



In the Tripura Information Commission
P. N. Complex : Gombasthi, Agartala

Appeal No 15 of 2007-08.

Syed Wasi Kamal
C/O Mr. Subrata Deb
Gobindapur, Kailashahar
North Tripura.....

Appellant

Vs.

1. The Conservator of Forests, Northern Circle, Kumarghat, North Tripura (First Appellate Authority).
 2. The Divisional Forest Officer, Northern Division, Kailashahar, North Tripura (SPIO).
.....
- Respondents

In the matter of a second appeal under section 19(3)
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: Sri N.G. Nandy, Advocate for and on behalf of the appellant.

For the Respondent No. 1: Sri B.S. Mishra, Conservator of Forests, Northern Circle, Kumarghat, North Tripura (FAA).

For the Respondent No. 2: Sri Amit Sukla, Divisional Forest Officer, Northern Division, Kailashahar, North Tripura (SPIO).

Date of lodging second appeal : 27.12.2007

Dates of hearing of second appeal: 21.01.2008 and 16.02.2008

Date of pronouncing judgment and order: 05.03.2008

JUDGMENT & ORDER

Facts:

1. This second appeal under section 19(3) of the RTI Act, 2005 (for short the Act) arises out of a memorandum of appeal dated 20.12.2007 by Syed Wasi

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Kamal (here in after referred to as the appellant) received by this Commission on 27.12.2007.

2. The facts leading to this second appeal are that the appellant made a written request on 13.09.2007 to the State Public Information Officer (SPIO) in the office the Divisional Forest Officer (DFO), Northern Division, Kailashahar seeking two items of information under the Act. Having no response within the statutory period of 30 days from the concerned SPIO, the appellant preferred a first appeal on 19.11.2007 to the Conservator of Forests (CF), Northern Circle, Kumarghat being the First Appellate Authority (FAA) seeking appropriate redress to have access to the information sought for. But, the FAA also failed to respond to the first appeal within the statutory period. Hence, the appellant approached this Commission by way of this second appeal for taking appropriate action under the Act for having access to the information sought for. The appellant, along with the memorandum of appeal, furnished photocopies of the relevant written request dated 13.09.2007 and the memorandum of first appeal dated 19.11.2007.

3. On perusal of the memorandum of appeal with enclosures, it is found in form and within time and, therefore, is admitted as second appeal under section 19(3) of the Act.

4. In response to the summons, Sri B.S. Mishra, CF, Northern Circle, Kumarghat (FAA) appeared and submitted a written representation stating, inter-alia, that the memorandum of first appeal of the appellant was received in his office on 19.11.2007 when the then CF, Northern Circle, Kumarghat Sri P.K.Pant was on leave for getting medical check up leaving the office vacant. Thereafter, Sri D.K.Sharma, CF, Wild Life assumed the charge of office of the CF, Northern Circle, Kumarghat on 22.12.2007 and subsequently taken over by Sri Mishra, by which time the statutory period for disposal of the first appeal had already elapsed. However, Sri Mishra after his joining, fixed a date for hearing on 15.01.2008, but he refrained from passing any order because of the fact that in the meantime, the appellant approached this Commission by way of this second appeal.

5. Respondent 2 Sri Amit Sukla, DFO, Northern Division, Kailashahar (SPIO) also appeared in response to the summons and submitted a written representation admitting that his office received the written request of the appellant dated 14.09.2007 and the same was attended by him immediately on its production before him by his officials. Expressing his decision to disclose the information, he sent intimation in form No-2 to the appellant on 14.01.2008. The SPIO has also confirmed that in the meantime, he has already furnished the information to the appellant free of cost. He further contended that due to negligence of some staff of his office, the written request of the appellant was not placed before him in time, which resulted delay in disposal of the same.

6. The appellant submitted a rejoinder dated 18.01.2008 to his memorandum of appeal received by this Commission on 20.01.2008 stating that he has already



received the required information in 524 pages. Ld. Advocate Sri N.G. Gandy appearing for the appellant also submitted a petition on 16.02.2008 before this Commission confirming that the appellant has already received the required information and he is satisfied with the same but insisted for imposing penalty upon the Respondents under section 20 of the Act for causing delay in providing the information.

Issue for decision:

7. In consideration of the relief sought for by the appellant and the written representations of the Respondents, the only point to be decided is as to whether the Respondents committed breach of the provisions of the Act and if so, whether they are liable to be penalized under section 20(1) of the Act.

Reasons for decision:

8. It is admitted fact that both the Respondents made delay in disposing of the written request and the first appeal. The Respondent 2 being the SPIO conceded that his office received the written request of the appellant dated 13.09.2007 seeking information on 14.09.2007 and he decided the same on 14.01.2008 for disclosure of the information and provided the information to the appellant on 20.01.2008. Thus, about four months delay has been caused in providing the information. The Respondent 2 has explained that due to repeated spells of un-authorized absence of the Head clerk of the General Section of his office, the written request in issue was not produced before him in time, for which he could not dispose of the same within the statutory period. The explanation advanced by the Respondent 2 is not at all satisfactory. As per provisions of section 7(1) of the Act, the SPIO or SAPIO is under obligation to receive the written request seeking information under the Act directly by himself/herself and is responsible for disposal of the same within the statutory period as prescribed under the Act. Such responsibility of receiving the written request seeking information under the Act cannot be delegated to a subordinate staff and if it is so done, that will be at the risk of the concerned SPIO/SAPIO. In the present case, the Respondent 2 has surely failed to follow the prescribed procedure for receiving and disposing of the written request in issue. However, since it is the first case of breach of the relevant provisions of law on the part of the Respondent 2 and that ultimately he has provided the information, which ventilates his applicant-friendly attitude to disclose the information, we view above breach of law on his part leniently with the caution that he should be more careful and follow strictly the relevant provisions of law in dealing with such written request for information under the Act in future. Since, the Respondent 2 had no malafide intention to cause the delay, we do not consider it a fit case to penalize him invoking the provisions of section 20 of the Act.

9. The Respondent 1 has also admitted that there was violation of the relevant provisions of the Act for not disposing of the first appeal by the CF, Northern Circle, Kumarghat being the FAA within the statutory period. The explanation offered by him in his written representation as depicted in

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paragraph 4 above deserves consideration and we hold that since the office of the CF was vacant for certain period of time, it was not possible on the part of the present CF i.e. the Respondent 1 to decide the first appeal in time and, therefore, we find no breach of law to have been committed by the Respondent 1. But, we are constrained to observe that the head of the Public Authority of the Forest Department, Government of Tripura was under obligation to see that the office of the FAA, Northern Circle, Kumarghat was not left vacant for the period in question. It is the responsibility of the head of the Public Authority to ensure that the authorities of the stakeholders under the Act like FAA, SPIO and SAPIO are not left vacant even for a while owing to absence of the designated FAA, SPIO and SAPIO either for remaining out of station on duty or proceeding on leave or any other ground whatsoever and alternative arrangement should be made forthwith for the period of such vacancy.

10. With the above observations, the issue is decided.

Decisions:

11. In fine, the appeal is disposed of on contest with the following observations:-

- (i) The Respondents 1 and 2 shall be more circumspect in future in dealing with the written request seeking information and the first appeal under the Act strictly following the provisions of the RTI Act, 2005 and the principle of natural justice.
- (ii) The PCCF, Government of Tripura, Agartala being the head of Public Authority of the Forest Department, Government of Tripura shall ensure that the offices of the authorities of the stakeholders under the Act like FAA, SPIO and SAPIO are not left vacant even for a while owing to absence of the designated FAA, SPIO and SAPIO either for remaining out of station on duty or proceeding on leave or any other ground whatsoever and alternative arrangement should be made forthwith for the period of such vacancy.

12. Let copy of this judgment and order be sent to the appellant and the Respondents. Also send a copy of this judgment and order to the Principal Chief Conservator of Forests, Government of Tripura being the head of the Public Authority.

13. Pronounced.

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

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

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Authenticated

ec 2/3/08
(S.C. Saha)
Secretary

Tripura Information Commission



TRIPURA INFORMATION COMMISSION
P. N. Complex; Gorkhabasti; Agartala

Appeal No - 15 of 2007-08/ 2615-48

March 05, 2008

Copy to: -

1. Syed Wasi Kamal, C/O Mr. Subrata Deb; Gobindapur, Kailashahar, North Tripura (Appellant).
2. Sri B.S.Mishra, Conservator of Forests, Northern Circle, Kumarghat, North Tripura (First Appellate Authority).
3. Sri Amit Sukla, Divisional Forest Officer, Northern Division, Kailashahar, North Tripura (SPIO).
4. The Principal Chief Conservator of Forests, Government of Tripura, Agartala, (Head of the Public Authority).

ec 2/3/08
(S.C. Saha)
Secretary

Tripura Information Commission