

IN THE PAKISTAN INFORMATION COMMISSION ISLAMABAD

APPEAL NO. 1113-06-2021

Asad H. Kizilbash

Vs

Cantonment Board Faisal, Karachi

Date: 24.6.2021

Fawad Malik: Information Commissioner

A. APPEAL.

1. Mr. Asad H. Kizilbash, a citizen of Pakistan has filed appeal dated 3.5.2021 before the Pakistan Information Commission under the Right of Access to Information Act, 2017 read with Article 19A of the Constitution of Pakistan complaining therein for non-provision of the requested information by the Cantonment Board Faisal, Karachi with in the frame of time provided in the Act.
2. The detail of the requested information in application dated 23.4.2021 addressed to the Cantonment Executive Officer, Cantonment Board Faisal, Karachi is reproduced as under:
 1. *“Kindly give exact figures of janitorial staff you have now, under the new arrangements, hired/enrolled for all cleaning, sweeping and solid waste removal services of your Cantonment. Benefits at which they have now been employed.*
 2. *Kindly provide information on exact wages, working hours, EOBI and social security benefits at which they have now been employed.*
 3. *Kindly provide any 5 Employment Letters that you have given to such employed janitorial staff which reflects the terms and conditions of service.*
 4. *Kindly provide a list of all janitors along with their EOBI registration numbers and SESSI registration numbers.*
 5. *Kindly confirm if they will now be paid by cash or by a banking channel, as required by law to provide an evidence of the actual payment made.”*

B. PROCEEDINGS.

3. The notice of the Commission has been responded by the public body vide letter dated 18.6.2021 to the appellant. The relevant portion of the reply is reproduced as under:

2. *“The requisite information’s / report as asked vide letters referred above are furnished here under as follows:-*

- *It is informed that the Cantonment Board Faisal outsourced its Conservancy Services through open tendering process, duly covered all codal formalities and publication in national press as per PPRA Rules. (Copies Annexed- A & B)*
 - *Nos of Janitors staff : 180 (As per contract agreement)*
- *Moreover, the information’s pertaining wages, registration of EOBI, SESSI and copy of Conservancy Contract firm M/S Nisar Jan & Co letter No. dated 17/2/2021 along with copy of wages sheet for the month of January, 2021 are enclosed as Annexure-C,D,E and F.*

3. *Moreover, the information’s required as mentioned in your letter at serial No. 3, 4 & 5 pertains with conservancy contractor’s firm, therefore it is requested to get the same directly from such firm on address and contact Nos given below:-*

- *Name of Firm : M/S. Nisar Jan & Co.*
- *Address : 44-B/1, Khayaban-e-sjajbaz
Phase-vii, DHA, Karachi*
- *Phone No. : +9221 35844485, +9221 35844486
& +9221 35251835*
- *Email : nicwaste@gmail.com*

C. COMMISSION’S VIEW.

4. Earlier this Commission in appeal no. 951-3-2021 titled *“Naeem Sadiq vs Cantonment Board Clifton”* vide order dated 18.6.2021 has decided almost the identical issues in principal that has been raised in the instant appeal in hand. The view of the Commission recorded in the appeal no. 951-3-2021 may be considered as the integral part of this order. The same are reproduced as under:

1. *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.*
2. *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.

3. *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.*
4. *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.*
5. *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.*

6. *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.*
7. *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.

5. The appeal is allowed. The Cantonment Executive Officer, Cantonment Board Faisal, Karachi is directed to provide the appellant all the requested information/record mentioned in his application dated 23.4.2021, forthwith but not later than seven days of the receipt of this order.

He is further 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 24.6.2021

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