

CENTRAL INFORMATION COMMISSION
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Decision No. CIC/SG/A/2012/000544/18674
Appeal No. CIC/SG/A/2012/000544

Relevant facts emerging from the Appeal:

Appellant : Dr. S.P. Udayakumar,
42/27, Esankai Mani Veethy,
Parakkai Road Junction,
Nagercoil, Tamil Nadu-629002

Respondent : Mr. S. K. Srivastava,
PIO & Deputy Chief Engineer (Projects),
Nuclear Power Corporation of India Limited,
Vikram Sarabhai Bhawan, Central Avenue
Road, Anushakti Nagar, Mumbai-400094

RTI application filed on : 25/01/2010
PIO replied on : 24/03/2010
First Appeal filed on : 16/04/2010
First Appellate Authority order of : 20/05/2010
Second appeal filed on : 13/08/2010 and 16/02/2012

The Appellant had filed a Second Appeal before the Commission on 13/08/2010. However, it appears that the Commission failed to register the matter and schedule it for a hearing. Subsequently, this lapse was brought to the Commission's notice by the Appellant's letter received on 16/02/2012 and the matter was registered by the Commission.

Since it appears that the Commission had not registered the appeal in 2010, when it had been made within time, it was registered since the appellant was not responsible for the delay.

Information sought:

The following information was sought in relation to the Koodankulam Nuclear Power Plant (KKNPP), Reactor I & II in Tamil Nadu:

1. Copy of Safety Analysis Report for reactor I & II;
2. Copy of Site Evaluation Report for reactor I & II; and
3. Copy of Environment Impact Assessment report for reactor I & II.

Reply of Public Information Officer (PIO):

1. The Environmental Impact Assessment Report was available with the PIO consisting of 339 pages. The Appellant was requested to send a demand draft of Rs.678/- (Rupees six hundred seventy eight only) @ Rs.2/- per page as per the provisions of the RTI Act, in favour of Manager (F&A), NPCIL. On receipt of the fees, a copy of the said report shall be furnished to the Appellant.

2. The Safety Analysis Report and the Site Evaluation Study Report were not public documents and contained design details that are proprietary in nature. As such the information was exempt under Sections 8(1)(a) and (d) of the RTI Act.

Grounds for First Appeal:

Incomplete information furnished by the PIO.

Order of First Appellate Authority (FAA):

The FAA agreed with the PIO and observed that the Safety Analysis Report and the Site Evaluation Study Report for KKNPP I & II were classified documents held by NPCIL.

Grounds for Second Appeal:

Dissatisfied with FAA's order. Indian citizen's safety and wellbeing are very important and information must be provided.

Relevant Facts emerging during Hearing held on 23 April 2012:

The following were present:

Appellant: Mr. Venkatesh Nayak representing the Appellant;

Respondent: Mr. S. K. Srivastava, PIO & Deputy Chief Engineer (Projects) via video conference from NIC Studio-Mumbai.

Both parties were heard. The Commission observed that copies of the Safety Analysis Report and Site Evaluation Report of reactors I & II (collectively referred to as Reports) of the Koodankulam Nuclear Power Plant in Tamil Nadu have not been provided to the Appellant.

The PIO argued that the Reports were classified information and the concerned public authority had not taken a decision to release it in to the public domain. He submitted that the Reports were protected from disclosure under Sections 8(1)(a) and (d) of the RTI Act. The Commission repeatedly asked the PIO the specific reasons for claiming the said exemptions. As regards Section 8(1)(a) of the RTI Act, the PIO stated that the security, strategic and scientific interests of the State would be affected on disclosure of the information. However, he did not give any explanations as to how the security, strategic and scientific interests of the State would be affected on disclosure of the said reports. Further, in relation to Section 8(1) (d) of the RTI Act, the PIO claimed that the Reports comprised of commercial confidence. However, he did not explain how disclosure of the said reports could be considered 'commercial confidence' and how it could harm the competitive position of a third party.

On the other hand, the Appellant contended that the exemptions under Sections 8(1)(a) and (d) of the RTI Act were not applicable to the present matter. He argued that a larger public interest would certainly be served on disclosure of the Reports. In this regard, reliance was placed upon the agreement between India and the International Atomic Energy Agency (IAEA) which lays down the safety and maintenance standards for nuclear activities. The Appellant further submitted that reports of the same nature were classified as public documents in countries such as USA, UK and Canada in order to ensure public debate. The Appellant gave written submissions along with a CD detailing the arguments mentioned above.

The order was reserved at the hearing held on 23/04/2012.

Decision announced on 30 April 2012:

The Appellant has sought copies of the Safety Analysis Report and Site Evaluation Report of reactors I & II of the Koodankulam Nuclear Power Plant in Tamil Nadu which have been denied. At the outset, the PIO has argued that the Reports were classified information and the concerned public authority had not taken a decision to release it in the public domain. It is

legally well-established that information under the RTI Act can be denied only on the basis of Sections 8 and 9 of the RTI Act. The fact that a record has been termed as 'classified', or that it shall be disclosed subject only to an executive decision to that effect-have not been stipulated as exemptions under the RTI Act. Therefore, the PIO cannot use such grounds for denying the information sought under the RTI Act; denial of information shall be on the basis of Sections 8 and 9 of the RTI Act only.

Having established the above, the Commission now examines the PIO's contention that the Reports were exempt from disclosure under Sections 8(1)(a) and (d) of the RTI Act. Section 8(1)(a) of the RTI Act exempts from disclosure-*"information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence"*. At the hearing held on 23/04/2012, the Commission repeatedly asked the PIO to identify and explain the specific interest which might be affected, on the basis of which the exemption under Section 8(1)(a) of the RTI Act was claimed. The PIO merely stated that the security, strategic and scientific interests of the State would be prejudicially affected on disclosure of the information; he gave no reasons whatsoever for claiming that the security, strategic and scientific interests of the State would be prejudicially affected if the Reports were disclosed.

Section 8(1)(d) of the RTI Act exempts from disclosure- *"information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;"*. In order to claim the exemption under Section 8(1)(d) of the RTI Act, the PIO must establish that disclosure of the information sought (which may include commercial or trade secrets, intellectual property or similar information) would result in harming the competitive position of a third party. At the hearing held on 23/04/2012, the Commission repeatedly asked the PIO the specific reasons for claiming the said exemption. The PIO simply stated that the information was commercial confidence; he provided no explanation as to how disclosure of the said reports would harm the competitive position of a third party, except mentioning that the designs were of Russian manufacturers. From this statement and the PIOs contention that the reports contained design details, it appears that the contention was that design details of the plant were in these reports and divulging them may be considered disclosing commercial confidence, trade secret or intellectual property and such disclosure may harm the competitive position of the supplier.

As per Section 19(5) of the RTI Act, in any appeal proceedings, the onus to prove that a denial of request was justified shall be on the PIO who denied the request. In the instant matter, the PIO has not given any justification for showing how the security, strategic and scientific interests of the State would be prejudicially affected if the Reports were disclosed-under Section 8(1)(a) of the RTI Act. Further, the PIO's argument indicates that exemption under Section 8 (1) (d) may be attracted if the design details of the plant were disclosed. It follows that the burden required to be discharged by the PIO under Section 19(5) of the RTI Act has not been done as far as exemption under Section 8 (1) (a) is concerned.

The Commission has also perused the Appellant's submissions. The appellant has pointed out that the International Atomic Energy Agency (IAEA) is a specialized body of the United Nations facilitating nuclear cooperation. Any country wishing to enter into an agreement with IAEA for the latter's assistance in relation to sites, design, construction, commissioning, operation, etc of a nuclear facility or any other activity is required to follow the safety and

maintenance standards of IAEA with regard to the activities covered under the agreement. India is a member of the IAEA and has entered into the Application of Safeguards to Civilian Nuclear Facilities Agreement with IAEA in 2009. The KKNPP-Reactors I & II are included in the list of nuclear power facilities and installations annexed to the agreement for application of the safeguards prescribed by IAEA. IAEA has, in its Safety Standards Series, issued a set of standards to be adhered to while undertaking a site evaluation for nuclear installations. Factors relevant in determining the suitability of a site for a nuclear installation are-effects of external events occurring in the site, characteristics of the site and its environment that could influence the transfer to persons and the environment of radioactive material that has been released, and population density and distribution that may affect the possibility of implementing emergency measures. IAEA has issued standards for the safety of nuclear power plants vis-à-vis design, operation and mitigating circumstances that could jeopardize safety. It prescribes safety assessment which is carried out in order to identify the potential hazards that may arise from the operation of the plant. IAEA standards also address events that are unlikely to occur, such as severe accidents and external natural factors, that may lead to major radioactive releases and for which it may be appropriate and practicable to provide preventive and mitigatory measures in the design.

The Appellant has also referred to the Vienna Convention on Nuclear Safety, 1994 (Convention), to which India is a signatory. Article 5 of the Convention requires India to submit for review a report on the measures it has taken to implement each of its obligations under the Convention including evaluation of safeguards and safety standards in place for nuclear power plants. The Appellant has cited the report of 2010 for India and referred to certain parts therein. It has been submitted that the report is required to be made in accordance with each Article listed in the Convention. Reporting in relation to Article 17- which refers to 'Siting' makes it clear that site evaluation does not relate to national security matters under Section 8(1)(a) or anything protected under Section 8(1)(d) of the RTI Act. It purely relates to geography, environment, meteorology, geology etc. These are all connected with the environment directly and inextricably and have a huge bearing on public health and safety. Reliance has also been placed upon Article 14-'Assessment and Verification of Safety' and Article 18-'Design and Construction'. The Appellant has also referred to a Government of India monograph mandating what is involved in site evaluation study and contends that the monograph makes it clear that the entire exercise of site evaluation is for ensuring safety of the environment and the people from any danger or fallouts.

The Commission finds merit in the Appellant's contention. The purpose of a site evaluation for nuclear installation in terms of nuclear safety is to protect the public and the environment from the radiological consequences of radioactive releases due to accidents, etc. The Commission notes that the site evaluation report not only provides the technical basis of the safety analysis report, it contains technical information useful for fulfilling the environmental impact assessment for radiological hazards. Therefore, it follows that the site evaluation report forms an important basis of the environmental impact assessment report as well. In order to appreciate the conclusions reached in the environmental impact assessment report, a citizen must have access to the site evaluation report as well. This will enable the public to obtain a comprehensive understanding of the likely environmental impact of the KKNP Project.

Moreover, any nuclear installation or site must be designed in a way to account for any unforeseen accidents and natural hazards. This is the basic purpose of a safety evaluation and citizens have a right to know what safety assessment has been of the KKNP Project I & II. If

it is disclosed and any deficiencies are pointed out, some corrective actions may be possible. Given the serious implications of the internal and external safety factors relating to nuclear reactors there is a great public interest in disclosing the safety evaluation report of the KKNP Project. Disclosure of the site evaluation and safety assessment reports will enable citizens to get a holistic understanding of the KKNP Project including environment and safety concerns.

It is not denied that the government while formulating policy decisions is guided by its wisdom and priorities for the nation. However, in a democracy, the masters of the government are the citizens. An argument that public servants will decide policy matters by without involving the masters is specious. The government from time to time sets up various commissions, committees and panels to examine pressing issues facing the nation and provide solutions and recommendations for the same. The Government sets such panels, committees, commissions or groups and selects members whose expertise and wisdom is recognized by it. Significant amounts of public funds are deployed for this purpose in order to address the nation's concerns. It is obvious that the Government sees the need for such advice and has given some thought to its composition, so that its findings may be significant and useful. Citizens individually are the sovereigns of democracy and it is their funds which are used for constituting such commissions, committees and panels and preparation of reports. If such reports are put in public domain, citizens' views and concerns can be articulated in a scientific and reasonable manner. Otherwise, citizens would believe that the Government's decisions are arbitrary or corrupt. Such a trust deficit would never be in the interest of the Nation.

The RTI Act recognises the above mandate and in Section 4 contains a statutory direction to all public authorities "to provide as much information suo moto to the public at regular intervals through various means of communications, including internet, so that the public have minimum resort to the use of this Act to obtain information". More specifically, Section 4(1)(c) of the RTI Act mandates that all public authorities shall- "publish all relevant facts while formulating important policies or announcing the decisions which affect public". It follows from the above that citizens have a right to know about the Safety Analysis Report and the Site Evaluation Study Report report, which has been prepared with public money.

The PIO has not justified the denial of the information in terms of Section 8 (1) (a) as required by Section 19 (5) of the Act. He did not give any reasoning to the appellant initially, nor did he provide any cogent explanation during the hearing to the Commission. Section 8(2) of the RTI Act states, "*Notwithstanding anything in the Official Secrets Act, 1923 nor any of the exemptions permissible in accordance with sub-section (1), a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests*". The Commission is of the view that the denial of Section 8 (1) (a) of the RTI Act has not been established, and there is certainly a larger public interest in the disclosure of these reports. Section 8 (1) (d) may be attracted if the said reports have details of designs of the plant which are specially provided by the suppliers. In that event the PIO can sever such design details which have been provided by the supplier as per the provisions of Section 10 of the Act.

The appellant has mentioned that in USA, UK and Canada, safety evaluation reports are uploaded on the government websites for citizens to access. Where world wide, site evaluation and safety analysis reports of nuclear power plants and installations are being put in public domain to elicit public views, India can have no reason to treat its Citizens differently. International best practices have been geared towards disclosure of information

that has a bearing on public safety, health and the environment, and India must strive to follow the same.

Citizens individually are the sovereigns of democracy and it is their funds which are used for constituting agencies which are responsible for site evaluation and safety assessment of a nuclear plant. Therefore it is imperative for citizens to know about the reports so prepared. Moreover, such reports are instrumental in influencing policy decisions as they have a tremendous impact on public health, safety and environment. Therefore, it is only reasonable that citizens express their views on it. Even if the Government decides not to accept the findings, their significance as an important input for policy making and taking decisions cannot be disregarded arbitrarily. If such reports are put in public domain, citizens' views and concerns can be articulated in a scientific and reasonable manner. If the Government has reasons to ignore the reports, these should logically be put before people. Otherwise, citizens would believe that the Government's decisions are arbitrary or corrupt. Such a trust deficit would never be in the interest of the Nation.

The disclosure of the Reports would provide a comprehensive perspective to the citizens about holistic understanding of the KKNP Project including environment, health and safety concerns. It would enable citizens to voice their opinions with the information made available in the said report. Such opinions will be based on the credible information provided by an agency appointed by the government. This would facilitate an informed discussion between citizens based on a report prepared with their/public money. The Respondent-public authority's unwillingness to be transparent is likely to give citizens an impression that most decisions are taken in furtherance of corruption resulting in a serious trust deficit. This hampers the health of our democracy and the correct method to alter this perception is to become transparent. Such a move would only bring greater trust in the government and its functionaries, and hurt only the corrupt. It follows that the Safety Analysis Report and Site Evaluation Report of KKNP Plant I & II must be displayed *suo moto* as per the mandate of Section 4 (1) (c) of the RTI Act.

The preceding arguments lead to the conclusion that all Safety Analysis Reports and Site Evaluation Reports and Environmental Impact Assessment reports prepared by the Department before setting up Nuclear Plants must be displayed *suo moto* as per the mandate of Section 4 (1) (c) & (d) read with 4 (2). If parts of such report are exempt as per the RTI Act, this should be stated and the exempt parts could be severed, after providing the reasons for such severance. Such a practice would be in accordance with the provisions of Section 4 of the RTI Act and would result in greater trust in the Government and its actions.

The Appeal is allowed.

The PIO is directed to provide an attested photocopy of the Safety Analysis Report and Site Evaluation Report after severing any proprietary details of designs provided by the suppliers to the appellant before 25 May, 2012.

Further, the PIO will also ensure that the complete Safety Analysis Report and Site Evaluation Report and the Environmental Impact report are placed on website before 30 May, 2012.

The Commission directs that the Nuclear Power Corporation Of India shall publish all Safety Analysis Reports and Site Evaluation Reports and Environmental Impact Assessment reports prepared by the Department before setting up Nuclear Plants within 30 days of receiving them, unless it feels that any part of such report is exempt under the provisions of Section 8(1) or 9 of the RTI Act. If it concludes that any part is exempt, the reasons for claiming

exemptions should be recorded and the report displayed on the website within 45 days of receipt, after severing the parts claimed to be exempt. There should be a declaration on the website about the parts that have been severed, and the reasons for claiming exemptions as per the provisions of the RTI Act. This direction is being given by the Commission under Section 19(1)(b)(iii) of the Act to the Managing Director of Nuclear Power Corporation of India Limited.

This decision be given free of cost to the parties.

Any information in compliance with this Order will be provided free of cost as per Section 7(6) of RTI Act.

Shailesh Gandhi
Information Commissioner
30 April 2012

(In any correspondence on this decision, mention the complete decision number.)(SS)