सत्यमेव जयते

सूचना का अधिकार
RIGHT TO INFORMATION

ARUNACHAL PRADESH INFORMATION COMMISSION
ITANAGAR

BEFORE THE FULL BENCH COURT OF STATE INFORMATION COMMISSIONERS

No.APIC-19/2024 Dated, Itanagar the **27th June, 2024**

Appeal Under Section 19(3) RTI Act, 2005

Appellant: Shri Riya Taram, Adv. Lokam Tadam & Adv. Tap Sajan, 3D Hotel Chandanagar, Itanagar, Papum Pare District, Arunachal Pradesh, PIN-791111. (M) 93831033871 / 9402443699.

Vs

Respondent: The PIO-cum-EE(PHE & WS) Tawang Division, Tawang District, Arunachal Pradesh, PIN-790104.

ORDER

1). This is an appeal under Section 19(3) of RTI Act, 2005 filed by Shri Riya Taram, Adv. Lokam Tadam & Adv. Tap Sajan, 3D Hotel Chandanagar, Itanagar, Papum Pare District, Arunachal Pradesh, for non-furnishing of information by the PIO-cum-EE(PHE & WS) Tawang Division, Tawang District, Arunachal Pradesh, as sought by the Appellant under section 6(1) of RTI Act, 2005 vide Form-A Dated 14/08/2023 of all the relevant information of entire PHE & WS Tawang Division regarding the allocation of fund under JJM/NRDWSP/SBM(G) schemes for implemented / expenditure of support activities and water quality monitoring surveillance (WQM&S)/ Maintenance of water Supply and Materials Supply work from 2016 to 2023.

2). **The 1st hearing is held today on 27th June, 2024 as scheduled**. The PIO-cum-EE(PHE & WS) Tawang Division, Tawang District, Arunachal Pradesh is represented by Shri Hillang Kaya, J.E. (PHE & WS) Tawang Division. The representative of the PIO has submitted that the information sought for is very vague and voluminous. Practically it is not possible to collect such huge information within the prescribed time and furnish to the Appellant. However, certain information has been collected and brought in the court room to hand over to the Appellant.

3). The Appellant Shri Riya Taram is absent. So, the information could not be handed over to him.

4). The Commission after perusing the records available and in observance of section 6(1)(b) and Section 7(9) of the RTI Act, 2005 directed the Appellant to seek specific information, i.e. detail of information for one specific work of one financial year in one application, so that the public authority can furnish information within prescribed time period, without disproportionately diverting the resources. As the information sought for by the Appellant is vague and voluminous. The information sought is for **all the relevant information of entire PHE & WS Tawang Division regarding the Allocation of Fund under JJM/NRDWSP/SBM(G) schemes for Implemented / Expenditure of Support Activities and Water Quality Monitoring Surveillance (WQM&S)/ Maintenance of water Supply and Materials Supply work from 2016 to 2023.**

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5). In this context, it is relevant to mention observation of the Central Information Commission in the case of *"Ashok Kumar vs Department Of Higher Education on 3 January, 2020 CIC/DHEDU/A/2018/145972/02526 File no.: CIC/ DHEDU /A/ 2018 / 145972"* -

> *"From a perusal of the relevant case records, it is noted that the information sought by the appellant relates to all the IITs and Sec 6(3) transfer by the CPIO, MHRD to all the IITs was not practicably possible. Moreover, it is pertinent to mention here that the sought for information is voluminous and direction for disclosure would disproportionately divert the resources of the public authorities. It is relevant to mention below the Apex Court observations relating to impractical demands of the appellants in the case of CBSE vs Aditya Bandopadhyay & Ors on 9 August, 2011, Civil Appeal No.6454 of 2011[Arising File no.: CIC/DHEDU/A/2018/145972 –*
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> > *"37. .....Indiscriminate and impractical demands or directions under RTI Act for disclosure of all and sundry information (unrelated to transparency and accountability in the functioning of public authorities and eradication of corruption) would be counter-productive as it will adversely affect the efficiency of the administration and result in the executive getting bogged down with the non-productive work of collecting and furnishing information. The Act should not be allowed to be misused or abused, to become a tool to obstruct the national development and integration, or to destroy the peace, tranquility and harmony among its citizens. Nor should it be converted into a tool of oppression or intimidation of honest officials striving to do their duty. The nation does not want a scenario where 75% of the staff of public authorities spends 75% of their time in collecting and furnishing information to applicants instead of discharging their regular duties. The threat of penalties under the RTI Act and the pressure of the authorities under the RTI Act should not lead to employees of a public authorities prioritising `information furnishing', at the cost of their normal and regular duties."*
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> *During the hearing, the appellant was asked to assist in reducing the demand for information by specifying any particular region or IIT regarding which he wants the information, so as to seek limited relief which can be provided but the appellant stated that he wants the information as has been sought by him in his original RTI application.*
>
> ***Decision**: In view of the above, the appellant is advised to limit the information sought and to submit his revised request for limited information to the CPIO within 10 days from the date of receipt of this order. Thereafter, the CPIO is directed to provide an additional reply to the appellant within 20 days from the date of the receipt of the revised request from the appellant. <u>The appellant is also at liberty to file fresh RTI applications to the concerned IITs with specific queries</u>. The appeal is disposed of accordingly."*

6). The records available also shows that the matter has not been heard by the First Appellate Authority (FAA). It is observed that under section 19(1) of the RTI Act, 2005, for the principal of natural justice, it is mandatory for the FAA to summon both the parties, give fair opportunities of being heard and pass speaking order on merit.

7). Also, as laid down Guidelines for the FAA issued by the GoI vide memorandum No. 1/14/2008-IR Dated 28/08/2008 and the State Govt. vide memo no. AR-111/2008 Dated 21st August, 2008 at para-38, the appellate authority's decision should be a speaking order giving justification for the decision arrived at. Since, it is not done; the case is pre-mature to be considered as an appeal under section 19(3) of the RTI Act, 2005. The application before the Commission without any adjudication of the FAA can be considered as a complaint case under section 18(1) of the RTI Act, 2005. In this context, it is relevant to mention below the Apex Court observations relating to procedural lack in the case of *"Chief Information Commr.& Anr vs State Of Manipur & Anr on 12 December, 2011: -*

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28. The question which falls for decision in this case is the jurisdiction, if any, of the Information Commissioner under Section 18 in directing disclosure of information. In the impugned judgment of the Division Bench, the High Court held that the Chief Information Commissioner acted beyond his jurisdiction by passing the impugned decision dated 30th May, 2007 and 14th August, 2007.

The Division Bench also held that under Section 18 of the Act the State Information Commissioner is not empowered to pass a direction to the State Information Officer for furnishing the information sought for by the complainant.

29. If we look at Section 18 of the Act it appears that the powers under Section 18 have been categorized under clauses (a) to (f) of Section 18(1). Under clauses (a) to (f) of Section 18(1) of the Act the Central Information Commission or the State Information Commission, as the case may be, may receive and inquire into complaint of any person who has been refused access to any information requested under this Act [Section 18(1)(b)] or has been given incomplete, misleading or false information under the Act [Section 18(1)(e)] or has not been given a response to a request for information or access to information within time limits specified under the Act [Section 18(1)(c). We are not concerned with provision of Section 18(1)(a) or 18(1)(d) of the Act. Here we are concerned with the residuary provision under Section 18(1)(f) of the Act.

Under Section 18(3) of the Act the Central Information Commission or State Information Commission, as the case may be, while inquiring into any matter in this Section has the same powers as are vested in a civil court while trying a suit in respect of certain matters specified in Section 18(3)(a) to (f). Under Section 18(4) which is a non-obstante clause, the Central Information Commission or the State Information Commission, as the case may be, may examine any record to which the Act applies and which is under the control of the public authority and such records cannot be withheld from it on any ground.

30. It has been contended before us by the respondent that under Section 18 of the Act the Central Information Commission or the State Information Commission has no power to provide access to the information which has been requested for by any person but which has been denied to him. The only order which can be passed by the Central Information Commission or the State Information Commission, as the case may be, under Section 18 is an order of penalty provided under Section 20.

However, before such order is passed the Commissioner must be satisfied that the conduct of the Information Officer was not bona fide.

31. We uphold the said contention and do not find any error in the impugned judgment of the High court whereby it has been held that the Commissioner while entertaining a complaint under Section 18 of the said Act has no jurisdiction to pass an order providing for access to the information.

32. In the facts of the case, the appellant after having applied for information under Section 6 and then not having received any reply thereto, it must be deemed that he has been refused the information. The said situation is covered by Section 7 of the Act. The remedy for such a person who has been refused the information is provided under Section 19 of the Act. A reading of Section 19(1) of the Act makes it clear. Section 19(1) of the Act is set out below:

"19. Appeal. - (1) Any person who, does not receive a decision within the time specified in sub-section (1) or clause (a) of sub-section (3) of section 7, or is aggrieved by a decision of the Central Public Information Officer or the State Public Information Officer, as the case may be, may within thirty days from the expiry of such period or from the receipt of such a decision prefer an appeal to such officer who is senior in rank to the Central Public Information Officer or the State Public Information Officer as the case may be, in each public authority:

Provided that such officer may admit the appeal after the expiry of the period of thirty days if he or she is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time."

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33. A second appeal is also provided under sub-section (3) of Section 19. Section 19(3) is also set out below:

"(3) A second appeal against the decision under sub-section (1) shall lie within ninety days from the date on which the decision should have been made or was actually received, with the Central Information Commission or the State Information Commission:

Provided that the Central Information Commission or the State Information Commission, as the case may be, may admit the appeal after the expiry of the period of ninety days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time."

35. The procedure for hearing the appeals have been framed in exercise of power under clauses (e) and (f) of sub-section (2) of Section 27 of the Act. They are called the Central Information Commission (Appeal Procedure) Rules, 2005. The procedure of deciding the appeals is laid down in Rule 5 of the said Rules.

Therefore, the procedure contemplated under Section 18 and Section 19 of the said Act is substantially different. The nature of the power under Section 18 is supervisory in character whereas the procedure under Section 19 is an appellate procedure and a person who is aggrieved by refusal in receiving the information which he has sought for can only seek redress in the manner provided in the statute, namely, by following the procedure under Section 19. This Court is, therefore, of the opinion that Section 7 read with Section 19 provides a complete statutory mechanism to a person who is aggrieved by refusal to receive information. Such person has to get the information by following the aforesaid statutory provisions. The contention of the appellant that information can be accessed through Section 18 is contrary to the express provision of Section 19 of the Act. ***It is well known when a procedure is laid down statutorily and there is no challenge to the said statutory procedure the Court should not, in the name of interpretation, lay down a procedure which is contrary to the express statutory provision. It is a time honoured principle as early as from the decision in Taylor v. Taylor [(1876) 1 Ch. D. 426] that where statute provides for something to be done in a particular manner it can be done in that manner alone and all other modes of performance are necessarily forbidden.***

40. Justice Das Gupta in J.K. Cotton Spinning & Weaving Mills Co. Ltd. v. State of Uttar Pradesh and others - AIR 1961 SC 1170 at page 1174 virtually reiterated the same principles in the following words:

"the courts always presume that the Legislature inserted every part thereof for a purpose and the legislative intention is ***that every part of the statute should have effect".***

41. It is well-known that the legislature does not waste words or say anything in vain or for no purpose. ***Thus a construction which leads to redundancy of a portion of the statute cannot be accepted in the absence of compelling reasons****. In the instant case there is no compelling reason to accept the construction put forward by the respondents.*

43. There is another aspect also. The procedure under Section 19 is an appellate procedure. ***A right of appeal is always a creature of statute. A right of appeal is a right of entering a superior forum for invoking its aid and interposition to correct errors of the inferior forum. It is a very valuable right. Therefore, when the statute confers such a right of appeal that must be exercised by a person who is aggrieved by reason of refusal to be furnished with the information.***

In that view of the matter this Court does not find any error in the impugned judgment of the Division Bench. In the penultimate paragraph the Division Bench has directed the Information Commissioner, Manipur to dispose of the complaints of the respondent no.2 in accordance with law as expeditiously as possible.

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44. This Court, therefore, directs the appellants to file appeals under Section 19 of the Act in respect of two requests by them for obtaining information vide applications dated 9.2.2007 and 19.5.2007 within a period of four weeks from today. ***If such an appeal is filed following the statutory procedure by the appellants, the same should be considered on merits by the appellate authority without insisting on the period of limitation.***

8). In view of above and pre-pages, for the benefit of the Applicant the Commission decides to remand the case to the FAA for appropriate adjudication and passing order on merit in speaking order. The liberty is on the Applicant to file a fresh appeal under section 19(3) of the RTI Act, 2005, if he is not satisfied with the decision of the FAA.

9). **N.B:** - PIO and Appellant can avail online mode of hearing by downloading **"Webex App"** from Google Play store, may contact **Shri Himanshu Verma** at **Mob:- 8878891768** for further technical assistance.

Therefore, the case is hereby closed and disposed of.

Order copies be issued to all the parties.

Sd/-
(Rinchen Dorjee)
State Chief Information Commissioner
Arunachal Pradesh Information Commission
Itanagar

Memo No.APIC-19/2024 /163 **Dated, Itanagar the** 3 **June, 2024**

Copy to:

1. The FAA-cum-Chief Engineer (PHED & WS) WZ, Govt. of A.P. Department of PHED & WS, Western Zone, Itanagar, PIN- 791111, for information and necessary action please.
2. The Deputy Commissioner, Govt. of A.P. Tawang, Tawang District, Arunachal Pradesh, PIN- 790104, for information and necessary action please.
3. Computer Programmer, APIC, Itanagar, to upload in APIC Website & send mail to all the parties.
4. Case file.

Registrar/ Dy. Registrar
Arunachal Pradesh Information Commission
Itanagar

Deputy Registrar
Arunachal Pradesh Information Commission
Itanagar