

**CENTRAL INFORMATION COMMISSION
B- Wing, 2nd Floor,
August Kranti Bhavan, Bhikaji Cama Place,
New Delhi - 110066**

Appeal Nos.CIC/SS/A/2011/000666

PARTIES TO THE CASES:

Appellant : Shri Vikas Patel (present in person)

Respondent : Deputy Estate Manager, General Administrative Department, Mumbai Port Trust, Mumbai (represented through Shri K.L. Sache, Dy. Estate Manager, Mumbai Port Trust)

Date of Hearing : 26/09/2011

ORDER

1. The Appellant vide his RTI Application dated 27/10/2010 had sought the photocopies of Lease Agreement executed between the Taj Mahal Palace (“Taj Hotel”) situated at Apollo Bunder, Mumbai – 400 001 and the Mumbai Port Trust (“MbPT”) along with all such Lease Renewal Agreements which were executed subsequently between the said parties.
2. The CPIO of the Respondent authority vide his Order dated 09/11/2010 denied the above sought information under Section 8 (1) (e) of the RTI Act. Aggrieved henceforth, the Appellant preferred first appeal dated 07/12/2010 to the FAA of the Respondent authority. The FAA dismissed the said first

appeal vide his Order dated 19/01/2011 and held that MbPT has a fiduciary relationship with its lessees and as such, the copies of the lease agreement cannot be provided to the Appellant. The FAA further held that there was no larger public interest involved in disclosing such information and therefore, upheld the Order of the CPIO.

3. The Appellant has thereafter approached this Commission in second appeal. The Commission has duly considered the submissions made by both the parties and has perused through the material placed on record.
4. The MbPT is constituted by the Major Port Trusts Act, 1963 (“MPT Act”) enacted by the Parliament and the Preamble thereof reads as follows:

“An Act to make provision for the constitution of port authorities for certain major ports in India and to vest the administration, control and management of such ports in such authorities and for matters connected therewith.”

For each major port trust established by the MPT Act, such as the MbPT, the Central Government has constituted a Board of Trustees for such major port under Section 3 of the MPT Act. One of the many powers exercised by the said Board of Trustees under the MPT Act is stated in Section 49 (3) of the said Act and reads as follows:

“(3) Notwithstanding anything contained in sub-section (1), the Board may, by auction or by inviting tenders, **lease any land** or shed belonging to it or in its possession or occupation at a rate higher than that provided under sub-section (1).”

Section 57 of the MPT Act states that the Board of Trustees shall not lease, farm, sell or alienate any power vested in it under the MPT Act of levying rates without the prior sanction of Central Government.

In light of the afore-quoted provisions of the MPT Act, it becomes clear that the power vested in the Board of Trustees of the MbPT to execute lease agreement is a statutory power which cannot be exercised without prior sanction of Central Government. The lease agreement entered into between the MbPT and the Taj Hotel, therefore, cannot be termed as being such information which is held by the MbPT in the capacity of a fiduciary under Section 8 (1) (e) of the RTI Act.

5. It is apposite to mention the following excerpt from the decision of the Hon'ble Kerala High Court in the case of 'Treesa Irish vs Central Information Commission' [ILR 2010 (3) Kerala892]:

“16. [...] it is clear that 'fiduciary relationship', although arises out of a transaction involving trust between two parties, it requires something more than mere trust to make the relationship fiduciary. It also cannot be equated with mere privacy or confidentiality. **At the heart of fiduciary relationship lie reliance, de facto control and dominance. A fiduciary relationship exists when confidence is reposed on one side and there is resulting superiority and influence on the other.** The Canadian Courts have developed the following tests for determining whether fiduciary relationship has been established, viz.

a) The fiduciary has the scope for the exercise of some discretion or power;

b) **The fiduciary can unilaterally exercise that power or discretion so as to affect the beneficiary's legal or practical interests;** and

c) **The beneficiary is peculiarly vulnerable to or at the mercy of the fiduciary holding the discretion or power.**

Based on the legal principles arising from the above discussion, I am inclined to add one more to the same viz.

d) The fiduciary is obliged to protect the interests of the other party.

From the material available on the subject, I am satisfied that those tests can be applied for deciding the question as to whether there is fiduciary relationship between two parties.”

(EMPHASIS ADDED)

6. Clearly, the features of a fiduciary relationship, as observed by the Hon’ble High Court (supra), are missing in a lease agreement entered into between MbPT as an exercise of a statutory power under the MPT Act, with the Taj Hotel. Therefore, there is no merit in the reasoning given by the FAA of the Respondent authority in this regard.

7. The Commission hereby directs the CPIO of the Respondent authority to provide the information sought by the Appellant herein, i.e. photocopies of the lease agreement entered into between the MbPT and the Taj Hotel, Mumbai along with any subsequent renewal agreements thereto, to the

Appellant within 15 days of receipt of this Order. The Appeal is accordingly allowed.

(Sushma Singh)
Information Commissioner
30.09.2011

Authenticated True Copies

(D.C. Singh)
Deputy Registrar

Name & Address of Parties:

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The Appellate Authority/Transparency Officer,
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