



In the Pakistan Information Commission, Islamabad

Appeal No 1514-12/21

Kashif Ali Sundrani

(Appellant)

Vs.

Ministry of Law & Justice

(Respondent)

ORDER

Date: January 31, 2022

Zahid Abdullah: Information Commissioner

A. The Appeal

1. The Appellant filed Appeal on December 02, 2021 to the Commission, stating that he had submitted information requests to Secretary, Ministry of Law and Justice on November 17, 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:

"1. Firstly, "The issue of workers/employees/well chowkidars through third party contractors/Land owners on lump sump basis, employed by OGDCL, now legal opinion requires "whether said well chowkidars through third party contractors are employees of the company/OGDCL or not, fall in the definition of eligible workers or not & entitled for all the benefits to be given to eligible workers, Whether there is recruited workers & outsourced workers". Now i would like to discuss why i need afore said information; That Supreme court of Pakistan & High courts have declared employees through contractor as employees of company in their verdicts duly reported, i mention some of the said cases (a) SBLR 2021 Sindh 2169 (b) 2013 SCMR 1253 (c) 2018 SCMR 1181 (d). 2020 PLC 153 (SC) (e) 2018 SCMR 1405 (f) 2021 PLC (C.S) 295 Sindh (g) 2019 PLC (C.S) 751 Sindh (h) 2017 PLC (C.S) 1192 Sindh (i) 2017 PLC 148 (Baluchistan) (ij) 2020 PLC 57 (HC, AJ & K). Despite above written clear legal position the out sourced well chowkidars/workers/employees of the Gas Companies are being deprived of various benefits from 2016-17 while other directly recruited employees are collecting the said benefits. (i) The ministry of Overseas Pakistanis & human Resource department vide its letter NO.WWF/WPPF/1(430)/2005 dated. 16.12.2016 issued by deputy director (legal) sent to MD OGDCL on the issue of 5% of WPPF amount of companies with reason of amendment in finance act 2007 to be declared null and void by Supreme court of Pakistan; in said letter there is also mention of eligible worker. that is why OGDCL has stopped 5% of WPPF amount of companies profit to its employees through third party contractors/Land owners since 2015-2016. (ii) Possibly on afore said reasons well

chowkidars' minimum Labour wages is not being increased since 2017, (iii) Benefit of other facilities is not being extended to Afore said employees/workers etc. That said Judgement of Apex court as reported at PLD 2017 SC 28 on which Human resource department is relying upon, in that judgment Apex court declared amendment in Act 1968 & ordinance 1971 etc as null and void as it can't be amended through finance bill & not fall in ambit of Article 73(3) of Constitution but apex court did not say that workers through third party are not employees of the company nor they are ineligible workers.

Secondly, Legal opinion is required "whether employees/ well chowkidars through 3rd party contractors working in trans-provincial public sector oil & Gas companies come in the ambit of federal labor laws or provincial Labour laws after 18th amendment & said trans provincial Public sector companies has to fix wage rates in provinces as fixed by federal government or provincial governments

Thirdly, Legal opinion is required "Whether this departments intends to amend the afore said laws (which were declared null & void by SC of Pakistan) in respect of definition of workers etc through regular way instead of money bill, said laws annulled only due to procedural wrong."

fourthly legal opinion is required "whether registrar high courts of the provinces may legally provide any information on administrative as well as judicial issues/matters to Information Commission of Pakistan or not & whether high court administratively fall in the ambit of Public body or not"

Fifthly," Whether High courts are administratively sub ordinate & under the administrative control of Supreme court of Pakistan or not"

Sixthly, "Which courts, judicial/Quasi-Judicial forums, tribunals, administrative forums etc are administratively under direct control of Supreme court of Pakistan as well as High court of sindh"

Seventhly, It is settled law In various/number of decisions Honourable Supreme court of Pakistan has held that Jurisdiction, Limitation Caus of action, maintainability, Locust standi, Multiplication of litigation etc, afore said acts to be decided first but in Sub ordinate judiciary & other quasi-judicial/administrative fora said cases remain in pending for years only on these issues, wasting costly time of persons as well as courts of law, "What is role of Law & Justice department & what should this department do to persuade courts to obey/ implement supreme court/high court decisions."

Eighthly, A 4-Member bench of Supreme court of Pakistan as reported in 2012 PLC 232 (SC) comprehensively decided the matter of Minimum Labour wages binding on all organs of state; since in 2021 all governments have fixed minimum labour wages w.e.f. first July 2021 but OGDCL is not paying its contract well chowkidars & well chowkidars through third party on lump sump basis & other employees nor said Labour departments have taken any action to ensure extension of benefit of minimum labour wages to OGDCL and other workers of Pakistan including employees of sindh health department," whether steps has been taken for implementation in the light of said order of Apex court."

Ninthly, "What are the jurisdictions of Supreme court of Pakistan like Original, Appellate etc"

Tenthly. "What kind of matters/ cases are to be entertained by Human rights Cell of Supreme court of Pakistan." 10

Eleventh, "What is the role of Registrar Supreme court of Pakistan/High courts for implementing Judicial as well as administrative orders/judgments etc of Apex court of Pakistan/high courts."

Twelfth, "please give me information, what is function of this ministry"

Thirteenth, whether federal muhtasib may take cognizance of case against OGDCL or not.

Fourteenth, OGDCL acquires lands on annual leases at Qaderpur Gas field Ghotki, fixes annual lease rates centrally from Islamabad without negotiating with Land owners, without their consent, by means of dictatorship whether is it legally fit or not, also by using police and other govt departments; do you intend to issue legal advice in this regard to OGDCL, all other federal bodies like PPL, though SSGC/SNGC etc do fixation of leased through negotiating process but OGDCL does contrary to it"

Fifteenth, "Whether this ministry is in a position to help these low paid well chowkidars through third party contractors/land owners on lump sump basis in new Pakistan as mentioned by Imran Khan by directing OGDCL & other ministries to give justice to these low paid employees by extending justice to these low paid employees by extending all benefits given to eligible workers."

It is requested to give above legal information".

B. Proceedings

3. In response to the notice of the commission, the Respondent through letter dated November 25, 2021 submitted its response which is as under:

"I am directed to refer to your letter no. Nil, dated 17-11-2021 on the subject noted above and to inform that this Division is performing on the subject noted above and to inform that this Division is performing duties under Rule 14 of the Rules of Business, 1973 and Appendix "F" to the Secretariat Instructions. Further the opinions, you sought from this Division does not fall under definition of information given in sub section V of Section (2) of Information Act, 2017. Therefore, you are advised to approach OGDCL in the said matter".

4. Through a letter dated January 24, 2022, the Appellant expressed his dissatisfaction through a rejoinder which is as under:

"REPLY/REJOINDER TO RESPONDENT'S LETTERS DT.30.12.2021 25.11.2021 RECIEVED THROUGH COMISSION'S LETTER DT 17.1.2022

It is submitted that what I have requested is record based information there is no exemption to the respondent; Act 2017 has over riding effect on other laws; Respondent mentions any rules of 1973 which can't equate with Act 2017 nor information comes in the abmit of section 7 of act 2017 therefore it is prayed to direct the respondent company to provide me legal information".

C. Issues:

5. The instant Appeal has brought to the fore following issue for the consideration of the commission:

Can legal opinions sought by the Appellant from the Respondent, Ministry of Law and Justice Division be termed as information based on records?

D. Discussion and Commission's View on Relevant Issues

6. This commission concurs with the Respondent that the 'opinions' sought by the Appellant from the Respondent, Ministry of Law and Justice do not fall under definition of information given in sub section V of Section (2) of Information Act, 2017.
7. This commission also holds that the requested information in para 2 does not belong to the categories of information that the Respondent, Ministry of Law and Justice is required to proactively publish through its web site.
8. There is difference between query, opinion and information based on records. While exercising their constitutional right of access to information in matters of public importance under the Act, 2017, citizens should mention specific records and information based on these records that they want to access.

E. Order

9. Appeal is disallowed as 'opinions' sought by the Appellant from the Respondent, Ministry of Law and Justice do not fall under definition of information given in sub section V of Section (2) of the Right of Access to Information Act, 2017.
10. Copies of this order be sent to The Respondent and the Appellant for information.

Mohammad Azam

Chief Information Commissioner

Fawad Malik

Information Commissioner

Zahid Abdullah

Information Commissioner

Announced on: January 31, 2022

This order consists of 4 (four) pages, each page has been read and signed.