

**ODISHA INFORMATION COMMISSION
BHUBANESWAR**

**Present: Shri Tarun Kanti Mishra,
State Chief Information Commissioner**

&

**Shri Pramod Kumar Mohanty,
State Information Commissioner**

Dated: 14th March, 2014

Second Appeal No. 118/2013

Bishnu Prasad Das,
Plot No. A/8, Kharvelnagar,
Unit – 3, Bhubaneswar.....Appellant

-Vrs-

1. Public Information Officer,
Odisha Industrial Infrastructure
Development Corporation,
IDCO Tower, Janpath,
Bhubaneswar.
2. First Appellate Authority,
Odisha Industrial Infrastructure
Development Corporation,
IDCO Tower, Janpath,
Bhubaneswar.....Respondents

Decision

1. Appellant Bishnu Prasad Das is absent. On his behalf, Baibaswata Panigrahi, Advocate is present. Minaketan Mishra, PIO-cum-General Manager (Civil), Odisha Industrial Infrastructure Development Corporation, IDCO Tower, Bhubaneswar is also present.

2. Appellant Bishnu Prasad Das filed form A application dated 28.06.2012 with the PIO, Odisha Industrial Infrastructure Development Corporation (IDCO), in which he had sought some information regarding tendering and allotment of land to DLF, for establishment an Information Park in Chandaka industrial area. The specific details of requested information are quoted verbatim below:

- (i) Original Tender Notice along with clarification/ modification/ corrigendum to the original notice, if any?
- (ii) Original agreement with DLF.
- (iii) Subsequent/revised agreement/MoU/amendments with, if any.

3. The PIO on receiving the application requested the appellant vide letter No.14018 dated 26/07/2012 to deposit Rs.144/- towards cost of providing information and on deposit of same the PIO furnished information on point No.1 to the appellant vide letter No. 14333 dated 01.08.2012. In this letter the PIO intimated the appellant that as regards furnishing of copy agreement executed with DLF Ltd., they have sought the consent of the third party i.e. DLF and on receipt of same, information would be furnished. On receiving the response from DLF Ltd., the PIO expressed his inability to furnish the balance information observing that “the third party intimated not to disclose such information as the same would hamper their commercial interest and competitive position in the market”. Being dissatisfied with the decision of the PIO, the appellant had approached the First Appellate Authority who, vide order dated 19.10.2012, upheld the decision of the PIO and declined to provide information to the appellant. Being aggrieved with the said order, the appellant preferred this Second Appeal u/s 19 (3) of the RTI Act.

4. The Commission heard the learned Counsels appearing for the parties. It has been submitted on behalf of the appellant that denial of information solicited by him concerning the tenders and agreement made between the IDCO and DLF under Public Private Partnership (PPP) could not be denied on the ground that it would

hamper the commercial interest and competitive position of DLF and thus, the order passed by the PIO, as well as the First Appellate Authority, are arbitrary and illegal. The learned advocate for the appellant asserted that the information sought was very much in public interest as a citizen has the right to know about the working of a State enterprise.

5. The Learned Counsel appearing for DLF Ltd. submitted that by paying more than three times the land price per acre as fixed by IDCO, DLF Ltd. had secured the winning bid and started development on the leased land and has already spent more than Rs. 160 crores towards completion of the first phase of development of the project as envisaged under the Lease Deed-cum-Development agreement. The lease deed contains information about price of the land, ancillary financial implication for the company, land usage, specification of the project development plan etc. If the documents are directed to be disclosed, it would harm its competitive position in the market and affect its commercial confidence. In this connection specific mention has been made to certain provisions in Clause 1-1 and Clauses 6, 7, 9, 17, 22, 28-1, 32 and Schedule – 1 of the Agreement.
6. On consideration of the arguments and rival arguments of the parties, the only point that remains for consideration is whether the solicited information concerning the agreement and related documents executed by public authority IDCO with the private party DLF Ltd. Under Public Private Partnership mode can be disclosed.
7. IDCO is an organization of the Government of Odisha established under OIIDC Act 1980 with the specific objective of creating infrastructure facility in the identified area for rapid, orderly establishment and growth of industries, trade and commerce. Pursuant to this objective, IDCO invited tenders from different companies to lease out government land for infrastructural developments and DLF, after passing through competitive techno-commercial bidding process was leased out 54 acres of

government land to develop a 'State-of-Art INFO – PARK' with modern facilities and services catering primarily to the needs of the IT and ITES industries. Substantial public resources are involved for such developmental work through DLF Ltd.

8. It may not be out of place to mention that the tender and bidding process have already been concluded and the contract has been made final. The agreement in question has been executed since years and the infrastructure development work on 54 acres of revenue land ear-marked for the purpose by the State is in progress. When the tender process has been made final, the public authority, which is constituted by the State, have entered into agreement with a private party for development of infrastructure on the government land provided to that party for the benefit of public at large, documents involved in the process are, therefore, public documents and in the interest of transparency, should be in the public domain. It may be mentioned here that there is no confidentiality clause incorporated in the agreement preventing either of the parties to disclose information concerning the agreement. In the instant case IDCO, a government organisation entered into an agreement with DLF Ltd. to develop a piece of government land for a particular purpose in a particular manner. DLF Ltd. may not be a "third party" in its strictest sense, but a party to a contract with the public authority. The Central Information Commission in its decision dated 21.08.2006 in the case between S.K. Maheswari v. Tele Communication Consultants India Ltd expressed the view that "any commercial agreement between a public authority and a third party is a public document available for access to a citizen and the procedure of Section 11 is not required to be followed" In another case the Central Information Commission also held "since the agreement has been entered into and is already being executed, hence disclosure of the same could not result in breach of any commercial secret or trade mark related confidentiality". (Sh. S.S. Upadhyaya v. ITDC Ltd in CIC/AD/A/2009/000391)

9. All commercial transactions of public authorities are meant to be available to citizens under the RTI Act. Commercial confidence and trade secrets would be of a nature where the defender discloses any special process or names and details of his working or agents etc. DLF Ltd. have never disclosed any special processes or the names and details of procedure of his working pattern involving his special skill on the subject and the names of his agents deployed or to be deployed in executing the contract. The specific clauses mentioned by the learned advocate for DLF Ltd. do not sufficiently justify non-disclosure of the balance information on such pretext also.
10. In a similarly situated case the Jharkhand High Court in the case of State of Jharkhand v. Navin Kumar Sinha held, “once a decision is taken in the matter of grant of tender, there is no reason to keep it secret. People have right to know the grounds or basis on which the decision has been taken. If tenders are invited by the public authority and on the basis of tender documents, the eligibility of a tenderer or a bidder is decided, then those tendered documents cannot be kept secret, especially when work order is issued on the ground that it will amount to disclosure of trade secret or commercial confidence”. The High Court have opined unequivocally that a contract entered into by a public authority with a private person cannot be treated as confidential after completion of the contract. Moreover, when the public authority refuses to disclose the document it would be violation of this Act (RTI Act) as disclosure of information sought by the petitioner is neither a trade secret nor a commercial confidence. Rather disclosure of such information shall be in the public interest as it will show the transparency in the activities of the public authority. (AIR 2008 Jhar 19).
11. When the facts involved in this case are examined in the light of the decisions referred to as above, the solicited documents cannot be treated as confidential documents, the disclosure of which would affect the commercial confidence of a

party to the contract executed by the public authority. The petitioner never sought for any information concerning DLF Ltd. with regard to its financial or commercial strategies, its expertise regarding the developmental skill. Therefore, on a careful consideration, the Commission is to observe that the request of the appellant to access the desired information should not have been denied on the ground that the disclosure of the information would affect the commercial confidence or harm the competitive position of DLF Ltd. Therefore, the impugned order of the First Appellate Authority cannot be upheld in law and thus is set aside. The appellant is entitled to receive the balance information solicited by him.

12. The Commission while allowing the appeal directs the PIO, IDCO to provide the balance information to the appellant within 15 days of receipt of this decision.

Pronounced in open proceedings

Given under the hand and seal of the Commission this day, the 14th March, 2014.

State Chief Information Commissioner
14.03.2014

State Information Commissioner
14.03.2014