

RTI/461/2020-21

केंद्रीय सूचना आयोग
CENTRAL INFORMATION COMMISSION
बाबा गणनाथ मार्ग
Baba Gangnath Marg
मुनिरका, नई दिल्ली - 110067
Munirka, New Delhi-110067

File No.: CIC/MEPZH/C/2019/653462

In the matter of:

Samir Sardana

... Complainant

VS

CPIO / Development Commissioner
Ministry of Commerce & industry,
Office of the Development Commissioner
MEPZ- Special Economic Zone,
Admin Office Building,
National Highway - 45, Tambaram, Chennai - 600045

...Respondent

RTI application filed on	:	26/07/2019
CPIO replied on	:	23/08/2019
First appeal filed on	:	04/09/2019
First Appellate Authority order	:	26/09/2019
Complaint filed on	:	09/10/2019
Date of Hearing	:	05/08/2020
Date of Decision	:	17/08/2020

The following were present:

Complainant : Present over phone

Respondent : Shri Santosh Menon, Superintendent of custom and the then CPIO, Kayalvizhi. V, Specified officer and CPIO

Information Sought:

The Complainant has sought the following information.

1. Audits and Consultants:

Provide the details of the audits carried out w.r .t. the MESEZ operations (in the last 7 years, besides the statutory audits under applicable statutes, as under:

- Nature and Type of Audit (Energy/Efficiency /Internal/Safety/ Insurance/ Environmental /CAG / Hazardous Cargo etc); Date of Audit; Period covered by the Audit; Name of Auditor; Scope of Adult.

2. Provide the details of the Management Consultants engaged for MESEZ operations (In India and overseas - including subsidiaries and JV), in the last 7 years, BESIDES IT Consulting assignments, as under

- Nature and Type of Consulting assignment (STRATEGY/ BANK FINANCE, OPERATIONAL IMPROVEMENT/ Energy/ Efficiency/ Internal/Safety/ Insurance/ Environmental /CAG / Hazardous Cargo etc); Date of Consulting assignment; Period covered by the Consulting assignment; Name of Management Consultant; Scope of Consulting assignment.

3. Private Sector Benchmarking

PIO to confirm whether the MESEZ has engaged any 3rd party or agency to benchmark the financial and operational performance of MESEZ with the private sector or Government owned entities in the SEZ business in India and overseas, in the last 7 years, as under:

- If Yes, give the date of such engagement, name of the agency or Team, scope of work of the said engagement and fees paid to the said agency

4. PIO to confirm whether the Ministry of Commerce has engaged any 3rd party or agency to benchmark the financial and operational performance of MESEZ with the private sector or Government owned entities in the SEZ business in India and overseas, in the last 7 years, as under:

- If Yes, give the date of such engagement, name of the agency or Team, scope of work of the said engagement and fees paid to the said agency

5. And other related information.

Grounds for Complaint

The CPIO has denied providing the desired information.

Submissions made by Complainant and Respondent during Hearing:

The complainant submitted in his "Complaint" that the same is being filed u/s 18(1) (b),(c) and (e) of the RTI Act,2005,w.r.t the illegal rejection by the PIO w.r.t. some of the information requirements in the RTI application , vide the following letter by the PIO of Madras Special Economic Zone (MESEZ) as under:

- ORIGINAL PIO REPLY REF.NO.RTI/413/2019-20/4251,dated the 23rd of August,2019

- REVISED PIO REPLY REF.NO.RTI/422/2019-20,dated the 4th of September,2019

- The revised PIO reply has removed all the illegalities in the 1st PIO reply and was sent by the PIO by email

The PIO has COMMITTED THE FOLLOWING ILLEGALITIES IN THE ORIGINAL PIO REPLY , AS UNDER :

- The PIO has not replied to SOME SPECIFIC information requirements at all - in the sense that the understated information requirements are not even stated in the PIO Reply

- PIO has not provided any reply w.r.t the arbitration cases

- PIO has not provided a single coordinate of the ongoing legal cases

- PIO did not provide the schedule of operational income in the representative heads of income sought (PIO provided only the tariffs - which were not sought for by the Applicant) • PIO made no reply w.r.t the Annual Performance Report

- PIO made no reply w.r.t annual report and financial summary of performance of developer • PIO has made no reply w.r.t the information sought on proceedings initiated against the MESEZ units by the DRI Misleading/False Information

- The PIO has made replies which make no sense

- W.r.t whether MESEZ made any investment in any MESEZ unit - the PIO states "Does not arise". Does the PIO mean NO or NIL ?

- W.r.t the FIRs and enquiries on MESEZ staff - the PIO states that the INFORMATION W.R.T "THIS OFFICE" IS NIL. What is the meaning of "THIS OFFICE" ? The information sought is for KASEZ as a whole.

- Is the applicant to understand that no Performance or other audit of MESEZ was done in the last 7 years (besides statutory audit) PIO has made no transfer u/s 6(3) of the RTI Act.

- PIO has also replied as NIL to query of whether DEVELOPERS OF MESEZ have made any investments/loans in MESEZ Units or MESEZ ancillary service providers. How would MESEZ PIO know about this - unless the application is transferred u/s 6(3) of is asked for by MESEZ from the developers

- W.r.t the raids by DRI etc, the PIO reply is NIL - but should this information requirement not be transferred u/s 6(3) of the RTI Act to the DRI etc

- W.r.t the MESEZ units facing criminal process from the DRI etc, the PIO reply is NIL - but should this information requirement not be transferred u/s 6(3) of the RTI Act to the DRI etc The PIO asked for fees for annual report – and the annual report is not listed as a part of the section 4 disclosures.

PIO might note that in Para 3.2 of the RTI Application, the Applicant had specifically asked for the information in E-FORMAT. Why can't the PIO just

email the annual reports or provide it on a CD? Kindly confirm that the Annual Reports are in e-format .This is a mandatory disclosure under Section 4(1)(b) (xiv) details in respect of the information, available to or held by it, reduced in an electronic form; In addition Annual Reports are meant to be on your portal free of cost under Section 4(1)(b) of the RTI Act (xvii) such other information as may be prescribed, and thereafter update these publications every year; Even UCIL and NPCIL disclose their Annual Reports free of cost as per the Transparency Audit of CIC - Annual Reports are to be disclosed free of cost u/s 4 of the RTI Act.

He further submitted that this Complaint is being filed to obtain the following relief:

1. Penalty on the PIO (under Section 19(8)(c), of the RTI Act,2005)
2. Dismissal of the PIO on account of illegal,deliberate,malafide and baseless reply o Administrative action and/strictures, against the PIO (under Section 20(2) , of the RTI Act,2005)
3. Recommendation to the MADARAS SPECIAL ECONOMIC ZONE (MADARAS SEZ) and the GOI – Ministry of Commerce , for administrative action and/strictures, against the PIO o Impose Maximum Penalty, on the PIO under Section 20(1) ,of the RTI Act,2005
4. Direct the Respondents to refund the Application fee paid by Complainant while submitting RTI Application, as per section (7)(6) of the RTI Act;
5. Invoke its powers under the RTI Act to issue any other direction or recommendation as it may deem appropriate.
6. Direct the public authority to make entry in Service Book/Annual Performance Appraisal Report of the Respondents for defying the provisions of the Act
7. Compensation for the Appellant for pecuniary and other loss

The complainant in addition to his lengthy complaint memo again sent a detailed lengthy written submissions vide letter dated 21.07.2020 and insisted on recording the same during the hearing. The Commission went through the same and noted that the crux of his submissions was that the CPIO and the FAA had not accepted that the 1st PIO reply was a mistake.

He further submitted that there were illegalities in the 2nd PIO reply identified by the him – “after the FAA’s order:” There are some illegalities in the 2nd PIO reply, which were detected by the complainant after the FAA ORDER, and are listed as under:

- The PIO has provided incomplete information w.r.t audit data as the audits done, do not include the performance audits - which perform a critical function to assess the efficiency and efficacy of a SEZ in meeting the GOI aims and

objectives, among others • These are critical audits, for a SEZ • The PIO could have transferred the application to the CAG or other public authority • However, this data has to be with the Finance and Accounts section of the KSEZ • For Example The Vizag SEZ stated that they have “Annual Performance Audits - and it Would Be Strange That Kandla SEZ has no Performance Audits He further submitted that the information w.r.t audit provided by the PIO is incomplete, as the PIO did not state that there are no energy or efficiency audits or environmental audits (which was specifically sought by the appellant).As an example, The Cochin SEZ made a specific Statement to that Effect - The PIO states that THE on LOSS MAKING UNITS IN THE SEZ IS “NIL” AND THE FINANCIAL PERFORMANCE OF SEZ units IS “NOT AVAILABLE”, which is a falsity, as the SEZ units are required to submit quarterly and half yearly returns to the SEZ, which will disclose the operational and financial performance. He also insisted for transfer of his RTI application to different public authorities which was not found feasible by the Commission observing the voluminous information sought by him. However, he also has submitted that the Annual report and Financial statements, at the minimum need to be on the portal of the MESEZ. Annual Reports are meant to be on the portal free of cost under Section 4(1)(b) of the RTI Act (xvii) such other information as may be prescribed, and thereafter update these publications every year; Even UCIL and NPCIL disclose their Annual Reports free of cost As per the Transparency Audit of CIC - Annual Reports are to be disclosed free of cost u/s 4 of the RTI Act.

The CPIO vide written submissions dated 03.08.2020 submitted that the Annual Report is uploaded and available under the link “RTI Related Resources” (at Sl. No. 17) which is under the link “RTI” in the home page of MEPZ-SEZ (www.mepz.gov.in). Since the appellant has not gone further in the menu given (“RTI Related Resources”), he has assumed that the Annual Reports are not available on the website of MEPZ-SEZ. Annual Reports of MEPZ-SEZ Authority for the years 2015-16 to 2018-19 are available under the said link. The screen shot of the same page was attached.

The CPIO also pleaded that there was no malafide intent for the deficiency in the first reply. He also submitted that the revised reply removing the deficiency of the first reply dated 23.08.2019 was given on 14.09.2019.

Observations:

On a perusal of the records it can be seen that the CPIO has provided a point wise reply on 23.08.2019. Further, the FAA vide his order dated 26.09.2019 has granted time to the complainant on two dates for personal hearing – on 20.09.2019 and as the complainant did not attend, again on 25.09.2019. Meanwhile revised further information was provided on 14.09.2019 after which the FAA held that complete information was given to the complainant.

Keeping all these facts in view, the Commission finds that the complaint is not established.

It is also important to mention here that the applicant cannot take the liberty of converting each and every complaint into second appeal at this juncture. The information sought by him is voluminous in nature and the grounds raised by him now cannot be accepted due to the fact that the same would amount to disproportionate diversion of resources of the public authority. Moreover, the issue of Sec 4(1)(b) disclosure was well explained by the CPIO in his written submissions that the Annual Report is uploaded and available under the link "RTI Related Resources" (at Sl. No. 17) which is under the link "RTI" in the home page of MEPZ-SEZ (www.mepz.gov.in). Since the applicant has not gone further in the menu given ("RTI Related Resources"), he has assumed that the Annual Reports are not available on the website of MEPZ-SEZ. Annual Reports of MEPZ-SEZ Authority for the years 2015-16 to 2018-19 are available under the said link. The screen shot of the same page was attached.

Decision:

The complainant is advised to avoid filing RTI applications by asking information on multiple subjects in a single RTI application, filing RTI applications to a public authority when apparently the information pertains to a different public authority and causing unnecessary pressure on the respondent authority to reply.

The present complaint also fails to sustain as the Commission is not satisfied that there is any larger public interest involved. However, the blunt allegations by the complainant, point towards definite tendency unerringly towards the misuse of the RTI Act by the complainant. These cases become a fit illustration for the observation of the Apex Court in Aditya Bandhopadhyay's case that –

"...The nation does not want a scenario where 75% of the staff of public authorities spends 75% of their time in collecting and furnishing information to applicants instead of discharging their regular duties..."

The Commission finds no merit in the present case and once again advises the complainant to make judicious use of the cherished statute of the RTI Act in future.

The complaint is disposed of accordingly.

Vanaja N. Sarna (वनजा एन. सरना)

Information Commissioner (सूचना आयुक्त)

Authenticated true copy

● (अभिप्रमाणित सत्यापित प्रति)

A.K. Assija (ऐ.के. असीजा)

Dy. Registrar (उप-पंजीयक)

011- 26182594 /

दिनांक / Date

