CENTRAL INFORMATION COMMISSION
Appeal No. CIC/WB/A/2006/00593 dated 5-9-2006
Right to Information Act 2005 – Section 19

Appellant: Shri Samay Singh
Respondent: Delhi Pollution Control Committee, (DPCC) NCT Delhi.

FACTS:
By an RTI application of 15-6-'06 Shri Samay Singh of Mahipalpur, Delhi applied to the PIO, Delhi Pollution Control Committee, (DPCC), NCT Delhi 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. Particulars of objections, if any, raised by Delhi Govt prior to the auction in view of Supreme Court orders for it since 1996-97 concerning ridge delineation and for EIA for the site (The auction terms mentioned DJB assurance of water by September 2004 and it was clarified that investors had to obtain environmental clearance from DPCC).

2. Particulars of objections, if any, raised by Delhi Govt in respect of environmental clearances prior to start of construction, especially in proceedings before the Central Empowered Committee on application of one Shri Vikram Soni, in 2004.

3. Particulars of objections, if any, raised by Delhi Govt in context of EIA notification dated 7.7.04 pursuant to start of construction in August-September 2004.

4. Particulars of action, if any, taken against the constructions proceedings at the site in vie of DPCC’s EIA public notice dated 13.3.05 (for all project proponents).

5. Details of events leading to and proceedings pursuant to DPCC’s EIA public notice dated 28.11.05 for the projects in the 198 ha site.

6. Details of events leading to EIA public notice dated 18.6.06 for the projects and details of how promoters will be compensated in case clearance is denied/ projects stopped at this stage (in view also of failure to ensure DJB water).
To this he received a reply on 14-7-06 from Dr. Chandra Prakash, SPIO as follows:

1. Matter pertains to Delhi Government. Environmental Clearance is given by Ministry of Environment & Forest, Govt. of India.


4. Under EIA notification DPCC has no power to take action against the construction proceedings. However, DPCC wrote letters to all the land owning agencies & agencies involved in the constructional activities to follow EIA notification dated 7.7.2004.

5. For the processing of the applications objections/suggestions/views were invited vide public notice dated 28.11.2005. Thereafter the matter was appraised to LG, Govt. of Delhi.

6. As per the direction of Ministry of Environment & Forest, Govt. of India, public notice was given n 18.5.2006 for inviting suggestions/objections/views from the public? & a public hearing was conducted on 19.6.2006 & on 20.6.2006 in the office of Deputy Commissioner (South-West).

Encl: No. f. DPCC/13(6)(48)/P4-06/1760 dated 14.7.08 transferring part application to SPIO in Deptt of Forest, Govt of NCT of Delhi under section 6(3) of RTI Act, saying also: “in case, it does not fall under your jurisdiction, it may further be transferred to the public Authority concerned, directly, under intimation to this office.”

Objecting that the transfer of points 1, 2 and 3 has taken place only on 14-7-06 in violation of Section 6 (3) of the RTI Act, which requires transfer in five days, and that the responses to the other questions were incomplete, Shri Samay Singh moved his first appeal before the Chairperson, DPCC, Department of Environment, Delhi Secretariat on 24-7-06. First Appellate Authority Ms Naini Jayaseelan, in her order of 24-8-06, while finding that the delay was not a result of malafide intention ordered as follows:
“SPIO and the concerned officials are hereby cautioned to adhere strictly to the time limit prescribed in the Act.

Appellate Authority felt that the SPIO has provided insufficient information. Therefore SPIO, DPCC is directed to provide the information indicating the events after 28.11.2005 in tabular form within 10 days.”

Subsequently, further information was provided to Shri Samay Singh. In the meantime, through a letter of 9-8-’06 the Forest Department, Delhi transferred the application received from DCF (Hq.) to DCF (South), and no further response was sent to the appellant Shri Samay Singh therefrom. This issue was not addressed by the 1st Appellate Authority Ms. Naini Jayaseelan, herself Secretary (Environment) at the time.

While this case was under due process Shri Samay Singh also received another letter dated 3-8-06 relating to a separate case dated 4-7-06, from Dr. N.H. Hosabettu, Director, Ministry of Environment & Forest, which is as follows

1. “No development activity which attracts the provisions of EIA Notification, 1994 can be initiated without prior environmental clearance. Para 2(III) (c) of the notification clearly stipulates that “No construction work, preliminary or otherwise, relating to the setting up of the project may be undertaken if then environmental and site clearance is obtained.

2. Violation of the provisions of EIA notification, 1994 attracts punitive action under Environmental (Protection) Act, 1986. Necessary powers have been delegated to the State Government under provisions of Environment (Protection) Act, 1986, for taking action against violations under the notification.

3. & 4. The punitive action against the violation of the notification attracts Section 5, 15 and 19 of Environment (Protection) Act, 1986.

The project proponent should ensure that all the conditions and measures stipulated while according environmental clearance to the project under EIA Notification, 1994 must be complied strictly.”
This response, being in his view contradictory to what he had received from DPCC, appellant Shri Samay Singh then moved his second appeal before us with the following prayer:

(a) To call from Smt Naini Jayaseelan, Delhi Govt Environment Secretary and head of both DPCC and Forest Department, a statement on oath as to:

(i) How she is prevented from acting against construction without EIA clearance.
(ii) Who, if not she, is the concerned officer for points 1 to 3 in the Appellant’s RTI application that SPIO transferred as “matters pertaining to Delhi Govt.”
(iii) Why has DPCC been writing to ‘land owning agencies’ instead of to officers authorized for purposes of s. 19(a) under EPA, 1986, in respect of constructions proceeding without EIA (as also raised at (i) in First Appeal) and
(iv) Why is information concerning officers and authorities competent to make complaints for cognizance of offences not published on the website of the Deptt of Environment although the RTI Act has been in force in Delhi since 2003?

(b) Pass appropriate directions, including for fair penalties and damages, against the failure to furnish information requested on 15.6.06.”

In response to our appeal notice we have received comments from SPIO, Dr. Chandra Prakash dated 11-4-07 responding to each of the points raised, which concludes as follows:

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<th>Prayer of the appellant to the commission</th>
<th>Reply</th>
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<td>Who, if not she, is the concerned officer for points 1 to 3 in the Appellant’s RTI application that SPIO transferred as “matters pertaining to Delhi Govt.”</td>
<td>As regard point 1 to 3 in the appellant RTI Application, it was informed by the concerned cell that the issue pertains to Delhi Govt. Based upon the nature of content, the application was transferred to SPIO, Forest Department, Govt. of NCT of Delhi.</td>
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<tr>
<td>Why is information concerning officers and authorities competent to make complaints for cognizance of offences</td>
<td>Pertains to Department if Environment.</td>
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In his rejoinder dated 3-5-07 Shri Samay Singh has submitted as follows:

"On first 3 points concerning GNCT actions since 1997 up to March 2005, the Appellant received no reply whatsoever. SPIO made transfer dated 14.7.2006 to GNCT Forest Deptt, which provided no response beyond intimation dated 9.8.06 of forwarding from DCF (HQ) to DCF (South)."

Alleging that the responses received were evasive against specific queries raised appellant specifically pointed out that (i) on point No. 5 the comment does not indicate how the public notice concerned of 28-11-05 came to be issued and (ii) the First Appellate Authority who has both DPCC and Forest Department should have provided this information, which would qualify, according to appellant, for *suo moto* declaration in terms of Section 4 (1) (d):

The appeal was first heard on 10.5.2007. The following were present.

**Appellant**
Shri Samay Singh.
Ms. Gita Dewan Verma (assisting appellant).

**Respondents**
Shri Chandra Prakash, SEE, DPCC.
Shri Mohammad Arif, EE, DPCC.

Dr. Chandra Prakash of DPCC had submitted a detailed point wise response on 11.4.2007, to which we also received a rejoinder of 3.5.2007 from appellant Shri Sanjay Singh during the hearing. Since both these documents had not been received earlier, after hearing the arguments we reserved our decision. In the meantime a copy of the appeal together with these enclosures was also sent to Shri J. K. Dabu, Secretary (Environment), GNCT Delhi seeking his comments on point (A) (iv) of the prayer and point F of the grounds for appeal in the second appeal made
before us on 4.9.2006, quoting the exact wording of each. Secretary was directed to submit his comments by 25th May, 2007.

Subsequently, through a letter of 21-6-07, SPIO, DPCC has submitted further clarifications in which the following question is answered as below:

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<th>Ground</th>
<th>Reasons</th>
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| A (iv) Why is information concerning officers and authorities competent to make complaints for cognizance of offences not published on the website of the department of Environment although the RTI act has been in force in Delhi since 2003? | The question/ point has not been raised by the applicant/ appellant in the original application submitted on 15.6.2006.  
However, the Environment (Protection) Act, 1986 and the notification No. SO 394 (E) clearly specifies the authority as Chairman and member Secretary of DPCC as competent authority to take action.  
List of officials handling different cells is placed on website and these officials files complaints in courts after approval (list annexed).  
A copy of the page downloaded from the website of DPCC is enclosed here with. It is clear from this that DPCC website recommends that for more information about pollution control laws/acts/ rules, the website of MoEF, GOI may be referred to |

Appellant Shri Samay Singh had not received a copy of this response, although a copy had indeed been endorsed to him. One copy is now provided to him attached to this interim decision.

The appeal was again heard on 22-2-2008. Following are present:

**Appellant:**
Shri Samay Singh  
Ms. Gita Dewan Verma, assisting appellant
Respondent:
Shri Chandra Prakash, SEE
Shri Mohammed Arif, EE
Shri B. Kumar, SEE

Shri Chandra Prakash pointed out that Shri Mohammed Arif is indeed EE and not Appellate Authority as per the notice of hearing issued by us. A correct is accordingly made in our record.

Shri Mohammed Arif, who was present in the hearing clarified that clearance had been given and therefore, there was no question of compensation being denied for refusal of clearance. He further clarified that even though the question of compensation was to be considered in light of Supreme Court orders, the DPCC had no authority to so consider or to make recommendations in this regard. There were, therefore, no records with DPCC in this regard. He also pointed to the response provided describing events leading to the public notice of 28-11-05.

Ms. Gita Dewan Verma assisting the appellant submitted that the response of Appellate Authority was evasive, because it had failed to detail the events leading to issue of public notice, but only directed for disclosure of events after 28-11-05, hence also leaving point No. 4 unanswered.

INTERIM DECISION:

There is no representative of the Department of Forest in the hearing, since they are not party to this appeal and we are unable to take a final decision on response to the application as the first three points transferred to that Department cannot be addressed. Moreover, since it has been clearly stated by respondents that DPCC has nothing to do with the question of compensation, it is only the MoEF, to whom the matter had been referred by Hon’ble the Supreme Court for taking final clearance of the cases, which could indicate the authority empowered to take such decisions.
On the points heard, however, our decision was as follows: The information sought with regard to point No. 5 is clearly asking for details of events leading to the issue of the public notice of 28-11-05, which would mean starting from the time that it is decided to place the sites for auction along with the purpose thereof. The answer that has been given is at best vague. However, we cannot conclude that the decision of the 1st Appellate Authority is deliberately misleading in this regard, since she has only come to this conclusion, in the absence of appellant in the hearing of the appeal before her, on the basis of the assurance that would have been given to her by SPIO as has been sought to be given to us by respondent, that the first part of the question stands answered.

Now, however, SPIO, Shri Chandra Prakash, DPCC is directed to provide the details sought from the time of initiation of the proposal to issue a public notice up to the time that the public notice was issued, within ten working days of date of issue of this interim decision, to appellant Shri Samay Singh, appellant.

To determine the authority that would provide the answers to the remaining questions, particularly, point Nos. 1, 2 and 3, the hearing was adjourned to 2nd May, 2008 at 11.00 a.m. when CPIOs Ministry of Environment & Forests, GNCT the Department of Forest and Department of Environment, GNCT Delhi will also be present. A copy of the original application, the response received, decision in first appeal and copies of second appeal will be sent together with the copy of this decision to each of the parties who are hereby impleaded as parties to this appeal. Announced on this 22nd day of February, 2008 in the hearing.

Accordingly, the matter was heard once more on 2.5.08. The following were present:

Respondents
Ms. Kamal Preet, DCF HQ / SPIO HQ
Shri Prabhat Tyagi, DCF South / F.A.A., GNCTD
Shri Bharat Bhushan, Director, MOEF

Appellant
Ms. Geeta Dewan Verma, representing appellant Shri Samay Singh appeared after the hearing had been concluded.

On the question Nos. 1, 2 & 3 Shri Bharat Bhushan, Director, MoEF submitted that these issues are usually dealt with at the level of State Pollution Control Committees or State Department of Forests and not by the MoEF. However, in this case there was a ruling of the Supreme Court of India in IA No. 1156 in WP No. 202 of 1995 Sh. T. N. Godavarman Thirumulpad vs. Union of India and Others. (with I.A. Nos. 1192, 756, 1463, 1501 and 1532 in WP (C ) 202 of 1995), in which by a judgment of 17.10.06 the Bench of Justice Arijit Pasayat and Justice S.H. Kapadia directed as follows:

“Learned counsel for the DDA while adopting the submissions made by the other respondents submitted that the DDA proceeded on a bona fide impression that all requisite clearances had been obtained by it. There was no question of it acting in malafide manner or irregular manner.

In view of what has been stated above, the MoEF has now to take a decision by taking the land as constraint area. It is needless to say that even if the land is held to be constraint area the constructions thereon have to be made after having the requisite clearance. The MoEF shall take note of the stands projected by the respondents. We are prima facie satisfied about the bona fides of the respondents but at the same time it needs no emphasis that DDA should have been more transparent in ensuring that it was not putting a site function where there was scope for litigation. It had definitely created an impression that all necessary clearances had been obtained, though it does not appear to be so. What remains to be decided as to what remedial measures including imposition of such amounts as costs can be taken.

Let the MoEF take a decision within a period of 2 months from today to avoid unnecessary delay. The IAs are accordingly disposed of.”

Accordingly, MoEF after enquiring into the matter imposed fines of Rs. One lakh each in five cases. A copy of this order has been taken on record. Ms. Kamal Preet, DCF HQ and SPIO submitted that in all three questions no
objections were actually raised by the Delhi Govt. However, on the basis of a reference by the Central Empowered Committee the views of the Department were submitted to the Committee through a letter of 24.3.04 by Shri A. K. Sinha, Conservator of Forests, a copy of which was submitted by Shri Prabhat Tyagi and has been placed on record. A copy of this statement has also been handed over to Ms. Geeta Dewan Verma, representing appellant Shri Samay Singh. This report referred to a management pattern of Delhi Ridge suggested by the Lovraj Kumar Committee on the basis of Master Plan 2001, which was submitted to the Govt. of India for their opinion on 4.11.93, resulting in the issue of notification u/s 4 of the Indian Forests Act 1927 on 15.5.94 on the basis of which certain areas on four ridges were notified as reserved forests.

DECISION NOTICE

With this, the information sought by appellant Shri Samay Singh can be concluded to have been provided. While therefore this appeal can now be considered disposed of, we are constrained to point out the perfunctory attitude adopted by the Delhi Govt. to the conservation of the Ridge despite having the backing of a report from an expert committee. Such an attitude, in light of the spiraling of property prices in Delhi metropolitan area, on the part of the UT government department charged with protecting the environment, is dangerous to the health of the ecology of the national capital region. A copy of this Decision may therefore be endorsed to Union Secretary, Environment & Forests to take up with the state govt. the measures required remedying this drift

Announced on this 2nd day of May, 2008 in the hearing. Notice of this decision be given free of cost to the parties.

(Wajahat Habibullah)
Chief Information Commissioner
2.5.2008
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.

(Pankaj K.P. Shreyaskar)
Joint Registrar
2.5.2008