



TRIPURA INFORMATION COMMISSION

P. N. Complex: Gorkhabasti
Agartala – 799 006

Appeal No. TIC - 07 of 2009-10.

Sri Ashis Chakraborty
S/O Late Srimanta Chakraborty
37, Akhaura Road,
Agartala : West Tripura.....Appellant

Vs.

1.Sri S. Bhowmik, Director of Higher Education, Government of Tripura, Agartala
(First Appellate Authority).

2.Sri Rameswar Bhattacharjee, Principal In-charge, Government Music College,
Government of Tripura, Agartala (State Public Information Officer).

..... Respondents

In the matter of the 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 appellant: The appellant Sri Ashis Chakraborty himself

For the Respondent No 1: Sri S. Bhowmik, Director of Higher Education,
Government of Tripura, Agartala (First Appellate
Authority).

For the Respondent No. 2: Sri Rameswar Bhattacharjee, Principal In-charge,
Government Music College, Government of Tripura
Agartala (State Public Information Officer).

Date of lodging the second appeal: 06.07.2009

Dates of hearing: 21.07.2009 & 31.07.2009

Date of pronouncing the judgment: 20.08.2009




JUDGMENT AND ORDER

Facts:

1. This second appeal under section 19(3) of the RTI Act, 2005 (for short the Act) arose out of a memorandum of second appeal dated 06.07.2009 of Sri Ashis Chakraborty (here in after referred to as the appellant) received by this Commission on the same date. Brief facts leading to this second appeal are that the appellant submitted on 04.10.2008 a written request seeking five items of information to the Principal In-charge, Government Music College, Government of Tripura being the State Public Information Officer (SPIO). In response to the said written request, Sri Rameswar Bhattacharjee, Principal In-charge, Government Music College, Government of Tripura being the SPIO provided the information on 09.11.2008, which was not satisfactory to the appellant and he preferred a first appeal against the decision of the SPIO to the Director of Higher Education, Government of Tripura being the First Appellate Authority (FAA) seeking appropriate redress to have access to the information. Sri S. Bhowmik, Director of Higher Education, Government of Tripura being the FAA decided the first appeal on 17.12.2008 asking the appellant to submit a fresh appeal clarifying the description of the specific information required. In compliance with the said order, the appellant on 27.12.2008 submitted an application to the Director of Higher Education, Government of Tripura. Having no response from the Director of Higher Education, Government of Tripura being the FAA, the appellant sent a reminder on 02.05.2009 seeking disposal of the first appeal in issue. But, till the date of lodging this second appeal, the appellant received no decision of the Director of Higher Education, Government of Tripura being the FAA. Hence, this second appeal is preferred by the appellant before this Commission seeking full information against five items of information as described in his written request dated 04.10.2008. Along with the memorandum of second appeal, the appellant furnished photocopies of all the relevant papers.
2. On perusal of the memorandum of appeal with enclosures, it was found in form, but barred by period of limitation. However, since the appellant sent a reminder to the concerned FAA on 02.05.2009 seeking disposal of the first appeal in issue, which remains un-responded amounting to acquiring a lease of life by the first appeal in issue, the delay was condoned. Accordingly, it was registered as a second appeal under section 19(3) of the Act.
3. In response to the summons, Respondent 1 Sri S. Bhowmik, Director of Higher Education, Government of Tripura and the FAA and the Respondent 2 Sri Rameswar Bhattacharjee, Principal In-charge, Government Music College, Government of Tripura and the SPIO appeared and submitted their respective written representations. Respondent 2 also submitted an additional written representation on 25.07.2009.
4. The appellant has also submitted a written rejoinder on 31.07.2009 reiterating his request made in the memorandum of appeal dated 06.07.2009.

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5. Heard oral submissions made by the appellant and the Respondents 1 and 2. In course of hearing, after due consideration of the papers produced by both the parties and the oral submissions placed by them, we were of the view that there was misunderstanding between the concerned SPIO and the appellant about the existence of the records pertaining to some of the information sought for under items – 1, 4 & 5 as described in the written request dated 04.10.2008 of the appellant. Therefore, it was felt necessary to make an inspection of the concerned records by the appellant pertaining to the above information in presence of a responsible officer to be engaged by the Respondent 2. Accordingly, the appellant and the Respondent 2 being the SPIO had agreed before this Commission to hold the said inspection in the office of the latter on 24.07.2009 at 11 A.M. Both the parties were directed to submit in writing the result of the inspection made by the appellant. But, the Respondent 2 in his additional written representation dated 25.07.2009 informed this Commission that the appellant informed him in writing on 23.07.2009 that he was not inclined to conduct the inspection despite specific direction by this Commission. The Respondent 2 also furnished a copy of the said letter dated 23.07.2009 of the appellant addressed to the former. In course of hearing, the appellant also admitted the fact.

6. It was further transpired from the oral submission of the Respondent 2 that the information sought for under item – 2 as described in the written request dated 04.10.2008 of the appellant were not available in his custody and, therefore, he was directed by this Commission to transfer the request to the appropriate public authority within a period of five days from 21.07.2009 under intimation to the appellant for taking decision in the matter according to the law. The Respondent 2 in his additional written representation dated 25.07.2009 confirmed that he had sent a letter to the SPIO in the Directorate of School Education, Government of Tripura on 04.07.2009 for taking necessary action in respect of the information sought for under item -2 as described in the written request in issue.

Issues for decision:

7. In consideration of the facts and the circumstances of the case, the following issues require decision:-

- (i) Is the appellant entitled to have access to further information as against the information sought for under items – 1, 4 & 5 as described in his written request dated 04.10.2008?
- (ii) Is the information provided by the Respondent 2 being the SPIO as against item -3 as described in the written request in issue of the appellant appropriate and if the appellant is entitled to any further information in this respect?

Reasons for decision:


8. Issue No.(i): We have carefully gone through the memorandum of second appeal with enclosures and the written rejoinder of the appellant, the written

representations of the Respondents 1 and 2 and the additional written representation of the Respondent 2. We have also considered the oral submissions placed by the appellant and the Respondents 1 and 2.

9. Out of five items of information sought for by the appellant under his written request dated 04.10.2008, the Respondent 2 being the SPIO transferred the request in respect of the information sought for under item -2 of the written request in issue to the SPIO in the Directorate of School Education, Government of Tripura for taking necessary action. So, we do not consider it wise to pass any further order at this stage in regard to the entitlement of the appellant to have such information. He will, however, have the right to take the recourse of law as regard the said information available under the Act at appropriate time.

10. We have already discussed in paragraph - 5 above that the appellant was given the scope of inspection of records available with the Respondent 2 as to the existence of the records pertaining to the information sought for under items - 1, 4 & 5 as described in the written request in issue. But, admittedly the appellant refrained from holding such inspection without assigning any valid reasons. So, the conduct of the appellant invited an adverse inference to be drawn against him as regard the truthfulness of his submission placed before this Commission that he had seen the original records pertaining to the information sought for by him under items - 1, 4 & 5 in the custody of the Respondent 2. According to the Respondent 2, he had shown all the old records available in his custody to the appellant and he provided copies of all the documents as chosen by the appellant. But, subsequently, in course of hearing of this case, the appellant disputed the version of the Respondent 2 stating that the copies of all the records seen by him were not provided to him by the Respondent 2. Since, the appellant did not avail of the opportunity of further inspection of the concerned records as allowed by this Commission, we are unable to accept the version of the appellant, but to believe the version of the Respondent 2 that copies of all the available records were provided to the appellant in response to the demand for information sought for under items - 1, 4 & 5 as described in the written request in issue. Therefore, the appellant is not entitled to have any further information against those three items of information from the Respondent 2 being the SPIO.

11. Issue No.(ii): Under item -3 as described in the written request in issue, the appellant sought for photocopies of musical and academic qualification of part- time teachers, namely, 1) Sri Chinmoy Das (Kathhak dance), 2) Sri Sushanta Lodh (Classical vocal), 3) Smt. Sima Ghosh (Rabindra Sangeet), 4) Sri Shymal Deb (Tabla), 5) Sri Subrata Talukdar (Tabla), 6) Smt. Manashi Ghosh (Tabla), 7) Smt. Chyanda Nandy (Classical vocal). In response to the above requirements, the Respondent 2 intimated the appellant on 03.11.2008 that the Director of Higher Education, Government of Tripura already provided the information to the appellant on 03.05.2008 against the query no- 4 of the written request dated 24.04.2008 of the appellant about the eligibility in regard to musical and academic qualifications of the part-time teachers. In his written representation dated 17.07.2009, the Respondent 2 stated that the information in respect of



academic and musical qualifications of the seven part-time teachers of Government Music College also relates to the third party information and supply of providing personal certificates etc, cannot be made under the Act. In his oral submission, the Respondent 2 made it clear that the certificates showing musical and academic qualifications of seven part-time teachers in issue were not lying in his office and he was also not sure if such records were available in the Directorate of Higher Education or not. The fact remains that the copy of the statement showing academic qualifications of seven part-time teachers sent by the Respondent 1 being the Director of Higher Education was available with the Respondent 2 since a copy of the said statement has been furnished to this Commission by him. The contention of the Respondent 2 that since, similar information was provided once by another office to the information seeker, he was not under obligation to provide the same information again to the same information seeker is not tenable. So, the reply given by the Respondent 2 as against the information sought for under item - 3 as described in the written request in issue cannot be held to be appropriate. He should have made it clear whether or not the original certificates of musical and academic qualifications of the concerned part-time teachers were available with him or not and if he was aware of the office, with which such records were lying and if such office is under the same public authority, he should have collected the records and taken a decision about disclosure of the information. In the instant case, since the Respondent 2 denied to have the custody of the records in issue and divulged that in response to the similar queries, the Director of Higher Education provided to the appellant only the qualifications acquired by the part-time teachers as information in connection with another written request, he should have collected the information from the concerned public authority and provide them to the appellant. The statement prepared by the Director of Higher Education containing musical and academic qualifications of the part-time teachers in issue did not confirm if the original certificates in support of the above qualifications were available in his office. If such records were available with the head of the public authority, we find no bar in law in furnishing copies of such documents to the appellant since the above documents were relied on to appoint the concerned part-time teachers in public interest only. However, the concerned SPIO is under no obligation to provide copies of the certificates in issue if the originals are not lying either in his custody or in the custody of the concerned public authority or by procuring from the incumbent concerned.

12. Having regard to the discussion made here in above, the information provided to the appellant by the Respondent 2 as against item -3 as described in the written request in issue is held to be not appropriate. He is required to collect the required information from the office of the Director of Higher Education and provide them to the appellant in the light of the discussion made in the preceding paragraph within a period of 15 days from the date of passing of this judgment and order free of charge since the information could not be provided within the statutory period as prescribed by the Act. Respondent 1 being the head of the Public Authority shall render necessary assistance to the Respondent 2 making the above information available with the latter.



13. As regard disposal of the first appeal dated 27.12.2008 claimed to have been preferred by the appellant before the Respondent 1 in compliance with his decision dated 17.12.2008, the latter denied to have received the same in his office. Therefore, the question of deciding the said first appeal dated 27.12.2008 did not arise, Respondent 1 added. The appellant expressed his inability to produce any proof of submitting the said first appeal on the plea that no receipt was issued from the office of the Respondent 1. In the circumstances, the Respondent 1 is directed to introduce in his office a mechanism for issuance of receipt for receiving any memorandum of first appeal under the Act henceforth.

Decision:

14. In fine, the appeal is partially allowed with the following orders:-

- (i) The appellant is not entitled to have any further information as against items - 1, 4 & 5 as described in his written request dated 04.10.2008 in the light of the discussion made in paragraph - 10 above.
- (ii) Respondent 2 Sri Rameswar Bhattacharjee, Principal In-charge, Government Music College, Government of Tripura being the SPIO is directed to provide the information to the appellant as against item - 3 as described in his written request dated 04.10.2008 within a period of 15 days from the date of passing of this judgment and order free of charge since the SPIO could not provide the information to the appellant within the statutory period in the light of the discussions made in paragraphs - 11 and 12 above .

15. Let copy of this judgment and order be sent to the appellant and the Respondents 1 and 2.

16. Pronounced.

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

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

Authenticated


(S.C.Saha)
Secretary
Tripura Information Commission



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

Appeal No TIC - 07 of 2009-10 / 858-60

Dated, 20.08.2009

Copy to:-

1. Sri Ashis Chakraborty, S/O Late Srimanta Chakraborty, 37, Akhaura Road, Agartala : West Tripura (Appellant).
2. Sri S. Bhowmik, Director of Higher Education, Government of Tripura, Agartala (First Appellate Authority) – Respondent 1.
3. Sri Rameswar Bhattacharjee, Principal In-charge, Government Music College, Government of Tripura, Agartala (State Public Information Officer) – Respondent 2.


(S.C.Saha)
Secretary

Tripura Information Commission