

NAGALAND INFORMATION COMMISSION

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No. NIC/Appeal-11/2018-19

Dated Kohima, the 23rd February, 2019.

Appellant : Shri. Molo Jamir,
Advocate,
Principal District Sessions Court,
Mokokchung, Nagaland/
Home address: House No.38, Lijaba Lijen Ward,
Mokokchung, Nagaland,
email:molojmair@gmail.com
Mobile No.9862127003/ 9862127003/ 7005040093.

Respondents : (i) The Chief Engineer & FAA,
NPWD (National Highways),
Nagaland, Kohima.

(ii) Er. Chubatoshi,
Executive Engineer & PIO,
PWD (National Highways) Division-II,
Mokokchung, Nagaland.

Public Authority : O/o the Chief Engineer PWD (National Highways),
Nagaland, Kohima.

Date of hearing : 19.02.2019 at 1:00 PM.

Date of Decision : 23.02.2019.

Present:

1. Er. K. Theunuo, Chief Engineer & FAA, O/o the Chief Engineer PWD (National Highway), Nagaland, Kohima, Mobile No. 9436000660
2. Er. Chubatoshi, Executive Engineer & PIO, O/o the Executive Engineer PWD (National Highway) Division-II, Mokokchung, Nagaland, Mobile No. 9436436335.
3. The applicant (now appellant), Shri. Molo Jamir, Advocate, Principal District Sessions Court, Mokokchung, Nagaland/ Home address: House No.38, Lijaba Lijen Ward, Mokokchung, Nagaland, email:molojmair@gmail.com Mobile No. 9862127003/ 7005040093.
4. Shri. Akum Pongen, DC Court Dimapur, Nagaland, Mobile No. 9856511462.

FACT OF THE CASE

An applicant, Shri. Molo Jamir had submitted an RTI application vide Ref: MJ/RTI/17/18 dated 17.07.2018 addressed to the Public Information Officer, Office of the Deputy Commissioner, Mokokchung, Nagaland along with an application fee of Rs. 10/- seeking the following information:-

1. *List of land/ house owners under Unger village, Chuchuyimlang village and Mongsenyimti village affected by the two-lane road construction.*
2. *Detailed criteria under which the compensation is to be paid to the each affected land/ house owner.*
3. *Village-wise details of the total amount sanctioned as compensation to the affected landowners falling under the jurisdiction of Unger, Chuchuyimlang village and Mongsenyimti village.*
4. *Complete list of the amount sanctioned as compensation to each and every land/ house owner under Unger village, Chuchuyimlang and Mongsenyimti village.*

On receipt of the above RTI application dated 17.07.2018 on the same day i.e. 17.07.2018, Shri. W. Manpai Phom, Additional Deputy Commissioner & PIO, Mokokchung, Nagaland had, vide letter No.JUD-50/2016-17/212 dated 09.08.2018 **transferred the original RTI application alongwith the fee** to the Executive Engineer, National Highway, Mokokchung, Nagaland to furnish the required information at the earliest directly to the applicant and under intimation to their Office.

On receipt of the above letter No. JUD-50/2016-17/212 dated 09.08.2018, Shri. Chubatoshi, Executive Engineer, PWD (National Highway) Division-II, Mokokchung, Nagaland had, vide letter No.EE/MKG/NH/T-48/2018-19/148-150 dated 07.09.2018 furnished the information for query Nos. 1, 2, 3 and 4 to the applicant and with a copy to the Deputy Commissioner, Mokokchung, Nagaland.

On receipt of the above information, the applicant (now appellant) had submitted his first appeal dated 12.09.2018 to the Chief Engineer & FAA, PWD (National Highway), Nagaland, Kohima stating that the concerned department had intentionally **concocted the facts and denied to give the information sought at Sl. No. 4** of the RTI application by replying that payment process was in progress.

On receipt of the first appeal dated 12.09.2018, Er. K. Theunuo, Chief Engineer & FAA, PWD (NH), Nagaland, Kohima had, vide letter No. CE/NH/RTI-20/2009 dated 26.10.2018 wrote to the applicant (now appellant) stating that the Executive Engineer, PWD (National Highway) had replied to query No.4 that the payment was in progress. Further, in referring to para 8 of the first appeal dated 12.09.2018, he stated that under RTI Act, 2005, Section 8(g) stipulating “*information, the disclosure of which would endanger the life of physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes*” and denied his request that it cannot be disclosed as it pertain to the safety of person and has no relation to any public activity or interest.

However, on not being satisfied with the above information furnished by the Chief Engineer & FAA PWD (National Highway), Nagaland, Kohima, the applicant (now appellant) had submitted a second appeal dated 28.11.2018 to the Commission, stating that disclosing information of management and disbursement of public money does not amount to endangering the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes, rather, it is the statutory right of every citizen to know the detailed information and the least duty of the government to show transparency and accountability in governance. And an extract of court judgment, AIR 2005 Karnataka 21 of K. Ravikumar vs. Bangalore University and AIR 2005 Karnataka 23 of A.M. Khaithan vs. M. Sheshappa were also enclosed for reference.

Since the applicant (now appellant) was not satisfied with the information on query No. 4 given by the Executive Engineer & PIO, PWD (National Highway) Division-II, Mokokchung, Nagaland, and also the denial of information by the Chief Engineer & FAA, PWD (NH), Nagaland, Kohima, the Commission has decided to hear the appeal case giving opportunity of being heard to all the parties on **19th February, 2019 (Tuesday) at 1:00 P.M.** in the **Hearing Room of Nagaland Information Commission, below Raj Bhavan, Officers’ Hill Colony, Nagaland, Kohima** and **also to bring the files and relevant documents** in question for scrutiny on the above date and time for hearing:-

- i. Er. K. Theunuo, Chief Engineer & FAA, O/o the Chief Engineer PWD (National Highway), Nagaland, Kohima.
- ii. Er. Chubatoshi, Executive Engineer & PIO, O/o the Executive Engineer PWD (National Highway) Division-II, Mokokchung, Nagaland.
- iii. The applicant (now appellant), Shri. Molo Jamir, Advocate, Principal District Sessions Court, Mokokchung, Nagaland/ Home address: House No.38, Lijaba Lijen Ward, Mokokchung, Nagaland.

OBSERVATIONS AND FINDINGS:

The applicant (now appellant) stated that he was satisfied with the information received relating to query Nos. 1, 2 and 3, except the reply to query No. 4 since the information sought did not attract Section 8(g) of the RTI Act, 2005 as the PWD(National Highways) was not a law enforcement agency, and therefore prayed for access to information.

The Commission also agreed with the above contention of the applicant (now appellant) and stated that the information regarding compensation of land paid to the affected individuals/house owners are not exempted from the purview of the RTI Act, 2005 and therefore the ground for denying the furnishing of the information to the applicant (now appellant) by the FAA was **not tenable**. The Commission further explained that the Engineers of the PWD(National Highways) make the valuation and determine the rate and send it to the District Administration, whereas the District Administration make the payment towards compensation. However, before any payment is made, the government i.e. the District Administration notify for compensation for claims and objections. Hence, in the present case, the *list of the amount sanctioned as compensation to each house owner* ought to be available with the Office of the Deputy Commissioner, Mokokchung and therefore the reply should have been given by the DC Office instead of transferring all the queries sought in the RTI application to the Office of the EE, PWD(National Highways).

Section 6(3) of the RTI Act, 2005 stipulates that RTI application should have been transferred to another public authority within five (5) days. However, the Commission observed that though the RTI application dated 17.07.2018 was received on the same day i.e. 17.07.2018, Shri. W. Manpai Phom, Additional Deputy Commissioner & PIO, Mokokchung, Nagaland had transferred the original RTI application alongwith the fee to the Executive Engineer, National Highway, Mokokchung, Nagaland only on 09.08.2018 which was **after 23 days**. Hence, the delay in transferring the RTI application had left the Executive Engineer & PIO, PWD (National Highway) with only a few days to furnish which resulted in the overall delay. Moreover, considering the five (5) days for the Additional Deputy Commissioner & PIO, Mokokchung to transfer the application to the Executive Engineer & PIO, National Highway, Mokokchung, the number of days of delay becomes (23 – 5) days = **18 days** for which penalty was attracted.

Shri. Chubatoshi, Executive Engineer & PIO, PWD (National Highway), Division-II, Mokokchung, Nagaland stated that though there was no record, he had probably received the RTI application dated 17.07.2018 from the PIO of the DC Office on 09.08.2018, since his office is adjacent to the DC Office. He further stated that the information could be furnished to the applicant (now appellant) only on **07.09.2018**.

The Commission observed that from the date of receipt of the RTI application dated 17.07.2018 to the date of furnishing the information on **07.09.2018**, there was a total of 52 days. And considering the 30 days time for the PIO to furnish the information, the total days of delay was (52 – 30) days = **22 days**. Also, out of the total delay of 22 days, since 18 days of delay was contributed by the Additional Deputy Commissioner & PIO, Mokokchung, the remaining (22 – 18) days = 4 days of delay would pertain to the Executive Engineer & PIO, National Highway, Mokokchung.

The Commission also observed that the First Appellate Authority (FAA) did not hear the first appeal and had simply replied to the applicant (now appellant) reiterating the reply of the EE & PIO that '*payment process was in progress*' and had further denied furnishing the information on the ground that it pertain to the safety of person and had no relation to any public activity or interest. The Commission reminded that since deciding of appeal is a quasi-judicial function, the FAA should have called for a hearing of both the parties i.e. the PIO and the applicant, and pass decision on the first appeal within 30 to 45 days.

DECISION:

On the above observations and findings, the Commission decided that:

1. Since the information relating to query No. 4 i.e the *list of the amount sanctioned as compensation to each house owner* do not fall under the category of exempted information, Shri. Chubatoshi, Executive Engineer & PIO, PWD (National Highway), Division-II, Mokokchung, Nagaland is directed to furnish the information to the applicant (now appellant) **within fifteen (15) days** from the date of receipt of this decision, with a copy of the information to this Commission.
2. On receipt of the information furnished by the PIO, the applicant (now appellant) shall submit satisfaction or non-satisfaction to the PIO and with a copy to this Commission.
3. Under Section 20 (1) of the RTI Act 2005, penalty for the total delay of **22 days** at the rate of Rs. 250/- per each day of delay amounting to **Rs. 5500.00** (Rupees five thousand and five hundred only) is imposed for the failure to furnish the information sought within

the prescribed period of 30 days without reasonable cause. The penalty amount shall be shared among the following two (2) **PIOs** for contributing to the delay in furnishing the information to the applicant (appellant).

Hence, the following two (2) **PIOs** are show caused as to why they should not pay the following penalties at the rate of Rs. 250/- for each day of delay for contributing to the delay in furnishing the information to the applicant (now appellant) as shown below:-

Name of Deemed PIO	No. of days of delay	Penalty amount @ Rs. 250.00
Shri. W. Manpai Phom, Additional Deputy Commissioner & PIO, Office of the Deputy Commissioner, Mokokchung, Nagaland	23-5= 18 days	Rs. 4500.00
Shri. Chubatoshi, Executive Engineer & PIO, PWD (National Highway) Division-II, Mokokchung, Nagaland	22-18=4 days	Rs. 1000.00
Total	22 days	Rs. 5500.00

The penalty amount shall be deposited into the Government account through **treasury challan** in favour of the Consultant (Accounts), Nagaland Information Commission, Kohima under the Head of Account given below, with a copy of the treasury challan(in original) to this Commission:-

0070 - Other Administrative Services
60 - Other Services
118 - Receipts under RTI Act, 2005

The above compliance shall be submitted to this Commission **within fifteen (15) days** from the date of receipt of this decision.

Decision pronounced in the presence of both the parties on 19.02.2019 at 1:00 PM.

Copy be given to:-

1. Er. K. Theunuo, Chief Engineer & FAA, O/o the Chief Engineer PWD (National Highway), Nagaland, Kohima, Mobile No. 9436000660.
2. Shri. W. Manpai Phom, Additional Deputy Commissioner & PIO, Mokokchung.
3. Er. Chubatoshi, Executive Engineer & PIO, O/o the Executive Engineer PWD (National Highway) Division-II, Mokokchung, Nagaland, Mobile No. 9436436335.
4. The applicant (now appellant), Shri. Molo Jamir, Advocate, Principal District Sessions Court, Mokokchung, Nagaland/Home address: House No.38, Lijaba Lijen Ward, Mokokchung, Nagaland, email:molojmair@gmail.com Mobile No. 9862127003/ 7005040093.
5. The Consultant (Accounts), Nagaland Information Commission, Nagaland, Kohima for information.
6. The Computer Programmer, Nagaland Information Commission for uploading on the Commission's website and Notice Board.
7. Office Copy.

Sd/-
CHANBEMO LOTHIA
Chief Information Commissioner

Sd/-
G. H. RAMLIA
State Information Commissioner

Sd/-
KEVIZATUO MIACHIEO
State Information Commissioner

Authenticated true copy:-

(WORHONTHUNG EZUNG)
Secretary