



महाराष्ट्र विद्युत नियामक आयोग

Maharashtra Electricity Regulatory Commission

Ref. No. ४०१ /FAA/2016/A-16 /Order /dated/07.10.2016/Mumbai

Date of RTI Application filed : 16.06.2016
Date of Reply of PIO : 07.07.2016
Date of receipt of First Appeal: 10.08.2016
Date of Order of First Appeal : 07.10.2016

**BEFORE THE APPELLATE AUTHORITY
(Under the Right to Information Act, 2005)
Maharashtra Electricity Regulatory Commission, Mumbai**

Appeal No. 16 of 2016

Shri S.N.Bhosale

..... **Appellant**

- Vs -

PIO, MERC, Mumbai

..... **Respondent**

In exercise of the power, conferred upon the Appellate Authority by Section 19 (6) of Right to Information Act, 2005, the Appellate Authority makes the following decision:

Facts of the Appeal

- 1) The Appellant had filed an application dated 16.06.2016, under the Right to Information Act, 2005, (hereinafter referred to as “RTI Act”). The Respondent vide letter dated 07.07.2016 responded to the Appellant’s Application. The Appellant has filed this Appeal on 10.08.2016, against the said response.
- 2) Before passing an Order, the First Appellate Authority has given the Appellant an opportunity of personal hearing on 24.08.2016 by serving upon him a notice of hearing dated 11.08.2016. The Appellant failed to appear in the hearing and made a request vide its letter dated 26.08.2016 for grant of an opportunity to appear and represent in the hearing. Accordingly, a second opportunity of hearing was given to the Appellant on 07.09.2016. The Appellant through his authorised representative and PIO attended the hearing and made their oral submissions.
- 3) I have carefully considered the application, the response and the Appeal and find that the matter can be decided based on the material available on record.

- 4) Upon perusal of the Appellant's request for information as made through his application, I find that Appellant sought information are as follows: **(a)** *the action taken on my client's complaint through me vide No. SNB/201/2016 dated 28.04.2016 against Kamlesh Vaidya Head of the new meter connection dept., received for giving 50 new residential meterese and many more in process to the Building known as KHADIJA HITECH TOWER (old name KHADIJA MANZIL) situated on plot no. C.T.S. No.425, 426 & 536 (pt) of oshiwara village on whom M.R.T.P. notice as well as demolition notice has been issued and even the Hon'ble Division Bench of Hon'ble Bombay High Court has refused to grant stay on the above notices, and refusing to regularize the unauthorized floor above XIIth floor (enclosed the Xerox copy of the above complaint) Which is self explanatory. (b) The Status of the above complaint. (c) The remarks officer by your Honour Dept. and forwarded to which dept. with dispatch Nos. and date. (d) The Copy of the notice issued to Kamlesh Vaidya against whom my client has made complaint asking his explanation and the copy of the explanation given by Kamlesh Vaidya to your honor. (e) How many residential meters have been granted permission to be installed till today by Kamlesh Vaidya and their Flat Nos. and the floors Nos. (f) How many more application has been received by Kamlesh Vaidya for the installation of the new residential meters in the above building. (g) The Copy of the reply given to me on behalf of my client by Senior Executive of Reliance /Business Head/Senior Manager in respect of action taken against Kamlesh Vaidya on my above client's complaint.*
- 5) The Respondent PIO has replied in response mentioning that the information to point No. **(a)** to **(g)** are as follows: *"Ministry of Personnel, Public Grievances & Information can not include within its fold answers to the question "Why" which would be same thing as asking the reason for a justification for a particular thing. The PIO cannot expect to communicate to the citizen the reason why a certain thing was done or not done in the sense of a justification are matter within the domain of adjudication authorities and cannot properly be classified as information." This is not come under RTI. According to section 2 (f) of the Act 'Information' means any material in any form."*
- 6) Without prejudice to the foregoing, upon a consideration of the Appellant's request for Information as contained in his application in light of his Appeal, it would appear that Appellant has sought information on (d) to (g) points are related with the other public authority. During the hearing all these factual position narrated to the Appellant. The information with respect to Para (b) & (c) are being provided to the Appellant herewith by the FAA as made available by the Respondent PIO.

Whereas, the information regarding Para (a) is about to the action taken on complaint, the Responded PIO is not duty bound to provide such information to the Appellant as per the provisions of the RTI Act, 2005. In context, Para (a) the information being sought by the Appellant is in the nature of action taken in this regard, the Hon'ble CIC in the matter of *Shri Madan Lal Aswal and Dal Chand Vs. CPIO Municipal Corporation Delhi (Decision dated 05.11.2008)* held that *"The respondent has replied to the query about the ownership of the land and the responsibility of maintenance The appellant now wants to know why action of demolition has not been taken, before allotment which according to him was precondition. Though the respondents are well intentioned, reasons for actions or inaction of public authorities cannot be obtained unless they have been recorded by the public authority. The PIO cannot be expected to provide reasons unless they are recorded."*

- 7) The information is sought in point No. (d) to (g) are related with the other public authority, the Respondent has to transfer the application of the Appellant according to the provisions of 6 (3) of the RTI Act, 2005. However, in the context, with the information being sought by the Appellant is related to other public authority, in this regard, the Hon'ble CIC in the matter of *Shri Rakesh Agarwal vs. Shri. Nandan Singh (Decision dated 13.01.2014)* held that, *"The application under Section 6 (3) of RTI Act can only be transferred if it has been made to a proper public authority under Section 6(1). When a petitioner is aware of the location of a given information vis-à-vis a Public Authority, it is not open to him to file his RTI application before any Public Authority in expectation that this latter Public Authority would act u/Section 6 (3) to transfer his application to where the information was known to be held."*

However, it is appropriate to mention that a decision passed in RTI Appeal No.20 of 2015, the *'Reliance Infrastructure Limited, vide its letter No. ED/RTI/512/2015 dated 07.08.2015 replied to the Appellant Shri. Mithun Kath, that they are of the earnest belief that they are not a "Public Authority" as defined under the RTI Act, and hence, the provisions of the RTI Act, 2005, are not applicable to them. They further, inform to Appellant that the Hon'ble Bombay High Court has stayed the Maharashtra State Information Commission's Order dated 19.07.2011, inter alia holding that R-Infra's Electricity Distribution Business is falling within the definition "Public Authority" as defined under the RTI Act, further, they have stated that in view of the above, they have not yet designated or appointed any Public Information Officer Or Appellate Authority for providing and / or dealing with request for information under RTI Act.'* In view of the foregoing, it is not possible to invoke Section 6 (3) of the RTI Act, and transfer of the application of the Appellant to the Reliance infrastructure.

- 8) The Appeal is allowed and disposed off accordingly. The FAA was on leave from 05.10.2016 to 06.10.2016 due to illness, hence passed this decision on 07.10.2016.
- 9) In case, the appellant is not satisfied with decision, he may prefer Second Appeal under RTI Act, 2005 within 90 days from the issue of this decision before the State information Commissioner, 13th Floor, New Administrative Building, Madam Cama Road, Opposite Mantralaya, Mumbai- 400 032.

Decision

The Appeal is allowed and disposed off accordingly.


(Anilkumar Ukey)
First Appellate Authority & Dy. Director (Legal)
Maharashtra Electricity Regulatory Commission

To
Shri S.N.Bhosale,
Flat No.A/301, Gorai Mangalmurti Apts.CHS Ltd,
5,L.T.Road, Gorai, Borivali (W),
Mumbai- 400092.

Copy to:PIO,MERC,Mumbai.


(Anilkumar Ukey)
First Appellate Authority & Dy. Director (Legal)
Maharashtra Electricity Regulatory Commission

Encl: Copy of the documents pertaining to the Para (a) & (b).