



In the Pakistan Information Commission, Islamabad
Appeal No 1397-10/21

Popular Goods Transport

(Appellant)

Vs.

PASSCO

(Respondent)

ORDER

Date: March 08, 2022

Zahid Abdullah: Information Commissioner

A. The Appeal

1. The Appellant filed an appeal, dated October 11, 2021, to the Commission, stating that he submitted an information request to Designated Official PASSCO Head office on September 25, 2021 under the Right of Access to Information Act 2017 but did not receive the requested information from the public body.
2. The information sought by the Appellant is as under:-
This is in reference to the Tender Notice for provision of Transportation Services for shifting of 300,000 (+ 10%) metric tons Imported Wheat wherein the Pakistan Agricultural Storage and Services Corporation Ltd (PASSCO) had invited sealed bids from well reputed firms/companies having a five (05) years' experience in transportation of wheat for shifting of 300,000 (+10%) metric tons Imported Wheat from Karachi Bin Qasim/ FAP Marine Terminal and Gwadar ports to various PASSCO designated Zones on a required basis which was opened on 19-07-2021.
That as per Section 11 of the Right of Access to Information Act, 2017 ("Act") the undersigned requires provision of the following information;
 1. *Record of bidders who were issued bidding documents*
 2. *Number of tenders submitted*
 3. *Evaluation reports*
 4. *Opening record of financial reports*
 5. *Combined tender evaluation report*
 6. *Notice of acceptance*
 7. *Letter of award*
 8. *Award of contract"*

B. Proceedings:

3. In response to the notice of the commission dated October 22, 2021, the Respondent through letter dated November 11, 2021 submitted its response and its relevant portions are as under:
"It is submitted for your kind information that the complainant has approached this Hon'ble commission with mala fide intention and malice just to malign the PASSCO authority.

That the complainant has not approached the authority as per procedure mentioned in Right of Access to Information Act 2017. He neither approached the authority nor submitted any application and the receipts attached with this complaint are fake and fabricated. The Authority after receiving the notice from your good office started an inquiry and it transpired from the letter of GPO that "It is intimated that matter on the above noted subject was got inquired through ASPO(Treasury) Lahore GPO, who reported that RGLNo.1181 dated 15-09-2021 & 1576 dated 25-09-2021 were not booked from Lahore GPO(Day& NPO) as per record. It is further added that the said registered letters were also not received to Lahore GPO for onward delivery to your office at PASSCO, 11-Kashmir Road Lahore". Copy of Letter attached herewith as A/I

That the complainant has no locus standi to get the information mentioned in his complaint as he is blacklisted from the authority.

That as per law the information which he ask for are privileged documents and handing over the same to the complainant will cause huge loss and distress to the Government of Pakistan, jeopardize the entire wheat operation for which 400 plus trucks are employed every day to carry wheat up country.

It is therefore most respectfully prayed that the complaint in hand may kindly be dismissed in the interest of Government and the complainant be prosecuted for mis-statement and committing fraud with this August Commission”.

4. Through a letter dated November 23, 2021, the Appellant submitted its response and its relevant portions are as under:

1. “That in response to the letter under reply we would like to submit as under:

- i. That the contents of Paragraph No.1 of the reply are absolutely denied. as incorrect. The Appellant in pursuance of its rights as provided under the Right to Access of Information Act, 2017 ("Act") vide letters dated. 15-09-2021 and 25-09-2021 duly requested the Respondent to provide information with regards to the Tender for provision of Transportation Services for shifting of 300,000 ((+10 %) metric tons Imported Wheat ("Tender Notice I") and the Tender for transportation services for shifting of 1,500,000 (+ 10%) metric tons Imported Wheat from Karachi Port Trust Bin Qasim/FAP Marine Terminal and Gwadar Ports to PASSCO designated zones on required basis (Tender Notice II"). It is to be noted that the Appellant was constrained to file an appeal due to the failure of the Respondent to provide the necessary information to the Appellant however; the same does not in any manner reflect any malice on behalf of the Appellant to malign the reputation of the Respondent. Had the procedure adopted by PASSCO in awarding above mentioned tenders been in accordance with, it would not have any problem in sharing the relevant record with the Appellant.
- ii. That the contents of Paragraph 2 of the reply are denied as incorrect. The Appellant duly requested the Respondent to provide the information vide letters dated 15-09-2021 and 25-09-2021 in accordance with the procedure as prescribed under Section 11 of the Act. It is pertinent to mention here that the receipts were duly obtained from the Civil Court post office and hence all allegations levelled against the Appellant with respect to the submission of fake receipts are absolutely fake and fictitious
- iii. That the contents of Paragraph 3 are vigorously denied as being incorrect. It is submitted that the Writ Petition No. 49976/2020 was filed to challenge the unlawful and arbitrary actions of the Respondent which pertained to awarding the contract to another bidder notwithstanding the fact that the Appellant had submitted the lowest financial bid. It may also be noted that the Honorable Lahore High Court was pleased to grant interim relief in the Writ Petition No. 49976/2020 vide order dated 12.10.2020. The copy of the order attached with the response of PASSCO is incomplete in order to mislead this Honorable

Commission. The certified copy of the order is attached herewith depicting the fact that the Honorable Court, accepting the contention of the Appellant, estopped PASSCO from awarding the contract. It is also important to note that the Appellant has no role to play with respect to any news that may have been published in any newspaper pertaining to the Writ Petition No.49976/2020 and the same may have been published by newspaper agencies themselves since the aforementioned tender was already highly publicized involving a handsome amount of public money. However, the Writ Petition No. 49976/2020 was withdrawn, with express permission to file fresh petition, later only on account of the same becoming infructuous since the Respondent had proceeded to award the contract to another bidder in a completely hasty, arbitrary and perverse manner and being a time bound contract the same had come to an end before the conclusive decision by the Honorable High Court. It is also pertinent to mention here that with the withdrawal of writ petition no. 49976/2020 the contempt, which was otherwise not maintainable and arguable, has also become infructuous and cannot proceed further.

- iv. That the contents of Paragraph No.4 of the reply are denied as being false and incorrect. The perusal of the Act makes it evident that there is no provision within the Act which bars any candidate or person from seeking access to information retained by a public body. Even otherwise, the allegation with respect to the blacklisting of the Appellant is absolutely false and without any merit. PASSCO is only trying to hide behind false allegations and avoiding the provision of the documents to which the Appellant is legally entitled to.
- v. That the contents of Paragraph No. 5 are vehemently denied as being fiction of mind and incorrect. Bare denial of the provision of document on the pretext that they are privileged is absurd and not supported by the law itself. The Respondent has failed to disclose a valid reason for the refusal for the information requested by the Appellant as provided under Section 13 of the Act. It is submitted that Section 13(2)(b) (ii), (iii) and (iv) provide that a public body may refuse the information requested by an applicant if the same is already readily available or is substantially the same information that was requested for within the last six (06) months or if the same falls under the exceptions provided under Section 7 of the Act. Evidently, the information requested by the Appellant does not fall in either of the categories mentioned within Section 13 (2) of the Act neither does the same fall within the exceptions provided under Section 7 of the Act. The blatant denial to provide the documents on the ground that these are "privilege documents and handling them would cause "huge loss and distress to the Government of Pakistan" is incongruous as no justification whatsoever is stated to come up with this stance. It is surprising how a wheat transport tender can cause huge loss and distress to Government of Pakistan unless there has been some misprocurement. It is submitted. that the information sought by the Appellant squarely falls under Section 5(d), 5(e), 5(g), 5(i), 5(j) and 5(k) of the Act however, the Respondent in a completely malafide manner has failed to disclose any information regarding both the Tenders on its official website. The ulterior motives of the Respondent are further evidenced by the fact that information regarding all other previous tenders is readily available on its official website also evidencing the fact that there is nothing "privilege" about these documents. The aforementioned deliberate omission on part of the Respondent does not only blatantly disregard the provisions of law but the same is clearly also violative of the scheme of law which lays considerable emphasis of the accountability and transparency of the actions of public bodies. In view of the foregoing, the Respondent has no valid

and sufficient reason for refusing to provide the information requested by the Appellant.

5. The failure of the Respondent to disclose the information being sought by the Appellant is in stark violation of the principles enunciated under Section 3 of the Act which expressly provide that no person shall be denied access to information or record held by a public body in pursuance of the scheme of law enumerated under the Act which mandates that it is imperative to promote and secure the right of access to information and facilitate the disclosure of such information in a proficient manner.
6. Even otherwise, Rule 47 of the Public Procurement Rules, 2004 read with Section 6 of the Act expressly provides that as soon as the contract is awarded the procuring agency shall make all documents related to the evaluation of the bid and the award of contract public. No compliance has been made by the Respondent of the said Rules and the PASSCO and PPRA websites are completely silent in this regard”.
7. In view of the foregoing, it is most respectfully stated that the Appellant is not satisfied with the reply of PASSCO and it is requested that this Honorable Commission may be pleased to direct the Pakistan Agricultural Storage and Services Corporation Limited (PASSCO)/ Respondent to disclose the requisite information requested by the Appellant vide letter dated 15-09-2021 and the letter dated 25-09-2021 as envisaged under Section 3 of the Right of Access to Information Act, 2017”.
8. The commission held hearing on this issue on December 23, 2021 and both parties were informed through notice vide letter dated November 29, 2021. The relevant portions of the response submitted by the Appellant are reproduced here:
 1. *“That the Respondent miserably failed to provide the aforementioned requisite information requested by the Appellant within the stipulated time. It is pertinent to mention here that the Appellant ran from pillar to post in requesting the Respondent to decide the request made by the Appellant vide letter dated 15-09-2021 however absolutely no heed was paid to the same.*
 2. *That subsequently, the Respondent again vide a Tender Notice invited sealed bids for transportation services for shifting of 1,500,000(+10\%) metric tons Imported Wheat from Karachi Port Trust Bin Qasim/FAP Marine Terminal and Gwadar Ports to PASSCO designated zones on required basis ("Tender Notice II"). Thereafter, the sealed bids were to be opened on 01-09-2021 and the contract was supposedly awarded however no information in this regard was uploaded on the official website of the Respondent.*
 3. *That the Appellant again vide letter dated 25-09-2021 requested the Respondent to provide the following information with respect to the Tender Notice II:*
 - i. *Record of bidders who were issued bidding documents*
 - ii. *Number of tenders submitted*
 - iii. *Evaluation report of technical reports*
 - iv. *Opening record of financial reports Combined tender evaluation report*
 - v. *Notice of acceptance*
 - vi. *Letter of award*
 - vii. *Award of contract”*
9. It is to be noted that Section 5 of the Act expressly lists down the categories of information and record which are to be published by the public body within Six (06) months of the commencement of the Act.
10. It is to be noted that the information sought by the Appellant squarely falls under Section 5(e), 5(1), 50) and 5(k) of the Act since the same expressly falls within the aforementioned sub-clauses of Section 5. However, despite the fact that the information sought by the Appellant fell within the categories laid down in Section 5 and hence it was

incumbent upon the Respondent to publish the information or upload the same on its official website no such effort was made by the Respondent who not only failed to make the information public but also refused to provide the same to the Appellant

11. Even otherwise, the Respondent in a completely malafide manner has failed to disclose any information regarding both the Tenders on its official website. The ulterior motives of the Respondent are further evidenced by the fact that information regarding all other previous tenders is readily available on its official website. The aforementioned deliberate omission on part of the Respondent does not only blatantly disregard the provisions of law but the same is clearly also violative of the scheme of law which lays considerable emphasis of the accountability and transparency of the actions of public bodies
12. With regards to the present case, it is submitted that the Respondent has not so far nominated any official to deal with the requests pertaining to disclosure of information made by applicants. The aforementioned submission is further fortified by the fact that no contact details of any designated official are available on the official website of the Respondent
13. That as per Section 6(b) of the Act all information regarding any contract entered into by the public body or awarded by the public body is public inform...
14. Even otherwise, Rule 47 of the Public Procurement Rules, 2004 read with Section 6 of the Act expressly provides that as soon as the contract is awarded, the procuring agency shall make all documents related to the evaluation of the bid and the award of contract public. No compliance has been made by the Respondent of the said Rules and the PASSCO and PPRA websites are completely silent in this regard. The aforementioned provision of law is reproduced hereunder; Rule 47 of the Public Procurement Rules, 2004 47 Public access and transparency As soon as a contract is awarded the procuring agency shall make all documents related to the evaluation of the bid and award of contract public.
15. Provided that where the disclosure of any information related to the award of a contract is of proprietary nature or where the procuring agency is convinced that such disclosure shall be against the public interest, it can withhold such information from public disclosure subject to the prior approval of the Authority
 2. Through a letter dated January 7, 2022, the Respondent shared with the commission the following:

“In continuation to the above referred letter, the information regarding blacklisting of M/s Popular Goods transporters (Pvt) Limited has been received from Public Procurement Regulatory Authority vide F.NO. I-8/Blacklisting/IT/2022 dated 10 January, 2022. The copy of the above mentioned letter is being enclosed herewith for kind Information and record, please”.
16. Through a letter dated January 12, 2022, the Appellant submitted the following:

“That this is the reply with reference to your letter dated 28.12.2021 received in the office of Our Client on 8.1.2022 by way of your office has sought Our satisfaction to the "response" shared by PASSCO.
17. That by way of the instant Appeal, Popular Goods Transporters (Private) Ltd., (Hereinafter referred to as "the Appellant") sought the indulgence of this Honorable Commission to direct the Pakistan Agriculture Storage and Services Corporation Limited (hereinafter referred to as "PASSCO" or "Respondent") to provide the requisite information requested by the Appellant vide letter dated 1-08-2021 and the letter dated 25-09-2021.
18. The appeal was heard and this Honorable Commission accepted the same directing PASSCO to provide the documents/information as sought by our Client.

19. That the public body, in this case PASSCO, vide Tender Notice for provision of Transportation Services for shifting of 300,000 (+ 10%) metric tons Imported Wheat ("Tender Notice I"), invited sealed bids from well reputed firms/companies having a five (05) year's experience in transportation of wheat for shifting of 300,000 (+-10%) metric tons Imported Wheat from Karachi Bin Qasim/ FAP Marine Terminal and Gwadar ports to various PASSCO designated Zones on a required basis. The said tender was however, malafide and against the law, not available on their website.

That the bids were opened on 19-07-2021 and supposedly the contract for the shifting of 300,000 (+10%) has been awarded Accordingly, the Appellant vide letter dated 1-08-2021 requested the Respondent to provide information regarding the following.

- 1) List of pre-qualified bidders.
 - 2) Record of bidders who were issued bidding documents
 - 3) Number of tenders submitted
 - 4) Evaluation reports
 - 5) Opening record of financial reports v
 - 6) Combined tender evaluation report
 - 7) Notice of acceptance
 - 8) Letter of award.
 - 9) Award of contract
20. That notwithstanding the fact that it is incumbent upon the Respondent to provide the information under the provisions of the Right of Access to Information Act, 2017 ("Act") and especially after the acceptance of the Appeal and order of this Honorable Commission, NOT a SINGLE document in this respect and as listed above has been provided in blatant and clear. violation of the order
21. That through another Tender Notice PASSCO invited sealed bids for transportation services for shifting of 1,500,000 (+ 10 %) metric tons Imported Wheat from Karachi Port Trust Bin Qasim/FAP Marine Terminal and Gwadar Ports to PASSCO designated zones on required basis ("Tender Notice II"). Thereafter, the sealed bids were to be opened on 01-09-2021 and the contract is supposedly been awarded. No information what so ever has been uploaded on their website.
22. That the Appellant again vide letter dated 25-09-2021 requested the Respondent to provide the following information with respect to the Tender Notice II;
- (1) 11) List of pre-qualified bidders
 - Record of bidders who were issued bidding documents
 - i) Number of tenders submitted
 - iv) Evaluation report of technical reports
 - v) Opening record of financial reports
 - vi) Combined tender evaluation report
 - [vii) Notice of acceptance
 - viii) Letter of award ix) Award of contract.
23. It is pertinent to mention here that ONCE AGAIN NONE OF THE DOCUMENTS AS MENTIONED ABOVE has been provided and PASSCO has played fraud on the process of the present appeal as well as the order of this Honorable Commission.
- Moreover in vengeance against our Client, for approaching this Honorable. Commission, PASSCO has blacklisted our Client without due process, without providing any reasons whatsoever and in utter violation of applicable law. The letter from PPRA Pakistan has been issued recently on 10.01.2022 wherein it is informed that our Client has been blacklisted from 6.01.2022 to 5.01.2032 ie for ten years. The reason stated is "indulgence in fraudulent activities". In other words our Client has been accused of indulging in fraudulent activities by filling the present appeal and appearing before this Honorable Commission. Our Client reserves the right to challenge the action taken by PASSCO and

PPRA Pakistan separately at the appropriate forum, however this fact should be taken notice of by the Honorable Commission and the Commission is well within its power to direct PASSCO to supply the document pertaining to blacklisting process, fraudulently and surreptitiously carried out by the public body pending this appeal to our Client.

(Copy of the letter issued by PPRA Pakistan is attached)

In order to mislead the Honorable Commission, PASSCO has appended document pertaining to previous tender and that too are incomplete wherein Our Client had participated and was wrongly disqualified despite being the lowest bidder. Thereafter the above two tenders were called and awarded illegally and without due process. Had the process been followed PASSCO would not hesitate to place the record on the website and would not have hesitated to provide the same to Our Client. The irony of the matter is that despite clear order of this Honorable Commission PASSCO is adamant enough to disobey the same and by deceiving your office by providing irrelevant documents which were never asked for. This blatant denial calls for initiating contempt proceeding against PASSCO officials

It is trite that the provisions of the Act explicitly give power to the Honorable Commission to implement its orders/decisions”.

24. Through a letter dated January 07, 2022, the Respondent submitted its response which is as under:

“1 That the above mentioned appeal came for hearing on 23.12.2021 and till today no order has been passed.

2 That the petitioner/PASSCO received information regarding the Blacklisting of the said appellant by PPRA for 10 years (copy attached) on the basis of fraudulent activities. M/s Popular Goods transporters Pvt Ltd want some documents/information which are not concerning him and in light of his Blacklisting from PPRA, the appeal may kindly be dismissed or fixed for re-hearing”.

25. Through a letter dated February 18, 2022, the Appellant submitted the response before this commission and its relevant portions are as under:

“1. PASSCO management deliberately, willfully and fraudulently issued Tenders with discriminatory and difficult conditions in violation and utter disregard to PPRA Rules for Transportation of Imported wheat in the year 2021 These Tenders were fraudulently designed to facilitate and ensure that only 1 party. i.e. M/s NLC can Participate and win the Tender at exuberantly higher-Rates Thus resulting in loss amounting to Billions of Rupees to the GOP NLC does not use its own fleet for Transportation and in this case the contract was sublet to a Black Listed Transport Company, PASSCO keeps a small share of profit and major share of profit earned from obtaining Tenders at exuberantly high rates is passed on to Sub-contractor. The sub-contractor shares this profit with other beneficiaries involved in this matter.

2. PASSCO management is avoiding and purposely delaying the desired information because if they submit the desired information their fraud will be exposed and it will be highlighted that Tenders were unilaterally awarded to M/s NLC and resulting in huge loss to Government of Pakistan (GOP). It may be noted that one of the reasons for escalation of Wheat/Flour is that GOP had to pay extra Transportation charges amounting to billions of Rupees which has ultimately resulted in the increase in price of Wheat/Atta as Transportation cost constitutes major portion of overall price of Wheat/Atta.

3. It was requested vide letters dated 12.01.2022 and 16-02-2022 that noncompliance by the public body (M/s PASSCO) should be dealt with strictly by initiating Contempt proceedings and exercising powers under Section 20(2) of the Act and the responsible officers should be punished in accordance with the provisions of the Act.

26. The hearing was held on February 23, 2022 and the learned counsel Ms. Tabinda Islam of the Respondent reiterated stance earlier submitted before the commission in writing. She

also submitted before the commission that it should issue detailed judgement on the matter.

C. Issues

27. The instant Appeal has brought to the fore following issues:
- (a) Is the Appellant required to establish locus standi to get access to records declared public under the Right of Access to Information Act, 2017, henceforth referred to as the Act, 2017?
 - (b) can the motives of the Appellant be determining factor in the disclosure, or, otherwise of the records/information requested by the Appellant? and
 - (c) can records pertaining to the bidding be disclosed once a public body has awarded the contract?

D. Discussion and Commission's View on Relevant Issues:

28. The applicants are not required to establish locus standi for exercising their right of access to information. The communication of an applicant with a public body constitutes requests for information if it fulfils requirements under Section 11 (3) of the Act, 2017 as is the case in the instant Appeal.
29. The Respondent PASCO stated that "the complainant has approached this Hon'ble commission with mala fide intention and malice just to malign the PASSCO authority". Federal Public bodies are required to decide on requests for information under the provisions of the Act, 2017 and not the supposed intentions of the applicants.
29. This commission holds that all requested records related to the award of the contract vide a Tender Notice invited sealed bids for transportation services for shifting of 1,500,000(+10\%) metric tons Imported Wheat from Karachi Port Trust Bin Qasim/FAP Marine Terminal and Gwadar Ports to PASSCO designated zones should not only be provided to the Appellant but should be proactively disclosed under Section 5 and 6 of the Act, 2017.
30. This commission is of the view that documents submitted by firms/individuals to a public body in order to get contracts are public documents as these documents reveal level of competence of the firms/individuals to carry out tasks funded by the tax-payers of the country. Furthermore, the bidding documents help officials in deciding awarding or otherwise of projects to a firm. That is why, the disclosure of these documents is warranted by the letter and spirit of the Right of Access to Information Act 2017 to achieve the stated objectives of Act enunciated in its Preamble which are as under:
- a. Making government more accountable to citizens';
 - b. Greater level of participation of citizens in the affairs of the government';
 - c. 'Reducing corruption and inefficiency';
 - d. Promoting sound economic growth'; and
 - e. Promoting good governance and respect for human rights.
31. Public interest dictates that the bidding documents submitted by a firm, after the award of the contract, cannot be withheld on the grounds of privacy as it this information is critical to determine the level of transparency and fairness adopted in the award of the contracts. Therefore, none of the provisions of this Act, including Section 7 (g) can be attracted to withhold the disclosure of the requested information.
32. The personal/private information means CNIC details, residential addresses, telephone numbers, bank accounts/financial details and health conditions. The Respondent can withhold such information and make the rest public.

E. Order

33. Appeal is allowed. The Respondent, PASCO is directed to provide the Appellant following requested records related to the award of the contract vide a Tender Notice invited sealed bids for transportation services for shifting of 1,500,000(+10\%) metric tons Imported Wheat from Karachi Port Trust Bin Qasim/FAP Marine Terminal and Gwadar Ports to PASSCO designated zones:
1. *Record of bidders who were issued bidding documents*
 2. *Number of tenders submitted*
 3. *Evaluation reports*
 4. *Opening record of financial reports*
 5. *Combined tender evaluation report*
 6. *Notice of acceptance*
 7. *Letter of award*
 8. *Award of contract*
19. These documents be provided to the Appellant at the earliest but not later than 7 working days of the receipt of this Order, with intimation to this office.
34. The Respondent is directed to proactively publish all categories of information through its web site as required under Section 5 of the Act 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 at the earliest but not later than 10 working days of the receipt of this Order.
35. The Respondent is directed to designate Public Information Officer as required under Section 9 of the Act, and put name, designation, telephone number and E-mail of the PIO at top right corner of the home page of its web site and submit compliance report to this effect to this commission within 10 working days of the receipt of this Order.
36. 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.
37. Copies of this order be sent to the Respondent and the Appellant for information and necessary action.

Mohammad Azam

Chief Information Commissioner

Fawad Malik

Information Commissioner

Zahid Abdullah

Information Commissioner

Announced on: March 08, 2022

This order consists of 09 (nine) pages, each page has been read and signed.