



In the Pakistan Information Commission, Islamabad

Appeal No 1753-02/22

Pervez Iqbal

(Appellant)

Vs.

National Transmission Dispatch Company

(Respondent)

ORDER

Date: September 12, 2022

Mohammad Azam: Chief Information Commissioner

A. The Appeal

1. This commission has received an appeal from Pervez Iqbal dated February 08, 2022, stating that he submitted an information request dated December 28, 2021 under the Right of Access to Information Act 2017 to Managing Director, National Transmission and Dispatch Company. The Respondent public body has not responded to his information request as required under section 13 of the Right of Access to Information Act, 2017. Therefore, the appellant has filed his appeal to the Commission.

2. The information sought by the Appellant is as under:

“In this regard, it is intimated that had NTDC has floated tender No. CPP-04M(R2)-2017 for the procurement of 29000 Nos of 80kN and 220,670 Nos of 1650Kn insulators in Lot-I 2664, 165 Nos of 160kN Insulators in Lot-II, 264, 165 Nos of 160kN insulators in Lot-III. After finalization of Technical and financial evaluation NTDC has issued Notification of award No.CE/MP7M/MP/AM-II/CPP-04M(R2)/L-I/4822-33 dated 10-0902018 against LOT-I, Notification of award No. CE/MP7M/MP/AM-II/CPP-04M(R2)/L-II/4834-45 dated 10-09-2018 against LOT-II and Notification of Award No. CE/MP7M/MP/AM-II/CPP-04M(R2)/L-III/6951-62 dated 08-10-2018 against LOT-III.

It is requested to provide the complete evaluation report carried out by against the subject tender procurement under provisions of Para 5 (i) of subject Act 2017 being a citizen of Pakistan for proceed further in the matter which is reproduced below:

“Reports including performance reports, audit reports, evaluation reports, inquiry or investigation reports and other reports that have been finalized”.

B. Proceedings

3. Through a notice dated February 16, 2022 sent to Managing Director, National Transmission and Dispatch Company, Commission 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 notice dated March 02, 2022 submitted its response which is as under:

“

1. *This is with reference to the above referred complaint/appeal of Mr. Pervez Iqbal and your letter wherein we have been directed to provide the reasons as to why the requested information has not been provided to appellant. It is clarified at the outset that the letter of applicant dated: 28.12.2022 as mentioned in your above referred communication could not be traced from records of this office and has probably not been delivered to this office.*
2. *The Appellant Mr. Pervez Iqbal, H. No. B-21, Rashida Park, Mumtaz St. Old Doltana House Ghari Shahu, Lahore has neither purchased the Bidding Document nor participated in the tendering process and is not direct stakeholder of the process. In instant case, the applicant Mr. Abdul Rehman has requested for attested detailed bid evaluation reports under the right of access to information act, Mr. Abdul Rehman is not an interested party in the subject tendering process.*
3. *PPRA Rule 35: Announcement of evaluation (Annex-A) reports states that,*

“Based on the procedure adopted for the respective procurement, the procuring agency shall announce the result of bid evaluation, in the form of final evaluation report giving justification for acceptance or rejection of bids at least fifteen days prior to the award of procurement contract”.

It is worth mentioning that Detailed Bid Evaluation Report is the organizational document having limited accessibility mainly to Board of Directors/Audits/Accountability forums etc., however its public version i.e., Bid Evaluation Report (BER) as per the format of PPRA is available at NTDC/PPRA Website.”

5. The response submitted by the public body was shared with appellant on March 07, 2022.

6. The appellant on March 09, 2022 submitted rejoinder to the information shared by the Respondent, which is as under:

“With reference to NTDC letter referred above, para-wise comments are as under:-

1. *It is in-correct that letter of undersigned dated 28.12.2021 regarding request for access to information against NTDC tender No. CPP.04M(R2)-2017 (Lots I, II 7 III) as per right of access to information act, 2017 was not delivered to NTDC.
In this regard, it is intimated that the said letter was delivered by Leopards Courier Services Lahore in the office of Managing Director NTDC 414 Wapda House Lahore which was received by Mr. Zafar – staff of MD NTNDC Office at 10.56 hours dated 20-12-2021 which can be verified through tracking no. LE005533069.*
2. *As per article 19-A of subject Act:
“Every citizen of Pakistan shall have the Right to have access to information in all matters.”
Reply to NTDC is misleading PIC regarding neither purchase of bidding document nor participating in tender or not stakeholder of the process.*
3. *PPRA Rule 35 clearly states that:
..... Procuring agency shall announce the result of bid evaluation, in the form of final evaluation report giving justification for acceptance or rejection of bids.....”
In this regard, it is submitted that the PPRA rule is for bidders who participated in tenders so that if rejected should go for grievance as per rule 48.*

Further, the attached two page evaluation result of aforesaid tender under the heading EVALUATION REPORT is not a complete evaluation report. The evaluation report is also incomplete due to not indicating the reasons of acceptance of responsive bidders as required in PPRA rule hence the reply of NTDC is considered to be misleading/mis-interpreting to PIC.

4. *Undersigned has no concern about PPRA rule 48 as well as closing of contract. Demanding information is as per PARA 5 (i) of subject act under the heading availability of record which is reproduced below:*

“reports including performance reports, audit reports evaluation reports, inquiry or investigation reports and other reports that have been finalized”.

Provided that in the information or record pertains to a period earlier than the year 2008.

5. *Evaluation process was confidential till announcement of technical responsive/non-responsiveness of bidders in case of single stage two envelope bidding process (price announced for technically responsive bidders after completing/finalization of technical evaluation. Once responsiveness or non-responsiveness is declared, the evaluation report is a public record that is why it is particularly mentioned at Para 5(i) of subject act under the heading availability of record. NTDC is misleading/mis-interpreting to PIC.*

It is place on record that similar complete tender evaluation reports were given by LESCO, LESCO & SEPCO on the decisions of PIC against appeal nos. 824-01/21, 856-01/21 and 958-03/21 respectively. Reply of NTDC vide letter referred above is not as per provisions of Act and misleading PIC, hence not satisfied. It is requested to issue PIC decision so that NTDC should provide the complete evaluation report carried out against the aforesaid tender under provisions of Para 5 (i) of subject Act 2017 being a citizen of Pakistan to proceed further in the matter.”

7. The rejoinder submitted by the appellant was shared with the Respondent with the directions to submit response to the queries of the appellant within 10 working days.
8. The Respondent through a letter dated March 25, 2022 submitted response to the queries of the appellant, which is as under:
 1. *“It is clarified that the detailed response to the queries of the appellant was provided regardless of the fact that whether the appellant participated in the bidding process or not. The non-participation was merely stated for record.*
 2. *The criteria for bid evaluation has been mentioned at Sr. No. 10 in the evaluation report already shared with your good office. If the bids comply with the said criteria, the same is declared responsive and its price has been indicated. For the bids that do not fulfill the criteria, the specific reasons have been mentioned. Hence the report is not misleading.*
 3. *Pursuant of PPRA-Rule-35 and Para 5(1) of the act referred by the appellant, the evaluation report has been shared with all the stakeholders and also with general public on NTDC and PPRA websites.*

In view of above, it is clear that NTDC has provide the requisite information to the appellant, furthermore, if there is any particular question regarding the subject procurement, NTDC will be provide full support.”

9. The response submitted by the public body was shared with the appellant on March 31, 2022.

10. The appellant again submitted objection to the response of the public body which was shared with the appellant to address the queries within 10 working days.
11. The public body through letter dated April 28, 2022 again submitted response to the queries of the appellant, which was shared with the appellant on May 10, 2022.
12. The appellant again submitted rejoinder to the response of the public body, which states that *“Study of NTDC dated April 28, 2022 reveals that there is nothing new as submitted earlier, NTDC letter is not as per provisions of Act and misleading PIC, and seems to be wastage of time, hence not satisfied.”*
13. The appellant was fixed for hearing on July 05, 2022 and both parties were summoned to appear before the Commission.
14. Mr. Barrister Faiza Malik, Council, NTDC and the appellant Pervez Iqbal attended the hearing. The public body ensure to provide the remaining information within two working days, but despite the passage of more than 2 month the public body didn't provide the remaining information.

C. Discussion and Commission's View on Relevant Issues

15. The commission has to decide that whether the information requested by the citizens falls within the ambit of the public record and whether the public body has relevant and complete information requested by the appellant under the Right of Access to Information Act, 2017, hereafter referred to as Act.
16. The information/documents requested by the Appellant in the instant appeal belong to the Section 5(i) of the Act, which is as under:
 - “i) *Reports including performance reports, audit reports, evaluation reports, inquiry or investigative reports and other reports that have been finalized*”
17. The Respondent through letter dated March 02, 2022 submitted its response with an evaluation report, but the Appellant in its response stated that the report submitted by the public body is initial report and is already available on the website of the public body. The appellant in his information request has requested the complete evaluation report having the technical and financial evaluation tender No. CPP-04M(R2)-2017.
18. Despite multiple notices in pursuance of the rejoinders submitted by the Appellant, the Respondent is reluctant to provide the complete evaluation report. The fact that the citizens are forced to exercise the Right of Access to Information Act 2017 and have to wait for many months even for the information that should be available on the websites of the public bodies demonstrates that the public bodies are not ensuring the implementation of the Right of Access to Information Act, 2017.
19. Disclosure of this information will improve the check and balance on the performance of the public bodies and by practicing Right to Information laws the citizen will able to make the public bodies accountable for their performance.
20. 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*”.

21. 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.

D. Order

22. Appeal is allowed. Managing Director, National Transmission and Dispatch Company is directed to provide complete information mentioned in para 2 of this Order to the Appellant, at the earliest but not later than 7 working days of the receipt of this Order, with intimation to this office.
23. 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.
24. Managing Director, National Transmission and Dispatch Company, is also directed to notify Public Information Officer, (PIO), under Section 9 of the Act, put contact details of PIO on its web site as required under Section 5 (1) (h) of the Act and submit compliance report to the commission within 10 working days of the receipt of this order.
25. Copies of this order be sent to the Managing Director, National Transmission and Dispatch Company and the Appellant for information and necessary action.

Mohammad Azam

Chief Information Commissioner

Fawad Malik

Information Commissioner

Zahid Abdullah

Information Commissioner

Announced on: September 12, 2022

This order consists of 5 (five) pages, each page has been read and signed.