

CENTRAL INFORMATION COMMISSION
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Decision No. CIC/SG/A/2011/002878/16667
Appeal No. CIC/SG/A/2011/002878

Relevant Facts emerging from the Appeal

Appellant : Mr. Sanjay Ramesh Shirodkar,
Runwal Seagull, Bldg. A 3, Flat 504,
Handewadi Road, Hadaspur,
Pune- 411028.

Respondent : Mr. Yashpal Gupta
Public Information Officer & General Manager
IDBI Bank Ltd.
IDBI Tower, WTC Complex,
Cuffe Parade,
Mumbai – 400 005.

RTI application filed on : 16/07/2011
PIO replied : 18/07/2011
First appeal filed on : 12/08/2011
First Appellate Authority order : 17/09/2011
Second Appeal received on : 13/10/2011

Information Sought:

Information regarding Rs. 4200 crores long term loan lent to Mumbai International Airport Ltd. (MIAL) by IDBI led consortium. Copy of all documents (incl. correspondence, memos, circulars, applications, representations etc.)

1. Purpose of the loan?
2. Security to the loan?
3. Who is going to contribute for equity contribution?
4. Whether there is any repayment of existing loan out of this tieup?
5. Envisaged tieups for the total amount with quantum and the lender/participant?
6. Availability of space (land) to carry out such a largescale expansion?
7. Loan will carry interest at 9% p.a. Whether in this current high rate of interest war – to fight with inflation – this rate is justifiable? Give grounds for justification.
8. Copy of documents submitted by MIAL for this long term debt.
9. Copy of Loan Agreement.
10. Copy of guidelines regarding such a huge infrastructure loan decided by IDBI.
11. Copy of Sanctions, Terms and Conditions.

Reply of the Public Information Officer (PIO):

Since the information pertains to the Borrowers of the Bank, it cannot be furnished. It is protected by Sections 8 (1) (d) and (e) of the RTI Act as it pertains to commercial confidence and is available in a fiduciary relationship.

Grounds for the First Appeal:

Refusal to provide information by the PIO.

Order of the First Appellate Authority (FAA):

The FAA held that the information was exempted on the same grounds and thus upheld the decision of the PIO.

Grounds for the Second Appeal:

No information provided by the PIO. FAA has erred in his order.

Relevant Facts emerging during Hearing:

The following were present:

Appellant: Absent;

Respondent: Mr. Yashpal Gupta, Public Information Officer & General Manager on video conference from NIC-Mumbai Studio;

The respondent states that the information being sought by the Appellant relates to a customer of the Bank and this information is held by the Bank in fiduciary capacity. The Bank has denied the information claiming exemption under Section 8(1)(e) of the RTI Act. Section 8(1)(e) of the RTI Act exempts information which is held in a fiduciary capacity by the public authority.

Section 8 (1) (e) of the RTI Act exempts from disclosure ‘information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;’

The traditional definition of a **fiduciary** is a person who occupies a position of *trust* in relation to someone else, therefore requiring him to act for the latter's benefit within the scope of that relationship. In business or law, we generally mean someone who has specific duties, such as those that attend a particular profession or role, e.g. doctor, lawyer, financial analyst or trustee. Another important characteristic of such a relationship is that the information must be given by the holder of information who must have a choice,- as when a litigant goes to a particular lawyer, a customer chooses a particular bank, or a patient goes to particular doctor. An equally important characteristic for the relationship to qualify as a fiduciary relationship is that the provider of information gives the information for using it for the benefit of the one who is providing the information. All relationships usually have an element of trust, but all of them cannot be classified as fiduciary. Information provided in discharge of a statutory requirement, or to obtain a job, or to get a license, cannot be considered to have been given in a fiduciary relationship.

In the instant case very clearly a fiduciary relationship exists, since customers of a Bank come to it because of the implicit trust they have; and they provide information to the Bank for their own benefit. Customers also have a choice of which bank they wish to approach. Hence unless a large public interest is shown the information is exempted from disclosure. In the instant case no larger public interest has been demonstrated.

Decision:

The appeal is disposed.

The information sought by the Appellant is exempted under Section 8(1)(e) of the RTI Act.

This decision is announced in open chamber.

Notice of 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 December 2011

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