



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

Appeal No 11 of 2007-08.

Dr. Karunamay Nath
G.P.Villa, Radhanagar
Agartala- 799001.....

Appellant

Vs

1.Dr. J. Muhuri, Joint Director & Director-in-charge of Family Welfare & Preventive Medicine, Government of Tripura, Agartala (FAA).

2.Sri M.K.Pal, Deputy Drugs Controller & Officer- in-charge of Regional Food Laboratory, Government of Tripura, Agartala.

3.Dr. P.Chatterjee, SPIO in the Directorate of Family Welfare & Preventive Medicine, Government of Tripura, Agartala.....

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:

Dr. Karunamay Nath himself.

For the Respondents:

1. Dr. J. Muhuri, Joint Director & Director- in-charge of Family Welfare & Preventive Medicine, Government of Tripura, Agartala (FAA).

2.Sri M.K.Pal, Deputy Drugs Controller & Officer- in-charge of Regional Food Laboratory, Government of Tripura, Agartala.

3. Dr. P.Chatterjee, SPIO in the Directorate of Family Welfare & Preventive Medicine, Government of Tripura, Agartala.

Date of lodging appeal : 15.09.2007

Dates of hearing argument: 03.10.2007 & 07.11.2007

Date of pronouncing judgment: 22.11.2007

JUDGMENT & ORDERFacts:

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 15.09.2007 of Dr. Karunamay Nath (here in after referred to as the appellant) received by this Commission on 15.09.2007.
2. Facts leading to this second appeal are that the appellant made a written request on 09.07.2007 depositing the requisite application fee to the State Public Information Officer (SPIO) in the Directorate of Family Welfare & Preventive Medicine (FWPM), Government of Tripura, Agartala seeking copies of all documents and notes of File No. VII (2)-RFL/06. In response, Dr. P. Chatterjee, SPIO in the Directorate of FWPM endorsed the copy of letter No.F.12(130)DCA/06/2929-31 dated 17.07.2007 of Sri M.K.Pal, Deputy Drugs Controller addressed to the SPIO in the Directorate of FWPM to the appellant vide his letter No.F.21(3-4)-RTI Act-Cell/DFWPM/2007/2699(2-1) dated 26.07.2007. Sri M.K.Pal, Deputy Drugs Controller in his letter referred to above expressed his views that the documents and the notes of the concerned file relate to disciplinary proceedings drawn against Dr. Karunamay Nath, Retd. Public Analystist, RFL under CCS (CCA) Rules, 1965 and the matter is pending with the Inquiring Authority appointed for the purpose. So, according to him furnishing the documents at this stage would impede the process of investigation i.e. the departmental inquiry, which is barred as per section 8(1)(VIII) of the Act. Being aggrieved with the above decision, the appellant preferred the first appeal to the First Appellate Authority (FAA) in the Directorate of FWPM on 17.08.2007. Dr. J. Muhuri, Joint Director & Director-in-charge of FWPM being the FAA vide his letter No.F.12(12-2)DFWPM/IEC/2005 dated 24.08.2007 informed the appellant that the decision of the SPIO (Deputy Drugs Controller) for not supplying the documents was appropriate as the matter was under investigation. Being dissatisfied with the above decision of the FAA, the appellant approached this Commission by way of this second appeal seeking appropriate redress for allowing him to get certified copies of all the documents and notes as sought for by him under his written request dated 09.07.2007. The appellant, along with the memorandum of appeal, furnished copies of the written request dated 09.07.2007, money receipt towards payment of application fee and copies all communications made by the SPIO and the FAA.
3. On perusal of the memorandum of appeal with enclosures, we found it in form and within the time. Accordingly, it is admitted as a second appeal under section 19(3) of the Act.
4. Summons were issued to (1) Dr. J. Muhuri, Director of FWPM, Government of Tripura, (2) The Joint Director of the Directorate of FWPM, Government of Tripura (FAA) (3) Sri M.K. Pal, Deputy Drugs Controller, Government of Tripura and (4) Dr. P. Chatterjee, SPIO in the Directorate of FWPM, Government of Tripura. In response, the Respondent 1 Dr. J. Muhuri being the Director of FWPM and the FAA, Respondent 2 Sri M.K. Pal, Deputy

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Drugs Controller & Officer- in-charge of the Regional Food Laboratory and Respondent 3 Dr. P. Chatterjee, SPIO in the Directorate of FWPM appeared and submitted their respective written representations on 12.10.2007, 12.10.2007 and 04.10.2007 respectively.

5. The appellant submitted a rejoinder on 07.11.2007 to his memorandum of appeal.

Issues for decision:

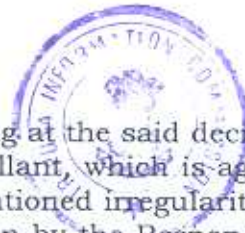
6. Taking into consideration the memorandum of appeal with the rejoinder thereto, written representations of the Respondents and the copies of the relevant papers and documents, the following issues are required to be determined: -

- (i) Are the decisions of the Respondent 1 & 3 being the FAA and the SPIO respectively in disposing of the written request and the first appeal maintainable?
- (ii) Is the appellant entitled to have access to the information sought for and if so, to what extent?
- (iii) Did the Respondents contravene the provisions of the Act and if so, are they liable to be penalized?

7. Issue No.(I): We have carefully gone through the memorandum of appeal with the rejoinder thereto and the written representations of the Respondents. We have also perused the decisions of the Respondent 1,2 & 3 as communicated to the appellant. It transpires from the written representations of the Respondents that the Respondent 2 Sri M.K. Pal, Deputy Drugs Controller is also the Officer-in-charge of the Regional Food Laboratory (RFL), which is under the administrative control of the Director of FWPM, Government of Tripura and accordingly the said RFL is under the jurisdiction of the SPIO in the Directorate of FWPM and not the SPIO (Sri M.K.Pal, Deputy Drugs Controller) in the Directorate of the Health Services, Government of Tripura. The Respondents 1 & 3 also admitted this fact. It is admitted fact that the Respondent 3 being the SPIO in the Directorate of FWPM, instead of taking the decision by himself about disclosure of the information to the appellant as sought for, communicated to the appellant the decision about the fate of the written request taken by the Respondent 2 who was mere the custodian of the relevant file pertaining to the information sought for. On the other hand, the Respondent 2 being the custodian of the records expressed his views about entitlement of the appellant to have access to the information sought for, which was beyond his jurisdiction. The above irregularities in disposing of the written request of the appellant as committed by the Respondents 2 & 3 are contrary to the provisions of section 7 of the Act.

8. We have also perused the communication made by the Respondent 1 being the FAA to the appellant vide his letter No.F. 12(12-2)DFWPM/IEC/2005 dated 24.08.2007 in deciding the first appeal dated 17.08.2007 of the appellant, wherein the Respondent 1 simply stated that the decision of the SPIO (Deputy Drugs Controller) for not supplying the documents was appropriate as the

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mater was under investigation. In arriving at the said decision, the Respondent 1 admitted to have not noticed the appellant, which is against the principle of natural justice. In view of the above mentioned irregularities on the part of the Respondent 1, 2 & 3, the decisions taken by the Respondent 1 being the FAA and the Respondent 3 being the SPIO are not maintainable and liable to be set aside.

9. Issue No.(ii): Under his written request dated 09.07.2007, the appellant sought for certified copies of all the documents and notes of File No. VII(2)-RFL/06. The description of the information sought for is found to be vague and not categorical. He did not mention the names of the office and the custodian of the above mentioned file. However, as the Respondent 3 being the SPIO could have located and identified the file, we are not inclined to put importance about the custodian of the above mentioned file. It is quite rationale to assume that in one file there may be so many notes and correspondences on several subject matters and the information seeker may not be interested with all of them. So, it would be quite reasonable for the SPIO to render necessary assistance to the requester to identify all those notes and documents copies of which would be required by the latter.

10. Views of the Respondents 1,2 & 3 as to the non- entitlement of the appellant to get copies of the documents and the notes sought for showing reasons that as the file notes and the correspondences are related to the investigation pending with the Inquiry Authority and also with the High Court case, disclosure of such notes and the documents would impede the said investigation and the court case, is not tenable, because of the fact that they (Respondents) themselves held the views that the appellant would get the copies of such notes and the correspondences in course of hearing of the disciplinary proceedings drawn against him before the Inquiry Authority . As a matter of principle and in the interest of the principal of natural justice, the copies of all the papers and the documents liable to be used in connection with the disciplinary proceedings against a public servant are required to be furnished to him. So, there should not be any bar to supply copies of such papers and the documents to the delinquent government servant. The plea of the Respondents that since there had been an alternative scope of getting copies of the notes and the correspondences for the appellant in the disciplinary proceedings, such copies cannot further be supplied under the Act is not in accordance with the provisions of the Act. The merit of the information to be adjudged for disclosure under the provisions of the Act ignoring the fact whether such information is available to the appellant under provisions of any other rules and regulations. In view of the discussion made here in above, we are to hold that the appellant is entitled to have access to the copies of only those notes and the correspondences of file No. VII (2-RFL)/06, which are related to the disciplinary proceedings drawn against him, but not barred by any provisions of the Act. To ascertain the particular notes and the documents to be required by the appellant, the Respondent 3 being the SPIO is required to render necessary assistance to the former and thereafter on receipt of written clarification from him, the latter is to furnish authenticated copies of such notes and documents, if not barred by section 8 or any other provisions of the Act. This second issue is decided accordingly.

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11. Issue No.(iii) It is admitted fact that all the Respondents committed some procedural irregularities, which are not supported by the provisions of the Act as discussed in paragraph 7 above. Firstly, the Respondent 1 being the FAA has not discussed any reason in deciding the first appeal after allowing an opportunity of hearing to the appellant to satisfy the requirement of principle of natural justice. Secondly, the Respondent 2 expressed his views about the merit of disclosure of the information beyond his jurisdiction since he was not the SPIO for the RFL, Government of Tripura. Thirdly, the Respondent 3 instead of giving his own decision on the entitlement of the appellant to have access to the information depended on the views of the Respondent 2.

12. All the Respondents in their respective written representations conceded that they have committed mistakes due to their lack of awareness of the provisions of the Act and they will rectify themselves in future in dealing with the request for information under the Act. Since all the Respondents frankly confessed their mistakes and expressed their readiness to adhere to the provisions of the Act, we find no malafide intention of the Respondents to deny the information to the appellant but for misconception of the relevant provisions of the Act and, therefore, they deserve a lenient view. Accordingly, they are not liable to be penalized under section 20 of the Act. However, we are constrained to warn all the Respondents that they should strictly adhere to the relevant provisions of the Act in dealing with the request for information and the first appeal in future. This third issue is decided accordingly.

Decision:

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

- (i) The decision of the Respondent 2 and the 3 as communicated to the appellant by the Respondent 3 vide his letter No.F.21(3-4)RTI Act/Cell/DFWPM/2007/2699(2-1)dated 26.07.2007 and the decision of the Respondent 1 being the FAA communicated to the appellant vide No.F.12(12-2)DFWPM/IEC/2005 dated 24.08.2007 are set aside.
- (ii) The Respondent 3 being the SPIO shall, within a period of 7 days from the date of passing of this judgment and order, allow the appellant to inspect the File No. VII(2-RFL)/06 and to identify the specific notes and documents, copies of which are to be required by him and on receipt of such specific written clarification from the appellant, the SPIO shall furnish authenticated copies of such notes and documents to the appellant, if not barred by any provisions of the Act on payment of requisite additional fees by the appellant. The process of assessment of additional fees by the SPIO, payment of such fees by the appellant and supply of the information to the appellant by the SPIO shall be completed within a period of 15 days of receiving the written clarification from the appellant.

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14. 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 Commissioner & the Secretary to the Government of Tripura, Health Department being the head of the Public Authority.

15. Pronounced.

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

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

Authenticated.

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22/11/07
(S.C. Saha)
Secretary

Tripura Information Commission

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

Appeal No. 11 of 2007-08/1087-91

November 22, 2007

Copy to:

1. Dr. Karunamay Nath, G.P.Villa, Radhanagar, Agartala- 799001 (Appellant).
2. Dr. J. Muhuri, Joint Director & Director- in-charge of Family Welfare & Preventive Medicine, Government of Tripura, Agartala (FAA).
3. Sri M.K.Pal, Deputy Drugs Controller & Officer- in-charge of Regional Food Laboratory, Government of Tripura, Agartala.
4. Dr. P.Chatterjee, SPIO in the Directorate of Family Welfare & Preventive Medicine, Government of Tripura, Agartala
5. The Commissioner & Secretary to the Government of Tripura, Health Department (Head of the Public Authority).

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22/11/07
(S.C. Saha)
Secretary

Tripura Information Commission