

CENTRAL INFORMATION COMMISSION

Room No.414, Baba Gangnath Marg, Munirka
New Delhi-110067

F. No. **CIC/PWDDL/A/2017/178894**
F. No. **CIC/PWDDL/A/2017/188212**
F. No. **CIC/PWDDL/A/2017/188178**
F. No. **CIC/PWDDL/A/2017/195202**
F. No. **CIC/CPWNR/A/2017/178900**
F. No. **CIC/PWDDL/A/2017/312312**
F. No. **CIC/PWDDL/A/2017/188927**
F. No. **CIC/PWDDL/A/2017/184121**
F. No. **CIC/PWDDL/C/2017/174972**
F. No. **CIC/PWDDL/C/2017/174973**
F. No. **CIC/PWDDL/C/2017/174974**

Date of Hearing : **05.01.2018**
Date of Decision : **05.01.2018**
Appellant/Complainant : **Shri Rahul Sharma**
Respondent : **PIO**
O/o the Executive Engineer,
Public Works Department
GNCTD

Through:

Information Commissioner : Shri Yashovardhan Azad

Since both the parties are same, the above mentioned appeals and complaints are clubbed together for hearing and disposal.

Case No.	Filed on	CPIO reply	First appeal	FAO
178894	23.05.2016	23.06.2016	16.08.2016	07.09.2016
188212	27.05.2016	25.06.2016	18.07.2016	20.09.2016
188178	27.05.2016	25.06.2016	18.07.2016	29.09.2016
178900	24.05.2016	29.09.2016	16.08.2016	07.09.2016
312312	23.05.2016	22.06.2016	09.07.2016	07.09.2016
188927	07.06.2016	01.10.2016	18.07.2016	20.09.2016
184121	11.09.2017	12.10.2017	20.11.2017	-
174973	13.05.2016	- -	20.07.2016	-
174974	13.05.2016	-	20.07.2016	-

ORDER

1. The present appeals emanate from respective RTI applications seeking information relating to various road construction projects undertaken by Public Works Department (PWD), Govt of NCT Delhi.
2. The Appellant introduces himself as Director of a private entity named 'Road Anti-Corruption Organization'. In his endeavour to curb the alleged malpractices in road construction projects, the Appellant assumed the role of 'private quality auditor' and made as many as 11 RTI applications to respective divisions of PWD seeking information regarding the quality of material used in construction of respective road projects.
3. The submissions of the Appellant are heard at length. He states that the private contractors are engaged by PWD after competitive tender bidding, but the process of tendering is not foolproof. His foremost submission is that the private contractors quote far less than the estimated work cost as calculated by the PWD. He strenuously argues that the quotation for executing a civil work incorporating specified quality of raw material can never be less than the estimated work cost. He alleges that the private contractors quote *unrealistically* low bids to secure the Road building contracts and resultantly, end up compromising on the quality. He alleges that the private contractors employ construction material of inferior quality to maximize their profit and violate the tender contract by not employing specified quality raw material viz. cement, iron and bitumen. He states that the road building work contracts mandate the private contractor to produce bills of raw material procurement as proof of having purchased the specified quality of raw material. However, the road building contractors are alleged to produce 'fake' bills of raw material procurement before the PWD and escape the rigour of quality checks with connivance of few officers. He states that in most of the cases, the bills so produced are returned to the contractors by officers of PWD after endorsement in the Material on Site Register (MSB). It is his grievance that the process lacks any mechanism to check the authenticity of the material procurement bill produced by the contractor. The Appellant cites instances wherein the bills produced by contractors were found to be 'fake' in cross verification with sales

tax department. He states that in few glaring instances, the civil works remain unexecuted but payments have been released. He buttress his contention, the appellant apprises the Commission with the fact that the Anti Corruption Bureau has already registered three FIRs upon his complaints and the same are being monitored by concerned court at Tis Hazari, Delhi. In the aforesaid backdrop, the Appellant states to have sought copies of raw material procurement bills as submitted by private contractors to the PWD in course of execution of various road construction projects.

4. On the other hand, the Respondents refute the allegation made by the Appellant are unfounded. It is argued by the Respondents that the civil construction works are awarded through two tier competitive bidding process, (Financial & Technical) and presently the process has been made online for ensuring transparency. It is further submitted that in the terms and conditions of award of road construction projects, the work executing contractor is mandated to use prescribed quality of raw material and in some cases, the contractor is further mandated to procure the same from PSUs. The execution of work is then executed in supervision of PWD officers and quality of the work is ensured. To keep a check on the quality of materials used in construction, their procurement bills are perused and endorsed in MSB register after successive verification by concerned Junior Engineer, Assistant Engineer & finally by Executive Engineer. They state that an independent third party quality check/audit is also performed before release of project payments. Core cut sampling followed by laboratory examinations is stated to be another mode of ensuring quality control by the respondent department.
5. It is submitted by the respondent that the Appellant had sought copies of MSB register and copies of raw material procurement bills in the present RTI applications wherefrom the present appeals emanate. It is the contention of the respondents that copies of respective MSB registers have been furnished to the appellant. The respondent submits that the individual bills are returned to the respective contractors after their endorsement in the MSB register. Thus, the respondents voice their inability to furnish copies of all individual itemized bills sought by the appellant as the same are not held by them. It is their contention that information which is not part of the

record could not be made available to the Appellant. However, the Appellant refutes the contention of the respondents and alleges this convention to be facilitating corruption. He states that the respondent department has no means to verify the authenticity of the material procurement bills.

6. Upon a pointed query by the Commission as to the standard practice, officers from PWD state that as per the standard form of contract entered to by PWD & work executing contractors, it is not mandatory for the department to retain the bills produced before it. As per the respondents, it is lawful for them to endorse the bills in their MSB register and return the bills to respective contractors, who require the bills for taxation assessment purposes. However, when confronted with the question ascertaining the impediment which keeps the PWD from retaining copies on record of such material procurement bills in addition with making endorsement in the MSB register; the officers present on behalf of PWD are unable to give a coherent answer.
7. It is further argued by the Appellant that few of the answering PIOs have already furnished the copies of material procurement bills as sought by him besides copies of MSB registers and the denial of the same by few others raises questions. However, the respondents clarify that in some cases, the copies of bills may have been retained by the department or the contractor may have left bills with the department out of own volition.
8. Broadly, the genre of information sought is identical in all the appeals. In appeal no. **CIC/PWDDL/A/2017/178894**, vide RTI application dated 23.05.2016, the appellant sought information on 11 points regarding tender for the work of improvement of Drain and carriageway by RMC at Old MB Road, IGNOU road and Phirni Road upgradation of street light at old MB road sanctioned on 17.10.2012.
9. In **CIC/PWDDL/A/2017/178894**, vide RTI application dated 27.05.2016, the appellant sought information on 12 points regarding tender for the work of Strengthening of Road no. 43 (Guru Harkishan Marg) from Britania Chowk to ORR at West Enclave. Sanction no. F4(46)/2012-13/PWDII/11463 dated 26.08.2013.

10. In **CIC/PWDDL/A/2017/188178** vide RTI application dated 27.05.2016, the appellant sought information on 14 points regarding tender for the work of Strengthening, Improvement of footpath and fixing, retro reflecting road signages and upgradation of street lighting on roads under Sector -21 in Rohini, Delhi.
11. In F. No.**CIC/CPWNR/A/2017/178900** the appellant sought information on 11 points regarding tender for the work of Strengthening of road and Improvement of footpath, Drainage System, Central Verge of EPDP Road (Malik Ram Issar Marg) New Delhi.
12. In **CIC/PWDDL/A/2017/312312**, the appellant sought information on 11 points regarding tender for the work of widening of Phirni Road connecting MB road and Aurbindo Marg at New Delhi agreement no. 86/EE/CRMD M-442/2014-15.
13. In **CIC/PWDDL/A/2017/188927**, the appellant sought information on 12 points regarding tender for the work of Strengthening of Road and Improvement of footpath F-Block Barat Ghar & Katran Road in Mangolpuri, Delhi under PWD Maint. Zone M-3. Similar information has been sought in rest of the appeals.
14. In **CIC/PWDDL/A/2017/184121**, the appellant sought information regarding the civil works which were awarded and executed under the supervision of PWD concerned office of M-212/East Road Delhi. The appellant sought documents related to such 18 works which have been allocated at very below rate. In this respect appellant sought information as under:-
1. *Name, current posting address and mobile number of Junior Engineer, Assistant Engineer under whom supervision of this works will take place.*
 2. *Certified copy of approved list of Manufacturer's /Supplier's /Vendor's specified in NIT.*
 3. *Certified copy of all the invoice /Challan /Vouchers/Bills of the material procured for execution of these works.*
 4. *Certified copy of MAS register.*
 5. *Certified copy of completion certificate of the work. (If the work has been completed) or if the work has not been completed*

mention the reasons of delayed along with the actual date of completed of work.)

6. *Certified copy of Abstract of cost of first and final bill.*

7. *Certified copy of Schedule of Quantity.*

8. *Measurement book. (If work has under execution, provide the MB for till Now.)*

The CPIO vide letter dated 12.10.2017 stated that the information sought under para 1. is exempted under Section 8(1)(J) of the RTI Act. In response to para 2 to 8, CPIO informed that the information is exempted under Section 7(9) of RTI Act, because CPIO will have to divert all its resources. The Appellant states that respective MSB registers have been made available to him except for in appeal no. **CIC/PWDDL/A/2017/184121**. In the considered opinion of the Commission, the information sought in the present appeal is not personal. The PIO committed grave error in labelling the information sought herein as personal and invoking Section 8(1)(j) of the RTI Act. The PIO is directed to furnish complete information under revised reply afresh.

15. The grievance of Appellant is focused on the practice of non retention of itemized material procurement bills by the PWD. In the course of hearing, few standard contracts entered to by PWD with private contractors are placed before the Commission for perusal. The same merely contemplate endorsement of bills in MSB register or for procurement of construction materials from a designated Govt. Agency or PSU, for instance, the contractors are required to procure *Bitumen* from the PSUs. Nothing thereafter is contemplated as regards retention of itemized bills. In the considered opinion of the Commission, there is a dearth of standardized practice of retaining records as aforesaid. Since the citizenry has a right to know about information relating to construction of public infrastructure, such a void in record retention policy proscribes the Right to Information and the free flow of information. Needless to say, the species of information does not *per se* attract any exemption clause under Section 8 of the RTI Act.

16. Having heard the contentions of the parties and perusal of record, the Commission finds the present controversy to be limited to practice of record retention. Though, in past, it may not have been mandatory for the respondent PWD to retain record of itemized bills produced by private contractors in all instances of road construction works/ civil construction works; however, it is in interest of infusing greater transparency in

functioning of a Govt. Department and erosion of faith of public at large; that best practices in Information Management may be incorporated in better interest of efficient Governance and administration.

17. In ***The State of U.P. vs. Raj Narain and Ors.***: **MANU/SC/0032/1975**; the Apex Court observed:

In a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can but few secrets. The people of this country have a right to know every public act, everything, that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing. The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security. To cover with veil secrecy the common routine business, is not in the interest of the public. Such secrecy can seldom be legitimately desired. It is generally desired for the purpose of parties and politics or personal self-interest or bureaucratic routine. The responsibility of officials to explain and to justify their acts is the chief safeguard against oppression and corruption.

18. Accordingly, considering the larger public interest and facilitation of the free flow of information relating to development of public infrastructure; the Commission in exercise of powers vested under Section 19(8)(a)(iv) of the RTI Act directs the respondent department as well as CPWD, MoUD, GoI to incorporate adequate changes in its information/ record retention practices as regards the itemized material procurement bills submitted by the contractors. In each case, it shall be mandatory for the PWD, GNCTD & CPWD to retain the authenticated copies of itemized bills on record invariably irrespective of existence of any terms & condition specified in work award contract. Authenticated copies must be obtained by work executing agencies/ contractors before settling payments. It is the need of the hour that the public authorities must adopt such proactive methods to minimize defiance of the morals of good governance and promote greater transparency in executive functioning.
19. It is clarified that the present directions shall be applicable prospectively. No separate directions in the individual appeals need to be passed as

information held by respondents has already been furnished to the Appellant and it is beyond the purview of the RTI Act to issue retrospective directions for compilation of data which was not being maintained till now.

20. The present decision shall be circulated to respective Secretaries of MoUD, PWD (GNCTD & other UTs) for necessary compliance.
21. The appeals are disposed of with the aforesaid directions.

(Yashovardhan Azad)
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.

(R.P.Grover)
Designated Officer