

2. By filing these writ petitions the petitioner, who is the Public Information Officer (PIO), has challenged the two orders, both dated 23.02.2012, issued by the State Information Commissioner (SIC) of the Arunachal Pradesh Information Commission (APSIC) imposing penalty upon the writ petitioner under Section 20(1) of the Right to Information Act, 2005 (hereinafter referred to as 'the Act of 2005'). Both these Writ Petitions arise out of two identical proceedings initiated before the APSIC, whereby, the writ petitioner has been held to be responsible for the delay in furnishing the information sought by the applicant/respondent No.2 therein. Since both these writ petitions are based on identical facts raising common questions of law, hence, both these petitions are being disposed of by this common judgment and order. For the purpose of proper appreciation of the contentious issues involved in these proceedings, the facts involved in WP(C) No.78(AP)/2012 are briefly stated herein below.

3. The respondent No.2, viz., Toko Nikam, had filed an application in Form-A seeking certain information from the writ petitioner who is the PIO –cum- Executive Engineer, PWD, Yazali Division, Lower Subansiri District, Arunachal Pradesh. On receipt of the aforesaid application on 07.09.2011, the petitioner had called for the relevant information from the Assistant Engineers and Head Assistants working under the Sub-Divisions of the Yazali Division. In the said process, the 30 days time period as mentioned in Section 7 of the Act of 2005 had expired

before the information sought for by the respondent No.2 could be furnished to him.

4. Aggrieved by the delay in furnishing the information within 30 days from the date of filing the application, the applicant/respondent No.2 had filed a complaint under Section 18(1) of the Act of 2005 before the respondent No.1 i.e. the Arunachal Pradesh Information Commission (APIC) on the ground that no response was made to his RTI application by the PIO. On the basis of the aforesaid complaint, APIC Case No.343/2011 was registered and the respondent No.1 had issued notice of hearing dated 27.10.2011 directing the writ petitioner to appear in person on the next date fixed along with all relevant papers and documents in the Court chamber of the State Information Commissioner fixing the date on 14.11.2011.

5. Responding to the notice dated 27.10.2011 issued by the respondent No.1, the writ petitioner had written a letter dated 13.11.2011 addressed to the Deputy Registrar of the APIC informing him that the delay in furnishing the information to the respondent No.2 was due to late receipt of some documents from the Sub-Divisional offices, which fact had also been duly intimated to the applicant. However, since the information sought by the applicant was now ready for furnishing on receipt of the cost of Rs.2300/-, being the charges of photocopying of the documents, the same could be

handed over to the applicant on deposit of the amount by means of Treasury challan. In the letter dated 13.11.2011 it was also mentioned that Sri N. Yangfo, Assistant Engineer –cum- Assistant Public Information Officer and Sri N. Riram, Head Assistant, had been asked to take steps in the matter.

6. On 14.11.2011, the Head Assistant, Sri N. Riram, appeared before the respondent No.1 and produced the information sought by the applicant. Accordingly, the information/documents were handed over to Sri Joram Mebi, i.e. the representative of the respondent No.2 under the direction of the respondent No.1. The recipient was granted liberty to go through the same and raise objection if the information was found to be false, misleading, partial in nature or incorrect. By the order dated 14.11.2011 the next date of hearing was fixed on 18.11.2011. In the order dated 14.11.2011 it was further mentioned that the Commission had taken serious note against the PIO and APIO for their non-appearance.

7. On 18.11.2011, the respondent No.2 filed a misc. application before the respondent No.1 raising objection to the information provided. On 18.11.2011, the writ petitioner was not present before the Commission. Taking note of the same, the respondent No.1 had passed an order dated 18.11.2011 directing personal appearance of the PIO i.e. the writ petitioner by fixing the next date on 12.12.2011.

However, due to the bandh call given by some association on that day, the petitioner could not appear before the respondent No.1 on 12.12.2011. As such, the next date of hearing was fixed on 23.12.2011 with a direction for personal appearance of the writ petitioner.

8. On 21.12.2011 the writ petitioner addressed a letter to the Deputy Registrar of the APIC, inter alia, informing that the information sought for by the applicant had been already furnished to him free of cost as per the direction of the respondent No.1, including the additional information as sought for comprising of the sanction order, vouchers, counterfoils and amounts in Annexure-1 to 31. In the letter dated 21.12.2011 it was also mentioned that the petitioner was undergoing medical treatment and therefore, was not in a position to personally appear on the next date fixed in the matter. As such, in his absence, the APIO had been asked to appear before the Commission on the next date of hearing. In support of his aforesaid letter the petitioner had also enclosed the medical certificate.

9. During the proceeding held on 23.12.2011, the respondent No.1 had expressed displeasure due to non-appearance of the writ petitioner and therefore, had issued a bailable arrest warrant against the petitioner fixing the next date of hearing on 18.01.2012. Having come to know about the order dated 23.12.2011, the writ petitioner had, once again, addressed a letter to the Deputy Registrar, APIC, on 03.01.2012 explaining in details, the circumstances under which he

was unable to personally appear on the previous date of hearing. In the letter dated 03.01.2012 it was reiterated that the information sought for by the applicant/respondent No.2 including the additional information had been already handed over to him and therefore, the bailable warrant of arrest issued by the Commission be recalled/cancelled.

10. On 18.01.2012 the petitioner had personally appeared before the respondent No.1 and submitted an affidavit stating the reasons for previous non-appearance. However, notwithstanding the explanation furnished by the petitioner, the respondent No.1 had passed the impugned order dated 23.02.2012 imposing a penalty of Rs.37,250/- calculated at the rate of Rs.250/- per day for causing 149 days delay in furnishing the information sought by the applicant/respondent No.2.

11. Aggrieved by the order dated 23.02.2012 passed in connection with Case No.APIC 343/2011, the petitioner has approached this Court by filing Writ Petition No.78(AP)/2012. It would be relevant to mention herein that a similar order passed by the respondent No.1 on 23.02.2012 in APIC Case No.339/2011 imposing penalty of Rs.24,500/- upon the writ petitioner in a parallel proceeding initiated on the basis of complaint made by another applicant, viz. Sri Nich Rika, is under challenge in WP(C) No.77(AP)/2012.

12. The respondents have not filed affidavit in these cases. But the learned counsel for the respondent No.1 has produced the record.

13. Mr. Ratan, learned counsel for the writ petitioner, submits that from a bare perusal of the application submitted by the applicants in both the cases it would be apparent that the information required by the applicants were not only voluminous but had to be collected from the various Sub-Divisional offices spread out in different parts of the district and therefore, some delay had occurred in the process of collection of the information which fact was duly informed to the respective applicants. The information having been handed over to both the applicants on 14.11.2011 and the writ petitioner having personally appeared and filed affidavit explaining the circumstances under which the delay had occurred, there was no legal justification for the respondent No.1 to pass the impugned orders of penalty against the writ petitioners.

14. Mr. Ratan further submits that it is not in dispute that the information required by the applicants had been ultimately received by them. Therefore, even assuming that there was any delay in furnishing the information, such delay would have to be computed from the expiry of 30 days from the date of receipt of application till the date on which the same was furnished i.e. 14.11.2011. Moreover, submits Mr. Ratan, there is no finding recorded by the respondent No.1 that the writ petitioner had delayed the information without any reasonable ground but the entire order has been issued on the sole basis that the petitioner had failed to appear in person on the previous

dates of hearing. In that view of the matter, submits Mr. Ratan, the impugned order dated 23.02.2012 is vitiated by complete arbitrariness and non-application of mind warranting interference by this Court. Mr. Ratan further submits that the impugned orders have been passed by the State Information Commissioner out of a sense of vengeance against the petitioner and therefore, both the orders are liable to be interfered by this Court on such count alone.

15. Mr. R. Saikia, learned counsel appearing for the respondent No.1, has made an attempt to defend the impugned orders by contending that the impugned orders had to be passed by the respondent No.1 due to the fact that the petitioner had not furnished the proper information within 30 days from the date of receipt of the application as per the mandate of Section 7(1) of the Act of 2005. The learned counsel has, however, fairly submitted that the information sought by the applicants were received by them and thereafter, both the applicants had not raised any further complaint against the petitioner in the matter.

16. I have considered the submissions made by learned counsel for the parties and have also perused the materials available on record.

17. It is the admitted position of fact that on 15.09.2011 the respondent No.2 in WP(C) No.78(AP)/2012 had made an application seeking certain information to be furnished by the writ petitioner. The details of the information required by the applicant/respondent No.2

in WP(C) No.78(AP)/2012, as indicated in his application under Form-A, is extracted herein below for ready reference :-

"PARTICULARS OF INFORMATION"

1. Copies of total LOC Release against LOC No.CEAP (WZ)/BT/LOC/1/09-10 dtd 7/9/9 Sl. No.200, along with counterfoils of the Cheques issued to the contractors in the name of particular works executed against this LOC.
2. Copies of total LOC Released against LOC No.CEAP (WZ)/BT/LOC/1/09-10 dtd. 16/9/09 Sl. No.222 along with Counterfoils of the Cheques issued to the contractors in the name of particulars works executed against this LOC.
3. Copies of total LOC Released against LOC No.CEAP (WZ)/BT/LOC/1/09-10 dtd 1/10/2009 Sl. No.245 along with Counterfoils of the Cheques issued to the contractors in the name of particulars works executed against this LOC.
4. Copies of total LOC Released against LOC No.CEAP (WZ)/BT/LOC/1/09-10 dtd 1/10/09 Sl. No.279 along with Counterfoils of the Cheques issued to the contractors in the name of particulars works executed against this LOC.
5. Copies of total LOC Released against LOC No.CEAP (CZ)/BT (2009-10) dtd 6/3/09 along with Counterfoils of the Cheques issued to the contractors in the name of particulars works executed against this LOC.
6. Copies of total LOC Released against LOC No.CEAP (CZ)/BT/LOC/1/09-10 dtd 20/3/10 along with Counterfoils of the Cheques issued to the contractors in the name of particulars works executed against this LOC.
7. Copies of total LOC Released against LOC No.CEAP (CZ)/BT/LOC/1/09-10 dtd 22/3/10 along with Counterfoils

- of the Cheques issued to the contractors in the name of particulars works executed against this LOC.*
8. *Copies of total LOC Released against LOC No.CEAP (CZ)/BT/LOC/1/09-10 dtd 25/3/10 along with Counterfoils of the Cheques issued to the contractors in the name of particulars works executed against this LOC.*
 9. *Copies of total LOC Released against LOC No.CEAP (CZ)/BT/LOC/1/2010-11 dtd 7/5/10 along with Counterfoils of the Cheques issued to the contractors in the name of particulars works executed against this LOC.*
 10. *Copies of total LOC Released against LOC No.CEAP (CZ)/BT/LOC/1/2010-11 dtd 31/8/10, Sl. No.031, along with Counterfoils of the Cheques issued to the contractors in the name of particulars works executed against this LOC.*
 11. *Copies of total LOC Released against LOC No.CEAP (CZ)/BT/LOC/1/2010-11 dtd 23/9/10, Sl. No.038, along with Counterfoils of the Cheques issued to the contractors in the name of particulars works executed against this LOC.*
 12. *Copies of total LOC Released against LOC No.CEAP (CZ)/BT/LOC/1/2010-11 dtd 21/11/10, Sl. No.062, including progressive LOC Sl. No.065 dtd 11/11/2010 along with Counterfoils of the Cheques issued to the contractors in the name of particulars works executed against this LOC.*
 13. *Copies of total LOC Released against LOC No.CEAP (CZ)/BT/LOC/1/2010-11 dtd 23/9/10, Sl. No.0318 along with Counterfoils of the Cheques issued to the contractors in the name of particulars works executed against this LOC.*
 14. *Copies of total LOC Released against LOC No.CEAP (CZ)/BT/LOC/1/2010-11 dtd 28/1/11, Sl. No.091, along with*

- Counterfoils of the Cheques issued to the contractors in the name of particulars works executed against this LOC.
15. Copies of total LOC Released against LOC No.CEAP (CZ)/BT/LOC/1/2010-11 dtd 02/12/2010, Sl. No.074, along with Counterfoils of the Cheques issued to the contractors in the name of particulars works executed against this LOC.
 16. Copies of total LOC Released against LOC No.CEAP (CZ)/BT/LOC/1/2010-11 dtd 01/03/2011, Sl. No.103, along with Counterfoils of the Cheques issued to the contractors in the name of particulars works executed against this LOC.
 17. Copies of total LOC Released against LOC No.CEAP (CZ)/BT/LOC/1/2010-11 dtd 01/03/2011, Sl. No.106, along with Counterfoils of the Cheques issued to the contractors in the name of particulars works executed against this LOC.
 18. Copies of total LOC Released against LOC No.CEAP (CZ)/BT/LOC/1/2010-11 dtd 08/03/2011, Sl. No.101, along with Counterfoils of the Cheques issued to the contractors in the name of particulars works executed against this LOC.
 19. Copies of total LOC Released against LOC No.CEAP (CZ)/BT/LOC/1/2010-11 dtd 18/03/2011, Sl. No.120, along with Counterfoils of the Cheques issued to the contractors in the name of particulars works executed against this LOC.
 20. Copies of total LOC Released against LOC No.CEAP (CZ)/BT/LOC/1/2010-11 dtd 23/03/2011, Sl. No.155, along with Counterfoils of the Cheques issued to the contractors

in the name of particulars works executed against this LOC.

21. *Copies of total LOC Released against LOC No.CEAP (CZ)/BT/LOC/1/2010-11 dtd 025/3/2011, Sl. No.163, along with Counterfoils of the Cheques issued to the contractors in the name of particulars works executed against this LOC.*
22. *That the information sought above must be clearly mentioned the name of contractors against the particular works including the Schemes in which cheques were issued. In the case of firm, mentioned the name of proprietor or name of attorney holder in other case.*
23. *Recently released LOC under SPA, FDR etc... against PWD Division Yazali.*
24. *Total Billed Amount of Contractors against Sil-Sango Road, KVK Road, Yachuli and Yazali-Mengio Road in a name wise manner including total payment made to the contractors till date and also total outstanding dues of the contractors in these three Roads. The total outstanding dues under PWD Division may also be furnish separately.*
25. *Other related information if any."*

18. It is also the admitted position of fact that the aforementioned information were furnished to the applicant on 14.11.2011.

19. Section 7(1) of the Act 2005 provides that where an application making a request for furnishing information under Section 6 of the Act is made, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, as expeditiously as possible, dispose of the request and in any case within 30 days of the

receipt of the request either provide the information on payment of such fee, as may be prescribed, or reject the request for any of the reasons specified in Sections 8 and 9 of the Act. Sub-section (2) of Section 7 provides that if the concerned Public Information Officer fails to give a decision on the request for information within the period specified under sub-section (1), then, he shall be deemed to have refused the request.

20. Section 18 of the Act of 2005 confers power upon the Central/State Information Commission to enquire into a complaint from any person on any of the grounds mentioned in the said provision. As per Section 18(1)(c), lack of response to a request for information is one of the grounds on which a complaint can be filed. Besides the above, an aggrieved person, whose request for furnishing information made under Section 6 is not responded to within 30 days, he would also have the option of preferring an appeal under Section 19(1) of the Act of 2005 before such Officer who is senior in rank to the PIO.

21. Section 20 of the Act of 2005 provides that penalties can be imposed on the grounds indicated therein. For the sake of ready reference Section 20 of the Act of 2005 is extracted herein below :-

“20. Penalties.-- Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding, any complaint or appeal is of the opinion that the Central Public

Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause, refused to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall impose a penalty of two hundred and fifty rupees each day till application is received or information is furnished, so however, the total amount of such penalty shall not exceed twenty-five thousand rupees:

Provided that the Central Public Information Officer or the State Public Information Officer, as the case may be, shall be given a reasonable opportunity of being heard before any penalty is imposed on him :

Provided further that the burden of proving that he acted reasonably and diligently shall be on the Central Public Information Officer or the State Public Information Officer, as the case may be.

(2) Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause and persistently, failed to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or

misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall recommend for disciplinary action against the Central Public Information Officer or the State Public Information Officer, as the case may be, under the service rules applicable to him."

22. A reading of the aforementioned provisions of the Act of 2005 clearly goes to show that the PIO would be under a legal obligation to respond to the application seeking information within thirty days failing which the applicant/information seeker would be entitled to avail the remedy either under Section 18(1) or 19(1) of the Act.

23. In the present case, as has been mentioned above, the respondent No.2 had filed the complaint before the respondent No.1 under Section 18(1) of the Act of 2005 on the ground that his application seeking information had not been responded to by the PIO i.e. the writ petitioner. In the circumstances mentioned herein above the complaint made by the respondent No.2 was finally disposed of by the respondent No.1 by order dated 23.02.2012. The operative part of the order dated 23.02.2012 passed in Case No.APIC 343/2011 impugned in WP(C) No.78(AP)/2012 would be relevant and is quoted herein below :-

"An explanation of reply filed by Er. Minjum Padu on medical ground with supporting medical document is nowhere convincing to Commission. This is because a

medical prescription suggesting to take rest for 7 days issued by medical officer is appears to be dated 21/12/11 whereas arrest order was issued on 23/12/11 just after two days. The arrest warrant was issued for non appearance of hearing dated 14/11/11, 18/11/11, 12/12/11, 23/12/11 much before prescription of medical practitioner which means prior to prescription of medical practitioner dated 21/12/11, the PIO could have appeared the hearing thereby clarified his position all through 4 hearings. But that was not so and for which the ground made by PIO cannot be fit to be relied upon.

Since there is a clear case of delay and negligence on the part of PIO, I am of the view that his case is fit to be concluded with following directives :

1. An amount of Rs.37,250/- @ Rs.250/- per day x 149 days is imposed upon Er. Minjum Padu as penalty as penalty for causing delay in furnishing information as well as non compliance of Commissions instruction w.e.f. date of application of form A i.e. 07/09/11 o submission of compliance report i.e. 05.02/11 under Section 20(1) of the RTI Act, 2005.
2. The penalty amount as imposed penalty amount shall be deposited by Er. Minjum Padu, EE PWD Yazali Division within 1(one) week from the date of receipt of this order through treasury challan under head of account "0070" OAS in favour of Deputy Registrar, APIC. The extra copy of treasury challan shall be submitted to Commission for records and references. If Er. Minjum Padu, EE PWD Yazali Division fails to deposit the said amount within the

time, the CE(C/Z) PWD Itanagar is directed to deduct said amount from the personal salary of Er. Minjum Padu and in the process same may be deposited through treasury challan under said account with an intimation to this Commission within 2(two) weeks from the date of receipt of this order.

- 3. Non compliance of order would attract appropriate contempt action under appropriate provision of law against CE(C/Z) PWD, Itanagar.*
- 4. The bail bond, if any stands cancelled and surety is hereby discharged. Bail bond of Rs.1000/- which is currently in the custody of Deputy Registrar may be returned with the submission of counter receipt challan by PIO.*

With the above directives the compliance hearing is fixed on 21.3.2012. Inform the parties accordingly.

Given under my hand and seal of the Commission, this 23rd February, 2012."

24. From bare reading of the order dated 23.12.2012, it is apparent that the information sought for by the applicant was furnished to him by the PIO and there was no complaint or grievance expressed by the applicant/information seeker before the Commission after receipt of the information. It appears that the proceeding before the respondent No.1 on and from 18.11.2011 was mostly directed towards non-appearance of the writ petitioner before the Commission on the previous dates. By filing the affidavit, the writ petitioner had admitted

that there was delay in his appearance before the Commission which was on account of medical reasons but by rejecting such explanation the Commission had imposed the penalty by the impugned order dated 23.02.2012. From a minute scrutiny of the impugned order dated 23.02.2012, I do not find any finding recorded by the Commission to the effect that there was delay in furnishing the information without any reasonable cause. Rather, the order dated 23.02.2012 entirely focuses on the previous non-appearance of the writ petitioner.

25. Section 20 empowers the Information Commission to impose penalty if it finds that the PIO has failed to furnish the information within the statutory period without any reasonable cause. Therefore, an order imposing penalty under Section 20 of the Act of 2005 necessarily has to be preceded by a finding to the effect that the PIO was guilty of some negligence resulting into unreasonable delay in the matter. However, as would be apparent from the materials on record, there is no such finding recorded by the learned SIC in this case.

26. The writ petitioner's categorical stand was that the voluminous information called for by the applicant was not readily available with the PIO and the said fact was also intimated to the applicant. The respondent No.2 has not denied the aforesaid assertion by filing any affidavit in this case. As soon as the information/documents could be gathered by the petitioner, the same were furnished to the applicant

on payment of requisite fees. It is a fact that the information sought for by the respondent No.2 could not be furnished within a period of 30 days from the date of filing the application under Section 6 of the Act but the petitioner had come up with reasonable explanation citing reasons for delay. There is no material placed on record to show that the explanation furnished by the writ petitioner was factually untenable.

27. Section 20 of the Act of 2005 imposes a ceiling of Rs.25,000/- as the maximum limit of penalty that can be imposed upon a PIO under the said provision. In such view of the matter, the amount of Rs.37,250/- imposed upon the writ petitioner in APIC Case No.343/2011 was also far in excess of the statutory limit rendering the same untenable in the eye of law.

28. As noted above, the order dated 23.02.2012 was passed by the SIC in connection with APIC Case No.339/2011 imposing penalty upon the writ petitioner under similar circumstances with the only difference being that the amount involved under the said order was Rs.24,500/- which was within the upper limits prescribed under section 20 of the Act of 2005. The operative portion of the impugned order dated 23.02.2012 passed in APIC Case No.339/2011 is quoted herein below :-

“Be that as it may, Er. M. Padu/PIO EE PWD Division Yazali admitted the delay in his affidavit reply on 2.1.2012 for not furnishing information within the period. Since Er. M.

Padu/PIO EE PWD Yazali Division has admitted for causing delay as is evident from his affidavit reply, I am of the considered view that this case required to be concluded with following directives :

1. *That an amount of Rs.24,500/- is imposed against Er. M. Padu/ EE PWD Division, Yazali as a penalty under section 20(1) of RTI Act of 2005 for admittedly causing delay of 98 days i.e. from the date of receive (sic) of application of Form 'A' dated 15.9.2011 to date of furnishing complete information dated 23.12.2011 calculated @ Rs.250/- per day.*

2. *The imposed penalty amount shall be deposited under the Head of Account '0070' OAS through Treasury Challan in favour of Deputy Registrar, Arunachal Pradesh Information Commission within the period of one week from the date of receive (sic) of this order. The extra copy of the Treasury Challan may be submitted to the Commission for records and references. If Er. M. Padu/ EE PWD Division, Yazali is failed to deposit the penalty amount, the Chief Engineer Central Zone PWD, Itanagar shall deduct the said amount from his personal salary and same shall be deposited through Treasury Challan under the said Head of Account with an intimation to this Commission within two weeks from the date of received (sic) of this order.*

3. *The bail bond if any stand cancelled and surety are hereby discharged. Rs.1000/- deposited as bail bond which is currently under the custody of Deputy Registrar, APIC may be returned to him with production of counter money receipt.*

With the above direction, the compliance hearing is fixed on 21.3.2012.

Given under my hand and seal of the Commission, this 23rd February, 2012."

29. While deciding a complaint made under Section 18(1) or appeal under Section 19(1) of the Act of 2005, the Commission functions as a quasi judicial authority. [see – Nomit Sharma vs. Union of India, reported in (2013)1 SCC 745]. It would be incumbent upon the respondent No.1 to give proper opportunity of hearing to the affected party and also pass a reasoned order, duly supported by materials on record. However, in the case in hand, no such exercise was undertaken by the learned Commission.

30. For the reasons mentioned herein above, this Court is of the opinion that the impugned orders dated 23.02.2012 are unsustainable in the eye of law and the same are accordingly set aside.

The writ petitions are accordingly allowed.

The records be taken back.

There would be no order as to cost.

JUDGE

T U Choudhury