

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



Appeal No 11 of 2006-07.

Dr Ashraf Khan,
66- Prakash Vihar, Dharampur
P.O.- Araghar, Dehradun
Uttanchal - 248001.....Appellant

Vs

1. Sri L.H. Darlong, Additional Secretary to the Government of Tripura, GA (AR/Vig) Department (First Appellate Authority).
2. Sri M.L. Das, Under Secretary to the Government of Tripura, GA (AR/Vig) Department (SPIO).
3. The Commissioner & Secretary to the Government of Tripura, GA (AR) Department (Head of the Public Authority).....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 Respondents:
1. Sri S.C. Das, Commissioner & Secretary to the Government of Tripura, GA (AR) Department.
 2. Sri L.H. Darlong, Additional Secretary to the Government of Tripura, GA (AR/Vig) Department.
 3. Sri Manikdal Das, Under Secretary to the Government of Tripura, GA (AR/Vig) Department.

Date of lodging complaint: 22.01.2007

Date of hearing argument: 05.02.2007

Date of pronouncing judgment: 08.02.2007

JUDGMENT & ORDER

Facts

1. This second appeal before this Commission under section 19(3) of the RTI Act, 2005 (for short the Act) arises out of a memorandum of appeal dated 09.01.2007 of Dr Ashraf Khan (here in after referred to as the Appellant) received by speed post on 22.01.2007.



2. The facts leading to this second appeal are that the Appellant made a written request on 09.08.2006 to the State Public Information Officer (SPIO) in the GA (AR) Department, Government of Tripura for providing four items of information. The SPIO transferred the request to the Principal Chief Conservator of Forests (PCCF) vide his letter No.F.3(22)-GA(AR)/2006/1979-1980 dated 07.09.2006. The PCCF vide his letter No.F.19(381)/Vig/For-86/Part/25401-03 dated 12.10.2006 returned the request under section 6(3) of the Act to the Commissioner & Secretary to the Government of Tripura, GA(AR) Department being the head of the Public Authority holding that the information asked for are related to the GA(AR) Department. The SPIO thereafter furnished certain information to the Appellant on 27.10.2006. According to the Appellant, the information provided by the SPIO on 27.10.2006 were not relevant to the information sought for. Being dissatisfied, the Appellant preferred a first appeal with the Additional Secretary to the Government of Tripura, GA (AR/Vig) Department- First Appellate Authority (FAA) on 02.11. 2006. The Appellant preferred another appeal with the FAA on 15.11.2006 in face of the facts that neither the PCCF nor after return of the written request dated 09.08.2006 by the PCCF, the SPIO of the GA (AR) Department had provided any information. In the meantime on 01.12.2006, the SPIO provided some more information to the Appellant.

3. The FAA had disposed of both the appeals by a common order passed on 08.12.2006 vide appeal no. 3 & 6/GA (AR) of 2006/106 holding that the SPIO (Under Secretary) of GA (AR/Vig) Department has rightly acted by forwarding the petition of the Appellant as the information sought by him were related to the Forest Department. Being dissatisfied with the decision of the FAA, the Appellant preferred this second appeal with grounds to this Commission seeking review of the order of the FAA and for issuing appropriate order so that the correct and complete information are supplied by the SPIO of the GA (AR) Department.

4. The memorandum of appeal is found in order and within time and, therefore, is admitted as a second appeal under section 19(3) of the Act.

5. In response to the summons, the FAA and the SPIO appeared and submitted their written representations supporting their respective decisions. They have also advanced some new points inconsistent with their earlier decisions.

6. Sri S.C. Das, Commissioner & Secretary to the Government of Tripura, GA (AR) Department appeared before this Commission on the date of hearing and submitted a petition for impleading him as a Respondent in this case being the head of the Public Authority of the GA (AR) Department, Government of Tripura. The prayer is allowed after due consideration and he is impleaded as a Respondent in this appeal.

7. Heard oral submissions made by all the three Respondents.



Issues for decision:

8. In consideration of the memorandum of appeal with all enclosures, the written representations of the FAA and the SPIO and the oral submissions made by the Commissioner & Secretary to the Government of Tripura, GA (AR) Department, the following issues deserve to be decided in this appeal: -

- (i) Does the Appellant have the right of access to the information sought for vide his written request dated 09.08.2006?
- (ii) Are the information provided by the SPIO relevant to the information sought for by the Appellant?
- (iii) Does the order passed by the FAA on 08.12.2006 vide appeal no 3 & 6/GA (AR) of 2006/ 106 suffers from any illegality?
- (iv) To what relief the Appellant is entitled?

Reasons for decision:

Issue No.(i) & (ii):

9. For the sake of convenience, both the issues are taken together for discussion. We have carefully gone through the memorandum of appeal along with the papers appended thereto by the Appellant and the representations submitted by the Respondents. The facts admitted by the Respondents are: -

- (i) Receipt of written request dated 09.08.2006 seeking information.
- (ii) Transfer of the written request to the PCCF by the SPIO on 07.09.2006.
- (iii) Return of the written request by the PCCF to the Commissioner & Secretary, GA (AR) Department on 12.10.2006.
- (iv) Disclosure of information twice on 27.10.2006 and 01.12.2006 by the SPIO.
- (v) Receipt of two appeals dated 02.11.2006 and 15.11.2006 by the FAA from the Appellant.
- (vi) Disposal of the two appeals by the FAA by a common order passed on 08.12.2006 vide appeal no 3 & 6/ GA (AR) of 2006/106.

10. The Appellant vide his written request dated 09.08.2006 sought for the following information: -

- (i) The details of allegations and enquiries pertaining to the reply to the Un-starred Assembly Question No-479 asked by Sri Ratanlal Nath, MLA and replied on 06.06.2006 by the Minister In-Charge of the Forest Department in the following proforma: -

Name & address of the complainant	Date of receipt	Nature of allegation	Date of order of enquiry
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- (ii) In spite of the facts that the Supreme Court vide order dated 15th January 1998 in Para 7 in the Writ Petition(C) No. 202 of 1995 has directed that the concerned Deputy Conservator of Forests /

Divisional Forest Officer shall be responsible to ensure that only legal timber is processed in the saw mill and that large quantity of timber reached the Industrial Estate at Agartala, which are converted into sawn timber and also sold by the mill owner, while the DFO, Sadar Forest Division has not been brought to book. The reason for doing so.

- (iii) In the inquiry report submitted by Sri Rajeswar Rao dated 27.07.2005, Sri V.K. Bahuguna, the then Chief Conservator of Forests has been found guilty of dereliction of duty but his name has not been mentioned in the aforesaid reply to the Assembly Question. The reason for doing so.
- (iv) Sri Rajeswar Rao in his report found Sri Samarendra Das, former DFO, Ambassa Division guilty of forgery of document to save himself and to shift the blame on the PCCF. The reason as to why Sri Das was not placed under suspension and why a criminal prosecution was not initiated?

11. In response to the above request for information, the SPIO furnished information in two instalments. Firstly on 27.10.2006 he furnished the following information: -

" I am directed to refer to your letter No.2006-07-/31-RTI dated 09-08-2006 on the subject noted above and to inform you that the Chief Minister was not given any wrong briefing by the GA(AR) Department. The issue whether an answer to an Assembly Question by the Chief Minister in the Tripura Legislative Assembly, was correct or not, is wholly a matter of the Assembly and cannot be allowed to be a debate outside the House."

12. Subsequently on 01.12.2006, the SPIO furnished the following information: -

" In inviting a reference to your letter No. 2006-07/35-RTI dated 28-08-2006 on the subject noted above, I am furnishing below the following information: -

- i) Copy of the complaints are enclosed herewith. Inquiry into the above complaints was ordered on 09-05-05.
- ii) This is question which can be replied to by the Government.
- iii) Government has been acting not only on the report of Sri Rajeswar Rao but also on other facts and circumstances relate to the case.
- iv) Action on the report against Shri Samarendra Das,TFS,DFO, Ambassa is in progress."

13. In nutshell, the Appellant's ground of dissatisfaction is that all the information furnished by the SPIO are not relevant to the information sought for and that the FAA without entering into the merit of the information dismissed the first appeal superficially.





14. The representations of the FAA and the SPIO contain similar submissions. According to them, the information sought for in the form of question and answer is not at all an information and the SPIO cannot be compelled to answer the question. Secondly that no where it was mentioned that the reply to the Assembly Un-starred Question No- 479 was prepared based on the report of Sri Rajeswar Rao alone. As regards the 4th item of information it related to a matter of ongoing inquiry/ investigation. Disclosure of this type of information is barred by section 8(1)(h) of the Act. However, they claim that the information furnished against item No.1 is quite adequate. After comparison of the information furnished by the SPIO in two phases and the stand taken in their written representations on the appeal, it is observed that the SPIO and the FAA have taken inconsistent views in appreciating the matters of information to be furnished and they had taken inconsistent decisions at different times which shows their lack of understanding about the very definition of 'Information' provided in the Act. However, the fact remains that the SPIO furnished some information to the Appellant in response to the written request and thus the written request for information was not rejected for the reasons advanced subsequently in the written representations. So, we are to ignore the pleas taken by the SPIO and the FAA in their written representations. We are to examine the merit of the request for information and the actions taken by the SPIO and the FAA thereon.

15. While furnishing information in two phases by the SPIO, he stated in the letters addressed to the complainant as he had been directed by some other authority to furnish the information. That means the decision of furnishing the information was not taken by himself but by some other authority superior to him and he was just communicating the decision to the Appellant. This is the complete departure from the relevant provisions of the Act. An SPIO is under obligation to take decision on disclosure of information or rejection of request for information independently and not under direction of anybody else as he is personally accountable for such decision taken quasi-judicially. But, we are constrained to hold that the SPIO had misconceived the relevant provisions of the Act.

16. As regards the first item of information, the Appellant advanced a format for supply of the information which is not desirable. The SPIO is to furnish the information in the form in which the information exists within his control. In response to the request for information sought for under item No.1, the SPIO in the second phase on 01.12.2006 supplied two copies of complaints along with the date of inquiry ordered, which in our view are adequate. So the allegation of the Appellant that it was not relevant to the information sought for is not tenable.

17. As regards the second item of information, the response of the SPIO is no doubt most un-satisfactory and it left room for further information to be furnished to the Appellant. The SPIO cannot shift the burden stating that the Government can reply the question. It amounted denial of information. In our view, the SPIO is to give specific and relevant information as against item No. 2 of the information sought for.



18. The information furnished against item No.3 is found to be unwarranted. In fact, we found the description of the information sought for to be vague and not clear. Consequently, against this item of information, the Appellant does not deserve any information in view of the fact that the details of the contents of the Assembly Question put up by the MLA and the reply furnished are not depicted in the written request. In absence of such materials, it is rather difficult to furnish any information. So, it was not practicable on the part of the SPIO to furnish any information against any vague and hypothetical query.

19. As regards the 4th item of information, the SPIO furnished that action on the report against Sri Samarendra Das, TFS, DFO, Ambassa is in progress. The Commissioner & Secretary, GA (AR) Department being the head of the Public Authority appearing before the Commission on 05.02.2007 clarified verbally that the matter relating to action to be taken on the report against Sri Das is under consideration of the competent authority and the decision for taking action against him is in progress. That means, the matter is yet to be finalized. If we accept the clarification of the Public Authority then the reply to the information sought for becomes adequate and it deserves no further information.

20. Now to sum up the discussion, we find that out of 4 items of information, the SPIO has furnished adequate information in respect of item no 1 and 4. Item No.3 of the information sought for is found to be not admissible. Only 2nd item of information is required to be adequately dealt with by the SPIO afresh and specific and relevant information is to be furnished. Thus, the first and the second issues are decided accordingly.

Issue No.iii:

21. The FAA decided the two appeals by a common order passed on 08.12.2006 vide appeal no 3 & 6 /GA (AR) of 2006/106, which runs as follows:-

"1) The complainant is absent without any step.

2) Dr. Ashraf Khan, 66, Prakash Vihar, Dharampur submitted an appeal petition No. 2006-2007/ 56- Appeal dated 2nd November, 2006 to the Appellate Authority of GA(AR/Vig) Department against the reply given by the SPIO (Under Secretary) of GA(AR/Vig) Department vide his letter No. F.3(22)-GA(AR)/2006/2252 dated 27th October, 2006. The reply of SPIO was in response to the petition No 2006-2007/31-RTI dated 9th August, 2006 filed by Dr Khan.

3) Thereafter, Dr Khan submitted another appeal petition to the Appellate Authority bearing No. 2006-2007/ 66- Appeal dated 15th November, 2006 against the reply of the SPIO (Under Secretary) of GA(AR/Vig) Department No.F.3(22)-GA(AR)/06/1979-1980 dated 7th September, 2006. The reply of SPIO was in response to the petition filed by Dr. Khan No. 2006-2007/31-RTI dated 9th August 2006.

4) The content of both the petitions No. 2006-07/31-RTI dated 9th August, 2006 submitted to the SPIO (Under Secretary) of GA(AR/Vig) Department were found to be the same. Therefore, the 2(two) appeal petitions has been clubbed



together. In fact, the second petition appears to be a Xerox copy of the 1st petition.

5) The SPIO (Under Secretary) of GA(AR/Vig) Department in his reply dated 7th September, 2006 in response to the petition dated 9th August, 2006 has forwarded copy of the petition of the SPIO of Forest Department along with the application fee of Rs. 10/- for supply of the information as sought by the applicant under section 6(3) of RTI Act, 2005. Thereafter, the SPIO (Under Secretary) of GA (AR/Vig) Department has supplied the information pertaining to the GA (AR) Department vide letter dated 27th October, 2006 relating to the para 2 (iii) of the petition.

6) The SPIO (Under Secretary) of GA (AR/Vig) Department has rightly acted by forwarding the petition of the applicant as the information sought by him were related to the Forest Department.”

Perusal of the whole order reveals that the FAA did not go into the merit of the appeals. He had failed to follow the principle of natural justice and the procedure of deciding the appeals by framing the points of issues to be decided and giving the reasons for the decisions arrived at. The point decided by the FAA was as to whether or not forwarding of the written request of the Appellant to the Forest Department was appropriate which was not at all an issue to be decided by the FAA. In his first two appeals dated 02.11.2006 and 15.11.2006, the relief sought for by the Appellant was only for supply of relevant and appropriate information as sought for by the Appellant in his written request dated 09.08.2006. But the FAA did not discuss anything in the matter of furnishing information by the SPIO in response to the written request dated 09.08.2006. Thus, the FAA has blatantly failed to decide the first two appeals of the Appellant on merit, which reflected his lack of understanding about the duties and functions of the FAA as enshrined under section 19(1) of the Act. So, the order passed by the FAA on 08.12.2006 vide appeal no 3 & 6/GA (AR) of 2006/106 is uncalled for and liable to be set aside.

Issue No.iv :

22. In view of the discussion made in paragraph 20 above, the Appellant is found to have been provided with information against item no 1 & 4 adequately. The information sought for under item No. 3 is found to be vague and, therefore, it does not deserve any information to be provided by the SPIO. However, the information provided by the SPIO against item No.2 of the information sought for is found to be not adequate and relevant. So, the SPIO is under obligation to provide specific and relevant information against item No. 2 of the information sought for by the appellant in his written request dated 09.08.2006.

23. Before parting with the judgment, we are constrained to make the observations that the present SPIO and FAA in the GA (AR/Vig) Department are not well acquainted with the provisions of the Act as demonstrated by them and they also failed to apply their mind properly in dealing with the written request for information and the first appeals respectively and both of them deserve to be imparted with more training on dealing with such written request and first

appeal under the Act. The Public Authority may make necessary arrangement for such training of the said officials at the earliest.

Decision:

24. In fine, the appeal is partially allowed with the following orders: -
- (i) The order dated 08.12.2006 passed by the FAA vide appeal no 3 & 6 /GA (AR) of 2006/106 is set aside.
 - (ii) The SPIO is directed to provide specific and relevant information to the Appellant against the 2nd item of information sought for under his written request dated 09.08.2006 within a period of 15 days from the date of passing of this judgment and order free of cost.

25. Let copy of this judgment and order be sent to the Appellant, the Commissioner & Secretary to the Government of Tripura, GA (AR) Department (head of the Public Authority), Sri L.H. Darlong, Additional Secretary to the Government of Tripura, GA (AR/Vig) Department (First Appellate Authority) and Sri M.L. Das, Under Secretary to the Government of Tripura GA (AR/Vig) Department (SPIO).

26. Pronounced.

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

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

Authenticated.

(Sudhir Sarkar)
Secretary

Tripura Information Commission

TRIPURA INFORMATION COMMISSION

P. N. Complex: Gorkhabasti : Agartala

Appeal No. 11 of 2006-07/ 100-103

February 08, 2007

Copy to:

1. Dr Ashraf Khan, 66- Prakash Vihar, Dharampur, P.O.- Aragarh, Dehradun, Uttranchal- 248001(Appellant).
2. The Commissioner & Secretary to the Government of Tripura, GA (AR) Department (Head of the Public Authority).
3. Sri L.H. Darlong, Additional Secretary to the Government of Tripura, GA (AR/Vig) Department (First Appellate Authority).
4. Sri M.L. Das, Under Secretary to the Government of Tripura, GA (AR/Vig) Department (SPIO).

(Sudhir Sarkar)
Secretary

Tripura Information Commission