

BEFORE THE CENTRAL INFORMATION COMMISSION

Club Building, Old JNU Campus, New Delhi 110067

Ph 26761137, 26105041; Fax: 26186536

September 15, 2010

Appeal against the decisions of the CPIO and Appellate Authority, Ministry of Water Resources, Govt of India

By Swarup Bhattacharyya, 86-D, AD Block, Shalimar Bagh, Delhi 110 088

1. This is appeal under the Right to Information Act, 2005, against the decision of Shri Ram Kumar Sund, Under Secretary to the Govt of India & CPIO, Ministry of Water Resources, B & B Wing, Mohan Singh Place, BKS Marg, New Delhi 110001) and also the decision of Shri Narendra Kumar, Commissioner (B&B) and the Appellate Authority, MWR following my RTI application to MWR on June 9, 2010. The matters under appeal have not been previously filed, or are pending, with any court or tribunal or with any other authority.
2. I had made an application under RTI to CPIO, Ministry of Water Resources, Shram Shakti Bhavan, Rafi Marg, New Delhi 110 001 on June 9, 2010, see a copy of the application at Annexure 1. This was regarding the report of Inter-Ministerial Group (IMG) constituted vide Ministry of Water Resources' O.M. dated 7th August, 2009 to evolve a suitable framework to guide and accelerate the development of Hydropower in the North-East and minutes-agenda notes of the IMG meetings.

3. I received a response from Shri Ram Kumar Sund dated July 9, 2010, No 18/2/2010-B&B/2866, SEE Annexure 2. His Response said in Para 2, “report of IMG is a strategic document of Govt of India and contains certain information which is sensitive with regard to its implications with the neighbouring countries and any disclosure of such information at this stage, may not be economic interest of the country... As such, these documents cannot be shared with the applicant in terms of provisions contained in clause (1)(a) & (1)(i) of Section 8 of the RTI Act, 2005.”
4. On July 15, 2010, I sent an appeal to Shri Narendra Kumar, Commissioner and Appellate Authority, MWR, where I challenged the decision on the CPIO in not providing me the requested documents. The appeal is attached at Annexure 3.
5. On September 3, 2010, I received the response (F No 18/2/2010-B&B) dated August 30, 2010 from the Appellate Authority (see Annexure 4), with the decision that the CPIO decision was correct in not sharing the report, agenda notes and minutes of the IMG under sub section (1)(a) & (1)(i) of Section 8 of the RTI Act, 2005.
6. My Case is as under: Section 8 (1) (a) of RTI Act, 2005 reads:
 8. *(I) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,—*
 - (a) 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;**

In this case, the information requested information on development of hydroprojects in North East and that information should be proactively in public domain and denying this under clause (1)(a) & (1)(i) of section 8 of the RTI Act, 2005 is gross misuse of these sections and complete violation of Letter and Spirit

of RTI Act. We see that this is a meeting about the issues concerning Development Projects and that this affects the people and public interest of people of the region and the country. Disclosure of such information is very vital and important for the people as these decisions are going to involve the fate of large number of people and also use of very large public resources.

In the response it has also been mentioned that providing information in this regard “may not be in economic interest of the country”, the hint is about upstream development by China, as several Indian ministers and officials have publicly and officially stated. To claim that suppression information on development of hydropower projects will help protect the economic interest of India is completely baseless. India is downstream country of China only with respect to some of the tributaries of Brahmaputra that are originating in China, only in case of three of them, namely Siang, Subansiri and Lohit is there substantial catchment area in China and only in case of one, namely Siang, is there a known China plan for storage and diversion of water. As far as run of the river projects are concerned, Indian minister has said on the floor of the Parliament and elsewhere that they do not affect India, though this is an erroneous statement. Even for the Siang, nothing, including denial of such information will stop China from doing what it wants to do on these tributaries. For Subansiri and Lohit, there are no known plans of storage or diversion of water by China.

For the rest of the North East where China is not the upstream country, even this justification is irrelevant and use of these claims is plainly wrong, even by their own admission.

The use of additional Section of 8(1)(i) of RTI Act is wrong. That section cannot be applied as the documents sought are not before any existing proposals before the cabinet. To deny the documents in the name of some future proposals would be against the letter and spirit of the RTI Act. To deny the

information itself under this guise would also be against the letter and spirit of the RTI Act.

Thirdly use of these sections to deny such crucial information of public interest is a blatant misuse of the section, and this ministry has been doing that in numerous cases and should not be allowed. Hence this appeal to CIC.

Moreover, denying the agenda notes and minutes of the meetings of IMG, including annexures under section 8(1) (e) and (i) would be completely wrong. The ministry that is known for its non transparent, unaccountable and non participatory track record, is mis-using these sections to deny information about development projects and processes.

The Ministry's continued denial, one way or the other, of such basic information on development projects in this manner, repeatedly, could have very adverse impact on the rights and perceptions of the people of the region, some of whom are already expressing feeling of alienation.

7. **PRAYERS:** (a) Direct MWR to provide i. copies of the report of the Inter-Ministerial Group (IMG) constituted vide Ministry of Water Resources' O.M. dated 7th August, 2009 to evolve a suitable framework to guide and accelerate the development of Hydropower in the North-East. ii. Copy of agenda notes and minutes of all the meetings of IMG held so far, including annexure as described above; (b) Direct MWR to change its information policy on such issues; (c) making a clear decision that use of section 8(1) (a) and (i) is completely wrong and unacceptable; (d) awarding token Rs 1 penalty to the CPIO and AA for denying this information; (f) make any other appropriate order.

8. Grounds for the prayer are described in paragraph 6 above.

9. The list of documents referred to and attached is given at the end of this appeal, which includes chronology of dates.

(SWARUP BHATTACHARYYA)

VERIFICATION:

I, SWARUP BHATTACHARYYA, do hereby verify that the contents of the above appeal are true and correct to the best of my knowledge and belief and nothing material has been concealed therefrom. Verified at New Delhi on this, the September 15, 2010.

(SWARUP BHATTACHARYYA)

INDEX OF THE DOCUMENTS REFERRED AND ATTACHED, INCLUDING A LIST OF DATES INDICATING CHRONOLOGY OF THE CASE:

Annexure 1: **June 9, 2010:** RTI request to CPIO, MWR

Annexure 2: **July 9, 2010:** MWR Response

Annexure 3: **July 15, 2010:** Appeal to Appellate Authority, MWR

Annexure 4: **August 30, 2010:** Decision of Appellate Authority.