सत्यमेव जयते

सूचना का अधिकार
RIGHT TO INFORMATION

ARUNACHAL PRADESH INFORMATION COMMISSION
ITANAGAR

BEFORE THE FULL BENCH COURT OF STATE INFORMATION COMMISSIONERS

No.APIC-1083/2023 Dated, Itanagar the 25th June, 2024

Appeal Under Section 19(3) RTI Act, 2005

Appellant: Shri Nabam Sonu, c/o Smti. Teli Lina, near Govt. Middle School Lekhi, Lekhi Village, Naharlagung, Papum Pare District, Arunachal Pradesh, PIN-791110, (M) 9402627443.

Vs

Respondent: The PIO-cum-EE (PHE & WS), Raga Division, Kamle District, Arunachal Pradesh, PIN-791120.

ORDER

This is an appeal under Section 19(3) of RTI Act, 2005 filed by Shri Nabam Sonu, Lekhi Village, Naharlagung, Papum Pare District, Arunachal Pradesh, for non-furnishing of information by the PIO-cum-EE (PHE & WS), Raga Division, Kamle District, Arunachal Pradesh, as sought by the Appellant under section 6(1) of RTI Act, 2005 vide Form-A Dated 02/05/2023 regarding Jal Jeevan Mission Package-02 at Huyi Don village.

The 1st hearing is held today on 25th June, 2024 as scheduled. The PIO-cum-EE (PHE & WS), Raga Division, Kamle District, Arunachal Pradesh is represented by Shri Melo Kadu, JE-cum-APIO. The Appellant Shri Nabam Sonu is present. The APIO has submitted that the applicant has submitted 12 (twelve) numbers of application at a time on the same day seeking various documents for various works. Further, he has submitted that information are collected for two applications and made correspondence with the Appellant intimating him to collect information from the office. The APIO also informed that the Appellant was intimated through telephonic call. On the other hand the Appellant has submitted that he has neither received the letter nor got any telephonic call.

The Commission, after going through the records and submissions of both the parties it is found 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.

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.***

In view of above and pre-pages, 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 application under section 19(3) of the RTI Act, 2005, if he is not satisfied with the decision of the FAA.

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-1083/2023/1183 **Dated, Itanagar the** 26 **June,2024**

Copy to:

1. The FAA-cum-Chief Engineer, Govt. of A.P., o/o Chief Engineer PHE & WS Itanagar, , Arunachal Pradesh, PIN-for information and necessary action please.
2. The Deputy Commissioner, Govt. of A.P. Raga, Kamle District, Arunachal Pradesh, PIN-791120 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