

BEFORE THE APPELLATE AUTHORITY
(Under the Right to Information Act, 2005)
SECURITIES AND EXCHANGE BOARD OF INDIA

Appeal No. 5781 of 2023

Pramod Kiron : Appellant

Vs
CPIO, SEBI, Mumbai : Respondent

ORDER

1. The appellant had filed an application dated July 22, 2023 (received by the respondent through RTI MIS Portal) under the Right to Information Act, 2005 (“**RTI Act**”). The respondent, by a letter dated August 17, 2023, responded to the application filed by the appellant. The appellant filed an appeal (Reg. No. SEBIH/A/E/23/00183) dated August 19, 2023. I have carefully considered the application, the response and the appeal and find that the matter can be decided based on the material available on record.
2. **Queries in the application** –The appellant, vide his application July 22, 2023, sought the following information regarding BSE Notice No. 20230602-44 dated June 02, 2023, FAQ on ESM available at NSE website and ESM update Notice No. 20230718-46 dated July 18, 2023:

“Was potential Collateral Damages which could arise out of implementing ESM framework, including the UPDATED ESM2, discussed between SEBI and Exchanges? Was potential Collateral Damages which could arise out of implementing ESM framework, including the UPDATED ESM2, discussed between SEBI and Exchanges?”

1. *If YES, provide the copy of the relevant Minutes of Meetings containing the text of the same.*
2. *If NO, provide us the exemption given to exchanges by SEBI, to disregard all Collateral Damages*
3. *If no exemption was given, please PROVIDE the new notification or instructions given by SEBI to the Exchanges, to take care that such Collateral Damages do not occur AND industries are not made to suffer from lack of capital and bank funding and companies are NOT subjected to reputational damage and investors in such fast growing, Emerging Companies are NOT harassed, by putting the stocks under ESM2 with daily periodic call auction.*

4. Periodic call action was implemented for illiquid securities. Please provide us copy of the Notification or the Minutes of Meeting or published rules which instructs the Exchanges to make liquid stocks illiquid ARTIFICIALLY, by placing them under periodic call auction.

5. If there are no such instructions, please confirm that the Exchanges were wrong in placing liquid stocks under Periodic Call Auction.”

3. The respondent, in response to the aforesaid queries, informed that the queries are in the nature of seeking clarification/opinion and accordingly, the same cannot be construed as seeking “information”, as defined under section 2(f) of the RTI Act.
4. **Ground of appeal-** The appellant has filed the appeal on the ground that the information provided was incomplete, misleading or false. The appellant, in his appeal, *inter alia*, submitted that he had sought for information and not clarification. The appellant also stated that the questions are very pointed and that he had sought minutes of meeting or instructions or notifications for each of the questions.
5. I have perused the aforementioned queries and the response provided thereto. On consideration, I find that the queries are in the nature of seeking clarification/explanation/ opinion/ confirmation from the respondent regarding Enhanced Surveillance Measure (ESM) framework. The queries also appear to be situational queries. In my opinion, the CPIO is not supposed to provide clarification/opinion; or to interpret information; or to compile information as per the desire of the appellant under the ambit of the RTI Act. In this context, reliance is placed on matter of *Azad Singh vs. CPIO, Oriental Insurance Company Limited* (order dated March 23, 2021) wherein the Hon’ble CIC observed that “7. *The Commission, after hearing the submissions of both the parties and after perusal of records, observed that some queries of the appellant are in the nature of seeking explanation/ opinion/ advice/ confirmation/ clarification from the CPIO and he has expected that the CPIO firstly should analyze the documents and then provide information to the appellant. But the CPIO is not supposed to create information; or to interpret information; or to compile information as per the desire of the appellant under the ambit of the RTI Act. As per Section 2(f) of the RTI Act, the reasons/ opinions/ advices can only be provided to the applicants if it is available on record of the public authority. The CPIO cannot create information in the manner as sought by the appellant. The CPIO is only a communicator of information based on the records held in the office and hence, he cannot be expected to do research work to deduce anything from the material therein and then supply it to him.*” In the context of seeking replies to situational queries, I note that the Hon’ble CIC, in the matter of *Mr. Mahendra Kumar Mehta vs. CPIO, SEBI* (Judgment dated April 12, 2021), held that: “9. *This Commission observes that the appellant herein attempts to seek legal opinion/clarification from the CPIO to his situational queries with regard to 'the circular, rules, regulations, notification etc. regarding trading member for taking stock in pledge, collateral, or security for*

providing margin to do trade in reference to derivatives segment, charging of interest and GST, precaution to be taken by trading member for protection of constituents individual/HUF etc.'. Therefore, the CPIO is not supposed to interpret information; or to furnish replies to situational queries; or to furnish clarifications. Hence, such queries seeking legal opinion/clarification from the CPIO are not covered within the definition of 'information' u/ Section 2(f) of the RTI Act, 2005. Accordingly, this Commission upholds the contention put forth by the CPIO." In view of these observations, I find that the said queries cannot be construed as seeking 'information' as defined under section 2 (f) of the RTI Act. Accordingly, I do not find any deficiency in the response.

6. Further, I note that the appellant, in his application, requested the CPIO to confirm that the Exchanges were wrong in placing liquid stocks under Periodic Call Auction in the absence of certain instructions. In my opinion, the appellant cannot expect the respondent to take certain action under the RTI Act. In this regard, the Hon'ble CIC, in the matter of *Mohan Kumar Sharma vs. CPIO, Prime Minister's Office* (order dated November 26, 2019), held that "7. *In view of the above, the Commission observes that under the RTI Act the CPIO provides information available with him or held by him. Thus, the appellant cannot expect the respondent to take certain action or initiate action as desired by him.*" In view of these observations, I find that the request made by the appellant in the application, does not warrant consideration under the RTI Act.
7. In view of the above observations, I find that there is no need to interfere with the decision of the respondent. The Appeal is accordingly dismissed.

Place: Mumbai

Date: September 14, 2023

ANAND BAIWAR

**APPELLATE AUTHORITY UNDER THE RTI ACT
SECURITIES AND EXCHANGE BOARD OF INDIA**