



IN THE TRIPURA INFORMATION COMMISSION

P. N. Complex: Gorkhabasti : Agartala

Complaint No TIC-06 of 2009-10.

Sri Partha Talapatra
Shibnagar (near Gedu Mia Maszid)
Agartala - 799001.....Complainant

Vs.

1.Sri Subhash Chakma, In-charge Inspector of Schools, Education Inspectorate,
Tripura Tribal Areas Autonomous District Council, Chailengta, P.O.- Chailengta,
Dhalai, Tripura (State Public Information Officer).

2.The Additional Chief Executive Officer, Tripura Tribal Areas Autonomous District
Council, Khumulwng, West Tripura (First Appellate Authority)

.....Opposite Parties

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 complainant : Sri Dhrubajit DebBarma for and on behalf of the
complainant Sri Partha Talapatra duly authorized.

For the Opposite Party No.1,Sri Subhash Chakma, In-charge Inspector of Schools,
Education Inspectorate, Tripura Tribal Areas
Autonomous District Council, Chailengta, P.O.-
Chailengta, Dhalai, Tripura (State Public Information
Officer)

For the Opposite Party: 2. The Additional Chief Executive Officer, Tripura Tribal
Areas Autonomous District Council, Khumulwng, West
Tripura (First Appellate Authority)

Date of lodging the complaint: 13.05.2009

Dates of hearing: 04.06.2009 & 22.06.2009

Date of pronouncing the judgment and order: 13.07.2009

JUDGMENT AND ORDER

Facts:


1. This complaint arose out of a written application dated 12.05.2009 of Sri Partha Talapatra (here in after referred to as the complainant) received by this Commission on 13.05.2009. Briefly stated, the case of the complainant is that he submitted a written request on 16.04.2008 to the State Public Information Officer (SPIO), office of the Inspector of Schools, Education Inspectorate, Tripura Tribal Areas Autonomous District Council (TTAADC), Chailengta, P.O.- Chailengta, Dhalai, Tripura seeking certain items of information under the RTI Act, 2005 (for short the Act). Having no response from the concerned SPIO within the statutory period, the complainant preferred a first appeal on 29.05.2008 to the First Appellate Authority (FAA), office of the Chief Executive Officer (CEO), TTAADC, Khumulwng, West Tripura. The Additional CEO, TTAADC being the FAA sent a wireless message on 03.06.2009 to the Inspector of Schools, Education Inspectorate, TTAADC, Chailengta giving direction to provide the information to the complainant. However, the FAA did not take any step for disposal of the first appeal in issue following the relevant provisions of the Act and the Tripura Right to Information Rules, 2008 (for short the Rules). The concerned SPIO in compliance with the direction of the Additional CEO, TTAADC and the FAA did not provide any information to the complainant until 28.04.2009, on which the Deputy Inspector of Schools, Education Inspectorate, TTAADC, Chailengta sent a letter to the complainant asking to deposit a sum of Rs. 28/- only being the cost of photocopy of the information required by the latter. The complainant submitted that since the information could not be provided within the statutory period, the SPIO should have provided the information free of cost. Hence, the complainant lodged this complaint before this Commission for having access to the information sought for free of charge. Along with the written complaint, the complainant furnished photocopies of the written request dated 16.04.2008 seeking information, the wireless message of the FAA and the letter dated 28.04.2009 of the SPIO demanding additional fee.

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

3. In response to the summons, Opposite Party (OP) 1 Sri Subhash Chakma, In-charge Inspector of Schools, Education Inspectorate, TTAADC, Chailengta and the SPIO appeared and submitted a written representation and also an additional written representation. OP 2 Sri S. Sailohnuna, Additional CEO, TTAADC and the FAA appeared and submitted a written representation.

4. The complainant submitted a written rejoinder on 22.06.2009 disclosing that in the meantime, out of 10 items of information sought for by him, all the information except incomplete information under item -9 have already been provided to him by the SPIO.

CS



5. After preliminary hearing on 04.06.2009 and appreciation of the complaint, the written representations of the OPs 1 and 2 and in consideration of the oral submissions made by the representative of the complainant and the OPs, this Commission, prima-facie, was of the view that the OP 1 Sri Subhash Chakma, In-charge Inspector of Schools, Education Inspectorate, TTAADC, Chailengta contravened several provisions of the Act causing long delay in providing the information to the complainant and also committed gross dereliction of duties by not complying with the specific direction of the OP 2 (FAA) to warrant penalty under section 20(1) of the Act. Accordingly, he was given an opportunity of being heard and showing cause as to why he shall not be penalized. In response, the OP 1 placed his submissions in writing vide his representation dated 22.06.2009.

6. Also heard oral submissions placed by Sri Dhruvajit DebBarma appeared for and on behalf of the complainant duly authorized, OP 1 and OP 2.

Points for decision:

7. In consideration of the facts and the circumstances of the case, the following points are to be determined:-

- (i) Whether or not the complainant has been provided with the information sought for by him by the OP 1 within the statutory period and if the complainant is entitled to any further information to be provided by the OP 1?
- (ii) Did the OP 1 Sri Subhash Chakma, In-charge Inspector of Schools, Education Inspectorate, TTAADC, Chailengta and the SPIO violated any provisions of the Act in handling with the written request dated 16.04.2008 of the complainant?
- (iii) Is the OP 1 being the SPIO liable to be penalized under section 20(1) of the Act and if so, what shall be the quantum of penalty?
- (iv) Did the OP 2 being the FAA committed any irregularity in handling with the first appeal of the complainant?

Reasons for decision:

8. Points No. (i), (ii) & (iii): For the sake of convenience, all the three points are taken together for discussion. It is admitted fact that the complainant submitted his written request seeking 10 items of information to the SPIO, office of the Inspector of Schools, Education Inspectorate, TTAADC, Chailengta. After perusal of the written representation of the OP 1 including the enclosures submitted therewith, it reveals that till 03.06.2008, no step was taken by him to respond to the written request of the complainant in issue. The Additional CEO, TTAADC being the FAA sent a radio message on 03.06.2009 to the OP 1 to provide the information to the complainant as sought for. In response to the said radio message, the OP 1 sent a letter on 26.06.2008 to the complainant to appear and to collect the necessary documents, in response to which, the complainant

requested the OP 1 by sending a letter dated on 04.07.2008, which was received by the latter on 09.07.2008 to send all the documents by registered post. But, the OP 1 took no further step to send the information to the complainant till the date of filing this complaint before this Commission. It is disclosed by the OP 1 at para - 8 of his written representation submitted on 22.06.2009 that he sent the documents to the complainant on 09.06.2009 by registered post. The complainant in his written rejoinder dated 22.06.2009 admitted to have received all the information except the full information sought for under item-9 of his written request in issue. It is also transpired from the records that the OP 1 being the SPIO demanded the additional fee of Rs. 28/- from the complainant vide his letter dated 28.04.2009, which was objected to by the complainant in his written complaint on the ground that since, the concerned SPIO did not provide the information within the statutory period, no additional fee for providing the information could be demanded by the SPIO.

9. It is transpired from the written representation of the OP 1 submitted on 22.06.2009 that the application fee of Rs. 10/- was deposited by the complainant in the form of Indian Postal Order (IPO) drawn in the name of the SPIO, Deputy Inspector of Schools, Education Inspectorate, TTAADC, Chailengta, which could not be encashed due to wrong address. Therefore, the written request of the complainant in issue was not supported by deposit of requisite application fee as added by the OP 1. It is fact that the Inspector of Schools, Education Inspectorate, TTAADC, Chailengta was designated as the SPIO in respect of the Education Inspectorate, Chailengta. During the material period, Sri Subhash Chakma, Deputy Inspector of Schools, Education Inspectorate, Chailengta was holding the charge of Inspector of Schools, Education Inspectorate, TTAADC, Chailengta. So, there was no mistake in making the endorsement in the IPO. Perusal of photocopy of the postal order in issue and the letter of the concerned Sub Post Master reveals that the IPO in issue was tendered to the Sub Post Master only on 19.06.2009 for encashment. According to Rule 11 of the Rules, an SPIO is under obligation to encash the IPO and thereafter to deposit the same to the Government exchequer on the first working day of the following week of receipt of the application fee. Had there been any wrong endorsement on the body of the IPO by the information seeker (here the complainant), the concerned SPIO should have asked the information seeker to make necessary correction in the endorsement on the IPO or to deposit the application fee afresh, which the OP 1 failed to do. As per provisions of section 5(3) of the Act, an SPIO is under obligation to render reasonable assistance to the persons seeking information. So, the complainant cannot be blamed for non - depositing the application fee. The OP 1 committed violation of the provisions of section 5(3) of the Act and Rule 11 of the Rules by not demanding application fee and not depositing the same to the Government exchequer within the statutory period. Thus, the OP 1 cannot escape his responsibility of having due application fee from the complainant.

10. Albeit, in our view, the Sub Post Master, Chailengta Sub Post Office did not apply his mind in refusing change of the IPO in issue as tendered by the OP 1 on 19.06.2009 since it was endorsed substantially in the name of the SPIO, office of



the Education Inspectorate, Chailengta. At the material point of time, the Deputy Inspector of Schools, Education Inspectorate, TTAADC, Chailengta was acting as the SPIO and, therefore, there should not have been any legal bar to allow the change. From that apart, the transaction was for the public purpose. The OP 1 should tender the IPO in issue afresh to the Sub Post Master, Chailengta Sub Post Office for encashment and after such encashment, the amount should be entered into the cash book of RTI against the written request of the complainant in issue and be deposited to the Government exchequer as per Rules.

11. In view of the discussion made here in above, it is palpably clear that the OP 1 took in all 421 days for the period from 16.04.2008 to 09.06.2009 including the period from 26.06.2008 to 08.07.2008 (12 days – i.e. the time taken for intimating the complainant to receive delivery of the information and receipt of reply to that intimation sent by the complainant) to provide the information to the complainant. Thus, the OP 1 caused long delay of about 379 days {421 – (12 + 30)} in providing the information to the complainant. The demand of additional fee of Rs. 28/- was made by the OP 1 on 28.04.2009 i.e. after more than 30 days of submitting the written request on 16.04.2008 and, therefore, such demand was against the provisions of section 7(6) of the Act. Of course, ultimately the OP 1 provided the information to the complainant on 09.06.2009 free of charge after receiving summons of this Commission in connection with the present complaint.

12. In his reply to the show cause notice, the OP 1 submitted in his written representation that he acted bonafide and it was the petitioner who dragged the matter by not appearing before him. He also submitted that the delay did occur not for any laches and negligence on the part of the OP 1 and urged to exonerate him.

13. After due consideration of the facts and the circumstances of the case and the pleas taken by the OP 1 to justify the delay and mishandling with the written request in issue, we hold that there was no reasonable and acceptable ground to cause a long delay of 379 days in providing the information to the complainant. The plea of non – appearance of the complainant in the office of the SPIO to collect the information cannot be considered to be a good ground to justify the delay since, the complainant conveyed his desire to have the information by registered post within a period of 12 days, which period has been deducted from the total period of delay of 421 days. It is also fact that for not taking prompt action on the written request in issue within the statutory period by the OP 1 being the SPIO, the State exchequer suffered revenue loss of additional fee to be paid by the complainant for having access to the information. In order to justify the plea of acting in good faith, the OP 1 is required to show that he acted responsively and effectively adhering to the relevant provisions of the Act and the Rules. But, he utterly failed to justify his actions in handling with the written request of the complainant in issue. Firstly, he did not make any attempt to realize the application fee from the complainant within the reasonable time tendering necessary assistance as required by law to make the application valid;

secondly, he did not dispose of the written request making assessment of additional fee and provide the information to the complainant within the statutory period; thirdly, he did not comply with the direction of the higher authority for providing information within the reasonable time and fourthly, he demanded additional fee from the complainant without authority. The above violations of the several provisions of the Act and the Rules committed by the OP 1 cannot be considered to have been done in good faith. The above actions on the part of the OP 1 are sufficient to draw an inference of his malafide intention. So, the OP 1 cannot claim exoneration from the liability to pay penalty as per provisions of section 20(1) of the Act. We are constrained to hold that without any reasonable cause, the OP 1 being the SPIO caused long delay of 379 days in providing the information to the complainant.

14. In his written rejoinder dated 24.06.2009, the complainant acknowledged that he had received all the information except item - 9, which was given in incomplete shape. He clarified that under item -9 of the written request in issue, he sought for supplying the photocopies of the cash books for the period from 01.04.2005 to 31.03.2008. But, it is surprising to note that under item - 9 of the written request in issue, the complainant sought for supplying photocopies of the pages of the cash books of dated 31.03.2005, 31.03.2006, 31.03.2007 and 31.03.2008 of the office of the DDO of Inspector of Schools, Education Inspectorate, TTAADC, Chailengta. Thus, it is clear that the complainant sought for specific information with the description of supplying copies of specific pages of the cash books of the office of the Inspector of Schools, Education Inspectorate, TTAADC, Chailengta. The description of the information was not mere an ambiguity. The complainant under his written rejoinder dated 22.06.2009, in fact, enlarged the description of the information at the stage of second appeal before this Commission, which he is not entitled to do. In course of hearing, the representative of the complainant admitted to have received photocopies of the concerned pages of the cash books as sought for by the complainant in his written request in issue. Thus, we find that no information is left to be provided to the complainant.

15. As regards quantum of penalty to be paid by the OP 1, section 20(1) of the Act lays down that the State Information Commission shall impose penalty of Rs. 250/- each day till the application is received or the information is furnished, so however, the total amount of such penalty shall not exceed Rs. 25,000/- to an SPIO who without any reasonable cause and with malafide intention has not furnished the information within the time specified under section 7(1) of the Act. In the present case, the OP 1 being the SPIO caused long delay of about 379 days in providing the information to the complainant. So, he is liable to pay the maximum amount of penalty as prescribed by section 20(1) of the Act.

16. Point No.(iv): The OP 2 being the present FAA in his written representation dated 04.06.2009 submitted that he had recently joined in the TTAADC on 13.03.2009 and he did not hear the first appeal in issue, which was preferred long before his joining during the period of his predecessor. It is implied from the copy

Ca

of the radio message dated 03.06.2008 of the Additional CEO, TTAADC addressed to the Inspector of Schools, Education Inspectorate, TTAADC, Chailengta that with reference to his letter No.F. 72-74 dated 29.04.2008, the latter was instructed to provide the information to the complainant. There was no mention in the radio message that this decision was taken in response to the first appeal dated 29.05.2008 filed by the complainant to the FAA in the office of the CEO, TTAADC. Thus, the fact reveals that the concerned FAA did take no step on the first appeal in issue. The concerned FAA should have disposed of the first appeal within the period as specified under section 19(6) of the Act. We are, therefore, constrained to hold that it was latches on the part of the concerned FAA. The CEO, TTAADC being the head of the public authority is, therefore, directed to see that the first appeals lodged under section 19(1) of the Act before the FAA in his office are disposed of with due care and diligence after strict adherence to the relevant provisions of the Act and the Rules.

Decision:

17. In fine, the complaint is partially allowed with the following orders:-

- (i) OP 1 Sri Sri Subhash Chakma, In-charge Inspector of Schools, Education Inspectorate, TTAADC, Chailengta and the SPIO is directed to tender the IPO of Rs. 10/- deposited by the complainant being the application fee to the concerned Sub Post Mater of Chailengta Sub Post Office for encashment and after encashment, the amount shall be entered in the RTI cash book and be deposited to the Government exchequer as per Rules.
- (ii) OP 1 Sri Sri Subhash Chakma, In-charge Inspector of Schools, Education Inspectorate, TTAADC, Chailengta and the SPIO is found guilty of causing unreasonable delay of about 379 days in providing the information to the complainant in violation of the provisions of section 7(1) of the Act. He is awarded with a penalty of Rs. 25,000/- (Rupees twenty five thousand) only to be paid by him personally within a period of thirty days from the date of passing of this judgment and order to the CEO, TTAADC, Khumulwng, West Tripura who shall in his turn deposit the amount to the Government exchequer in the appropriate head of account.
- (iii) The CEO, TTAADC, Khumulwng, West Tripura being the head of the Public Authority is directed to see that the first appeals under section 19(1) of the Act lodged before the FAA are duly attended and disposed of by the FAA in his office in due time strictly adhering to the relevant provisions of the Act and the Rules. He is also directed to ensure that the amount of penalty awarded to OP 1 Sri Sri Subhash Chakma, In-charge Inspector of Schools, Education Inspectorate, TTAADC, Chailengta and the SPIO is realized from him and deposited to the Government exchequer within the given time.
- (iv) The OP 1 and the CEO, TTAADC shall submit forthwith reports of compliance to this Commission.



18. Let copy of this judgment and order be sent to the complainant and the OPs. Also send a copy of this judgment and order to the CEO, TTAADC being the head of the Public Authority.

19. Pronounced.

Sd/-
(D.K.Daschadhuri)
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

Complaint No TIC- 06 of 2009-10 / 652-55

Dated, 13.07.2009

Copy to:-

- 1.Sri Partha Talapatra, Shibnagar (near Gedu Mia Masjid), Agartala – 799001 (Complainant).
- 2.Sri Subhash Chakma, In-charge, Inspector of Schools, Education Inspectorate, TTAADC, Chailengta, P.O.- Chailengta, Dhalai, Tripura (State Public Information Officer) – OP 1.
- 3.Sri S. Sailohnuna, Additional Chief Executive Officer, Tripura Tribal Areas Autonomous District Council, Khumulwng, West Tripura (First Appellate Authority) – OP 2.
- 4.The Chief Executive Officer, Tripura Tribal Areas Autonomous District Council, Khumulwng, West Tripura (Head of the Public Authority).

(S.C.Saha)
Secretary

Tripura Information Commission