



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

Appeal No TIC-05 of 2009-10.

Sri Amit Kumar Bhawsinka
S/O Sri Raj Kumar Bhawsinka
C/O Fortuna Agro Plantations Ltd
8/1 Lalbazar Street, Bikaner Building
3rd Floor, Middle Block
Kolkata – 700 001
Cell Phone No-9436909654.....Appellant

Vs.

1.Sri N. Das, Joint Secretary to the Government of Tripura, Revenue Department,
Agartala (First Appellate Authority).
2.Sri M. Chakraborty, Under Secretary to the Government of Tripura, Revenue
Department, Agartala (State Public Information Officer).

..... 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: None.

For the Respondent No.1: Sri N. Das, Joint Secretary to the Government of
Tripura, Revenue Department, Agartala (First
Appellate Authority).

For the Respondent No.2: Sri M. Chakraborty, Under Secretary to the
Government of Tripura, Revenue Department,
Agartala (State Public Information Officer).

Date of lodging second appeal : 03.06.2009

Date of hearing of second appeal: 01.07.2009

Date of pronouncing judgment and order: 27.07.2009

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JUDGMENT & 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 08.05.2009 of Sri Amit Kumar Bhawsinka (here in after referred to as the appellant) sent by courier post and was received by this Commission on 03.06.2009. Brief facts leading to this second appeal are that the appellant made a written request on 14.11.2008 to the State Public Information Officer (SPIO) in the office of the Revenue Department, Government of Tripura, Agartala seeking four items of information under the Act. In response, Sri M. Chakraborty, Under Secretary to the Government of Tripura, Revenue Department being the SPIO provided the information on 28.01.2009. Being aggrieved with the information provided by the concerned SPIO, the appellant on 07.02.2009 preferred a first appeal to the First Appellate Authority (FAA) in the Revenue Department, Government of Tripura. Sri N. Das, Joint Secretary to the Government of Tripura, Revenue Department, Agartala being the FAA decided the first appeal in issue by an order dated 09.04.2009 holding that the contention of the SPIO that the information not available regarding items – 1 and 2 is not acceptable in view of the definition contained in the Rules of Executive Business, Government of Tripura under Order No.F. 3(2)-CAB/72 dated 14.03.1972 issued from the General Administration (Confidential & Cabinet) Department, Government of Tripura, which runs as thus – "Secretary means a Secretary to the Government of the State and includes an Additional Secretary, a Joint Secretary, a Deputy Secretary, an Under Secretary and an Assistant Secretary". He also viewed that the authority of the Under Secretary was thus covered by the provisions contained in the Rules of Executive Business. It is agitated by the appellant that the concerned FAA although did not accept the decision of the SPIO as regards to the information sought for under items – 1 and 2 of his written request in issue, but the FAA did not issue any direction to the concerned SPIO for providing the information formally. Hence, the appellant preferred this second appeal against the incomplete decision of the FAA seeking a direction to be issued to the concerned SPIO for providing the information against items – 1 and 2 as mentioned in his written request in issue. Along with the memorandum of appeal, the appellant furnished photocopies of all the relevant papers.

2. On perusal of the memorandum of second appeal with enclosures, it was found in form and within time and accordingly, was registered as a second appeal under section 19(3) of the Act.

3. In response to the summons, Respondent 1 Sri N. Das, Joint Secretary to the Government of Tripura, Revenue Department, Agartala and the FAA and the Respondent 2 Sri M. Chakraborty, Under Secretary to the Government of Tripura, Revenue Department, Agartala and the SPIO appeared and submitted their respective written representations.

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4. The appellant did not turn up on the date of hearing despite issuance of notice. So, the appeal is heard on ex - parte.

5. Heard oral submissions made by the Respondents 1 and 2.



Issue for decision:

6. The issues to be decided are whether or not the order dated 09.04.2009 of the Respondent 2 being the FAA passed in Appeal No - 1/Rev/RTI/App/09 suffers from any impropriety and whether or not the appellant is entitled to any relief as sought for in the memorandum of appeal.

Reasons for decision:

7. We have gone through the written request dated 14.11.2008 of the appellant seeking information, the information provided by the Respondent 2 being the SPIO, copy of the order dated 09.04.2009 of the Respondent 1 being the FAA passed in the first appeal in issue, the memorandum of second appeal of the appellant and the written representations of the Respondents 1 and 2. We have also considered the oral submissions made by the Respondents 1 and 2.

8. Out of four items of information sought for by the appellant, he restricted his grievance in respect of the information sought for under items 1 and 2, description of which are given below:-

"Item - 1: Certified copy of Authorisation sent by The State of Tripura, Agartala (represented by the Chief Secretary to the Government of Tripura, Agartala to Respondents No 3 (i.e. Revenue Department for filing counter Affidavit on 11.10.2007 & Supplementary Counter Affidavit filed on 31.03.2007 in W.P (C) 315 of 2007 before Hon'ble Gauhati High Court, Agartala Bench.

Item-2: Certified copy of Authorisation sent by The State of Tripura, Agartala (represented by the Chief Secretary to the Government of Tripura, Agartala to Respondents No- 3 (i.e. Revenue Department for filing counter Affidavit on 06.09.2007 by Fortuna Agro Plantations Ltd in W.P (C) 133 of 2007 before Hon'ble Gauhati High Court, Agartala Bench."

9. While providing the information against the above two items, the reply of the Respondent 2 being the SPIO was 'Information not available' in common.

10. The Respondent 1 being the FAA in deciding the first appeal on 09.04.2009 passed the following orders in respect of the information sought for under items 1 and 2 of the written request in issue :-

" The contention of the SPIO that information not available available regarding point 1 & 2 is not acceptable in view of following definition contained in the Rules of Executive Business under the Order No.F.3(2)-CAB/72 dated 14.03.1972 issued from General Administration (Confidential & Cabinet) Department , Govt. of Tripura -

'Secretary means a Secretary to the Government of the State and includes an additional Secretary, a Joint Secretary, a Deputy Secretary, an Under Secretary and an Assistant Secretary'

The Authority of Under Secretary is, thus covered by the provision contained in the ' Rules of Executive Business'. The appeal petition is disposed of accordingly."

11. The case of the appellant is that although the Respondent 1 being the FAA did not accept the decision of the Respondent 2 being the SPIO, but he did not issue any direction to the SPIO for providing the information to the appellant in the light of the above orders passed by the Respondent 1.

12. After due appreciation of the facts and the circumstances, we find merit in the argument advanced by the appellant. Since, the Respondent 1 did not agree with the decision of the Respondent 2 being the SPIO and referred to the relevant provisions of the Rules of Executive Business, Government of Tripura issued vide No. F. 3(2)-CAB/72 dated 14.03.1972 without mentioning specific Rule number, copies of the aforesaid provisions should have been ordered to be provided to the appellant being the answer to the queries made under items 1 and 2 of the written request in issue. We have gone through the relevant provisions of the Rules of Executive Business of the Government of the State of Tripura, 1972 (for short the Rules of Executive Business) as laid down in Rule 2 (c) and 12 of the said Rules, which are reproduced below:-

"2 (c) - "Secretary means a Principal Secretary, a Commissioner & Secretary, a Secretary to the Government of the State and includes an Additional Secretary, a Joint Secretary, a Deputy Secretary, an Under Secretary.

12 - Every order or instruments of the Government of the State shall be signed either by a Principal Secretary, a Commissioner & Secretary, a Secretary, an Additional Secretary, a Joint Secretary, a Deputy Secretary and an Under Secretary or such other officer as may be specially empowered in that behalf an such signature shall be deemed to be the proper authentication of such order or instrument."

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13. It is commonly known that the Chief Secretary is also basically a Secretary to the Government of Tripura, for which his name might not have been included in the definition of the Secretary in Rule 2 (c) of the said Rules.



14. As per provisions of Rule 2 of Order XXVII of the Code of Civil Procedure, 1908 (CPC), persons being ex- officio or otherwise authorized to act for the Government in respect of any judicial proceeding shall be deemed to be the recognized agents by whom appearances, acts and applications under the said Code may be made or done on behalf of the Government. Thus, it is established from the above provisions of the CPC and the Rules of Executive Business that any one of the officials holding the designation mentioned in Rule 12 of the Rules of Executive Business is authorized to file counter affidavits in the judicial proceedings as mentioned in the written request in issue. It has not been divulged by any one of the parties in this appeal as to by whom of the officials mentioned in Rule 12 of the Rules of Executive Business filed the counter affidavits in the Writ Petitions as mentioned in the written request in issue. The Public Authority of the Revenue Department is supposed to have in its custody the records pertaining to the materials as to by whom the counter affidavits in the Writ Petitions in issue were filed. So, the concerned SPIO is under obligation to provide the copy of the contents of the relevant provisions of Rules 2 (C) and 12 of the Rules of Executive Business and also to furnish the name and designation of the official by whom the counter affidavits as mentioned in the written request in issue were filed in reply to the queries made under items 1 and 2 of the said written request of the appellant.

15. Thus, the order dated 09.04.2009 of the Respondent 1 being the FAA was incomplete since there was no direction issued by him to the SPIO for providing the information to the appellant against items 1 and 2 of the written request in issue consequent upon the findings of the FAA arrived at in his aforesaid order.

Decision:

16. In fine, the appeal is allowed on contest with the order that the Respondent 2 being the SPIO shall provide the information to the appellant in respect of the items 1 and 2 of his written request dated 14.11.2008 in the light of the discussion made in paragraph 14 above 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 as prescribed by the Act.

17. Let copy of this judgment and order be sent to the appellant and the Respondents.

18. Pronounced.

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

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



Authenticated

27/7/09
(S.C.Saha)
Secretary

Tripura Information Commission

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

Appeal No- 05 of 2009-10 / 711-13

Dated, 27.07.2009

Copy to:-

1. Sri Amit Kumar Bhawsinka, S/O Sri Raj Kumar Bhawsinka, C/O Fortuna Agro Plantations Ltd, 8/1 Lalbazar Street, Bikaner Building, 3rd Floor, Middle Block, Kolkata – 700 001 (Appellant).
- 2.Sri N. Das, Joint Secretary to the Government of Tripura, Revenue Department, Agartala (First Appellate Authority)- Respondent 1.
- 3.Sri M. Chakraborty, Under Secretary to the Government of Tripura, Revenue Department, Agartala (State Public Information Officer) – Respondent 2.

27/7/09
(S.C.Saha)
Secretary

Tripura Information Commission