Appellant - Shri Ajit Singh
Respondent - Delhi Pollution Control Committee

Facts:

By an application of 15.5.06 Shri Ajit Singh of Masood Pur New Delhi sought the following information from the PIO Delhi Pollution Control Committee (DPCC) seeking the following information:

“Delhi Govt. /DPCC Public Notice for EIA public hearings has been published on 18.5.06 for the under construction Vasant Kunj Malls, sites for which were auctioned in 2003. Please provide the following information under RTI Act, 2005:

1. For which other projects simultaneously proposed /constructed / under construction in the Mehrauli-Mahipalpur area, especially amongst those listed below, have EIA public notices been issued or are proposed to be issued.

   a) Delhi Govt. /APMC wholesale mandi at Andheria Morh (Mehrauli ridge/completed)


   c) Mega-housing by AICon near Mahipalpur CNG Station (Sultangarh ridge, nearly complete, started September-October, 2004)

   d) Sun-city Mall at Masudpur (located like Vasant Kunj Malls in relation to the village, under construction since mid 2005)

   e) Commercial complex proposed in Mahipalpur Hauz (historic water body approval of land use change indicated in draft Master Plan 2021).

2. Reasons for not issuing earlier the EIA public notice for Vasant Kunj Malls even as the site required EIA by Supreme Court Orders of 1996-97.
3. Reasons for not issuing EIA public notice for projects such as listed above requiring EIA by notification dated 7.7.04.

4. Details of DPCC inputs into draft Master Plan 2021 indicating –“

To this he received a response from Dr. Chander Prakash, SPIO on 18.7.06 as follows:


1. a to e & 3 EIA public notice has been issued for Suncity Mall for which hearing is proposed on 4.7.2006 in the office of Dy. Commissioner (South West) Distt. South West, Kapashera Border, New Delhi-110037. No other projects as mentioned have applied for NOC under EIA notification.

2. Construction projects have been added in schedule 1 vide EIA notification dated 7.7.2004.

4. Question is incomplete.”

Not satisfied with this response Shri Ajit Singh moved his first appeal before the Chairperson DPCC on 24.7.06 praying as follows:

“a) Penalty for delay past 30 days, including failure to intimate date of hearing on 4.7.06, also because information of public notice / hearing was not communicated in Masudpur and is not published in information about the project on Delhi Govt. – DPCC website (Annexure-3)

b) Compensation for missing of hearing opportunity on account of lack of information in pendency of the instant application – in form of information (copies) of public notices(s) and comments received in response thereto and particulars of hearing panel and status of procedure for EIA clearance for Suncity Mall.

c) clarification / confirmation of the following points in the Reply

1. confirmation that no EIA public notice has been issued for any other project in the area
2. clarification of reason to not issue public notice for VK Malls promptly after 7.7.04.

3. confirmation that the only reason for not issuing EIA public notices for other projects – including Delhi Govt. projects – is they have not applied for NOC to Delhi Govt. –DPCC

4. confirmation that details of DPCC inputs into draft Master Plan 2021 cannot be provided /have not been published on Delhi Govt. – DPCC or DDA websites in general terms (such as by ignoring the word ‘indicating’ in the ‘incomplete question’)

On this he received an order of 11.8.06 as follows:-

“The hearing was held on 11.8.2006. The applicant was not present during the hearing. The appeal was heard ex-parte. Shri B. Kumar, concerned SEE informed that the DPCC had issued a public notice in respect of the public hearing schedule to be held on 4.7.2006 in leading daily English & Hindi newspapers on 3.6.2006 as per the statutory requirement as per the EIA notification. Hence there is no merit in seeking compensation for not being able to participate in the said public hearing. Further, it was also brought to my notice that the information was supplied to the appellant after 33 days from the date of receipt of application. But the delay of 3 days was not with any malafide intentions, as the concerned officials of a different division were compiling the information.

SPIO and the concerned officials are hereby cautioned to adhere strictly to the time limit prescribed in the Act.¹

After examination of the records and the deliberations made during the appeal, it is clear that there is no further action point in this appeal.”

Because the order of the first Appellate Authority had not even addressed the clarifications sought by him and finding the remaining responses inadequate, Shri Ajit Singh moved his second appeal before us with the following prayer:

“The Appellant prays to the Commission to direct the DPCC to furnish:

¹ Emphasis ours.
a) the clarifications/conformations sought in prayer (c) of his First Appeal.

b) full details of processing of EIA application for Sun-city Mall as sought in prayer (b) in the First Appeal, the same being liable to be published under s.4(1)(c) as relevant facts of decision affecting the public announced by alleged public notice dated 3.6.06 to unlawfully process post facto EIA clearance.

c) a statement on oath as to why DPCC has been processing EIA applications for under-construction projects like Sun-city Mall / not pre-empting post facto EIA applications for projects such as named in the application – even though its Chairperson (Delhi Govt. Secretary) (Environment) is authorized for cognizance of the offence of construction without prior EIA clearance."

In response to our appeal notice Dr. Chander Prakash has sent us detailed comments on the subject addressing each of the points of the clarification/confirmation sought in prayer c) by Shri Ajit Singh in his first appeal and prayer a) as above. He has also provided further details of the processing of the EIA applications for Sun City Mall, sought in prayer b) of the first appeal. On the question of a statement on oath sought in prayer c) before us Dr. Chander Prakash has responded that all the facts in this regard have been forwarded to Ministry of Environment & Forests, Govt. of India. However, under the notification issued by the MoEF, Govt. of India that Ministry is the competent authority for grant of environmental clearances for the whole of the country.

The appeal was heard on 8.5.07 at 11.30 a.m. The following are present:

Appellants:
1. Shri Ajit Singh Malik
2. Ms Gita Dewan Verma

Respondents:
1. Dr Chandra Prakash, SEE DPCC
2. Shri Mohammad Arif EE DPCC
Authorized representative of appellant Shri Ajit Singh, Ms. Gita Dewan Verma had in the meantime submitted a rejoinder dated 3.5.07, copies of which were presented to respondents and us during the hearing. With regard to clarifications issued now Ms. Verma expressed her satisfaction but asked for the following further details:

1. Copy of letters to MoEF and Departments cited in the response may be provided and

2. names of newspapers in which public notices were published may be provided.

Appellant has also asked that SPIO may reply on the reasons for not issuing earlier the EIA public notice of Vasant Kunj Malls, from the records of Court proceedings.

In their response to the appeal notice SPIO has given particulars of officials as published by DDA in approved MPD 2021. The appellant has asked that SPIO may also provide or refuse details of DDA inputs in MPD 2021.

While complaining in his rejoinder of the indifference with which his application has been handled, appellant Shri Ajit Singh Malik has urged that directions be given to DPCC Chairman to publish a statement as prayed for in prayer ‘c’ quoted above, because appellant apprehends attempts to obfuscate the mandate of sec. 19(a) of the Environmental Protection Act.

Dr. Chander Prakash has expressed his readiness to provide such information as is held by the Department including the copies of letters, sought above, and names of newspapers in which public notices were published. He, however, contended that EIA notification is only processed when the DPCC is approached for the same by any authority and that the basic responsibility for this rests with Ministry of Environment & Forests.
In response authorized representative of appellant Ms. Verma has cited notification SO-394-E of the Central Government, a copy of which had been submitted to first Appellate Authority in seeking the original clarification in first appeal which is the S.O. authorizing officers and authorities for the purpose of enforcing section 19(a) of the EPAct together with the jurisdiction mentioned against each of them. Sr. No. 3 & 4 of this notification clearly states as follows:

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<tr>
<th>Sr. No.</th>
<th>Officer</th>
<th>Jurisdiction</th>
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<tr>
<td>3.</td>
<td>The Government of the State (represented by the Secretary to the State Government in charge of environment)</td>
<td>Whole of the State</td>
</tr>
<tr>
<td>4.</td>
<td>The Chairman or Member Secretary of the State Pollution Control Board constituted under section 4 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974) or a State Pollution Control Board constituted under section 5 of the Air (Prevention and Control of Pollution) Act, 1981 (14 of 1981)</td>
<td>Whole of the State</td>
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**DECISION NOTICE**

The key information sought in this application is whether the DPCC and the GNCT Delhi’s Department of Environment are exercising their authority under sec. 19(a) of the EPA. It has become quite clear through the processing of this application and the arguments before us that they are not. Whether they actually exercise this authority or don’t is not within our jurisdiction to adjudicate upon. However, we would advise only that the Union MoEF and the Dep’t. of Environment of GNCT Delhi to review their activities u/s 19(b) to ensure that gaps do not remain unwittingly in application and thereby uphold the majesty of the law.

We are moreover constrained to observe that appellant Shri Ajit Singh Malik who has clearly been seeking information that is fully in the public interest,
has been put to considerable inconvenience. The information now supplied in response to the appeal notice and which has been accepted by the authorized representative of appellant as being exhaustive could have been readily provided at the stage of the first Appellate Authority. By not doing so, it has rendered the disclosure of this information at the late stage, difficult to capitalize upon in ensuring compliance with the EPA, which is the objective of the appellant. The Appellate Authority of DPCC is therefore, directed to give closer attention to appeals that come before her under the RTI Act as this is the authority meant to rectify any shortcomings in disclosure at the level of the SPIO. While making this comment, however, we will at the same time appreciate the comprehensive response given by SPIO Dr Chander Prakash to the appeal notice, expressing only the regret that had this been done at the initial stage it could have saved all concerned considerable inconvenience.

Appellate Authority has indeed passed orders cautioning strict adherence to the time limits prescribed under the Act in light of the delay in responding to the initial application, as emphasized by us in the quote above. Since this time delay was only of a few days and has not been pressed by appellant in his second appeal before us, and because the Appellate Authority herself did not have the authority to impose any penalty, we do not consider a penalty necessary in this case. We would however, endorse the caution ordered by Ms. Naini Jayasleen first Appellate Authority in disposing off the first appeal.

We find that the documents in this matter now stand transferred to MoEF Govt. of India on 13.10.06. This renders infructuous that part of the prayer (b) of appellant Shri Ajit Singh Malik before us. Information may not now be published under sec. 4(1)( c) by the Department since the matter is no longer within its province. However, since the record is now with MoEF, this suggestion is endorsed by us for consideration by MoEF to whom appellant Sh.Ajit Singh has already applied for further information, in respect of EIA for all mega
constructions undertaken in Delhi, since such information falls clearly within the requirement of sec. 4(1)(c) which reads as follows:

“publish all relevant facts while formulating important policies or announcing the decisions which affect public”

A copy of this decision notice will also be supplied with a covering letter to the CPIO, Ministry of Environment & Forests that Ministry who is directed to response to the application of Shri Ajit Singh Malik accordingly.

Announced in the hearing. The appeal is disposed of accordingly.

Notice of this decision be given free of cost to the parties.

(Wajahat Habibullah)
Chief Information Commissioner
8.5.2007

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.

(L.C. Singhi)
Addl. Registrar
8.5.2007