

IN THE GAUHATI HIGH COURT

(THE HIGH COURT OF ASSAM: NAGALAND: MIZORAM & ARUNACHAL PRADESH)

ITANAGAR PERMANENT BENCH (NAHARLAGUN)

WP(C) 339 (AP) 2015

The State of Arunachal Pradesh,
Represented by the Secretary to the
Govt. of Arunachal Pradesh, Public
Works Department, Itanagar.

..... *Petitioner.*

– VERSUS –

1. The State of Arunachal Pradesh
Information Commission, represented by
It's the Commission, Hotel Bomdila
Complex, Gohpur Tinali, Itanagar.
2. Shri Rimmar Taso,
Resident of Abotani Colony, Itanagar
District Papum Pare (AP)

.....*Respondents*

Advocate for the Petitioner: Mr. D. Soki, Addl. Senior
Government Advocate.

Advocate for the Respondents: Mr. R. Saikia, Standing Counsel for
Arunachal Pradesh Information
Commission.

:::BEFORE:::
HON'BLE MR. JUSTICE NANI TAGIA

Judgment and Order (Oral)

24.07.2019

Heard Mr. D. Soki, learned Additional Senior Government advocate for the State-petitioner and Mr. R. Saikia, learned Standing counsel for the Arunachal Pradesh Information Commission.

None appears for the respondent No.2.

2. This writ petition has been filed by the State, represented through the Secretary of Government of Arunachal Pradesh, Itanagar challenging the order dated 31.07.2015, issued on 04.08.2015, passed by the Information Commissioner in Case No. APIC-66/2015 (Shri Rimmar Taso Vs. Public Information Officer(PIO)-cum-Under Secretary Government of Arunachal Pradesh, Itanagar), by which order, the Public Information Officer (PIO)-cum-Deputy Secretary Government of Arunachal Pradesh, Itanagar was directed to make available to the respondent No.2/Shri Rimmar Taso the ACRs of all the officers whose promotion were considered by the Departmental Promotion Committee (DPC) proceedings of PWD held on 16.04.2015 free of cost on 11.08.2015, failing which, Section 20(I) of the Right to Information Act would be invoked against the Public Information Officer.

3. Mr. D. Soki, learned counsel for the State-petitioner by relying on the decision of the Hon'ble Supreme Court rendered in the case of *R.K. Jain versus Union of India*, reported in (2013)14 SSC 794 submits that ACRs of the other employees cannot be supplied/or furnish to any other person as a matter of right under the Right to Information Act. Therefore, the impugned order dated 31.07.2015 issued on 04.08.2015 passed by the Arunachal Pradesh Information Commission in case No. APIC-66/2015 is illegal and liable to be set aside and quashed.

4. On the other hand Mr. R. Saikia, learned Standing counsel for the Arunachal Pradesh Information Commission, submits that ACRs of the employees

can be furnished to the information seeker, if the procedure prescribed under Section 11 of the Right to Information Act is followed.

5. Having heard the learned counsels for the parties and also perused the materials on records. It is settled position of law as have been held in *R.K Jain (supra)* that ACRs of an employee being the third party information, the same cannot be made access to by the information seeker as a matter of law under Right to Information Act. In the present case, it is noticed that the respondent No. 2 had sought for the ACRs of all the officers whose case was considered for promotion in the DPC proceedings of the PWD held on 16.04.2015 which means the petitioners had sought for the ACRs of the third persons. It is also noticed that while directing the Public Information Officer of the PWD department to make available the ACRs sought for by the respondent No.2/information seeker, vide impugned order dated 31.07.2015 issued on 04.08.2015 in case No. APIC-66/2015 the Commission has not recorded any findings that the procedure for providing the information pertaining to the third party as provided under Section 11 of the Right to Information Act have been followed and complied with.

6. In view of the above, by following the ratio laid down in *R. K Jain (supra)* by Hon'ble Supreme Court as well for non-compliance of Section 11 of the Right to Information Act, the impugned Order dated 31.07.2015 issued on 04.08.2015 by the Arunachal Pradesh Information Commission in case No. APIC-66/2015 in *Rimmar Taso versus Public Information Officer PWD-cum-under Secretary* cannot be sustained and the same is liable to be set aside and quash.

The writ petition is allowed and **disposed** of in terms above.

JUDGE