



In the Pakistan Information Commission, Islamabad

Appeal No 1298-08/21

Zubaida Aslam Awan

(Appellant)

Vs.

National Books Foundation

(Respondent)

ORDER

Date: January 12, 2022

Mohammad Azam: Chief Information Commissioner

A. The Appeal

1. The Appellant filed Appeal on August 30, 2021, to the Commission, stating that she had submitted information requests to Managing Director, National Book Foundation on August 16, 2021 under the Right of Access to Information Act 2017 but did not receive any response from the public body.
2. The information sought by the Appellant is as follows:
 1. *Purchase of paper from the company/ firm (2019 to 2021).*
 2. *Quantity of the paper for years (2019-2020-2021) from the firm Mill/traders.*
 3. *Name of the firm which provided the paper to the NBF (along with the address of the firm where it is actually situated.*
 4. *Rates of paper on which paper was purchased.* 5. *Quality of the paper purchased in years (2019-2020-2021)*

(About publication of Books)

 1. *Criteria under which the quality / text of the books is analyzed.*
 2. *Number of persons of the board who are responsible to asses the book for publication.*
 3. *Professional / educational qualification of the board Analyzing the standard of the books presented to the NBF for publication.*
 4. *Criteria according to which the books are selected for publication by the NBF.*
 5. *Names of Books/ list of books along with names of Authors (Published by NBF during the years 2019-2020-2021),*
 6. *Criteria of Prequalification/selection of Publishers.*
 7. *Amount paid to publishers during the years 2019-2020-2021 with the name of publishers alongwith their complete address and land line No (if any).”*

B. Proceedings

3. Through a notice dated September 02, 2021, sent to Secretary, National History & Literary Heritage Division stated that “Under Section 14 of the Right of Access to Information Act 2017, each federal public body is bound to respond to a request as soon as possible and in any case within ten working days of receipt of the request. You are directed to provide reasons in writing within 7 working days of the receipt of this notice as to why the requested information has not been provided to the applicant, (copy of the information request and appeal thereon enclosed)”.

4. The Respondent through a letter vide No. 331/HBD-01 dated September 09, 2021 submitted its response which is as under:

“The undersigned has been directed to refer your letter of 16th August, 2021 on the above subject and to state the information requested by you does not falls within the ambit of Section 6 of Right of Access to Information Act, 2017 and it is also exempt under the provisions of Section - 16 (d) (ii) & (iii) of the said Act.

2. National Book Foundation is a Federal Government institution involved in publishing of textbooks, general books etc. The disclosure of the said information may cause damage to the financial interests of the Foundation which may give unreasonable advantage to its competitors i.e. people/firms involved in publishing of books. The disclosure of the said information may also cause damage to lawful commercial activities of the Foundation. Hence Foundation regrets to provide you the requisite information.”

5. Response submitted by the public body was shared with the Appellant on September 15, 2021.

6. The Appellant on October 04, 2021 submitted rejoinder to the information shared by the public body, which is as under:

“Referring to the above cited subject it is stated that the reply from National Book Foundation is not satisfactory and contrary to the spirit of RTI 2017. It is deliberate attempt conceal facts and figures, which is the irrefutable right of citizens of Pakistan. It is, also, a criminal attempt to hide facts from public, who are lawful heirs of the public kitty. To disclose fact and figures is not against the interest of state, rather its disclosure is in the highest public / national interest.”

7. Rejoinder submitted by the Appellant was shared with the public body on October 11, 2021 with the directions to respond to the queries of the Appellant within 10 working days.

8. The Appeal was fixed for hearing on December 07, 2021 and both parties were informed through notices sent on November 15, 2021.

9. Mr. Amjad Ali, Secretary, NBF and Mubeen Ur Rahman, Assistant Director, NBF attended the hearing held on December 07, 2021 and submitted response to the queries of the appellant, which is as under:

“Preliminary Objections:

- a) *That the Appellant has got no legal or fundamental right which has been infringed as the response to the appellant's application has been provided as per law vide letter dated 7 9-2021 which was served upon the address provided by Appellant.*
- b) *That some of the queries sought by the Appellant is already part of Public Record which is available on the website of National Book Foundation as required by Section 6 of The Right of Access to information Act, 2017 which can be accessed clicking on the following URL i.e. <http://www.nbf.org.pk>*
- c) *That the plaintiff has not come before this Honourable Commission with clean hands and wilfully, deliberately and intentionally concealed important facts from this Honourable Commission, hence suit in hand is not maintainable in the eye of law especially against the respondent and liable to be dismissed ab initio.*
- d) *That above titled appeal is bad in the eye of law as the same is composed of falsehood mala fide and ulterior designs on part of Appellant against the answering respondent.*
- e) *That the answering respondent has got no concern whatsoever with the allegations levelled in the instant appeal, hence appeal is liable to be dismissed on this score alone.*
- f) *That through instant appeal, the appellant has miserably and desperately tried to drag the answering respondent in a false and frivolous litigation with which the answering respondent has got no concern whatsoever.*
- g) *That suit in hand is based on false, frivolous and baseless assumptions/assertions of the plaintiff hence the same is liable to be dismissed.*
- h) *That the Appellant has suppressed material facts from this Honorable Commission. Hence she is not entitled to any relief.*
- i) *That the instant appeal is not maintainable as the Appellant has no locus standi to file it.*
- j) *That instant has not been filed by following the due course of law and procedure laid down in Section I (2) of right of Access to Information Rules, 2020, which is reproduced herein :-*

“The applicant may file an appeal on a plain paper or on a simplified format prescribed format prescribed by the information Commission and the applicant shall certify that the applicant had not already or concurrently filed an application, complaint or suit before any other forum or court.”

REPORT

- i. *National Book Foundation was established in 1972, It is a statutory Corporation created through an Act of the parliament in order to make books available at moderate prices. The National Book Foundation (NBF) is working under the administrative control of Ministry of Federal Education & Professional Training, Islamabad. It has also been notified as Federal Textbook Board (FTBB) vide SRO No. 615(i) 2010, dated 06-07-2010.*
- ii. *The answering respondent has responded the request vide letter dated 7-9-2021 as per the law laid down in The Right of Access to the Information Act, 2017.*

GROUND

1. *The basic spirit behind the enactment of the Right of Access to the Information Act, 2017 is derived from Article 19-A of Constitution of Pakistan, 1973 which is reproduced herein:-*

“19A. Right of Access to Information:

Every citizen shall have the right of Access to Information in all matters of public importance subject to regulation and reasonable restrictions imposed by law.”

2. *That the conclusion must be drawn on balance and under the principle or proportionally that disclosure of information would cause great injury to the public interest, than its non-disclosure. Same balance test would apply where the right to disseminate information conflicts with private interest of an individual and Court could have to determine whether public interest would prevail over private interest.(PLD 2018 Lah 198.) In the instant matter, appellant has private and vested interest which is driving her to seek such information.*
3. *That role of answering respondent is defined in preamble of National Book Foundation Act, 1972 which is stated as under:-*

“Where it is expedient to provide for the establishment of a Foundation for making books available at moderate prices, and for matters ancillary thereto.”

National Book Foundation endeavours to make the books available to general public at moderate prices and to achieve this major objective it is surviving in a strict competitive environment among major commercial giants in open market.

Under the aforementioned circumstances, information sought by appellant is exempted under Section 16 (d) of the Right of Access to Information Act, 2017 which is reproduced below:-

“(d) information is exempt if and so long as its disclosure is likely to cause (i) damage to the economy as a result of premature disclosure of a proposed introduction, abolition or variation of any tax, duty, interest rate, exchange rate of any other instrument of economic management;

(ii) damage to the financial interests of the public body by giving an unreasonable advantage to any person in relation to a contract which that person is seeking to enter into with the public body for acquisition or disposal of property or supply of goods or services; or

(iii) damage to lawful commercial activities of the public body.”

Moreover, information sought by Appellant is related to third person i.e. private publisher and printers, it is pertinent to mention here that answering respondent follows all ethical and moral principles by not disclosing the confidential information related to its business and trade secrets, as said information is also exempted under section 16 (g) of The Right of Access to Information Act, 2017 which is stated as under:-

“(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;”

4. *That the answering respondent is in process or prequalification bid by inviting applicants for procurement / supply of Textbooks for Academic Session 2022-2023 and General Books etc. to national Book Foundation/Federal Textbook Board and disclosure of such information is likely to cause harm to an influence another on-going process.*

PRAYER

In the light of all these circumstances it is humbly prayed that the instant appeal may kindly be dismissed in limini as instant appeal, if accepted, would lead to dangerous consequences, for it would open doors for every unsuccessful writer with unethical engagements bringing whole system to vogue at stake.”

C. Discussion and Commission’s View on Relevant Issues:

10. The instant appeal has brought to the fore following questions for the consideration of the commission:
 - (a) *Can the instant appeal be dismissed on the grounds raised by the Respondent that the appeal is based on “false, frivolous and baseless assumptions”?*
 - (b) *Will the disclosure of the requested information harm any legitimate commercial interests of any third party?*
 - (c) *Does the requested information fall within the ambit of the public record and whether the public body has responded or not to the information request and notices of the commission within time limit mentioned in the Right of Access to Information Act, 2017, hereafter referred to as the “Act”?*
11. This commission finds it unfortunate that the Respondent, instead of determining whether the requested information can be provided under the provisions of the Act, indulged in determining the motives of the Appellant by stating that the instant appeal be dismissed as it is based on *“false, frivolous and baseless assumptions”*. Had the Respondent gone through Section 11 (5) of the Act, which specifically bars federal public bodies to call into questions motives of the Appellants, the Respondent would not have raised these grounds.
12. This commission also holds that the disclosure of the requested information would not hurt any legitimate commercial interests of third parties.
13. The information requested by the appellant belongs to the Section 5(e) and (g) of the Act. Section 5 (e) & (g) is as under:

“(e) The condition upon which members of the public body can acquire any license, permit, consent, approval, grant, allotment, or other benefits of whatsoever nature from any public body or upon which transactions, agreements and contracts, including contracts of employment which can be entered into with the public body, along with particulars about recipients of any concession, permit, license or authorization granted by the public body

(g) Detailed budget of the public body; including proposed and actual expenditures, original or revised revenue targets, actual revenue, receipts, revision in the approved budget and the supplementary budget;”
14. The budget allocated to the public bodies is the public money and the citizens have the right to know the details of its utilizations. The public bodies without waiting for the

information requests of the citizen, should themselves share budget expenditure and strategy papers on their websites.

15. This commission observes that proactive disclosure of such information will bring transparency and providing greater accountability of the government to the citizens, which the spirit of enactment of this Act. Moreover, it will also improve the trust of the citizens in its public bodies.
16. The public bodies are bound to ensure that all such categories of the information and record defined in Section 5 of the Act are duly published including uploading over the internet or in a manner which best ensures that these are accessible to the public.
17. In the instant appeal the public body has failed to acknowledge and respond to the information request of the appellant. This commission has observed that the public bodies are reluctant to share the basic information to the citizen which should be available on their website under the Section 5 of the Act. As such, citizens have to approach the commission for information due to the wilful delay or denial by the public bodies which causes undue cost to citizens and the commission.
18. According to Section 9 of the Act, each public body shall, within thirty days of the commencement of this Act, notify one or more designated officials, not below the rank of an officer in BPS -19 or equivalent; but the Respondent has not so far nominated any official to deal with the information request of the citizen.
19. This Commission maintains that the information proactively published under Section 5 of the Right of Access to Information Act 2017 should be 'accessible' for all citizens, including the blind, low-vision, physically disabled, speech and hearing impaired and people with other disabilities. Apart from the interpretation of 'accessible' in section 5 of the Act, section 15 (5) of the ICT Rights of Persons with Disabilities Act 2020 requires federal public bodies to ensure accessibility of web sites to the special needs of persons with disabilities and it is as under:

“The government shall ensure that all websites hosted by Pakistani website service providers are accessible for persons with disabilities”.

D. Order

20. The appeal is allowed. The Managing Director, National Book Foundation is directed to provide the information requested in Para-2 with intimation to this office, at the earliest, but in any case, not later than 10 working days of the receipt of this Order.
21. The Respondent is also directed to take immediate steps to proactively share through the web site all categories of information mentioned in Section 5 of the Right of Access to Information Act 2017 and submit the compliance report to the commission in the Template for the Compliance Report-Proactive Disclosure of Information under Section 5 of the Right of Access to Information Act 2017'. This template is available under 'Information Desk' category at the web site of the commission www.rti.gov.pk. The compliance report be submitted to this commission within 30 days of the receipt of this Order.
22. The Respondent is directed to ensure accessibility of the information proactively published on its web site under Section 5 of the Right of Access to Information Act 2017 for all citizens, including the blind, low-vision, physically disabled, speech and hearing

impaired and people with other disabilities and submit compliance report to this effect using 'Web accessibility checklist'. This checklist is available under 'Information Desk' category at the web site of the commission www.rti.gov.pk. The compliance report be submitted to this commission at the earliest but not later than 10 working days of the receipt of this Order.

23. The Respondent is also directed to designate Public Information Officer as required under Section 9 of the Act and upload its notification along with the name, designation and contact details on its website as required under Section 5 (1) (b) and (h) of the Act and submit compliance report to the commission within 10 working days of the receipt of this order.
24. Copies of this order be sent to the Managing Director, National Book Foundation and the Appellant for information and necessary action.

Mohammad Azam

Chief Information Commissioner

Fawad Malik

Information Commissioner

Zahid Abdullah

Information Commissioner

Announced on:

January 12, 2022

This order consists of 7 (seven) pages, each page has been read and signed.