



**ARUNACHAL PRADESH INFORMATION COMMISSION
ITANAGAR**

**BEFORE THE FULL BENCH COURT OF STATE INFORMATION
COMMISSIONERS**

No.APIC-983/2023

Dated, Itanagar the 25th July, 2024

Appeal Under Section 19(3) RTI Act, 2005

Appellant: Shri Antosa Tindya, c/o Shri Rohita Mele, Baka Pulu Building, near petrol pump, Chandranagar, Itanagar, Arunachal Pradesh, PIN-791110, (M) 7629999284 / 6000171854.

Vs

Respondent: The Public Information Officer, Govt. of A.P., O/o Deputy Commissioner, Tezu, Lohit District, Arunachal Pradesh, PIN-792001.

ORDER

1). This is an appeal under Section 19(3) of RTI Act, 2005 filed by Shri Antosa Tindya, c/o Shri Rohita Mele, Baka Pulu Building, near petrol pump, Chandranagar, Itanagar, Arunachal Pradesh, for non-furnishing of information by the Public Information Officer, Govt. of A.P., O/o Deputy Commissioner, Tezu, Lohit District, Arunachal Pradesh as sought by the Appellant under section 6(1) of RTI Act, 2005 vide Form-A Dated 01/08/2023 regarding Information pertaining to Land under the occupation of 9th BN ITBP, Lohitpur, Tezu, Lohit District.

2). The Commission on 1st hearing held on 2nd May, 2024 in perusal of records submitted by the information seeker had found that the matter was not heard by the First Appellate Authority (FAA). 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.

3). Under the Guidelines for the FAA issued by the Govt. of India 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 was viewed pre-mature to be considered as an appeal under section 19(3) of the RTI Act, 2005.

4). If the Appellant does not get any response / information from the Public Authority, actually he/she can file complaint case under section 18(1) of the RTI Act, 2005. However, in this context, it is relevant to mention below the Apex Court observations in the case of "*Chief Information Commr. & Anr vs State Of Manipur & Anr on 12 December, 2011*:-

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:

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.

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.

5). In view of above and pre-pages, the Commission for the benefit of the information seeker had remanded the case to the FAA for appropriate adjudication and passing order on merit in speaking order. The Commission once gain remain the FAA for the action and to intimate the Commission of his action taken report. The liberty is on the Applicant to file a fresh application under section 19(3) of the RTI Act, 2005, if he is not satisfied with the decision of the FAA. The Commission decides to close and dispose of the case.

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-983/2023/190
Copy to:

Dated, Itanagar the 26 July,2024

1. The FAA-cum-Deputy Commissioner, Govt. of A.P., Tezu, Lohit District, Arunachal Pradesh, PIN-792001 for information and necessary action please.
2. Computer Programmer, APIC, Itanagar, to upload in APIC Website& send mail to all the parties.
3. Case file.


Registrar /Dy. Registrar
Arunachal Pradesh Information Commission
Itanagar
Deputy Registrar
Arunachal Pradesh Information Commission
Itanagar