



महाराष्ट्र विद्युत नियामक आयोग Maharashtra Electricity Regulatory Commission



माहितीचा
अधिकार

Order NO.-MERC/FAA/2025/Appeal/5 of 2025/0331

Date: 28.05.2025

Date of RTI application filed: 21.03.2025

Date of reply of PIO: 08.04.2025

Date of receipt of first appeal: 02.04.2025

Date of order of first appeal: 28.05.2025

**BEFORE THE APPELLATE AUTHORITY
(Under the Right to Information Act, 2005)
Maharashtra Electricity Regulatory Commission, Mumbai
Appeal No. 05 of 2025**

Shri. Kamlakar Ratnakar Shenoy

.....Appellant

V/s

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 makes the following decision.

Facts of the Appeal

1. The appellant had filed an application dated 21.03.2025 under the Right to Information Act, 2005 (hereinafter referred to as RTI Act). The application was received at the office of the Commission on 02.04.2025. The PIO/Respondent, vide letter dated 08.04.2025 provided the reply to the Appellant. The Appellant filed the First appeal on 21.03.2025 (received at Office of the Commission on 02.04.2025).
2. The First Appellate Authority has given the opportunity of a personal hearing on 22.04.2025 by serving a notice of hearing upon Appellant dated 09.04.2025. However, the Appellant informed his unavailability due to judicial work on the same date. Therefore, the hearing was rescheduled to the mutually decided date of 06.05.2025. The Appellant and PIO attended the hearing on 06.05.2025. During the hearing the Appellant insisted on video recording the appeal proceedings and also requested the training related information of PIO

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१३वा मजला, केंद्र क्र. १, जागतिक व्यापार केंद्र, कफ परेड, मुंबई - ४०० ००५.

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and FAA. Considering the circumstances, the hearing was again rescheduled on 21.05.2025. The Appellant and PIO attended the hearing on 21.05.2025 and made the oral submission.

3. The information sought by Appellant was as follows:

1. Wheeling Charges to Retail ale Consumers.

- i. Definition and purpose of wheeling charges as per Section 4(1) (b)(v) of the RTI Act.
- ii. Copies of studies conducted and published before granting permission to collect wheeling charges from retail sale consumers, as per Sections 4(1)(b)(v) and 4(1)(c)(d).
- iii. Section under the Electricity Act relied upon to levy wheeling charges to BEST retail sale electricity consumers as per Section 4(1) (b)(iii) of the RTI Act.
- iv. Copies of affidavits submitted by BEST Undertaking to MERC in support of levying wheeling charges on retail sale consumers.
- v. Copies of written submissions made by AHAR and other stakeholders opposing the collection and increase of wheeling charges from retail sale consumers.

2. Installation of Smart Meters.

- i. Action taken against BEST Undertaking for illegally entering the consumers premises without consent and intimation to charge the meters.
- ii. Action taken against BEST Undertaking for not providing notice to each consumers for changing the electric meters.
- iii. Action taken for concealing true facts of that this smart meter shall facilitate the facility of Prepaid meter, TOD, surging charges.
- iv. Action taken for making false presentation in the notice that the smart meters are installed free of cost when in fact the cost shall be recovered through ARR in MYT petition submitted 207 of 2024.
- v. Section and provision of law relied upon not to take action on false submission and not following due procedure of law.
- vi. Copies of the approval given by MERC for the installation of smart meters in Mumbai, along with the relevant sections in the Electricity Act.
- vii. Reasons for permitting BEST to install smart meters when transmission loss in Mumbai is around 3.5% which is much below the 12-15% target of the Central Government.

- viii. Copies of all correspondence between MERC and BEST regarding the approval, including any studies or reports relied upon to install smart meters.
- ix. Details of reduction in loss which will be enjoyed by BEST in rupees and number of units after installation of smart meters.
- x. Copy of the certificate issued by Metrology department.
- xi. Clarification on whether MERC considered Case No. 203 of 2022, Paragraph 12, which mandates consumer choice in selecting electric meters.
- xii. Affidavit confirming whether MERC was informed about the Power Minister's statement in the Maharashtra Assembly that smart meters shall be installed only in feeders, substations, and government offices.

3. Capital Investment Approval for BEST

- i. Copies of the in-principle approval granted by MERC to BEST for the capital investment related to the installation of smart meters under the RDSS Scheme.
- ii. Details of the scrutiny process followed by MERC under Section 5.6, Appendix 2 of the Capital Investment Regulation, including compliance with guidelines for procurement of materials through competitive bidding.
- iii. Documents verifying whether MERC scrutinized the financials of BEST before approving their capital investment proposal.
- iv. Explanation of how MERC justified approving an increased cost of Rs. 1,720.14 crores for smart meters when the RDSS Monitoring Committee had estimated the project cost at Rs. 645.53 crores.
- v. Specifically, I seek
 - a) The date of approval by MERC for the procurement of smart meters.
 - b) The date on which the order was placed by BEST.
 - c) The name and designation of the person who placed the order.
 - d) The name and designation of the competent authority who, as per law, is authorized to place such an order.
- vi. Copies of any orders or approvals passed regarding
 - a) The difference in cost between the order placed by an incompetent person and the cost mentioned by RDSS.
 - b) The cost comparison with MSEDCL.

4. Procurement Details of Smart Meters by BEST

- i. Date of approval by MERC for the procurement of smart meters.
- ii. Date on which the order for smart meters was placed by BEST

- iii. Date of the approval received from RDSS.
- iv. Name and designation of the persons of RDSS who granted approval to include BEST in RDSS scheme.
- v. Name and designation of the competent authority who is authorized to include BEST in RDSS scheme as per law.
- vi. Name and designation of the person who placed the order for smart meters.
- vii. Name and designation of the Competent authority who as per law is authorized to place such an order.

5. Miscellaneous Information

- i. Certified copies of all meeting minutes, decisions and resolutions passed by MERC related to the above issues.
- ii. Copies of any consumer objections received regarding the imposition of wheeling charges and smart meter installations and the responses provided by MERC.

6. Video Recording and Live Streaming of MERC Hearings

- i. Sections of the RTI Act relied upon by MERC to deny video recording to the public affected persons, consumers and those who appeared in person.
- ii. Section 7(8)(i) and 19(5) RTI Act: Justification for how providing live streaming would affect the transparency and accountability of MERC members and how it would be against the larger public interest.

4. The reply by PIO was as follows:

For point no. 1 i)

This information is available in MERC (Multi Year Tariff) Regulation, 2024. This Regulation is available on website of the Commission (www.merc.gov.in) in downloadable format.

For point no. 1 ii) to v)

This information related to Case No. 207 of 2024 on the MYT petition filed by BEST. The Commission is a quasi-judicial body and has followed due process in Case No. 207 of 2024, including the public consultation process and public hearing. The Commission has issued the final Order in Case No. 207 of 2024 on 28 March, 2025 which is available on Commission's website in downloadable format. The applicant can refer the Order for the information. The copy of summary of petition is also available on Commission's website.

For point no. 2 i) to iii)

The requisite information pertains to BEST Undertaking office. Since your application is being transferred under Section 6 (3) of RTI Act, 2005 to BEST Undertaking dated 27.03.2025.

For point no. 2 iv) & v)

It is observed that the RTI applicant, vide his RTI application is seeking answers to his questions, which does not fall within the definition of 'information' as per Section 2(f) of the RTI Act. Kindly note that the definition of information cannot include within its fold answers to the question what Action taken which would be same thing as asking the reason for a justification for a particular thing. Which is expecting to communicate the reason why a certain thing was done or not done in the sense of a justification. In view of the above, it is observed that at the outset it is clarified that under the provisions of the RTI Act only such information as is available and existing and held by the public authority or is under control of the public authority can be provided. The PIO is not supposed to answer what action is taken for false presentation or create information that is not a part of the record and also not required to interpret information or provide clarification or furnish replies to hypothetical questions.

For point no. 2 vi)

As per the office record in principle approval letter Smart Metering System information / documents are available with the office of the Commission. (The total number of pages 05).

For point no. 2 vii)

No such document with the Commission wherein Central Government has exempted Utility for not to install energy meters where transmission losses are less than 3.5% which is much below the 12-15% target of Central Government.

It is observed that the RTI applicant, vide his RTI application, is seeking answers to his questions, which does not fall within the definition of 'information' as per Section 2(f) of the RTI Act. Kindly note that the definition of information cannot include within its fold answers to the question.

Such as reasons for permitting BEST to install smart meters when transmission loss in Mumbai is around 3.5%, which is much below the 12-15% target of Central Government, which would be same thing as asking the reason for a justification for a particular thing.

Which is expecting to communicate the reason why a certain thing was done or not done in the sense of a justification.

In view of the above, it is observed that at the outset it is clarified that under the provisions of the RTI Act only such information as is available and existing and held by the public authority or is under control of the public authority can be provided. The PIO is not supposed to answer what are the Reasons for installation of meters or create information that is not a part of the record and also not required to interpret information or provide clarification or furnish replies to hypothetical questions.

For point no. 2 viii)

As per the office record all correspondence after submission of DPR information / documents are available with the office of the Commission. (The total number of pages-508).

For point no. 2 ix)

It is observed that the RTI applicant, vide his RTI application, is seeking answers to his questions, which does not fall within the definition of 'information' as per Section 2(f) of the RTI Act. Kindly note that the definition of information cannot include within its fold answers to the question such as reduction in loss which will be enjoyed by BEST in rupees, which would be same thing as asking the reason for a justification for a particular thing. Which is expecting to communicate the reason why a certain thing was done or not done in the sense of a justification.

In view of the above, it is observed that at the outset it is clarified that under the provisions of the RTI Act only such information as is available and existing and held by the public authority or is under control of the public authority can be provided. The PIO is not supposed to answer how much is saving after installation of meters or create information that is not a part of the record and also not required to interpret information or provide clarification or furnish replies to hypothetical questions.

For point no. 2 x)

The requisite information pertains to BEST Undertaking office. Since your application is being transferred under Section 6 (3) of RTI Act, 2005 to BEST Undertaking dated 27.03.2025.

For point no. 2 xi) & xii)

It is observed that the RTI applicant, vide his RTI application, is seeking answers to his questions, which does not fall within the definition of 'information' as per Section 2(f) of the RTI Act. Kindly note that the definition of information cannot include within its fold

answers to the question such as whether the Commission has considered Case No. 203 of 2022 while approving, which would be same thing as asking the reason for a justification for a particular thing. Which is expecting to communicate the reason why a certain thing was done or not done in the sense of a justification.

In view of the above, it is observed that at the outset it is clarified that under the provisions of the RTI Act only such information as is available and existing and held by the public authority or is under control of the public authority can be provided. The PIO is not supposed to answer whether statement was informed create information that is not a part of the record and also not required to interpret information or provide clarification or furnish replies to hypothetical questions.

For point no. 3 i)

As per the office record in principle approval letter Smart Metering System information / documents are available with the office of the Commission. (The total number of pages- 05)

For point no. 3 ii)

The scrutiny process followed by the Commission is as per the, Maharashtra Electricity Regulatory Commission (Approval of Capital Investment Schemes) Regulations, 2022 which involves a detailed evaluation of the capex Scheme for in-principle approval of Capital Investment against DPR Schemes.

It is observed that the RTI applicant, vide his RTI application, is seeking answers to his questions, which does not fall within the definition of 'information' as per Section 2(f) of the RTI Act. Kindly note that the definition of information cannot include within its fold answers to the question such process followed for approving, which would be same thing as asking the reason for a justification for a particular thing. Which is expecting to communicate the reason why a certain thing was done or not done in the sense of a justification.

In view of the above, it is observed that at the outset it is clarified that under the provisions of the RTI Act only such information as is available and existing and held by the public authority or is under control of the public authority can be provided. The PIO is not supposed to answer which process is followed and also not required to interpret information or provide clarification or furnish replies to hypothetical questions.

For point no. 3 iii)

The Commission scrutinizes the financials submitted in the Capex Scheme through a detailed Prudence Check process. This process involves evaluating several financial

parameters, procurement methodology, etc. as per Maharashtra Electricity Regulatory Commission (Approval of Capital Investment Schemes) Regulations, 2022.

It is observed that the RTI applicant, vide his RTI application, is seeking answers to his questions, which does not fall within the definition of 'information' as per Section 2(f) of the RTI Act. Kindly note that the definition of information cannot include within its fold answers to the question such as whether MERC scrutinized the financials before approving the scheme, which would be same thing as asking the reason for a justification for a particular thing. Which is expecting to communicate the reason why a certain thing was done or not done in the sense of a justification.

In view of the above, it is observed that at the outset it is clarified that under the provisions of the RTI Act only such information as is available and existing and held by the public authority or is under control of the public authority can be provided. The PIO is not supposed to answer whether MERC scrutinized the financials of BEST before approving the DPR and also not required to interpret information or provide clarification or furnish replies to hypothetical questions.

For point no. 3 iv)

It is observed that the RTI applicant, vide his RTI application, is seeking answers to his questions, which does not fall within the definition of 'information' as per Section 2(f) of the RTI Act. Kindly note that the definition of information cannot include within its fold answers to the question such as explanation of how MERC justified approving an increased cost, which would be same thing as asking the reason for a justification for a particular thing. Which is expecting to communicate the reason why a certain thing was done or not done in the sense of a justification.

In view of the above, it is observed that at the outset it is clarified that under the provisions of the RTI Act only such information as is available and existing and held by the public authority or is under control of the public authority can be provided. The PIO is not supposed to answer explain how MERC justified approving increased cost and also not required to interpret information or provide clarification or furnish replies to hypothetical questions.

For point no. 3 v) a)

The Commission had accorded in principle approval for Capex scheme Submitted by BEST for implementation of smart Metering System for FY 2023-24 to FY 2024-25 on 22 November, 2023.

For point no. 3 v) b) to d), vi) & point no. 4 i) to vii)

The requisite information pertains to BEST Undertaking office. Since your application is being transferred under Section 6 (3) of RTI Act, 2005 to BEST Undertaking dated 27.03.2025.

For point no. 5 i) & ii)

This information related to Case No. 207 of 2024 on the MYT petition filed by BEST.

The Commission is a quasi-judicial body and has followed due process in Case No. 207 of 2024, including the public consultation process and public hearing.

The Commission has issued the final order in Case No. 207 of 2024 on 28 March, 2025 which is available on Commission's website in downloadable format.

The applicant can refer the order for the information. The copy of summary of petition is also available on Commission's website.

For point no. 6 i) & ii)

Information asked in question format. The Act does not expect the PIO to find answers for raised question.

A Public Information Officer (PIO) is not expected to provide intangible information, such as interpretations, opinions, advices, explanations, reasons as they are not included in the definition of information in Section 2(f) of the RTI Act, 2005.

5. Reason for filling an Appeal:

Information not provided.

6. Accordingly, final in-person hearing scheduled on 21.05.2025 in combination with two other appeals of the similar subject of the Appellant. The Appellant and Respondent argued orally, and no written submission was made during the hearing.

7. The following observations are made while scrutinizing the application and the reply submitted by the Respondent PIO and facts emerging during the hearing.

The information sought by the Appellant referred to the content of the MYT petition filed by the BEST Undertaking before the MERC. The Appellant contended non receipt of information from the PIO as per Section 19(5) of the RTI Act, 2005 before the appeal, however as PIO informed that he has no say other than the reply submitted to the Appellant. Further, PIO informed that, for point no. 2 i) to iii), x), point no. 3 v) b) to d), vi) and point no. 4 i) to vii) the application is transferred to BEST Undertaking for information on

27.03.2025. In response, the BEST Undertaking vide letter dated 02.05.2025 informed the Appellant to collect the information by depositing the requisite fees as per RTI Act. Apparently, the Appellant may collect the information from the BEST Undertaking by following due process.

During the hearing, the Appellant mentioned various Gazette notifications related to the MYT petition. Since this forum is not adjudicating the merits of the MYT petition and order, the Appellant is informed to present the matter before the appropriate forum.

Additionally, for point no. 2 i), ii), iii) & iv) the Respondent PIO orally submitted that no such information is available in the office of the Commission.

8. Decision:

- a) For point no. 1 ii) to v) PIO is directed to provide the copy of documents free of cost within 20 days from the date of this order.
- b) For point no. 2 vi), viii) and 3 i) the information is available in the office of the Commission for which the PIO informed the Appellant to deposit the requisite amount for obtaining the relevant copies of the required documents.

However, the Appellant reasoned that as per the Government of Maharashtra circular dated 17.11.2017, the details of additional fees need to be informed to the Appellant within 10 days otherwise it should be provided free of cost.

In this matter, without going into the pertinency of the circular and since the matter is heard in the first appeal, this authority directed the PIO to provide the above-mentioned information free of cost within 20 days from the date of this order.

- c) For point no. 2 v), ix), xi) & xii), point no. 3 ii), iii), iv) and point no. 6 the nature of information sought is in question format. This authority agrees that PIO is not supposed to create or interpret the information or provide the clarification. The authority relied upon the judgement of Hon'ble Bombay High Court in the matter of Dr. Celsa Pinto vs. Goa State Information Commission (WP 419 of 2007) which held that,

"The definition of information cannot 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 public information authorities cannot expect to communicate to the citizen the reason why a certain thing was done or not done in the sense of a justification because the citizen makes a requisition about information. Justifications are a matter within the domain of adjudicating authorities and cannot properly be classified as information.

Moreover, Hon'ble CIC judgements in the case no. CIC/DOCAF/A/2018/137220 date 11.02.2020 held that "*under the provisions of the RTI Act only such information as is available and existing and held by the public authority or is under control of the public authority can be provided. The PIO is not supposed to create information that is not a part of the record. He is also not required to interpret information or provide clarification or furnish replies to hypothetical questions*".

Therefore, no intervention is required on behalf of the FAA in this matter.

- d) For point no. 5 i) & ii), the PIO is already directed in case of 4 of 2025 to provide the copy of final order pertains to MYT petition of BEST Undertaking which covers the suggestion, objections reply of the BEST Undertaking and Commission's decision.
- e) Since the Appellant is senior citizen, the PIO is directed to provide the documents with proper Index.

9. The appeal is disposed of with the above decision.


10. In case the Appellant is not satisfied with the decision, he may prefer the second appeal within 90 days before the State Information Commissioner, 13th Floor, New Administrative Building, Madam Cama Road, Opposite Mantralaya, Mumbai-400032.



Abhijeet V. Chatuphale
First Appellate Authority & Jt. Director (A&F)
Maharashtra Electricity Regulatory Commission

To,

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Copy to PIO of MERC for necessary action.