

IN THE PAKISTAN INFORMATION COMMISSION ISLAMABAD

APPEAL NO. 675-10-2020

Mian Sohail Hussain

Vs

Pakistan State Oil Company Limited

Date: 7.6.2021

Fawad Malik: Information Commissioner

A. APPEAL.

1. Mian Sohail Hussain, Chief Executive Officer, Gresham's Eastern (Pvt) Limited has filed a complaint dated 13.10.2020, invoking the Right of Access to Information Act, 2017 before the Pakistan Information Commission stating therein that his application for information/record has not been responded by the Pakistan State oil Company Limited within the stipulated period provided in the Act.
2. In the application dated 13.2.2020 addressed to the Managing Director, Pakistan State Oil Company Limited, under the repealed Ordinance 2002, the applicant has requested the provision of documents related to:

1. Tender # RC-11844-SS for 30 KVA DG Set
2. Tender # RC-13323-SS for 30 KVA DG Set
3. Tender # RC-14084-SS for 30 KVA DG Set

B. PROCEEDINGS.

3. The Manager Director Pakistan State Oil Company Limited vide letter dated 21.10.2020 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 18.11.2020 and both the appellant as well as the respondent were informed accordingly vide notices dated 02.11.2020.
5. The respondent submitted the reply to the notice vide letter dated 10.11.2020. The text of the reply by the public body is reproduced hereunder:

Preliminary Submissions:

1. *"That applicant submitted its bids in response to PSO's tenders Nos. RC/11844/SS and RC13323-SS in year 2017 and 2019, respectively. In both the tenders, the applicant could not qualify due to the technical grounds. It is important to mention here that in the tender No. RC/11844-SS the applicant submitted fake and forged documents/information due to which PSO initiated the process of black listing the applicant under Rule 19 of the Public Procurement Rules, 2004 ("PPRA Rules) and after providing an opportunity of hearing the applicant was permanently black listed vide letter No. Nil dated*

- 01.10.2020. (Copy of blacklisting letter dated 01.10.2020 is enclosed as Annexure "A").
2. After being disqualified in tender Nos. RC/11844-SS and RC/13323/SS, the applicant wrote two letters dated 13.02.2020 and 14.02.2020, respectively, to the Company requesting, inter alia, to provide certified copies of the said tenders including communications to and from Ministry of "Commerce for amendment in SRO/827(1)/2001. PSO responded both the letters vide its letter dated 26.02.2020 is enclosed as annexure "B").
 3. Earlier, the applicant won PSO's tender No.CF/7151-LPR and was awarded a purchase order No.4110016367 dated 05.08.2013 for the supply of 2 DG sets of 500 KVA each. However, the failed to supply the requisite equipment within the stipulated time. Therefore, PSO cancelled the contract and encashed the performance guarantee amounting to Rs.1326368/- submitted by the applicant. Subsequent to that the applicant filed a Suit No.427/214 titled Gresham,s Eastern (Pvt) Ltd. Vs. Pakistan State Oil Co. Ltd. before the Honourable Sindh High Court at Karachi which is pending adjudication.
 4. The applicant also approached to the Wafaqi Mohtasib (Ombudsement's Secretariat and made a similar complaint against PSO on 13.08.2020 being the complaint No.WMS-ONL/0010028/20, PSO contested the said Complaint and submitted its reply vide letters dated 02.09.2020 and 15.09.2020. Resultantly, the said Complaint was dismissed by the Honourable Wafaqi Mohtasib vide its findings dated 14.10.2020. (copies of the complaint, our response letters dated 02.09.2020 and 15.09.2020 and the findings dated 14.10.2020 are enclosed herewith as annexures "C to F")."

Specific response to the Complaint:

1. "With regard to the requisite communication to and from Ministry of Commerce for amendment in SRO 827(1)/2001, we would like to clarify that we are not custodian of the said record, therefore, the applicant may be advised to approach directly to the Ministry of Commerce for any clarification/documents..
2. The requisite information regarding tenders falls under the exemption as mentioned in section 16(1)(g)(i) and (ii) of the Right of Access to Information Act, 2017, ("Act") as it relates to the third parties trade secret and its communication may prejudice the commercial or financial interests of those third parties who submitted the bids. Moreover the disclosure of such information may constitute an actionable breach of confidence. For case of reference, we reproduce herein below the relevant extracts from section 16(i)(g)(i) and (ii) of the Act.

"(g) information may be exempted if.

- (i) The information was obtained from a third party and on its communication it would constitute an actionable breach of confidence or
 - (ii) The information was obtained in confidence from a third party and it contains a trade secret or if communicated it may prejudice the commercial or financial interests of that third party.
3. Under Rule 41 of PPRA Rules, PSO, being a procuring agency, is duty bound to maintain confidentiality in respect of all the information documents relating

to the bid evaluation. Therefore, the applicant's request for the same is not justified..

4. *It may be noted that the Act is about the access of information to the public record and PSO has already made the requisite tenders' records public to a reasonable extent as per PPRA Rules thorough website and other mediums. Furthermore, all relevant information was also made available to all stakeholders from time to time in the form of bidding documents, public tender opening and bid evaluation reports, etc. Therefore, the demand of the applicant to supply the said documents is not justified."*

6. The response of the public body was shared with the appellant but he through his letter dated 09.03.2021, addressed to the Commission conveyed his dissatisfaction with the information. The relevant part is reproduced as under

1. *"Under Article 3 of the Right of Information Act 2017, there is no necessity for us to provide any reason to PSO for demanding the documents.*

Willy nilly they have to comply with the Article 3(c) and surrender the documents as per procedure under Article 3 of the Right of Information Act 2017, give a response and if any payment to be made for copies to be given to us.

The Article of the Act are sufficiently self-explanatory.

2. *As PSO violated Article 3(c) and did not comply with Article-5. The complainant filed an appeal with the Chairman, Information commission to proceed against PSO under Article 17 read with 19.*
3. *It is submitted that within the specific Articles of the Right of Information Act 2017 due to non compliance by PSO of the Articles 3 and 5 they have rendered themselves liable for further action by the Chairman Information Commission under Article 22 read with 25.*

ONLY FOR CORRECTING FACTS RELATING TO THE SUPERFLUOUS RESPONSE OF PSO LETTER DATED 10.11.2020, WE REPLAY AS HERE UNDER:

- A. *By Law, PSO had to comply with all the provisions of SRO 827(1)/2021 and when they did not do so in Tender Nos: RC 11884 SS, as per Article 33 of PPRA 2004 and rejected our tender with no valid reason as per LAW, we applied to the PSO Grievance Committee whence an altogether new matters was raised.*

The provision of which attracted Penal Code and so much more only as an effort to justify the illegal procurement.

The counter arguments by the complainant forced PSO to in fact cancel the tender altogether.

- B. *Since PSO repeated the same exercise of violating SRO 827(1)/2001 in Tender No. RC 13324 SS. Another complaint was duly filed for which to date PSO never formed the required Grievance Committee and thus rendered themselves liable to Article 50 of PPRA (Miss procurement).*
- C. *PSO then issued another tender No.RC/14084 and during pre-bid meeting on 30.01.2020, it was disclosed that PSO had the SRO 827(1)/2001 amended upon*

which complainant visited Ministry of Commerce to seek withdrawal of the SRO 827 amendment.

- D. Simultaneously complaint sought relevant files under Right of Information Act seeking to how the background of this amendment.*
- E. As PSO was not complying with the requests, the complainant filed a reference with Wafaqi Mohtasib to seek relief.*
- F. Thereupon PSO initiated a “blacklisting” under PPRA article 19 trashed the relevant laws in a typical gangland style and proceeded with the illegal blacklisting on dated 01.12.2020 which has no legal cover at all and now for past 16 weeks not been endorsed by PPRA.*
- G. The Blacklisting was also taken up by Complainant with Transpacy International who investigated the matter and whose conclusions can be seen in attached letter dated 07.12.2020.*
- H. The Fact is:*
 - 1. That the PPRA 2004 article 19 can only be invoked on a Vendor...further reading of the Article 19 is sufficient. Inasmuch that on complaint this article does not apply as:*
 - A. The Tender under which the “alleged” wrong doing was done...was cancelled.*
 - B. The PO against which PSO claims complainant did not supply goods was cancelled when in fact the purchase order had no such provisions and for which complainant has rightfully proceeded with an application under PPRA 2004 articles seeking appointment of arbitrator which is pending in Sindh High Court and being subjudice PSO could not have raised this as blacklisting issue under Article 19 of PPRA.*
 - 2. PSO is bound under the Right of Information Act 2017 to supply the documents and cannot use an “alleged blacklisting” to deny issue of the requested documents for which the complainant under Article 3 is not bound to provide any reason.*

C.COMMISSION’S VIEW.

- 7. After going through the file it is revealed that the request was filed on 13.2.2020 which was responded by the GM, PSO vide letter dated 26.2.2020. The request was not filed under the Right of Access to Information Act, 2017 rather Information Act XCVI 2002. Further the complaint before the Commission was filed on 13.10.2020, after an inordinate delay of about seven months. The Commission can dismiss the appeal on these scores alone but considering the right to information a fundamental right guaranteed by Art 19A of the Constitution of Pakistan, instead striking the appeal on technical grounds it is being considered on merits.
- 8. The appellant has requested in his application the documents with reference to the following tenders.
 - Tender # RC-11844-SS for 30 KVA DG Set
 - Tender # RC-13323-SS for 30 KVA DG Set, and
 - Tender # RC-14084-SS for 30 KVA DG Set
- 9. The respondent has responded to the request vide letter dated 26.2.2020. The appellant has locked horns with the public body before the wafaqi mohtasib and High Court of Sindh at Karachi but the information under the right of access to information cannot be denied or delayed for this reason.
- 10. Later before the Commission the appellant has added to his request “the communications to and from Ministry of Commerce for amendment to SRO 827(1)/2001”.
- 11. So far as the information related to the three tenders mentioned in the application are concerned this Commission is of the considered view that the public body under

- section 5 of the Act is under compulsion to publish including uploading over the internet to ensure its availability on the website of the public body. However the information provided in the tender that can affect the private privacy of any individual is exempted from disclosure. So far as the communication to and from Ministry of Commerce for amendment in SRO 827(1)/2001 are concerned, the same was added to the request at the later stage before the Commission and the public body is not under obligation to share with the appellant.
12. It is noticed that the respondent public body has not notified the designated officer so far as mandated under section 9 of the Act.

ORDER.

13. The appeal is partly allowed. The Managing Director, Pakistan State Oil Company Limited is directed to provide the appellant information/record related to the three tenders excluding the telephone number, CNIC, address or any material that can affect the private privacy of any individual/bidder, i.e. Tender # RC-11844-SS for 30 KVA DG Set, Tender # RC-13323-SS for 30 KVA DG Set and Tender # RC-14084-SS for 30 KVA DG Set within ten days of the receipt of this order. The request to the extent of communications to and from Ministry of Commerce for amendment to SRO 827(1)/2001 is not allowed.
- He is further directed to notify designated officer in compliance of section 9 of the Act without any further delay under intimation to the Commission by or before 16.7,2021.

Mohammad Azam
Chief Information Commissioner

Fawad Malik
Information Commissioner

Zahid Abdullah
Information Commissioner
Announced on 7.6.2021

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