

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

Appeal No. 5941 of 2024

Amit Gupta	:	Appellant
	Vs	
CPIO, SEBI, Mumbai	:	Respondent

ORDER

1. The appellant had filed an application (Reg. No. SEBIH/R/P/24/00004) dated December 29, 2023 (received by SEBI on December 29, 2023) under the Right to Information Act, 2005 (“**RTI Act**”). The respondent, by a letter dated January 25, 2024, responded to the application filed by the appellant. The appellant filed an appeal dated March 01, 2024 (received by the Office of Appellate Authority on March 05, 2024).
2. In this appeal, the appellant has made a request for a personal hearing. I have carefully considered the application, the response and the appeal. I note that the nature of the request, the response of the CPIO and the grounds of appeal are self-explanatory and not complex. On the issue of providing an opportunity of hearing by the FAA under RTI Act, a full bench of Hon’ble Central Information Commission (hereinafter referred to as “**CIC**”) in *Bombay Stock Exchange Limited vs Securities and Exchange Board of India* (File No. CIC/SM/A/2011/001687) observed that “*It is not practical to lay down an inflexible rule that PIOs and AAs will always offer an opportunity of hearing to the parties, let alone to the 3rd party. They may do so as per their discretion, keeping in view the complexity of legal and factual issues involved, without forgetting that timelines are to be adhered to, being the essence of the Act.*” Therefore, it is noted that there is no specific requirement under the provisions of the RTI Act, of providing a personal hearing by the FAA and that the discretion to give hearing to the appellant shall be exercised considering the complexity of the issues involved and the timelines specified under the RTI Act. In this context, reliance is also placed on the decisions of the Hon’ble CIC in the matters of *Mr. Milind Hemant Kotak, Mumbai vs. Canara Bank* (Decision dated April 24, 2008) and *Mr R.K Jain vs. UPSC* (Decision dated March 10, 2014). Therefore, I am of the opinion that the appeal can be decided on the basis of material available on record.

3. **Ground of appeal** - On perusal of the appeal, it appears that the appellant is not satisfied with the response provided by the respondent. The appellant, in his appeal, has raised dissatisfaction with respect to reply of the respondent pertaining to his requests nos. 1-7 and 9 of his application.
4. **Request no. 1 of the application-** The appellant, vide his request no. 1 of the application, *inter alia*, sought the following information:

(01) Provide two certified hard copies of information about the details (name of employee/s, address, contact numbers, email IDs etc.) of complaint handling (complaint escalation matrix) higher authority against dissatisfying with SEBI LAD-OLAE actions about LAPS-SMART matters of SEBI. (Complaint/ Grievances handling for FY2020-21, FY2021-22, FY2022- 23 and FY2023-24) ...”

5. **Reply of the Respondent** - The respondent, in response to request no. 1, provided the name and contact details of the higher authority, in case of any grievances with respect to IAPs of SMARTS. Further the respondent also provided the link to access the directory of SEBI employees on SEBI website.
6. I have perused the request and the response provided thereto. On consideration, I note that respondent has provided all the relevant information as available with him and has also guided the appellant to access the specific link on SEBI website. In my opinion the said request has been adequately addressed by the respondent. However, I note that the appellant, in his appeal has submitted that the information sought in the tabular format has been denied to him. I note that the appellant in his application has merely provided a table without making any request for information in respect to the said table. The said table has been put in the application without any context and background. Hence, I am of the view that the said request is vague and not specific. Further, the public authorities are not obligated to indulge in speculation or conjecture to decipher the intent of an ambiguous request. It is an established law that the information sought for in order to be disclosable under the RTI Act, must be clear, specific and available in the records of the public authority. In this context, I note that in the matter of *Mr. T. V. Sundaresan vs. CPIO, Securities and Exchange Board of India* (Decision dated November 24, 2021), the Hon’ble CIC held: *“The framework of the RTI Act, 2005 expects that the information sought is specific and believed to be existing with the public authority in documented or material form as such; which can be shared with the appellant as per the provisions of the RTI Act. Answering to broad, multiple and general queries and presumptive documents that should have been generated as per the expectation of the appellant cannot be furnished under the provisions of the Act.”* In view of these observations, I find that the request cannot be construed as seeking “information”, as defined under section 2(f) of the RTI Act.

7. **Request nos. 2, 3, 4 and 6 (i-iv) of the application** - The appellant, vide his request nos. 2, 3, 4 and 6 (i-iv) of the application, *inter alia*, sought the following information:

“(02) Provide two certified hard copies of the information about the documents related to the Investor Awareness Program (Online and Offline) conducted by the Organization category SEBI recognized SMART's Ambition Learning Solutions (ALS), ... from Nov 2020 to December 2023(till date) in the below- given format or the best available format with you to cover maximum desired information in the provided format...”

(3) Provide two certified hard copies of the information about the documents related to the Investor Awareness Program (Online and Offline) conducted by the SEBI-recognized SMARTS (Including Organization category and Individual category) from Nov 2020 to December 2023 (till date) in the below-given format or best available format with you to cover maximum desired information in the provided format...

(4) Provide two certified hard copies of the information about the documents related to the reimbursement claim submitted for the Investor Awareness Program (Online and Offline) conducted by the SEBI-recognized SMART, Ambition Learning Solutions (ALS), Mumbai ... from Nov 2020 to December 2023(till date) in the below-given format or the best available format with you to cover maximum desired information in the given format...”

“(6) Provide two certified hard copies of the information about the documents related to the below-mentioned table format or the best available format with you to cover the maximum desired information in the given format:

- i) Complaint Status against SEBI Empaneled Organisations SMARTs for FY 2020-21...*
- ii) Complaint Status against SEBI Empaneled Organisations SMARTs for FY 2021-22...*
- iii) Complaint Status against SEBI Empaneled Organisations SMARTs for FY 2022-23...*
- iv) Complaint Status against SEBI Empaneled Organisations SMARTs for FY 2023-24...”*

8. **Reply of the Respondent** - The respondent, in response to the aforesaid request, informed that the information sought relates to the activities of third parties which is available with SEBI in fiduciary capacity and includes commercial confidential information of other entities, the disclosure of which could hamper the competitive position of the entities. Hence the information sought is exempt u/s 8(1)(d) & 8(1) (e) of RTI Act.

9. I have perused the aforesaid request and the response provided thereto. As regards, the request nos. 2- 4 of the application, seeking information regarding the Investor Awareness Programs conducted by other individuals and Organisation SMARTS (including ALS) and the reimbursement claims for these programs. I concur with the response of the respondent that the requested information is available to SEBI in fiduciary capacity. In the context of non-disclosure of information under Section 8(1)(e) of the RTI Act, 2005, the decision of the Hon'ble Supreme Court of India in *Institute of Chartered Accountants of India Vs. Shaunak H. Satya and Ors.*, in Civil Appeal NO. 7571 of 2011- dated 02/09/2011 is referred to, wherein it was held that: "... In other words, anything given and taken in confidence expecting confidentiality to be maintained will be information available to a person in fiduciary relationship". I, therefore, find that the requested information is exempt from disclosure under section 8(1)(e) of the

RTI Act. Further, I note that the appellant, in his appeal, has cited few orders, however, the same are distinguishable from the facts of the instant case. Accordingly, I do not find any deficiency in the response of the respondent

However, as regards request no. 6 of the application, seeking information regarding complaints against certain individuals and Organisation SMARTS. I find that the response provided by the respondent does not justify the denial of the requested information on the ground that the same is exempt from disclosure under 8(1)(d) and 8(1)(e) of the RTI Act. In my view, the respondent was obliged to ascertain availability of the requested information with SEBI and whether the same may be provided to the appellant in accordance with the provisions of the RTI Act. Accordingly, on consideration, I find that the said requests have not been adequately addressed by the respondent and the same warrants reconsideration.

10. **Request nos. 5 and 9 of the application** - The appellant, vide his request nos. 5 and 9 of the application, *inter alia*, sought the following information:

“(05)” Provide two certified hard copies of the information about the documents related to the reimbursement claim submitted for the Investor Awareness Program (Online LAP) conducted by the SEBI-recognized SMART (Mr. Amit Gupta from Thane location, Registration No....) from Nov 2020 to December 2022 in the below-given format or best available format with you to cover maximum desired information in the given format...”

“(09) Provide two certified hard copies of information about all the communications (including emails, letters, notices sent by you, replies of notices received by you etc.) about LAP scheduling, LAP approval, Web meeting link sharing and claim/bill submitted & paid/unpaid for the Online LAPs Webinar delivered by Me (Mr. Amit Gupta,) as the SEBI Recognized Individual SMART (Mr. Amit Gupta, SEBI Ex-SMART Registration No...: ”

11. **Reply of the Respondent** - The respondent, in response to the aforesaid request informed that the information sought has already been replied by CPIO vide SEBI letter No. 2485-2023-24 dated 17/10/2022.
12. I have perused the aforesaid request and the response thereto. I note that similar requests were sought by the appellant in his earlier RTI application, for which the respondent has already provided the reply vide SEBI letter No. 2485-2023-24 dated 17/10/2022. In the context of filing repetitive requests under RTI Act, the Hon'ble CIC in the matter of *Shri Ramesh Chand Jain vs. Delhi Transport Corporation, GNCTD, Delhi* (File No. CIC/AD/A/2013/001326-SA decided on June 25, 2014) held that “*The universal principles of civil justice also recognized ‘constructive res judicata’, which in the RTI context means when an applicant uses an opportunity of obtaining information on a particular subject as per law, he is*

expected to seek all the related information in that first ever opportunity itself. He cannot file another application for a bit or piece which he forgot to ask, or not advised by his lawyer, or for any other reason. He should ask all possible aspects of information about that subject matter, in the first ever available opportunity. Even if he does not, it is presumed by law that he asked for that and was refused after due trial..... Thus, once information is given, applicant shall not seek the same once again in the guise of different form or language. If the applicant seeks information again and again, the PIO, the First Appellate Authority and the Commission would be forced to spend their time on this repeated application, and in the process the authorities would lose that much time to address the other RTI applications or performing their general duties in their public office. Repeated RTI applications will amount to clogging the office of public authority and CPIO would be justified in refusing the same with intimation of reasons. Because the repeated RTI application has an effect of clogging the public offices, it would amount to obstructing the free flow of information to deserving and genuine RTI applicants, besides preventing the officers from performing their general duties attached to their office". Hence, I do not find any deficiency in the response of the respondent.

13. **Request nos. 7 (i-iv) of the application** - The appellant, vide his request nos. 7 (i-iv) of the application, *inter alia*, sought the following information:

"(07) Provide two certified hard copies of the information about the documents related to the below-mentioned table format or the best available format with you to cover the maximum desired information in the given format:

- (i) Complaint Status against Employees/ Department of SEBI Investor OLAE) for FY 2020-21...*
- (ii) Complaint Status against Employees/ Department of SEBI Investor OLAE) for FY 2021-22...*
- (iii) Complaint Status against Employees/ Department of SEBI Investor OLAE) for FY 2022-23...*
- (iv) Complaint Status against Employees/ Department of SEBI Investor OLAE) for FY 2023-24..."*

14. **Reply of the Respondent** - The respondent, in response to request nos. 07 (i-iv), informed that the information sought relates to personal information, the disclosure of which has no relationship to any public activity or interest and may cause unwarranted invasion into the privacy of the officials and may also endanger the life or physical safety of the person(s). Hence, the same is exempt in terms of Sections 8(1)(g) and 8(1)(j) of the RTI Act.

15. I have perused the request and the response provided thereto. I find that the response provided by the respondent does not justify the denial of the requested information on the ground that the same is exempt from disclosure under Section 8(1)(g) and 8(1)(j) of the RTI Act. In my view, the respondent was obliged to ascertain availability of the requested information with SEBI and whether the same may be provided to the appellant in accordance with the provisions of the RTI Act. Accordingly, on consideration, I find that the said requests have not been adequately addressed by the respondent and the same warrants reconsideration.

16. Considering the above observations, I remit the application to the respondent for *de novo* consideration of request nos. 6 and 7 of the application and sending appropriate response to the appellant in terms of RTI Act, within 15 working days from the date of receipt of this order.
17. The Appeal is accordingly disposed of.

Place: Mumbai
Date: March 22, 2024

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