

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

Appeal No. 5604 of 2023

Dr A K Asthana	:	Appellant
	Vs	
CPIO, SEBI, Mumbai	:	Respondent

ORDER

1. The appellant had filed an application dated December 23, 2022 (received by SEBI on December 28, 2022) under the Right to Information Act, 2005 (“**RTI Act**”). The respondent, by a letter dated January 23, 2023, responded to the application filed by the appellant. The appellant filed an appeal dated February 13, 2023 (received by the Office of Appellate Authority on February 17, 2023). The appeal is being taken up for consideration and disposal today due to official exigency. 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. **Ground of appeal-** On perusal of the appeal, it appears that the appellant is not satisfied with the response provided by the respondent with respect to query numbers 2, 3, 4, 5, 6, 7, 8 and 10. In view of the submissions made by the appellant in his appeal, I am only dealing with the said queries and the response provided thereto, in this order.
3. **Query numbers 2 to 8-** The appellant, vide query numbers 2 to 8, sought the following information-

“2. During 2022 whether SEBI has paid bill along with GST amount submitted by Empanelled/recognized SMARTS/LAs/CoT for conducting investor awareness programs/commodity awareness programs on behalf of SEBI under the aegis of SEBI Investor Protection and Education Fund (SEBI IPEF).

3. Whether the SEBI has continued to pay the bill of investor awareness programs/commodity awareness programs on behalf of SEBI under the aegis of SEBI Investor Protection and Education Fund (SEBI IPEF) including GST amount or discontinue to pay bill with GST submitted by Empanelled/recognized SMARTS/LAs/CoT for conducting investor awareness

programs/commodity awareness programs on behalf of SEBI under the aegis of SEBI Investor Protection and Education Fund (SEBI IPEF).

4. From which month in 2022 SEBI has decided not to pay GST amount on the bills submitted by empanelled/ recognized SMARTS/LAs/CoT for investor awareness programs/commodity awareness programs on behalf of SEBI under the aegis of SEBI Investor Protection and Education Fund (SEBI IPEF).

5. If SEBI pay the bill with GST to empanelled/ recognized SMARTS/LAs/CoT for conducting investor awareness programs/commodity awareness programs on behalf of SEBI under the aegis of SEBI Investor Protection and Education Fund (SEBI IPEF) and empanelled recognized SMARTS/LAs/CoT deposit the GST amount against GST Number of SEBI then whether SEBI is taking input credit from it.

6. Please intimate under which rule of GST, SEBI establishes a principal agent relationship with its empanelled/recognized SMARTS/LAs/CoT for investor awareness programs/commodity awareness programs on behalf of SEBI under the aegis of SEBI Investor Protection and Education Fund (SEBI IPEF).

7. SEBI as principal has supplied which goods to empanelled/ recognized SMARTS/LAs/CoT as agent.

8. Whether the training programme rendered by empanelled/ recognized SMARTS/ LAs/CoT comes under category of good or service.”

4. 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. The appellant, in his appeal, *inter alia*, reiterated the queries and requested to provide the information sought by him. The appellant also submitted that the respondent did not provide complete information and tried to circumvent the issue by taking the help of section 2(f) of the RTI Act. Further, the appellant submitted that he had sought information and not opinion/clarification.
5. I have perused the queries and the response provided thereto. On consideration, I find that that the queries of the appellant are in the nature of seeking clarification from the respondent. I note that 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. 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/advice 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 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. **Query number 10-** The appellant, vide query number 10, sought the following information-

"10. Does SEBI has issued the circular or letters to Cots to this effect that they will not pay to GST and listed the same in its website. If yes, then provide copy of said circular/letter.

Please provide the note sheet associated with processing of above bills. If it is processed on e-office like software, then screen shot of all till the amount is credited in Institute account."

7. The respondent, in response to the aforesaid query, informed that the query is 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. The respondent also informed that the information sought in the second part of the query is exempt from disclosure under section 8(1)(a) and 8(1)(d) of the RTI Act since the same pertains to internal functioning of SEBI and the same is strategic in nature, disclosure of which may hamper the decision making by SEBI in its supervisory and regulatory role. Further, the respondent stated that the requested information includes confidential information of other entities which are commercial in nature and disclosure of the same could harm their competitive position.

8. I have perused the query and the response provided thereto. With respect to the first part of query number 10, I find that the same is in the nature of seeking clarification/opinion from the respondent. The query also appears to be a situational query. As noted above, the respondent is not supposed to create information; or to interpret information; or to furnish clarification to the appellant under the ambit of the RTI Act. In this context, 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 respondent did not have any obligation to provide clarification/opinion with respect to situational query, under the RTI Act. Accordingly, I do not find any deficiency in the response.

9. With respect to second part of query number 10, I note that the appellant has sought information regarding four bills submitted by Udaybhasinhji Regional Institute of Cooperative Management (URICM), Gandhinagar. I note that the respondent has denied the information on the ground that the same is exempt from disclosure under section 8(1)(a) and 8(1)(d) of the RTI Act. On perusal of the application and the appeal, I note that the same have been filed by the appellant, who is the director of URICM. Further, I find that the respondent has not explained how the requested information is exempt from disclosure under section 8(1)(a) of the RTI Act. Accordingly, it would be appropriate to remit the query for reconsideration.
10. In view of these observations, I remit the application to the respondent for reconsidering second part of query number 10 and to provide a revised response within 15 working days from the date of receipt of this order.
11. The Appeal is accordingly disposed of.

Place: Mumbai
Date: March 20, 2023

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