



ARUNACHAL PRADESH INFORMATION COMMISSION
ITANAGAR.

An Appeal Case U/S 19(3) of RTI Act, 2005
Case No. APIC-360 /2024.

APPELLANT : Shri Shoney Pertin, PO/PS Pasighat, East Siang District(A.P).

RESPONDENT : The PIO, o/o the Executive Engineer, Pasighat Smart City Development Corporation Ltd., Pasighat, East Siang District (A.P)

ORDER

This is an appeal under Section 19(3) of RTI Act, 2005 received from Shri Shoney Pertin for non-furnishing of below mentioned information by the PIO, o/o the Executive Engineer Pasighat Smart City Development Corporation Ltd., Pasighat, East Siang District, Arunachal Pradesh as sought for by him under section 6(1) (Form-A) of RTI Act, 2005 vide his application dated 02.07.2024:

1. **Particulars of information:** Market area upgradation Phase-I.

2. **Details of information:**

- (i) Certified copy of DPR and sanction order;
- (ii) Certified of acceptance letter and NIT copy;
- (iii) Certified copy of agreement and
- (iv) Certified copy of Drawing and Designing.

4. **Period for which information is required:** 2022 to till date.

Facts emerging from the appeal:

The facts as emerged from the appeal are that the appellant, Shri Shoney Pertin, vide his RTI application dt.02.07.24, had requested the PIO, the Executive Engineer, Pasighat Smart City Development Corporation Ltd. for the aforementioned information but failed to obtain the same which prompted him to approach the Deputy Commissioner, East Siang District, Pasighat as the First Appellate Authority (FAA) under section 19(1) of the RTI Act, 2005 vide his Memo of Appeal dt. 25.08.2024.

Records further revealed that the FAA-cum-the CEO, PSCDCL heard the appeal on 19.09.2024 and by an even dated order, passed the following order:

“ After considering the submission of both parties, it is hereby directed that a notice be issued to the PIO-cum-AE, Smart City Development Corporation Limited, Pasighat, to furnish the sought for information to the appellant within a period of 30 days from the

date of this order, provided that the requirements under section 6 of the RTI Act, 2005, have been dully complied with by the applicant and that the information sought does not fall under any exempted category as per the provisions of the Act.”

As could be seen in the aforesaid order, the FAA had passed the order without going into the merit of the appeal as to whether the information sought for by the appellant was disclosable or not. For instance, whether the information was covered under section 11 or under various exemption clauses under section 8 of the RTI Act etc., but merely directed the PIO to furnish the sought for information thereby shifting it's responsibility to the PIO. This Commission, thus noticed that FAA did not discharge its mandated function under section 19(1) of the RTI Act. Since adjudication of appeals under the RTI Act is a quasi-judicial function, the appellate authority ought to have passed a speaking order giving justification for its decision so that justice is not only done but it must also appear to have been done.

The records also, however, revealed that the PIO, Shri Bengia Gagung, AE, PSCDCL, vide his letter dt.20.09.2024 addressed to the appellant, had furnished the copy of sanction order and copy of acceptance & NIT order as sought vide Sl.No.(i) and (ii) respectively of his application, but denied the copy of DPR {part of Sl.No.(i)}, copy of Agreement {Sl. No.(iii)} and the copy of drawing and design {Sl.No.(iv)} of his application on the ground that those are exempted under section 8(d), section 11(1) and section 8(d) respectively of the RTI Act.

The appellant, aggrieved with the decision of the PIO as above, filed his 2nd appeal before this Commission under section 19(3) of the RTI Act vide his Memo of Appeal dt. 26.11.2024 and, accordingly, the appeal was listed and heard on 7th February, 2025 wherein the appellant, Shri Shoney Pertin was present through VC and Advocate Shri T.Marnagar, the Counsel for the PIO was present on behalf of the PIO.

During the course of hearing the appellant submitted that the PIO had furnished to him the information relating to the Phase-II of the project but denied the information relating to Phase-I citing various exemption provisions under section 8 of the RTI Act which can not be accepted. On the other hand, the Ld. Counsel for the PIO submitted that there are judicial pronouncements by the Apex Court and high Courts according to which the particular information(s) as sought for by the appellant are exempted and therefore, that the PIO had rightly denied those information. The Ld. Counsel, however, could not produce any of the High Court/Supreme Court ruling / judgment on the question to support his contention during the hearing.

This Commission, upon hearing the parties then passed the following interim order issued on 10.02.2025:

“Heard the parties.

The appellant submitted that the PIO had furnished to him the information relating to the Phase-II of the project but the PIO has denied the information relating to Phase-I citing various exemption provisions under section 8 and 11 of the RTI Act which can not be accepted. On the other hand, the Ld. Counsel for the PIO submitted that there are judicial pronouncements by the Apex Court and high Courts according to which the particular information(s) as sought for by the appellant are exempted and therefore, that the PIO had rightly denied those information. The Ld. Counsel, however, could not produce any of the High Court/Supreme Court ruling / judgment on the question to support his contention during the hearing today.

*This Commission, therefore, decides to adjourn the hearing of this appeal to **19 March, 2025 (Wednesday) at 10.30 am** and directs the Counsel or the PIO to produce on that day the copies of relevant supreme Court and High Court orders/rulings on the subjects for perusal of this Commission. The appellant is also directed to attend the hearing on that day physically to make his submissions."*

This appeal was, accordingly, listed and heard on 19.03.2025 wherein the appellant, Shri Shoney Pertin and Advocate, Shri T.Marnagar, the Counsel for the PIO on behalf of the PIO were present.

The appellant, reiterating his demand for the left out documents such as the copy of DPR, copy of Agreement and the copies of drawing and design for the Market Area upgradation Phase-I, produced the copies of such documents provided to him in respect of other projects undertaken by the Pasighat Smart City Development Corporation Ltd..

The Ld. Counsel for the PIO, who was earlier directed to produce the copies of Apex Court/High Court rulings in support of his contention that the documents, more particularly, the DPR and Agreements are exempted from disclosure under section 8(1)(j) of the RTI Act, did not produce the any of the copies of Apex Court and H/Court rulings on the subject but produced the copies of CIC decision dt. 29.11.2022 in CIC/PGCIL/A/2022/106036 (Liyit Panor Vs CPIO, Power Grid Corporation of India Ltd.) and decision dt.01.09.2016 in CIC/SS/A/2014/000197, (198) & (212)-YA (Bharat Jhunjhunwala Vs. Central Electricity Authority).

This Commission, on perusal of the CIC decision dt.29.11.2022, noticed that the CIC had refused to order furnishing the copy of the revised DPR on the premises that the revised DPR was yet to be finalized and approved and that the execution of work was under way. This Commission also observed that the CIC, while refusing to grant relief to the appellant, had relied on the observation of the Madras High Court contained in judgement dt.09.07.2021 in W.P (MD) No.14645,15631,15632 and 15634 of 2016 in a similar issue, the relevant portion of which is reproduced hereunder:

"13. Therefore, the NHAI should not be providing any information to anyone under the RTI Act till the DPR is finalized and approved by the Central Govt. and a Notification is issued under the Act. If information is provided, in the manner in which it has appened in the present case, obviously, the acquisition proceedings will be stalled and persons will start knocking the doors of this Court even before the Notification is published. It is therefore, made very clear that NHAI should not be divulging information when the project is at the preparatory stage."

In the case of Bharat Jhunjunwala Vs. Central Electricity Authority case, the CIC found the existence of fiduciary relationship between the Central Electricity Authority (CEA) (the Public Authority) and the respective private developers (the third parties) by operation of law i.e regulation 11 of the Central Electricity Authority (Furnishing of Statistics, Returns and Information) Regulation, 2007 and hence, found the plea of exemption under section 8(1)(e) of the CEA (Public Authority) tenable and accordingly, refused to grant relief to the appellant. The provisions of regulation 11 of the Central Electricity Authority (Furnishing of Statistics, Returns and Information) Regulation, 2007 is reproduced hereunder for reference:

"11. Restriction on publication of these information and returns-(1) No information, no individual return and no part thereof with respect to any particular individual or commercial concern, given for the purpose of these regulation shall, without the previous consent in writing of the owner for the time being of the industrial or commercial concern in relation to which the information revealing the commercial and technical confidentiality, be published in such manner as would enable any particulars to be identified as referring to a particular concern.

(2) Except for the purpose of these regulation, no person who is not engaged in the collection of statistics under these regulations shall be permitted to see any information or individual return referred to in sub-section (1)"

The Ld. Counsel for the PIO, relying on the observations of the CIC as contained in the above decisions, submitted that the left out informations / documents such as the copies of DPR, Agreement and the Drawing and Design of the project in question can not be furnished to the appellant. This Commission was, however, not inclined to accept the submission of the Ld. Counsel for the following reasons:

- (a) That the CIC decision dt. 29.11.2022 in CIC/PGCIL/A/2022/106036 (Liyit Panor Vs CPIO, P.G.C.I Ltd.) was in respect of a *draft DPR which was yet to be finalized and approved* by the competent authority while in the case on hand, the DPR was already finalized one as per which the execution of project in question had commenced and admittedly, the project has already been complete and awaiting inauguration:
- (b) That the CIC decision dt.01.09.2016 in CIC/SS/A/2014/000197, (198) & (212)-YA (Bharat Jhunjunwala Vs. Central Electricity Authority) exempting the disclosure of the DPR under section 8(1)(e) was based on existence of fiduciary relationship between the Public Authority and the third parties by operation of law namely, the Central Electricity Authority (Furnishing of Statistics, Returns and Information) Regulation, 2007 while in the instant case no such relationship has been shown/claimed.

In the premises above, this Commission was of the considered view that neither of the above two decisions of the CIC was found applicable in the present appeal and as such the PIO was directed to furnish the copy of DPR with the copies of drawing and design to the appellant as were furnished in respect of other projects.

The PIO was also directed to provide the copy of agreement between the Pasighat Smart City Development Corporation Ltd. and the contractors minus the portion on 'Non-disclosure Clause', if any, contained in the agreement.

The PIO was, thus, directed vide order dt. 20.03.2025 to comply with the above direction and report compliance thereof to this Commission within 4(four) weeks from the date of receipt of the order. The appellant was also directed to intimate his acknowledgement of the receipt of the documents within the said period failing which it was made clear that the appeal shall be closed presuming that he had received the sought for information and is satisfied therewith.

In compliance with the aforesaid order dt. 20.03.2025, the appellant, Shri Shoney Pertin vide his letter dt.25.04.2025 has intimated this Commission that the PIO has furnished all the requested documents as directed by this Commission and requested for disposal of his 4 (four) Appeals namely, APIC-360/2024, 361/2024, 363/2024 and 364/2024.

In the premises above, this Appeal, APIC-360/2024 along with other 3 aforementioned appeals are hereby disposed off and closed and a copy of this order be placed in each of the other 3(three) appeals for record.

Given under my hand seal of this Commission on this 28th April, 2025.

Sd/-

(S. TSERING BAPPU)

State Information Commissioner,

APIC, Itanagar.

Memo No. APIC- 360/2024

Dated Itanagar, the 29 April 2025

Copy to:

1. The First Appellate Authority (FAA), the Chief Executive Officer, Pasighat Smart City Development Corporation Ltd. Pasighat, East Siang District, Arunachal Pradesh for information.
2. The PIO, o/o the Executive Engineer, Pasighat Smart City Development Corporation Ltd. Pasighat, East Siang District, A.P.(PIN : 791102) for information.
3. Shri Shoney Pertin PO/PS Pasighat, East Siang District Arunachal Pradesh (PIN : 791102) Mobile No. 8974216125 for information.
4. The Computer Programmer/Computer Operator for uploading on the Website of APIC please.
5. Office copy.
6. S/Copy.

Registrar/ Deputy Registrar
APIC, Itanagar

Deputy Registrar
Arunachal Pradesh Information Commission
Itanagar