from the conservancy contractors as this office has no such information / documents”.*

5. The appellant in the rejoinder dated 10.4.2021 has objected the response by the public body as absolutely unsatisfactory. He has reiterated the provision of the requested information in the light of the judgement dated 10.3.2021 by the Sindh High Court in Constitutional Petition No. D-852/2019.

C. COMMISSION’S VIEW.

6. The appellant time and again repeated for the provision of the current contracts between the Cantonment Board and Janitorial Contractors performing duty in the area of Cantonment Board Clifton, names of all contracted janitors and their EOBI numbers, in case they are registered with EOBI and names of all contracted janitors and their Social Security numbers, in case they are registered with Social Security.
7. The respondent in the first part of the response has admitted the endorsement of the contracts stating that existing contracts with all its terms and conditions have been extended to the extent of 15% as required under PPRA Rules 2004 but in the later part has denied the custody and has tried to refer the appellant to the conservancy contractors for seeking the required record. It is not denied that the janitorial contractors are not performing duty in the area of the Cantonment Board and likewise it is also not denied that they are being paid from the account of the Board. If they are being paid their monthly wages from the account of the Board it does not appeal to a prudent mind that a large number of janitors are being paid without any contract or document. Rather there must exist two contracts (i) between the Board and the contractor with the settled terms and conditions for the supply of the janitors and (ii) between the Board and the janitors with the agreed terms and conditions for performing the duty. Because the payments are made from the account of the Board, the Board is legally bound and under obligation to retain the contract in the office

- record. The Board cannot ignore or by-pass this basic mandatory legal requirement nor can violate it. Besides the contracts the Board possesses other means as well to meet the appellant's request i.e. office copies of payslip, pay register etc., which undoubtedly is the official record. The suggestion of the respondent to the appellant for seeking the information from the conservancy contractors is otherwise evasive and practically not possible for the reason that they are not public body rather private contractors for the supply of man power to the Board. Moreover it is admitted by the public body that the janitors are employees of the Cantonment Board hence the relationship of the employee and employer is established and admittedly the Cantonment Board is the paymaster. The contract between the employee and employer is the legal document that defines the rights and duties of the parties. The Commission is of the considered view that the contract / agreement signed between the janitors and the Cantonment Board or janitors and the contractor, for the agreed terms and conditions is a public document and that the Cantonment Board is the custodian of the document.
8. While dealing with the matter of unconstitutional and illegal denial of the basic minimum wages to the janitorial staff employed by the Clifton Cantonment Board, Karachi the High Court of Sindh in Constitutional Petition No. D-852-2019 vide order dated 10.3.2021 has observed as under:
“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. A similar issue came under consideration before the Honorable Supreme Court in Civil Appeal No. 1549/2014 vide order dated 24.5.2019 has observed that “the above arrangement” in the facts and circumstances of the case, is merely a vehicle of oppression and exploitation of the poor helpless employees, who on account of widespread unemployment, economic and social disparities and for their bare survival, are compelled to accept the job offered to them suiting the organization”.
 9. The respondent in the reply has not addressed the queries raised by the appellant vis-à-vis registration of the contracted janitors with EOBI and Social Security.
 10. The requested information/record is the category of public record that ought to have been published including uploading over the internet by the public body as required under section 5 of the Act.
 11. The correspondence of the public body for the deposit of the copying fee and irrelevant reply to the queries is deemed as deliberately and wilfully obstructing the provision of the information warranting section 20(f) of the Act for preventing and delaying the disclosure of information. The designated officer is advised to avoid the delaying tactics through unwanted correspondence in future.
 12. The information/ record held by the public bodies are the public record and the citizens have the fundamental and statutory right under the Constitution of Pakistan and the Right of Access to Information Act, 2017 respectively to have the access to

the public record. This privileged right cannot be delayed, denied or abridged at the whims of the beurocratic hierarchy.

D. ORDER.

13. The appeal is allowed. The Chief Cantonment Engineer/Designated Officer\, Cantonment Board Clifton, Karachi is directed to provide the appellant all the requested information/record mentioned in his application dated 29.1.2021, forthwith but not later than seven days of the receipt of this order.

The Cantonment Executive Officer, Cantonment Board Clifton is directed to implement the mandatory provision of section 5 in letter and spirit within one month under intimation to this Commission.

Mohammad Azam
Chief Information Commissioner

Fawad Malik
Information Commissioner

Zahid Abdullah
Information Commissioner

Announced on 21.6.2021

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