



In the Tripura Information Commission
P. N. Complex: Gorkhabasti : Agartala

Complaint No TIC-38 of 2008-09.

Smt. Namita Saha
W/O Sri Birendra Ch. Saha
M.G.Bazar (near Lotus Club)
Agartala- 799001
Cell Phone No- 9436565283.....Complainant

Vs.

1.Sri R.C.Poddar, Chief Executive Officer, Agartala Municipal Council, Agartala
(First Appellate Authority).
2.Sri Santosh Das, Officer on Special Duty, Agartala Municipal Council, Agartala
(State Public Information Officer).....Opposite Parties

In the matter of a complaint under section 18(1)
of the Right to Information Act, 2005.

PRESENT:

1. Sri B.K.Chakraborty
State Chief Information Commissioner

2. Sri D.K.Daschaudhuri
State Information Commissioner

For the Complainant: Ld. Advocate Sri S. Chakraborty for and on behalf of
the complainant duly authorized.

For the Opposite Party No.1: Sri R.C.Poddar, Chief Executive Officer, Agartala
Municipal Council, Agartala (First Appellate
Authority).

For the Opposite Party No.2: Sri Santosh Das, Officer on Special Duty, Agartala
Municipal Council, Agartala (State Public
Information Officer).

Date of lodging the complaint: 04.12.2008

Date of hearing of the complaint: 02.01.2009

Date of pronouncing judgment and order: 30.01.2009

JUDGMENT & ORDER

Facts:

1. This complaint under section 18(1) of the RTI Act, 2005 (for short the Act) arose out of a written application dated 04.12.2008 of Smt. Namita Saha (here in after referred to as the complainant) received by this Commission on the same



date. The backdrop of this case is that upon a second appeal dated 12.08.2008 of the complainant registered as Appeal No.TIC-19 of 2008-09, this Commission passed an order on 12.11.2008 directing the Opposite Party (OP) 2 Sri Santosh Das, Officer on Special Duty (OSD), Agartala Municipal Council (AMC), Agartala being the State Public Information Officer (SPIO) [Respondent 2 in the said Appeal] to furnish further information to the complainant (Appellant in the said Appeal) in the light of the discussion made in paragraphs -8 & 9 of the said judgment and order within a period of 15 days from the date of passing of the said judgment and order. In compliance with the said direction, the OP 2 provided the information to the complainant on 27.11.2008. Now, under this complaint, the complainant alleged that the information provided by the OP 2 being the SPIO against items -1,3& 4 of her written request in issue were misleading and incorrect. Moreover, the OP 2 being the SPIO provided the information against item - 1 stating that hearing was taken place on 11.09.2008, which was in fact, incorrect as no such hearing was at all taken place. It is also alleged by the complainant that the Assessor of the AMC threatened her to vacate the excess land. Hence, the complainant approached this Commission by way of this complaint for issuing direction to the SPIO to provide correct information and also to penalize the SPIO for furnishing incorrect and misleading information. Along with the written complaint, the complainant furnished photocopies of all the relevant papers.

2. On perusal of the written complaint with enclosures, adequate materials were found to take cognizance of a complaint under section 18(1) of the Act and accordingly, it was registered.

3. In response to the summons, the OP 1 Sri R.C.Poddar, Chief Executive Officer (CEO), AMC, Agartala and the FAA and the OP 2 Sri Santosh Das, OSD, AMC, Agartala and the SPIO appeared and submitted their respective written representations denying the allegations.

4. The complainant has also submitted a written rejoinder to her written complaint on 10.12.2008.

Point for decision:

5. In consideration of the facts and the circumstances of the case, the only point to be decided is whether or not the OP 2 being the SPIO provided correct information in compliance with the direction given by this Commission in its order dated 12.11.2008 passed in Appeal No.TIC-19 of 2008-09.

Reasons for decision:

6. We have perused the written complaint together with the written rejoinder of the complainant and the written representations of the OPs. We have also taken into consideration the oral submissions made by both the parties.

7. In her written request dated 07.06.2008, the complainant sought for 5 items of information. For the sake of brevity, we are refrained from discussing all

the 5 items of information here since, the complainant confined her allegations against the items – 1, 3 & 4-only. This Commission in its order dated 12.11.2008 passed in Appeal No.TIC-19 of 2008-09 between the same parties directed the OP 2 (Respondent 2 in the said appeal) being the SPIO to furnish further information to the appellant in the light of the discussions made in the preceding paragraphs within a period of 15 days from the date of passing of the said judgment and order. So, it is necessary to re-produce here the discussions made in paragraphs – 8 & 9 of the said judgment and order:-



"8. The appellant agitated that the information provided by the Respondent 2 being the SPIO were inadequate, misleading and incorrect. We have appreciated the information provided by the Respondent 2 being the SPIO as mentioned above. After a plain reading of the information provided by the Respondent 2, we find them to be not appropriate and to some extent were inconsistent. So, this Commission required the Respondent 1 being the head of the Public Authority as well as the FAA of the AMC, Agartala to cause a fresh look into the matter and submit a detailed report showing the present status of the representation dated 03.08.2007 of the appellant submitted to the AMC, Agartala praying for removal of the alleged illegal construction done by Sri Amulya Ghosh on the land of the appellant. Accordingly, the Respondent 1 caused a fresh enquiry into the matter and thereafter submitted a detailed additional representation on 25.09.2008 before this Commission vide his communication No.8185/F VII-6(Vol-I)/RTI/AMC/07 dated 24.09.2008 showing the steps taken and the replies to the queries made by the appellant vide her written request dated 07.06.2008, which are re-produced below:

<i>Queries made by the appellant</i>	<i>Information furnished by the FAA</i>
<i>1. What action Agartala Municipal Council has taken for removal of illegal part of construction of Sri Amulya Ghosh as requested for removal vide my prayer dated 03.08.2007 which was received by the Agartala Municipal Council under Docket no. 2395 dated 03.08.2007.</i>	<i>1. Action taken- i. Hearing taken on <u>11.09.2007</u> at <u>11.00 a.m.</u> ii. As per verbal instruction by the Authority in the hearing both the parties attended and Sri Amulya Ghosh was asked orally to remove the illegal part of structure.</i>
<i>2. The reason for not removing the said illegal part of construction of Sri Amulya Ghosh.</i>	<i>2. Since Sri Amulya Ghosh did not remove on oral request, the matter of removal was processed, by the AMC. But, as it was noticed during field enquiry that there were still some confusions regarding the construction of Sri Amulya Ghosh, the matter was getting delayed.</i>
<i>3. By which date AMC will remove the said illegal part of construction of Sri Amulya Ghosh.</i>	<i>3. From the report of the last physical inspection done by the staff of Agartala Municipal Council dated 02.09.2008 it is</i>

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	<i>seen that the said construction of Sri Amulya Ghosh is not illegal. Since, he has been possessing only the allotted land and Smt. Saha as requested by both the parties the resurvey will be done after Durga Puja and date of hearing will also be fixed by the Assessor, AMC for further hearing for disposal of the matter.</i>
<i>4. Who is responsible for not taking appropriate action on my prayer dated 03.08.2007.</i>	<i>4. Decision for removal was delayed as both the parties were occupying access land as reported at that time. There were some confusions regarding the said construction/ occupation of land etc. The detailed verification was made and actually no staff was responsible for non compliance.</i>
<i>5. What action AMC contemplates against the erring Authority for not taking action for removal of illegal part of construction of Sri Amulya Ghosh and by which date the process of action would be completed and intimated to the requester.</i>	<i>5. Action against the assigned officials for non removal of the construction/ erection could not taken as there were some confusions regarding the actual possession of land by both the parties.</i>

9. *After a comparison between the replies furnished by the Respondents 1 & 2 to the queries made by the appellant, we found marked differences. In the earlier one, it was stated that both the parties were in possession of excess land and the matter was under investigation. In the latter report, it has categorically been stated that the construction done by Sri Amulya Ghosh was found not illegal. However, the land in possession of both the parties will be re-surveyed and final decision will be taken after Durga Puja. In view of the latest position submitted by the Respondent 1 vide his report dated 24.09.2008 as narrated at para - 8 above, we think that if these information are provided to the appellant in response to her written request dated 07.06.2008, it should suffice. Thus, the decisions dated 30.06.2008 of the Respondent 2 and dated 19.07.2008 of the Respondent 1 are not maintainable and liable to be modified as discussed here in above."*

8. In compliance with the said judgment and order, OP 2 being the SPIO provided the following information against items - 1, 3 & 4 along with the items - 2 & 5:-

Question	Answer
1. What action Agartala Municipal Council has taken for removal of illegal part of construction of Sri Amulya	1. Action Taken- i. Hearing taken on 11/09/2007 at 11.00 a.m. ii. As per verbal instruction by the authority in the hearing both the parties attended and Sri Amulya Ghosh was asked

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<p>Ghosh as requested for removal vide my prayer dated 3/8/2007 which was received by the Agartala Municipal Council under Docket No. 2395 dated 3.08.07.</p>	<p>orally to remove the illegal part of structure.</p>
<p>3. By which date AMC will remove the said illegal part of construction of Sri Amulya Ghosh.</p>	<p>3. From the report of physical inspection done by the staff of Agartala Municipal Council dated 02/09/08 it was sent that the said construction of Sri Amulya Ghosh was not illegal and on the basis of request made by both the parties a decision was taken that after Durga Puja 2008 a detailed resurvey in presence of both the parties would be done and accordingly on 01/11/08 a team headed by the Asstt. Survey Officer, Agartala Municipal Council re-surveyed and demarcated the plots/Touji land of Smt. Namita Saha and Sri Amulya Ch. Ghosh. From the enquiry report of the Asstt. Survey Officer it is seen that both the parties have been possessing excess land beyond their touji land allotted by the Agartala Municipal Council. A copy of the enquiry report along with a hand sketch map showing the detailed measurement are annexed.</p> <p>On 19/11/08 a hearing has been conducted. Both the parties attended. The parties have been informed their existing position of possession of excess land beyond their touji granted by the Agartala Municipal Council. Both the parties agreed in presence of Assessor on 19-11-08 that they are possessing excess land beyond their touji allotted land. Process is being taken to ask the both the excess land occupiers to demolish their illegal part of the construction including the alleged construction of Sri Amulya Ghosh made over the Municipal land within 10 days.</p>
<p>4. Who is responsible for not taking appropriate action on my prayer dated 3/08/2007.</p>	<p>4. Decision was kept pending by the AMC as both the parties were occupying access land as reported and to take a decision on further detailed verification."</p>

9. According to the discussions made by this Commission in paragraphs- 8 & 9 of the judgment and order passed in Appeal No.TIC-19 of 2008-09, the OP 2 being the SPIO (Respondent 2 in the said appeal) was directed to provide the information similar to the report furnished by the Respondent 1 as described in paragraph - 8 of the said judgment and order passed in Appeal No.TIC-19 of 2008-09. In doing so, the OP 2 being the SPIO provided appropriate information against items 1 & 3. Ld. Advocate appearing for the complainant could not show any departure from providing the information contrary to the direction given by this Commission. Rather, the OP 2 being the SPIO intimated some facts

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of subsequent development of the proceedings arose out of the dispute between the complainant and one Sri Amulya Ghosh, which he (OP 2) was not under any obligation to supply. It was alleged by the complainant that no hearing was conducted on 11.09.2008 although it was shown in reply to the queries against item - 1. In fact, the complainant misquoted the date, which was ought to have been 11.09.2007. OP 1 in his written representation categorically claimed that such hearing was held on 11.09.2007. Thus, the allegation of the complainant as regards the hearing held on 11.09.2008 does not stand.

10. It will be evident from perusal of the replies given against item -4 of the information sought for by the complainant as mentioned in paragraph -8 of the judgment and order of Appeal No.TIC-19 of 2008-09 and the information provided by the OP 2 on 27.11.2008 that there is a marked difference between the two information. While in the report of OP 1 as mentioned in the appeal, it was claimed by the AMC authority that no such staff was responsible for non-compliance, the SPIO while providing the information on 27.11.2008 intimated that the decision was kept pending by the AMC as both the parties were occupying excess land as reported and to take a decision on further detailed verification. It is no doubt a deviation on the part of the OP 2 being the SPIO. So, he is under obligation to provide further information against item- 4 of the information sought for by the complainant strictly following the direction given by this Commission in its judgment and order dated 12.11.2008 passed in Appeal No.TIC-19 of 2008-09.

11. The complainant further alleged that the Assessor, by serving a notice threatened her for vacating the excess land. This Commission has no jurisdiction to adjudicate over such allegation as the Assessor was acting within his jurisdiction under specific Municipal Law.

12. As regards claim of the complainant to penalize the OP 2 being the SPIO, we find no reasonable ground to invoke the provisions of section 20(1) of the Act. The complainant virtually was apprised of the required information by supplying a copy of the written representation of the OP 1 submitted in the Appeal No.TIC-19 of 2008-09. Providing information by the OP 2 being the SPIO in pursuance of direction of this Commission was mere a formality.

Decision:

13. In fine, the complaint is partially allowed on contest. The OP 2 Sri Santosh Das, OSD, AMC, Agartala being the SPIO is directed to provide the correct information to the complainant against the query made under item - 4 as mentioned in her written request dated 07.06.2008 within a period of 15 days from the date of passing of this judgment and order in compliance with the direction given by this Commission in its order dated 12.11.2008 passed in Appeal No.TIC -19 of 2008-09. A report of compliance shall be sent to this Commission by the OP 2 forthwith.

14. Let copy of this judgment and order be sent to the complainant and the OPs.

15. Pronounced.



Sd/-
(D.K.Daschauthuri)
State Information Commissioner

Sd/-
(B.K.Chakraborty)
(State Chief Information Commissioner)

Authenticated

30.1.09
(S.C.Saha)
Secretary

Tripura Information Commission

Tripura Information Commission
P. N. Complex: Gorkhabasti : Agartala

Complaint No.TIC- 38 of 2008-09 / 118 - 20

Dated, 30.01.2009

Copy to:-

- 1.Smt. Namita Saha, W/O Sri Birendra Ch. Saha, M.G.Bazar (near Lotus Club) Agartala- 799001 (Complainant).
- 2.Sri R.C.Poddar, Chief Executive Officer, Agartala Municipal Council, Agartala (First Appellate Authority)- OP1.
- 3.Sri Santosh Das, Officer on Special Duty, Agartala Municipal Council, Agartala (State Public Information Officer)- OP 2.

30.1.09
(S.C.Saha)
Secretary

Tripura Information Commission