

IN THE GAUHATI HIGH COURT

(THE HIGH COURT OF ASSAM; NAGALAND; MIZORAM AND ARUNACHAL PRADESH)

ITANAGAR PERMANENT BENCH

WP (C) 407 (AP) 2011

**Er. Minjom Padu,
PIO-cum-Executive Engineer,
PWD, Yazali Division,
Lower Subansiri District,
Arunachal Pradesh.**

...petitioner.

-VERSUS-

- 1. The Arunachal Pradesh Information Commission represented by its Secretary.**
- 2. The Chief Engineer, (Central Zone),
Public Works Department,
Itanagar.**
- 3. Shri Neelam Topu,
B-Sector, Itanagar, Papumpare District,
Arunachal Pradesh.**

...respondents.

::BEFORE::

HON'BLE MR JUSTICE NANI TAGIA

Date of Judgment and Order (Oral): 09.05.2019.

By Advocates:

For the petitioner: D. Panging.
For the respondents: Mr. R. Saikia, learned counsel for R-1.
Ms. P. Pangu, Jr. Govt. Advocate for R-2.

JUDGMENT & ORDER (ORAL)

Heard Mr. D. Panging, learned counsel for the petitioner and Mr. R. Saikia, learned Standing Counsel for respondent No. 1. Also heard Ms. P.Pangu, learned Junior Govt. Advocate for respondent No. 2.

None has appeared for respondent No. 3.

2. This writ petition has been filed challenging the impugned order dated 03.10.2011 (Annexure-14 to the writ petition) passed by the State Information Commissioner-the respondent No. 1 herein, in Case No.APIC-287/2011 (*Shri Neelam Topu-vs-PIO/EE PWD Yazali*) in a proceeding under Section 18 of the Right to Information Act, 2005 whereby the State Information Commissioner has directed the writ petitioner/ PIO to pay a sum of Rs.50,000/- to the complainant/ respondent No. 3 Shri Neelam Topu under Section 19 (8) (b) for loss or other detriment suffered in appearing all together 8 hearings within a period of 3 weeks from the date of the order. The State Information Commissioner by the aforesaid order further directed that in the event of failure to pay within the stipulated period, the Chief Engineer (Central Zone) PWD, Itanagar will deduct an amount of Rs.50,000/- from the personal salary of Er. Minjom Padu/ the writ petitioner herein and the same be deposited to the Deputy Registrar, APIC, Itanagar for onward payment to the complainant Shri Neelam Topu and non compliance of the order would attract for recommending of disciplinary action against both the officials under relevant service rules.

3. The facts leading to filing of the present writ petition is stated as follows:-.

4. The respondent No. 3 herein by an application dated 07.05.2011 (**Annexure-3** to the writ petition) had sought for an information from the Public Information Officer (for short, 'PIO'), Executive Engineer, Yazali with regard to the details of payment against the LOC received during the years June, 2010 to last March, 2011. As the information sought for was not furnished to the respondent No. 3 by the concerned PIO, the respondent No. 3 lodged a complaint under Section 18 (1) of the Right to Information Act, 2005 before the Information Commission on 06.06.2011 (**Annexure-5** to the writ petition). In pursuance of the aforesaid complaint dated 06.06.2011, notice to the PIO was

issued on 09.06.2011 (**Annexure-4** to the writ petition) by the State Information Commissioner. On the receipt of the aforesaid notice dated 09.06.2011, the writ petitioner who had in the meantime joined as PIO in the Department on 10.06.2011 issued a letter to the respondent No. 3, the information seeker, vide letter dated 21.07.2011 (**Annexure-6** to the writ petition), whereby it was intimated to the respondent No. 3, the information seeker, that he may have to deposit Rs.10,000/- for the purpose of making the photo copy of the documents as the documents were voluminous or else he may have to inspect the documents at the office.

5. As the information sought for by the respondent No. 3 continued to remain un-furnished to the respondent No. 3, an order dated 26.08.2011 (**Annexure-8** to the writ petition) was passed by the State Information Commissioner, wherein, the writ petitioner/ PIO was asked to Show-Cause as to why penalty provision under Section 20 (1) or 20 (2) shall not be invoked and a week's time was granted to the writ petitioner/ PIO to file written statement.

6. As the written defence by the writ petitioner/ PIO was not filed within the given time, the writ petitioner/ PIO was granted another one week's time for filing a written defence or reply by an order dated 02.09.2011 (**Annexure-10** to the writ petition) passed by the State Information Commissioner. Thereafter, on 07.09.2011 (**Annexure-11** to the writ petition), the writ petitioner/ PIO filed his written defence/ reply to the aforesaid Show-Cause Notice.

7. The State Information Commissioner on consideration of the rival pleadings between the parties, by the impugned order, dated 03.10.2011 (**Annexure-14** to the writ petition) came to a finding that the information as sought for on 07.05.2011 by the respondent No.3 being not furnished, the respondent No. 3, the information seeker, filed a complaint under Section 18 of the

Right to Information Act, 2005 on 06.06.2011 and accordingly, notice to the writ petitioner/ PIO was issued on 09.06.2011. On receipt of the notice, the writ petitioner/ PIO had written a letter on 21.07.2011 intimating the respondent No. 3 to deposit an amount of Rs.10,000/- for the purpose of making photo copy or else to make an inspection of the documents.

8. In the impugned order, the State Information Commission has also observed and come to a finding that during the course of hearing of the proceeding under Section 18 of the RTI Act, 2005, the information as sought for was exchanged between the parties on 26.08.2011.

9. Having arrived at the aforesaid findings, the State Information Commission have held that there was delay in furnishing the information as sought for, and the same was not furnished to the respondent No. 3, the information seeker, within the prescribed or stipulated time of 30 days. It was in that view of the matter that the State Information Commission has directed the writ petitioner/ PIO to pay an amount of Rs.50,000/- only as compensation to the respondent No. 3, the information seeker, purportedly under Section 19 (8) (b) of the RTI Act, 2005. The State Information Commission by the aforesaid impugned order has further held that no case for invoking Section 21 & 22 of the RTI Act, 2005 have been made out.

10. Assailing the legality of the order passed by the State Information Commission vide the impugned order dated 03.10.2011 whereby the writ petitioner has been directed to pay an amount of Rs.50,000/- as compensation to the respondent No. 3 in terms of Section 19 (8) (b), the present writ petition has been instituted.

11. Mr. D. Panging, learned counsel for the petitioner submits that Section 19 (8) (b) is a provision wherein the information commission while hearing an appeal filed, may in an

appropriate case require public authority to compensate the complainant for any loss or detriment suffered. Mr. Panging, learned counsel for the petitioner further submits that the PIO is not a public authority as contemplated under Section 19 (8) (b) inasmuch as Public Authority has been defined under Section 2 (h) of the RTI Act, 2005 to mean any authority or body or institution of self-government established or constituted:

- (a) *by or under the Constitution;*
- (b) *by any other law made by Parliament;*
- (c) *by any other law made by State Legislature;*
- (d) *by notification issued or order made by the appropriate Government, and includes any-;*
 - (i) *body owned, controlled or substantially financed;*
 - (ii) *non-Government Organization substantially financed, directly or indirectly by funds provided by the appropriate Government.*

12. As the PIO is appointed by the public authority, the PIO does not come within the definition of public authority as defined under Section 2 (h) of the RTI Act, 2005 and therefore, the learned State Information Commission have acted illegally in directing the writ petitioner to pay an amount of Rs.50,000/- as compensation to the respondent No. 3, the information seeker.

13. Mr. Panging further submits that as the learned State Information Commissioner have categorically held that Section 20 clause 1 & 2 of the RTI Act, in the facts of the present case, cannot be invoked, and, therefore, neither in the form of compensation nor in the nature of penalty could have been imposed by the learned State Information Commission by the said impugned order.

14. On the other hand Mr. R. Saikia, the learned Standing counsel representing the respondent No. 1, the State Information

Commission submits that as per Section 7 Sub-Clause 1 of the RTI Act, 2005, the information sought for by the information seeker is required to be furnished within 30 days of the receipt of the request, failing which under Sub-Section 6 of Section 7, the concerned PIO is required to furnish the information sought for free of cost; and on failure to furnish the required information within 30 days of the date of request as stipulated under Section 7 (1) of the said Act, the information seeker has got 2 (two) remedies under Sections 18 & 19 i.e. either to file a complaint under Section 18 or to file first appeal before the first appellate authority. Whenever a complaint is filed by the information seeker under Section 18, the Information Commission is empowered to receive and inquire into a complaint so received and on such inquiry being made with regard to the complaint so received, if it is found that the information is not furnished within the period specified under Sub-Section 1 of Section 7, the Information Commission under Section 20 has the power to impose penalty of Rs.250/- each day till information is furnished. However, the total amount of such penalty. Mr. Saikia further submits could not exceed Rs.25,000/-. As the information was sought for by the respondent No. 3 vide an application dated 07.05.2011 which information was only furnished to the respondent No. 3 on 26.08.2011, which is well beyond the time as stipulated under Section 7 Sub-Clause 1, the information commission acted within the sphere of power and there is no illegality in the impugned order.

15. Rival submissions advanced at the bar have received due consideration of this Court.

16. Having heard the learned counsel for the parties and on perusal of the materials on record, more particularly, the impugned order, it has remained undisputed that the information was sought for by the respondent No. 3, the information seeker, on 07.05.2011, the information sought for

ultimately came to be furnished to the respondent No. 3 only on 26.08.2011, that too, during the course of proceeding undertaken under Section 18 of the RTI Act between the parties.

17. On perusal of Sections 18, 19 & 20 of the RTI Act, 2005, it is found that under Section 18, the Information Commission have been empowered to receive and enquire into a complaint from any person who would, amongst others, under Clause (C) of Sub Section (1) has not been given a response to a request for information or access to information within the time limit specified under the Act, unless the information sought for have been rejected for any of the reasons specified under Sections 8 & 9 of the RTI Act, 2005, the Information Commission, under Section 18 would have power to inquire into the complaint so received. Once the Information Commission arrives at a conclusion that the Information Seeker/ complainant has not been given a response to a request for information or access to information within the time limit specified under the Act, the Information Commission is empowered under Section 20 of the RTI Act, 2005 to impose appropriate penalties.

18. In the present case, however, it is found that the Information Commission, after having found that the respondent No. 3 was not furnished with the information within the period stipulated under the Act, the Information Commission,, instead of imposing penalty as prescribed under Section 20 have gone on to direct the writ petitioner/ PIO to pay a compensation of Rs.50,000/- to the respondent No. 3 purportedly under Section 19 (8)(b) which, in the view of this Court, appears to be not correctly directed by the Information Commission, inasmuch as, Section 19 (8) (b) refers to the Public authority which the writ petitioner/ PIO apparently is not. Section 19 (8) (b) which requires the public authority to compensate the complainant for any loss or other detriment suffered would only be

applicable to the public authority as defined under Section 2 (h) of the RTI Act, 2005 which defines the public authority to mean any authority or body or institution of self government establishment or constituted:-

- (a) *By or under the Constitution;*
- (b) *by any other law made by Parliament;*
- (c) *by any other law made by State Legislature;*
- (d) *by notification issued or order made by the appropriate Government, and includes any:-*
 - (i) *body owned, controlled or substantially financed;*
 - (ii) *non-Government Organization substantially financed, directly or indirectly by funds provided by the appropriate Government.*

Whereas, the Public Information Officer is designated under Sub-Clause 1 of Section 5 of the RTI Act, 2005 as provided under Section 2 (m).

19. In any view of the matter, once the Information Commission, in exercise of powers conferred under Section 18 of the RTI Act, 2005, on receipt of a complaint to the effect that no response to a request for information was furnished to him within the time limit specified under the Act, have come to a conclusion that the information sought for was not furnished within the time specified under Sub-Clause 1 of Section 7, the Information Commission ought to have proceeded to pass orders under Section 20 of the RTI Act, 2005 and not under Section 19 (8) (b) of the RTI Act, 2005.

20. In such view of the matter, I am of the considered view that the impugned order dated 03.10.2011 passed in Case No.APIC-287/2011 (*Shri Neelam Topu-vs-PIO/EE PWD Yazali*) in a proceeding under Section 18 of Right to Information Act, 2005 insofar as, it directs the writ petitioner to pay a sum of Rs.50,000/- to the respondent No. 3 under Section 19 (8) (b) of the RTI Act

needs to be interfered with, with a further direction to the respondent No. 1, the Information Commission to pass a fresh order having regard to the powers that are available with the information commission under Sections 18 & 20.

21. Accordingly, the impugned order 03.10.2011 passed in Case No.APIC-287/2011 (Shri Neelam Topu-vs-PIO/EE PWD Yazali) by the State Information Commission, the respondent No. 1, wherein, the writ petitioner/ PIO has been directed to pay a sum of Rs.50,000/- as compensation to the respondent No. 3, the information seeker, under Section 19 (8) (b) is hereby set aside and quashed only to the extent it directs to pay a sum of Rs. 50,000/- as compensation, with a further direction to the respondent No. 1, the State Information Commission, to pass fresh order in the matter having regard to the powers that are available to the Information Commission under Sections 18 & 20 of the RTI Act, 2005.

This writ petition is disposed of in terms above.

Talim

JUDGE