

**ODISHA INFORMATION COMMISSION
BHUBANESWAR
Present: Shri Tarun Kanti Mishra,
State Chief Information Commissioner
Dated: 24th May, 2012
Second Appeal No-228 / 2009**

Uma Ballav Rath,
60, Forest Park,
Bhubaneswar.....Appellant

-Vrs-

1. Public Information Officer,
Odisha Power Generation Corporation Ltd.,
7/A, Fortune Tower, Chandrasekharpur,
Bhubaneswar-751023.
2. First Appellate Authority,
Odisha Power Generation Corporation Ltd.,
7/A, Fortune Tower, Chandrasekharpur,
Bhubaneswar-751023..... Respondents

Decision

1. Neither appellant Uma Ballav Rath nor the PIO, Odisha Power Generation Corporation Ltd., Bhubaneswar is present. Chinmaya Mishra representing the appellant and Bibhu Prasad Panda representing the PIO are present.
2. The appellant filed form-A application dated 28.05.2009 with PIO in the Energy Department seeking the following information :-
 - (i) Was there a Memorandum No-OPGC-1697 regarding sharing of Resources between AES and OPGC placed in the 137th meeting of Board of Directors of OPGC Ltd., held on 06.08.2008?

(ii) Whether in that meeting the proposal of terms and conditions of drawing resources from the strategic investor was approved?

(iii) A copy of the proposal placed and approved in the said Board meeting may kindly be supplied.

3. The PIO transferred the said application to the PIO, Odisha Power Generation Corporation Ltd. On receiving the same on 02.06.2009 the PIO, OPGC rejected the application of the appellant on the ground that the information sought for includes commercial confidence, trade secret, disclosure of which is prohibited under Section 8(1)(d) of the RTI Act, 2005. The PIO communicated his decision to the appellant vide letter No-1617 dated 27.06.2009. Being aggrieved the appellant preferred first appeal before the First Appellate Authority on 31.07.2009 who upheld the decision of the PIO and intimated the appellant vide memo No.2200 dated 22.08.2009. On being aggrieved the appellant approached the Commission on 30.10.2009.

4. In course of hearing, the PIO in defence of his decision submitted that out of three pieces of information sought for, the first two questions are related to the answer of Yes or No, which is merely technical in the present scenario. The third question relates to a proposal considered and approved in the meeting of the Board of Directors of OPGC. This piece of information, the PIO argued, is coming under the purview of 'commercial confidence' and 'trade secrets'. He submitted that such information cannot be supplied as the same is exempted under section 8(1)(d) and Section 8(1)(j) of the RTI Act, 2005. The documents sought for are the business arrangements between the shareholders which are confidential in nature and as such, the disclosure or publication thereof would compromise the business sharing/ resource sharing formulae. He further submitted that trade secret or commercial confidence has been defined subject to its different usage in different contexts.

There are certain informations of commercial or trade practice based upon which the success and the viability of such business survives and thrives. In a contract of employment, the Company can protect its confidential information through non-compete and non-disclosure clauses with its employees. The informations sought by the appellant in the present appeal involves definite formulae of resource sharing between two Corporates for the improvement and development of the Company business and sharing of such information would have definite negative impact on the administration of the Company and shall compromise the terms of understanding between the shareholders. The PIO further submitted that disclosure of such information would compromise the technicalities and the innovative formulae of resource sharing, which may be followed or adopted by other Corporate entities thereby compromising the interest of OPGC.

5. The appellant on the other hand contended that the information sought by him does not in any stretch of imagination relate to the competitive position of a third party and not in any manner interpreted under the head of trade secret and commercial confidence. He submitted that OPGC is a State-owned Corporation wherein the State Government has a majority stake of 51% of the total shares. However, a citizen of the State has got every right to know about the working of a State enterprise. There is a larger public interest in seeking such information, which must be furnished by the PIO. Both the appellant and the respondents defended their contentions citing several judicial pronouncements and State Government's Book Circular. The Commission carefully considered the arguments and counter-arguments of both the parties and also went through the decisions cited by them.

6. The objective of the RTI Act, 2005 is to provide for setting out a practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and

accountability in the working of every public authority. The preamble of the Act refers to this aspect. Democracy requires an informed citizenry and transparency of information. Both are vital to the functioning of democracy and also to contain corruption, holding Government and their instrumentalities accountable to the people. There are indeed circumstances under which revelation of information may conflict with other public interests including efficient operations of the public authorities, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information. The Act, therefore, aims at harmonizing these conflicting interests while preserving the paramountcy of democratic ideal. In the Statement of Objects and Reasons, while legislating on right to information, the Government has reiterated its resolve to put in place a progressive, participatory and meaningful law guaranteeing access to information. The request of the appellant under section 6(1) of the RTI Act, 2005 is to be considered in this context.

7. Odisha Power Generation Corporation is a public utility established in 1984 by the State Government with substantial investment out of the state exchequers. Subsequently, there was a part disinvestment of this Corporation. Nevertheless, it retains all the properties and characteristics of a Public Authority. The Corporation is engaged in generation of power in the state and is posting profit year after year. Yet it is not a mere commercial entity. It has a deep social commitment far above limited business sense. The citizens of the state have a significant stake in the working of this Corporation. A perusal of the contents in the form-A application filed by the appellant would reveal a discernible element of public interest.

8. Under the provisions of section 8(1)(d) it is provided that the PIO shall be under no obligation to give any citizen information including commercial confidence, trade secrets or intellectual properties, the disclosure of which would

harm the competitive position of a third party, unless larger public interest warrants the disclosure of such information. Thus, the element of exemption is not absolute under section 8(1)(d) of the RTI Act, 2005. Holding this view, the Bombay High Court in case of M/s Shonkh Technology International Ltd., -Vrs- State Information Commission, Maharashtra observed that Section 8(1)(d) of the RTI Act, 2005 does not say that the information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party cannot be demanded or if demanded, cannot be disclosed even if larger public interest warrants the same. If the public authorities refuse to disclose the documents, the very purpose of the Act will be frustrated.

9. Considering the facts and circumstances of the case, the Commission is of the view that disclosure of information sought by the appellant cannot and shall not be a trade secret or commercial confidence; rather disclosure of such information shall be in public interest, in as much as it will show the transparency in the activities of the Corporation. It is necessary that OPGC which is created out of tax payers' money, should have requisite transparency and accountability. It is not a privately owned enterprise with overriding business interest. Quite appropriately, it has stated in its Mission Statement that it aims to be a responsible corporate citizen, having concern for environment, society, employees and people at large. True to its spirit, the OPGC should therefore disclose its sharing of resources between AES and OPGC to the citizens. There cannot be any secret or magic formula of resource sharing between two Corporates for the improvement and development of the Company's business, as claimed. It is hard to appreciate as to how sharing of such information would have definite negative impact on the administration of the Company, compromising the terms of understanding between the share-holders. The respondents have also argued that disclosure of requested information shall compromise the technicalities and the innovative formula of resource sharing which

may be followed or adopted by other Corporate entities thereby compromising the interest of OPGC. A tax payer has right to know as to how entities created out of State Exchequers are functioning and whether there is enough transparency in the transactions of their business. Therefore, the order passed by the First Appellate Authority is set aside and the PIO is directed to furnish the requested information to the appellant within 30 days of receipt of this order under registered post, free of cost. The proceedings under Section 20(1) are dropped. With these observations and directions, the case is disposed of.

Pronounced in open proceedings

Given under the hand and seal of the Commission this day, the 24th
May, 2012.

State Chief Information Commissioner
24.05.2012