



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

Complaint No 16 of 2007-08.

Mr. M.A.Khan, Retd PCCF  
66- Prakash Vihar, Dharampur  
P.O.- Araghar, Dehradun  
Uttarakhand - 248001 .....Complainant

Vs.

1. Sri A.Debnath, Under Secretary to the Government of Tripura, GA (AR) Department (State Public Information Officer).
2. The Secretary to the Government of Tripura, GA (AR) Department (head of the Public Authority).
3. Sri M.L.Das, Under Secretary to the Government of Tripura, GA (P&T) Department [former SPIO in the GA (AR) Department].

.....Opposite Parties

In the matter of 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: None

For the Opposite Parties: 1. Sri A. Debnath, Under Secretary to the Government of Tripura, GA (AR) Department (SPIO).  
2. Sri L.H. Darlong, Additional Secretary to the Government of Tripura, GA (AR) Department on behalf of the Secretary to the Government of Tripura, GA (AR) Department.  
3. Sri M.L. Das, Under Secretary to the Government of Tripura, GA (P&T) Department [former SPIO in the GA (AR) Department].

Date of lodging complaint: 03.08.2007

Dates of hearing: 30.08.2007, 03.09.2007 & 13.09.2007

Date of pronouncing judgment: 22.09.2007

JUDGMENT & ORDERFacts:

1. This complaint under section 18(1) of the RTI Act, 2005 (for short the Act) arises out of a written complaint bearing No- 2006007/39-Appeal dated 25.07.2007 of Mr. M.A.Khan, Retd. PCCF (here in after referred to as the complainant) received by this Commission on 03.08.2007.
2. Gist of the complaint is that in deciding an appeal bearing No. 10 of 2006-07 brought by the complainant, this Commission passed an order on 13.04.2007 directing the State Public Information Officer (SPIO) in the GA (AR) Department, Government of Tripura to provide the information to the complainant as sought for vide his written request dated 29.08.2007 free of cost within a period of 15 days from the date of passing of the judgment and order, in default of which, penal provision under section 20(1) of the Act shall apply. It is alleged by the complainant that out of 5 items of information sought for by him, the SPIO in the GA (AR) Department, did not provide correct information against 4<sup>th</sup> and 5<sup>th</sup> items of information. He, therefore, expressed his dissatisfaction with the information provided by the concerned SPIO and approached this Commission with this complaint with a request to review the matter, to issue appropriate order directing the SPIO to supply him specific and complete information and also to penalize the SPIO under section 20 of the Act.
3. On perusal of the complaint, adequate materials are found to take its cognignce under section 18(1) of the Act.
4. In response to the summons, the Opposite Parties (OPs) Sri A. Debnath, Under Secretary to the Government of Tripura, GA (AR) Department being the SPIO (OP 1) and Sri S.K. Chaudhury, Secretary to the Government of Tripura, GA (AR) Department being the head of the Public Authority (OP2) responded and submitted their respective written representations on the complaint. OP 1 appeared personally and the OP 2 is represented by Sri L.H. Darlong, Additional Secretary to the Government of Tripura, GA (AR) Department duly authorized. Both the OP 1 and OP 2 in their written representations, supported full compliance of the order dated 13.04.2007 of this Commission passed in Appeal No.10 of 2006-07 by Sri M.L. Das, the then SPIO in the GA (AR) Department (OP 3).
5. In response to the notice asking to show cause as to why he should not be penalized under section 20(1) of the Act, Sri M.L. Das, now Under Secretary to the Government of Tripura, GA (P&T) Department [former SPIO in the GA (AR) Department, Government of Tripura] who vide his letter No.F.3(22)-GA(AR)/06/758-759 dated 27.04.2007 had furnished information to the complainant in compliance with the order dated 13.04.2007 of this Commission passed in Appeal No-10 of 2006-07, appeared and submitted his written representation on 13.09.2007.



Points for decision:

6. In consideration of the complaint and the written representations of the OPs, the following points are to be decided: -

- (i) Did the OP 3 Sri M.L. Das, now Under Secretary to the Government of Tripura, GA (P&T) Department [former SPIO in the GA (AR) Department, Government of Tripura] provided adequate information to the complainant in compliance with the order dated 13.04.2007 passed by this Commission in Appeal No.10 of 2006-07?
- (ii) Is there any violation of Commission's order by the OP3 Sri M.L. Das, now Under Secretary to the Government of Tripura, GA (P&T) Department [former SPIO in the GA (AR) Department, Government of Tripura] to warrant penalty under section 20(1) of the Act?
- (iii) To what relief the complainant is entitled?

Reasons for decision:

7. Issue No.(i) & (ii): For the sake of convenience, the first two issues are taken together for discussion. We have carefully gone through the complaint dated 25.07.2007 of the complainant, copy of letter No.F. 3(22)-GA(AR)/06/578-579 enclosed by the complainant along with the complaint, written representation dated 27.08.2007 of OP 2 Sri S.K. Chaudhury, Secretary to the Government of Tripura, GA(AR) Department, written representation dated 30.08.2007 of OP 1 Sri A. Debnath, Under Secretary to the Government of Tripura, GA (AR) Department and the written representation dated 13.09.2007 of OP 3 Sri M.L. Das, now Under Secretary to the Government of Tripura, GA (P&T) Department [former SPIO in the GA(AR) Department, Government of Tripura]. After careful appreciation of the above papers and documents, it is revealed that in terms of this Commission's order dated 13.04.2007 passed in Appeal No. 10 of 2006-07, the OP 3 being the then SPIO in the GA (AR) Department was under obligation to provide the following information against item No (iv) and (v) as sought for by the complainant vide his written request dated 29.08.2006: -

- (iv) If no enquiry has been ordered into the written request dated 27.01.2006 of Mr. M.A.Khan addressed to the Chief Secretary, Government of Tripura, the reason for the same.
- (v) The reason for not replying to the above letter dated 27.01.2006.

8. The OP 3 in order to satisfy the above queries made by the complainant provided the following information in seriatim: -

- (iv) No such information is available.
- (v) This not covered by the definition of 'information' and 'record'.

9. The complainant advanced his strong objection about the correctness of the said information. According to him there must be existence of some reasons for not holding the enquiry and not replying to the letter and thus the SPIO



suppressed the real information. The OP 3 in his rejoinder date 27.08.2007 supported the information already provided by the OP 3 as full compliance of the Commission's above order. The OP 3 in his written representation dated 13.09.2007 made the following submissions: -

"2. As directed by the Commission in the judgment and order dated 13-04-2007, in appeal NO.10 of 2006 and 2007, the respondent NO.3, Shri M.L. Das, Under Secretary to the Government of Tripura, GA(P&T) Department [ former SPIO in the GA(AR) Department] has no malafide intention not to supply the information regarding item No.(V) to the appellant.

3. It may kindly be mentioned here that there exist no record in the relevant file showing the reasons as to why the inquiry has not been ordered. Therefore, the reply was given against item No.(iv) that no such information is available.

4. In regard to information item No.(v), it may be mentioned that reasons for not replying to the letter dated 27<sup>th</sup> January, 2006 of the complainant are not available on record in the Department. Therefore, the information supplied to the complainant that this was not covered by the definition of information or "record" was due to misconception about the relevant provision of the Act. This was however given in good faith not with any malafide intention with the understanding that this would be adequate compliance of the Commission's order. However, this steps taken by me if found are not in accordance with the direction of the Commission, I may kindly be excused for this."

10. Having regard to the facts discussed in the preceding paragraphs, we find the reasons advanced by the OP 3 in his written representation to justify the information provided by him against item No.(iv) of the information sought for by the complainant to be satisfactory. According to the OP 3, there exists no record available in the relevant file showing the reasons as to why the enquiry has not been ordered and also as to why his letter dated 27.01.2006 was not replied. OP 3 confessed that due to his misconception about the relevant provisions of the Act, he intimated the complainant against fifth item of information that the information was not covered by the definition of 'information' or 'record' considering it would be the adequate compliance of the Commission's order. He further stated that he acted in good faith without any malafide intention to suppress any fact constituting the information. Although the submission of the OP 3 deserves consideration, but we are not fully satisfied with the explanation given by him. He could have replied the fifth item of information based on the available facts and records. The facts as divulged by the OP 3 in his written submission made on 13.09.2007 that there exists no record available in the relevant file showing the reason for not replying to the letter dated 27.01.2007 of the complainant addressed to the Chief Secretary, Government of Tripura should have been provided to the complainant against fifth item of information. It deserves to be kept in mind that an SPIO cannot go beyond the available records to answer a query made by a requester under the Act.

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11. In view of the discussion made here in above, we are of the view that the information furnished by the OP 3 against fourth item of information is correct according to the available record. However, the information provided against fifth item of information is required to be provided afresh by the OP1, the present SPIO in the GA (AR) Department within a period of 10 days from the date of passing of this judgment and order.

12. As regards the claim of the complainant for imposition of penalty upon the OP 3 for non-compliance of this Commission's order, we are satisfied with the explanation given by the OP 3 and to hold that his malafide intention to deny or suppress the information to the complainant is not established beyond reasonable doubt. This apart, in the meantime, the OP 3 has already been transferred to the GA (P&T) Department and he is no longer in the GA (AR) Department. Considering all these aspects, we are not inclined to impose any penalty upon the OP 3. However, we are constrained to make the OP 3 alert that he should be more careful in future in dealing with the cases of any such request for information under the Act.

13. These first two issues are decided accordingly.

14. Issue No.(iii): Since the fifth item of information had not been provided in its true sense, the complainant is entitled to have access to the factual information against the said item, which the OP 1 being the present SPIO in the GA(AR) Department, Government of Tripura shall provide within a period of 10 (ten) days from the date of passing of this judgment and order free of cost.

Decision:

15. In fine, the complaint is partially allowed on contest. OP 1 being the present SPIO in the GA(AR) Department, Government of Tripura shall provide the fifth item of information, namely, the reason for not replying to the letter dated 27.01.2006 of the complainant addressed to the Chief Secretary, Government of Tripura within a period of 10 ( ten) days from the date of passing of this judgment and order free of cost and compliance of the same should be reported to this Commission.

16. Let copy of this judgment and order be sent to the complainant and the OPs.

17. Pronounced.

Sd/-  
D.K. Daschaudhuri  
State Information Commissioner

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



Authenticated.

22/9/07  
 (S.C. Saha)  
 Secretary

Tripura Information Commission

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

Complaint No. 16 of 2007-08/953-56

September 22, 2007

Copy to:

1. Mr. M.A.Khan, Retd PCCF,66- Prakash Vihar, Dharampur,P.O.- Araghar, Dehradun,Uttarakhand – 248001 (Complainant).
2. Sri A. Debnath, Under Secretary to the Government of Tripura, GA (AR) Department (SPIO).
3. The Secretary to the Government of Tripura, GA (AR) Department (Head of the Public Authority).
4. Sri M.L. Das, Under Secretary to the Government of Tripura, GA (P&T) Department [former SPIO in the GA (AR) Department].

22/9/07  
 (S.C. Saha)  
 Secretary

Tripura Information Commission