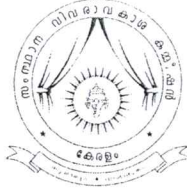


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A.P No.2340(4)/2018/SIC
(File No.11604/SIC-G2/2018)

Present

Sri. K.V. Sudhakaran, State Information Commissioner

Sri. M.T. Thomas,
Muramthookil,
Mulakulam South,
Peruva – 686 610,
Kottayam.

} Appeal Petitioner

Vs

1. The State Public Information Officer,
Kerala Rail Development Corporation Ltd.,
Trans Towers, 5th Floor, Vazhuthacaud,
Thiruvananthapuram – 695 014.
2. The Appellate Authority &
Director (P &P),
Kannur University,
Kannur University Campus P.O.,
Pin – 670 567.

} Respondents

Date of application u/s. 6(1):	16.07.2018
Date of Reply by SPIO:	18.08.2018
Date of First Appeal:	07.09.2018
Date of decision on the First Appeal:	06.10.2018
Date of filing second Appeal:	12.10.2018
Date of receipt of Appeal by Commission:	16.10.2018

ORDER

The Appeal Petitioner, Sri. M.T. Thomas submitted a second appeal dated 12.10.2018 before the Commission stating that he was denied information with regard to the pre-feasibility report in CD format related to the Kerala Semi High Speed Rail Project. The complaint is that the information was denied quoting 8(1) d of the RTI Act, the reply he received for his first appeal also remains to be not satisfactory. Hence he preferred the second appeal.

2. The Commission conducted hearing with regard to this appeal at the head quarters of the Commission on 18.12.19. The appeal petitioner was present, but the SPIO could not turn up for the hearing. But he submitted his leave application for the same. So the appellant submitted his statement before the Commission on the same day. He argued that the respondents cannot deny the information sought for under Section 8(1)d of the RTI Act. Because once report is submitted to the Government for sanction, it becomes public document and no Property Rights can be claimed under Section 8(1)d. Here, the feasibility report related to the High Speed Rail Corridor Project has been approved by the Government also. Then it is quite evident that it is a public document. In order to strengthen his argument, he has quoted the orders of Hon'ble Central Information Commission dated 05.05.2017 and the Hon'ble Chief Information Commissioner, Kerala Sri. Vinson M. Paul dated 07.09.2017. In the light of all these, the appellant argued that the SPIO had simply refused information invoking 8(1)d of the RTI Act. Hence, he pleaded that the

information sought for is to be furnished in the CD format. He also requested that penalty under Section 20(1) of the RTI Act should be imposed for non-compliance of the Act.

3. After this, the Commission conducted another hearing on 23.12.19 at the head quarters of the Commission for the first respondent. And the first respondent was present for the hearing on the same day. He stated that Mr. M.T. Thomas (the appellant), vide his application dated 16.07.18 requested a copy of the pre-feasibility study report of Semi High Speed Rail Project in CD format. The information was denied in view of Section 8(1) d of the RTI Act. His appeal was also rejected by the first appellate authority stating that pre-feasibility report for the project of the proposed Semi High Speed train from Trivandrum to Kasaragod was prepared by Kerala Rail Development Corporation Ltd. (KRDCL). This report is a commercial document, which is the Intellectual Property of KRDCL. The disclosure of this report to a third party might harm the business interest of the KRDCL. He was of the opinion that the information requested by the respondent contains commercial confidence, trade secret or intellectual property, the disclosure of which would harm the competitive position of a third party. So, it is exempted from disclosure under Section 8(1)d of the RTI Act. Pre-feasibility report, feasibility report and detailed project report prior to implementation of the project contains information which are of commercial confidence, like ridership estimation, traffic projections, capital cost estimates, fire structures etc. The tender documents at implementation stage is prepared based on the estimations and assumptions made at the feasibility and DPR

stage, the disclosure of which will harm the competitive position of KRDCCL (third party) as the rates in tender may vary. This may result in even higher bid amount resulting in project cost escalations, which is against the economic interest of KRDCCL under Section 8(1)a of the RTI Act. A public authority is not under obligations to furnish the information, the disclosure of which would prejudicially affect the economic interest of the State.

4. The information and reports from the Ministry of Defense, Director General of Aviation, Survey of India, like maps and locations data for preparing the feasibility report and DPR are restricted information received in confidence expecting confidentiality and hence received in a fiduciary relationship enjoying exemptions under Section 8(1)e of RTI Act. The final order No.CIC/NEERI/A/2017/177852 dated 26.03.2018 is actually relating only to environmental study report which should be mandatorily disclosed under the guide lines of the Ministry of Environment and Forest in the case of Ferani Hotels Pvt. Ltd. Vs. The State Information Commission, Mumbai and others. The information was allowed as the Real Estate (Regulation & Amendment) Act 2016 requires mandatory disclosure of the information sought by the applicants. So the first respondent concluded his argument requesting to exempt his office from providing the feasibility report.

5. The Commission scrutinised the appeal petition, the statements of both the parties and the connected documents. And then the Commission finds that the said Semi High Speed Rail Project is a green project of KRDCCL which involves

acquisition of more than 20,000 acres of prime land at an estimated cost of around 1,00,000/- crore. And if the project report of the same is given as a public document, there is a possibility of misusing the report in various ways. If the map, route etc. of the proposed project is to be conferred to a third party, sometimes it may foil the prospects of the KRDC. Others can make use of the said project report on a lucrative angle also. That would evidently affect the competitiveness and confidentiality of the project. The argument of the appellant, since the project involves acquisition of 20,000 acres of prime land including forests land and eviction of more than a lack of people, it affects the public at large cannot be taken for granted. These things are inevitable in any projects. It is the inevitable responsibility of the Government to mitigate the hardships caused by the said eviction and provide the people meticulous rehabilitation. And the Commission feels that the Government would be considering these aspects also.

6. The Orders of the Hon'ble CIC and Hon'ble Chief Information Commissioner, Kerala quoted by the appellant, are related to some different aspects. The Order No. CIC/NEERI/A/2017/177852 dated 26.03.2018 is related only to environmental study report. And that of the Hon'ble CIC of Kerala AP No.1666(4)/2016/SIC dated 07.09.2017 also is the environmental study report received by the KHRCL. Then, in the case of Ferani Hotels Private Ltd., the information has to be furnished because it comes under the Real Estate (Regulation & Development) Act 2016, the disclosure of which is mandatory.

7. Taking all these into consideration, the Commission finds that the respondents have got enough ground to deny the information sought for by the appellant. The Commission makes it clear that Sections 8(1)d and 8(1)e of the RTI Act apply allow the respondents to deny the information, since the disclosure of the same would affect the commercial confidence, trade secrets, or intellectual property, the competitive position of a third party and the fiduciary relationship. The Public interest in this case cannot be placed a higher pedestal. Hence the Commission endorses the replies of the respondents.

8. With the above order, the Commission disposes of the second appeal on the 13th day of March, 2020.

Sd/-

K.V. Sudhakaran
State Information Commissioner



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Commission Secretary

gk.