सूचना का अधिकार अधिनियम

RTI Appeal

Due date – 27.10.2018

समय बद्ध/Time Bound

भारत सरकार

खान मंत्रालय

विषय - सूचना का अधिकार अधिनियम, 2005 के तहत Sh. Anup Jain, R/o New Delhi से प्राप्त अपील के संबंध में।

Sh. Anup Jain, R/o New Delhi से प्राप्त मूल अपील दिनांक 26.09.2018 को इस पत्र के साथ उपचित कार्यवाही हेतु भेजा जा रहा है।

2. आपसे अनुरोध है कि उक्त अपील/पत्र का निस्तारण दिनांक 27.10.2018 से पूर्व किया जाए और प्रतिलिपि सूचनार्थ पी.आई. सेल को भी भेजी जाए।

राकेश मोजा
(राकेश मोजा)

उप सचिव भारत सरकार

ई-मेल: rakesh.moza@nic.in

संलग्न: मूल अपील Dy. No. 119215 dt. 27.09.2018

Smt. D. Veena Kumari, निदेशक/अपीलीय अधिकारी (M-VI), खान मंत्रालय

FIRST APPEAL UNDER SECTION 19(1) OF THE RIGHT TO INFORMATION ACT, 2005

To,

Shri Shersha,
Appellate Authority - RTI (Records Section)
Ministry of Mines
Room No. D-309,
IIIrd Floor, Shashtri Bhawan,
New Delhi - 110001

1. Name of the Appellant: Anup Jain
   (a) Address: #33, 9th Floor, Dakshineshwar Building, 10 Hailey Road,
               New Delhi - 110001

2. Particulars of the Nodal Officer (RTI):
   (a) Name: Mr. Rakesh Moza
   (b) Address: Deputy Secretary, Ministry of Mines,
                Room No. D-313, 3rd Floor, Shastri Bhawan,
                New Delhi - 110001

3. Date of submission of application for seeking information: 07/08/2018
   Date on which 30 days from submission of application are over: 06/09/2018

3. Reasons for appeal
   (a) No response received within the specified time-limit: YES
   (b) Aggrieved by the response received within the specified period: N.A.
   (b) Grounds for appeal:
   i. Because the information sought have not been received with the prescribed time frame.
   ii. Because CPIO of Ministry of Mines (MoM) was bound to disclose the information sought by the Appellant.
   iii. Because the information sought by the Appellant does not relate any personal information, which would cause unwarranted invasion to the privacy of any individual, hence CPIO of MoM was bound to disclose the information sought by the Appellant.
   iv. Because the information sought by the Appellant does not warrant under any exempted categories.
   v. Because the CPIO of MoM has completely failed to disclose the relevant information that he was bound to disclose as per the provisions of the RTI Act, 2005.

4. Last date for filing the appeal: 05.10.2018

5. Particulars of Information
   (a) Information requested: (Redacted)
<table>
<thead>
<tr>
<th>Query - RTI</th>
<th>Grievance of the Appellant</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Copies of the reports/clarifications/opinions (single or multiple) of Department of Legal Affairs under Ministry of Law and Justice as referred in the Circular dated 02.01.2018 numbered as 16/136/2016-M/VII issued by Ministry of Mines including on the issue of transfer of Mining Lease qua merger/amalgamation of Companies prior to 2015 amendment in MMDR Act.</td>
<td>Desired Report not provided nor MoM responded to Appellant’s RTI Application.</td>
</tr>
<tr>
<td>(b) Copies of the note sheets of consultations of Ministry of Mines with Department of Legal Affairs under Ministry of Law and Justice on the issue referred in Sl. No. (a) above.</td>
<td>Desired note sheets not provided nor MoM responded to Appellant’s RTI Application.</td>
</tr>
<tr>
<td>(c) Copies of all other documents forming the basis of ‘considered opinion’ as reflected in Para No. 9 of referred Circular dated 02.01.2018.</td>
<td>Desired documents not provided nor MoM responded to Appellant’s RTI Application.</td>
</tr>
<tr>
<td>(d) Copies of the advice letter/opinion letter (single or multiple), by whatever name so called, so issued by the Ministry of Mines to the Department of Legal Affairs under Ministry of Law and Justice, as referred in Para No. 7 of referred Circular dated 02.01.2018.</td>
<td>Desired advice letter/opinion letter not provided nor MoM responded to Appellant’s RTI Application.</td>
</tr>
<tr>
<td>(e) Copies of any other information directly or indirectly in relation to, or incidental to, the aforementioned subject matter.</td>
<td>MoM responded to Appellant’s RTI Application.</td>
</tr>
</tbody>
</table>

Place: New Delhi
Date: 26/09/2018

**CC:**
Mr. Rakesh Moza  
Nodal Officer (RTI)  
Deputy Secretary, Ministry of Mines, Room No. D-313, 3rd Floor,  
Shastri Bhawan,  
New Delhi - 110001

Anup Jain, Advocate  
Appellant  
#33, 9th Floor, Dakshineshwar Building, 10 Hailey Road,  
New Delhi - 110001  
M: 9312989749  
E: adv.anupjain@gmail.com
Ref. No. RTI/Aug 18-19/01

To,

Shri Rakesh Moza,
Deputy Secretary / Nodal Officer (RTI)
Ministry of Mines,
Room No. D-313, 3rd Floor, Shastri Bhawan,
New Delhi - 110001.

Subject: Application under Section 6 of the Right to Information Act, 2005, seeking inter alia following information and documents:

(a) Report(s)/clarification(s)/Opinion(s) of Department of Legal Affairs under Ministry of Law and Justice as referred in the Circular dated 02.01.2018 numbered as 16/136/2016-M/VI issued by Ministry of Mines including on the issue of transfer of Mining Lease qua merger/amalgamation of Companies prior to 2015 amendment in MMDR Act.

(b) Note sheets of consultations of Ministry of Mines with Department of Legal Affairs under Ministry of Law and Justice on the issue referred in Sl. No. (a) above.

Respected Sir,

Upon going through the Circular dated 02.01.2018 numbered as 16/136/2016-M/VI issued by Ministry of Mines (enclosed) which was subjected as 'Clarification on the issue of transfer of mining leases - regarding', I request you to please provide me the following documents as referred therein:

(a) Copies of the reports/clarifications/opinions (single or multiple) of Department of Legal Affairs under Ministry of Law and Justice as referred in the Circular dated 02.01.2018 numbered as 16/136/2016-M/VI issued by Ministry of Mines including on the issue of transfer of Mining Lease qua merger/amalgamation of Companies prior to 2015 amendment in MMDR Act.
(b) Copies of the note sheets of consultations of Ministry of Mines with Department of Legal Affairs under Ministry of Law and Justice on the issue referred in Sl. No. (a) above.

(c) Copies of all other documents forming the basis of 'considered opinion' as reflected in Para No. 9 of referred Circular dated 02.01.2018.

(d) Copies of the advice letter/opinion letter (single or multiple), by whatever name so called, so issued by the Ministry of Mines to the Department of Legal Affairs under Ministry of Law and Justice, as referred in Para No. 7 of referred Circular dated 02.01.2018.

(e) Copies of any other information directly or indirectly in relation to, or incidental to, the aforementioned subject matter.

The Applicant undertakes to pay all expenses and charges incurred in obtaining the information and the copies of the aforementioned documents and informations sought under Right to Information Act.

In anticipation of the expense / charges for the copies to be obtained, the Applicant has also enclosed postal order of Rs. 10/- Kindly acknowledge the receipt of the present application preferred along with the requisite postal order and as enclosure Circular dated 02.01.2018 numbered as 16/136/2016-M/Vl issued by Ministry of Mines.

Thanking you,

ANUP JAIN,
Advocate.

Encl: As above.  
I.P.O. No. 70C 875702  
70C 875701
6. Besides the references received from Government of Gujarat, the Ministry has been receiving representations from the industry who are basically asserting that transfer of mining leases in their case is not required to be subject to provisions of 2016 Transfer Rules. There are two categories of representations. The first being “inter-group”, i.e., in the case involving transfer of mining leases from Grasim Industries Ltd. to Ultratech Cement Ltd., and the second being “inter-group” involving transfer of mining leases as a result of restructuring within the same ‘Group’.

7. In this regard, the Ministry consulted the advice of DOLRA which clarified that the schemes of amalgamation and reconversion, including mining lease approved by the concerned High Court is subject to conditions and approvals as required by law. The application filed by Ultra Tech Cement before the State Government for transfer of mining lease in its name, was pending on the date of coming into force of the Amendment Act of 2015, kept its identity and becomes non-ex. Now, on coming into force of the Amendment Act of 2016, transfer of mining lease can be considered under the Transfer Rules, 2016 only and it has to make fresh request as per the existing Rules.

8. DOLRA has further clarified that so far as inter-group transfer is concerned, Section 12A(6) of the MMDR Act makes no difference in respect of transfer of mining leases, whether it is inter-group transfer or inter-group transfer.

9. In view of the aforesaid, the Ministry is of the considered opinion that when the scheme provides that transfer has to be done in a certain manner then there is no other manner in which the transfer can be made effective.

10. As the State Governments/LTs are hereby advised to process applications for transfer of mining lease granted otherwise than through section in accordance with the extant provisions of MMDR Amendment Act, 2016 and the rules framed thereunder.

This issues with the approval of the competent authority.

Yours faithfully,

[Signature]

[Name]

[Title]

[Address]

[Telephone]

[Date]
To

Chief Secretary / Principal Secretary, Government of India, Ministry of Mines

Subject: Clarification on the issue of transfer of mining leases—regarding.

The Ministry of Mines is in receipt of several applications received from industry and a couple of State Governments seeking clarification on the issue of transfer of mining leases. In this regard, it is informed that the matter was examined in the Ministry in consultation with the Department of Legal Affairs (DOLAs) and the Ministry of Law.

1. For example, in the reference received from Government of Gujarat, UltraTech Cement Ltd has informed that since marginalization of companies under order of the Honourable High Court has been done prior to the MMDR Amendment Act, 2015 and MMDR Amendment Act, 2016, the applicability for transfer of mining leases from UltraTech Cement Ltd. need to be dealt in accordance with the provisions of the aforesaid MMDR Act and extant rules in effect before the commencement of MMDR Amendment Act, 2015 and MMDR Amendment Act, 2016.

2. In this matter, the Government of Gujarat informed that UltraTech had applied to the State Government for transfer of the said mining leases, and that the applications made by UltraTech for transfer of mining leases are still pending before the State Government of Gujarat.

3. The Ministry is of the considered view that the aforementioned of the MMDR Amendment Act, 2015 i.e., 2012-2015, as transfer of lease granted after April 2012 through auctions were banned. As a consequence, all applications for such transfer that were pending as on that date because null and void.

4. The new window that was opened by the MMDR Amendment Act, 2016, namely, did not introduce any substantive changes to, or modifications in, the legislative scheme that was enacted by the 2013 Amendment Act, 2013. Anybody wanting to take advantage of the 2014 Amendment shall have to make a fresh application for transfer of mining leases which has to be necessarily dealt with in accordance with the extant statutory provisions that is, the provisions of the MMDR Amendment Act, 2016 and the Mines Transfer of Mining Lease Deemed Otherwise than Through A Scheme for Capacity Purchase Rules, 2016.

Ministry of Mines
Dated 3rd January, 2021

[Signature]
To

Shri Anup Jain
Advocate on Record, Supreme Court of India
Flat No. 33, 9th Floor, Dakshineswar Building
Hailey Road, New Delhi – 110 001

Subject: Appeal under RTI Act, 2005.

Sir,

Please refer to your appeal dated 26.09.2018. The information in reply to your RTI application dated 07.08.2018 has been provided by the CPIO vide letter dated 06.09.2018. A copy of the same is enclosed.

2. Appeal is hereby disposed off.

3. In case, you are not satisfied with information provided, you may prefer second appeal in the Central Information Commission, under the provisions of the RTI Act 2005.

Yours faithfully,

(Dr. Veena Kumari D)
Director and Appellate Authority
Phone No. 2338 8345

Copy to: ACPIO, (PI Cell) M/o Mines, w.r.t Dy. No. 119215/2018 dated 28.09.2018