

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



Appeal No 9 of 2006-07.

Mr. M.A. Khan, Retd. PCCF
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).....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 L.H. Darlong, Additional Secretary to the Government of Tripura, GA (AR/Vig) Department.
2. Sri Maniklal Das, Under Secretary to the Government of Tripura, GA (AR/Vig) Department.

Date of lodging complaint: 18.12.2006

Date of hearing argument: 08.01.2007

Date of pronouncing judgment: 11.01.2007

JUDGMENT & ORDER

Facts:

1. This is a second appeal under section 19(3) of the RTI Act, 2005 (for short the Act) as received from Mr. M.A. Khan, Retd. PCCF (here in after referred to as the Appellant) on 18.12.2006 directed against the order dated



21.11.2006 passed by the First Appellate Authority, GA (AR/Vig) Department, Government of Tripura in Appeal No-5 / GA (AR) of 2006/87.

2. The facts leading to this second appeal are that Mr. M.A. Khan, Retd. PCCF made a written request on 05.10.2006 to Sri M.L. Das, Under Secretary to the Government of Tripura, GA (AR/Vig) Department being the State Public Information Officer (SPIO) for disclosure of the following information under section 6 of the Act: -

- (i) Whether any action has been taken on the letter of the Appellant bearing No- 2005-06/19-21- Reports/ dated 23.04.2006 addressed to the Commissioner & Secretary, GA (AR) Department, Government of Tripura. If so, the details thereof may be disclosed. If not, the reason for the inaction may also be disclosed.
- (ii) In the circumstances given in Para -3 of the above referred letter, the reason for not bringing IFS Officers like the then DFO Teliamura, DFO Sadar and CF Southern Circle to book may be disclosed.

3. In response to the request, the SPIO furnished the information vide letter No.F.3 (22)-GA (AR)/06/2303 dated 01.11.2006 which are quoted below: -

" To

Sri M.A.Khan,
Retd. Principal Chief Conservator of Forest,
66, Prakash Vihar, Dharampur,
P.O.- Aragarh, Dehradun,
Uttanchal- 248001.

Subject: - Supply of information under Right to Information Act, 05.

Sir,

In inviting a reference to your letter 1006-0152-RTI dated 05-10-2006 on the subject noted above and to inform you that action on allegations against Sri A.K. Sinha, Conservator of Forest, Northern Circle, Sri A.K.Roy, Conservator of Forest, Northern Circle and Sri Samarendra Das, TFS, DFO, Ambassa is in progress.

2. Government has been acting not only on the report of Sri Rajeswar Rao but also on other facts and circumstances related to the case.

3. This is a question which can be replied to by the Government.

Yours faithfully,

Sd/-

(M.L.Das)

SPIO/Under Secretary, Govt. of Tripura"

4. Having been aggrieved with the decision dated 01.11.2006 of the SPIO, the Appellant preferred the first appeal to Sri L.H. Darlong, Additional Secretary



to the Government of Tripura, GA (AR/Vig) Department being the First Appellate Authority (FAA) on 10.11.2006 seeking appropriate order for supply of the information to his satisfaction showing the reason that the decision of the SPIO amounted non-supply of the required information.

5. Acting upon the memorandum of appeal dated 10.11.2006 of the Appellant, the FAA passed an order on 21.11.2006 in Appeal No- 5/GA (AR) of 2006/87 which concluded as thus- " The petition of the Appellant is not admitted on the grounds that the SPIO, GA (AR/Vig) Department has supplied complete information to the Appellant".

6. Now the Appellant being aggrieved with the order dated 21.11.2006 of the FAA, preferred this second appeal on 08.12.2006 before this Commission on the ground that the contention of the FAA was not appropriately placed. The Appellant urged before the Commission for issuing appropriate order for supply of the information sought for and also to penalize the SPIO for deliberate and willful non-supply of the complete information.

7. The memorandum of appeal dated 08.12.2006 is found to be in form and within time. Therefore, it is admitted under section 19(3) of the Act as second appeal.

8. In response to the summons, the FAA and the SPIO appeared before this Commission on 08.01.2007 and submitted a joint written representation reiterating the decision given by them in disposing the written request dated 05.10.2006 by the SPIO and disposing of the first appeal dated 10.11.2006 by the FAA.

9. The Appellant, despite notice, remained absent on the date of hearing.

10. **Issues for decision:**

- (i) Are the information furnished by the SPIO in response to the written request dated 05.10.2006 of the Appellant appropriate and adequate?
- (ii) Whether or not the order dated 21.11.2006 of the FAA delivered in Appeal No-5/GA(AR) of 2006/87 is maintainable?
- (iii) Whether the SPIO, malafidely denied disclosure of information as sought for by the Appellant and if such denial warrants any penalty?
- (iv) To what relief the Appellant is entitled?

Reasons for decision:

Issue No (i)

11. We have carefully perused all the papers placed before this Commission by both the parties, namely, the written request dated 05.10.2006 of the Appellant, the information furnished by the SPIO on 01.11.2006 in response to the written request for information, the order dated 21.11.2006 passed by the FAA in Appeal No-5/GA (AR) of 2006/87, the memorandum of appeal dated 08.12.2006 with enclosures submitted by the Appellant to this Commission and



the joint representation dated 08.01.2007 of the FAA and the SPIO. We have also considered the oral submissions made by the FAA in course of hearing. After critical examination of all the papers, we are of the view that the information furnished by the SPIO to the Appellant were not appropriate and categorical to the request for information, which is also admitted by the FAA and the SPIO. The first item of information as sought for by the Appellant vide his request dated 05.10.2006 pertains to representation of the Appellant dated 23.04.2006 addressed to the Commissioner & Secretary to the Government of Tripura, GA (AR) Department, a copy of which has been annexed to the memorandum of appeal as Annexure -2. In fact, the Appellant wanted to know whether any action was contemplated against Sri V.K. Bahuguna, the then CCF. But in the information furnished by the SPIO, there is no mention whether or not any action was contemplated against Sri Bahuguna, the then CCF. The Appellant did not seek the information as furnished by the SPIO on this count. So, the Appellant is quite justified in agitating that no information was furnished against the first item of information sought for.

12. Under the second item of information, the Appellant desired to know the reasons for not bringing the then DFO Teliamura, DFO Sadar and CF Southern Circle to book for allegedly allowing transportation of illegally felled trees from Jeolcherra Range to Agartala without proper transport pass and without payment of full royalty. In response to the requirement, the SPIO informed the Appellant that such question can be replied to by the Government. Thus, the response of the SPIO in this respect is inappropriate and evasive. In the present case, in response to the request for both the information sought for by the Appellant, the SPIO's replies contained in letter No.F.3 (22)-GA (AR)/06/2303 dated 01.11.2006 were not appropriate and categorical to the information as sought for by the Appellant under his written request dated 05.10.2006. So, the SPIO is required to furnish the information afresh in the light of the discussion made here in above. This first issue is decided accordingly.

Issue No (ii)

13. We have gone through the order dated 21.11.2006 of the FAA passed in Appeal No-5/ GA (AR) of 2006 /87 on the basis of the memorandum of appeal dated 10.11.2006 of the Appellant. The FAA has not admitted the appeal showing the ground that the SPIO supplied the complete information to the Appellant. The FAA had neither noticed the Appellant nor heard him at the time of hearing the appeal, which caused denial of the right to be heard, a principle of natural justice. In view of the discussion made against the Issue No(i) wherein we have already held that the information furnished by the Appellant were not at all relevant and appropriate to the information sought for by the Appellant. So, we are constrained to hold that the FAA has failed to apply his mind at the time for consideration of admissibility of the first appeal and the decision thereof and, therefore, the order passed by the FAA as mentioned above suffers from serious infirmity and it is liable to be set aside.



Issue No (iii)

14. The Appellant urged for penalizing the SPIO for deliberate and intentional denial of disclosure of the information as sought for. Considering the all facts and circumstances of the case, we do not believe that the SPIO with any malafide intention refrained from disclosure of appropriate and relevant information. The SPIO, in fact furnished some information in response to the request which may not be appropriate but it does not mean that the SPIO had any malafide intention not to disclose appropriate and relevant information to the Appellant. It could be the reason that the SPIO has failed to understand the actual requirement of the Appellant. So, we do not find any element of malafide denial of information to the Appellant on the part of the SPIO to warrant penalty as per provisions of section 20(1) of the Act. So, this issue is decided in the negative.

Issue No.(iv)

15. Taking into consideration the discussion made against the Issue No (i), we are to hold that the Appellant is entitled to have the specific and appropriate information afresh from the SPIO on the basis of the written request dated 05.10.2006 of the Appellant in the light of the discussion made in paragraphs 11 and 12 above.

16. Before parting with the judgment, we are constrained to observe that the FAA and the SPIO have not understood their duties and responsibilities in dealing with the request for information and the first appeal respectively. According to the scheme of the Act, both FAA and the SPIO have distinct powers and responsibilities for disclosure of the information to a requester. So, while they are asked to appear before the Commission and submit written representation on any appeal or complaint, they are supposed to submit such written representation separately and not jointly. Because, they are accountable for their independent decision either on the request or on the appeal. But in the instant case, the FAA and the SPIO have committed a serious mistake by submitting a joint representation dated 08.01.2007 on the appeal. The FAA and the SPIO are, therefore, directed to be more diligent and sincere in responding to any summons issued from this Commission in future.

Decision:

17. In fine, the appeal is allowed on contest with the following orders: -

- (i) The order dated 21.11.2006 passed by the FAA in Appeal No-5/GA (AR) of 2006/87 is hereby set aside.
- (ii) Sri M.L. Das, Under Secretary to the Government of Tripura, GA (AR/Vig) Department (SPIO) shall disclose appropriate and specific information to the Appellant on the basis of latter's written request dated 05.10.2006 afresh in the light of the discussion made in paragraphs 11 and 12 above within a period of 10(ten) days from the date of passing of this judgment and order free of cost.



18. Let copy of this judgment and order be sent to the Appellant, the Respondents- 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) free of cost. Also send a copy of this judgment and order to the Commissioner & Secretary to the Government of Tripura, GA (AR) Department being the head of the Public Authority.

19. 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. 9 of 2006-07/ 31-34

January 11, 2007

Copy to:

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

(Sudhir Sarkar)
Secretary

Tripura Information Commission