

CENTRAL INFORMATION COMMISSION

Room No. 308, B-Wing, August Kranti Bhawan, Bhikaji Cama Place, New Delhi-110066

File No.CIC/LS/C/2009/000617

Complainant : Shri Sunil Kumar

Public Authority : PGIMER, Chandigarh
(through Shri Dinesh Sharma, Nodal Officer)

Date of Hearing : 9.2.2010

Date of Decision : 9.2.2010

FACTS :

By his RTI application dated 5.8.2009, the complainant had requested for samples of material used in the construction of Advanced Trauma Centre at PGIMER, Chandigarh. As the complainant did not receive any response from CPIO, he has filed the present complaint.

2. Heard on 9.2.2010. Complainant not present. PGIMER is represented by the officer named above. It is the submission of Shri Sharma that Trauma Centre is being constructed by CPWD on turn-key basis. The work is still continuing and has not yet been completed. It is also his say that it is not true that he had not give any response to the complainant. Infact, vide his letter dated 25.8.2009, he had transferred the RTI application to CPIO of CPWD, Chandigarh, u/s 6 (3) of the RTI Act. He would also submit that this fact was brought to the notice of CIC vide his letter dated 30.10.2009. He would further submit that CPIO of CPWD had sent his response to the complainant vide letter dated 7.1.2010 wherein he has mentioned that the information sought by the complainant did not fall in the ambit of section 2 (f) of the RTI Act. Nor did the requested sample fall in the ambit of section 2 (j) (iii) of the Act. The relevant portion of the letter is extracted below :-

“That the document requested by you does not fall within the ambit of the provision of the Right to Information Act, 2005 because of the following reasons :-

- A) The materials requested by you is not covered under the section 2 (f) of the Right to Information Act, 2005.
- B) That the materials requested also does not come under the provisions of section 2 (j) (iii).

The words used in the Section 2 pertains to the sample of the materials which become available with the engineers at the time of execution and are not in respect of the finished items such as RCC slab, columns/beams etc.

- C) As per provisions given in Section 11, Right to Information Act, 2005, third party information/approval is required regarding whether the information should be disclosed or not. In the present case as already stated since the real owner is the PGI and the work has been executed by some other contractor. It is, therefore, necessary that third party approval may be obtained from them, subject, however, to the conditions as given in para A&B above

In view of the above and more particularly, since the provision of Right to Information Act, 2005 are not attracted, you may please explain as to why your application should not be dismissed.”

Shri Sharma would also submit that said letter was returned undelivered, as intimated by CPIO of CPWD.

3. The question for consideration before the Commission is whether the samples of material being used in the construction of Trauma Centre is ‘information’ in terms of section 2(f) of the RTI Act; and, whether the complainant is entitled to take certified samples of the material in terms of section 2 (j) (iii) of the Act.

4. Section 2 (f) is extracted below :-

(f) "information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force;”

A bare reading of the above would indicate that samples are ‘information’. The question is whether the samples of building material are ‘information’. Needless to say, samples are taken from any product/article/material etc. Hence, such samples can be taken from the under-construction building. Such samples would, thus, fall in the ambit of section 2 (f) of the RTI Act. In this view of the matter, the decision of CPIO of CPWD extracted above is perverse and based on total misappreciation of law.

5. Another question is whether the appellant has right to seek certified samples of material from the Trauma Centre. A bare reading of sub clause (iii) of clause (j) of section 2 would indicate that the statute confers right on the information seeker for ‘taking certified samples of material.’ The decision of CPIO of CPWD is, therefore, unsustainable in law on this count also.

DECISION

6. In view of the above, it is held that samples of material used in the construction of Trauma Centre, PGIMER at Chandigarh is ‘information’ as

defined in section 2 (f) and seeking certified samples of the material is the right of the complainant, as enshrined in section 2 (j) (iii) of the RTI Act. Hence, the order of the CPIO of CPWD is set aside. It is hereby ordered that the complainant may be allowed to take 03 samples of the material used in the construction of the building from 03 different spots as per CPWD specifications. It is clarified that the samples will be taken in presence of the CPIO of PGIMER, CPIO of CPWD, senior most Engineer of CPWD, who is incharge of construction of the Trauma Centre project and an Engineer of PGIMER to be nominated by CPIO, PGIMER. The appellant may be accompanied by another individual of his choice. The samples will be taken in such a manner as to not deface, damage or destroy the structure. Two sets of samples will be taken and certified by the above mentioned individuals. One set of sample will be kept by CPIO, CPWD in a sealed condition and another samples will be given to the complainant.

7. The order of the Commission may be complied with in 06 weeks time.

Sd/-
(M.L. Sharma)
Central Information Commissioner

Authenticated true copy. Additional copies of orders shall be supplied against application and payment of the charges, prescribed under the Act, to the CPIO of this Commission.

(K.L. Das)
Assistant Registrar

Address of parties :-

1. Er B.S. Sandhu
Executive Engineer (HQ-cum-CPIO),
O/o Chief Engineer (NZ-I),
CPWD, PGIMER.
2. Shri Sashi Thakur
Sr. Administrative Officer & CPIO,
PGIMER, Sector-12,
Chandigarh.
3. Shri Sunil Kumar Advocate,
C/o Karamvir Singh Rana,
General Secretary,
Yuva Chetna Samaj Sudhar Sangthan (Regd),
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