

NAGALAND INFORMATION COMMISSION
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No. NIC/Appeal-6/2016-17

Dated Kohima, the 15th November, 2016.

Appellant(s): 1) Shri. Kedou Wetsah, Member,
PGD, NPCC, Kohima,
Mobile No. 9436001640
2) Shri. Haiying, Member,
PGD, NPCC, Kohima,
Mobile No. 9402908307.

Respondent(s): 1) The Director & First Appellate Authority,
New and Renewable Energy, Nagaland, Kohima.
2) The PIO, Directorate of New and Renewable Energy,
Nagaland, Kohima.

Public Authority : Directorate of New and Renewable Energy, Nagaland, Kohima.

Date of first Hearing : 29.07.2016 at 2:00 P.M

Date of first Decision : 24.08.2016.

Date of second Hearing: 26.10.2016 at 11:00 A.M

Date of second Decision: 15.11.2016.

Present:

1. Er. T. S. Angami, Director & FAA, New and Renewable Energy, Nagaland, Kohima, Mobile No. 7085022440.
2. Er. Kimaba, Joint Director, New and Renewable Energy, Nagaland, Kohima, Mobile No. 9436010489.
3. Er. Thungpemo Ezung, Deputy Director & PIO, Directorate of New and Renewable Energy, Nagaland, Kohima, Mobile No. 9436215367.
4. Er. Imliakum, J.E (Electrical) & APIO, Directorate of New and Renewable Energy, Nagaland, Kohima, Mobile No. 9615936058.
5. The applicants (now appellants), Shri. Kedou Wetsah, Member, PGD, NPCC, Kohima, Mobile No. 9436001640 and Shri. Moa Emchen, Member, PGD, NPCC, Kohima, Mobile No. 9862749595.

FACTS OF THE CASE.

The Commission had, on 29.07.2016 at 2:00 P.M heard the second appeal vide letter No. PGD-1/2015-16 dated 08-06-2016 submitted by Shri. Kedou Wetsah, Member, PGD, NPCC, Mobile No. 9436001640 and Shri. Haiying, Member, PGD, NPCC, Mobile No. 9402908307 against the non-furnishing of the requisite information from the First Appellate Authority in response to their First Appeal dated NIL which was submitted against the incomplete information furnished by the PIO to their RTI application dated NIL.

After the hearing of the second appeal vide No. PGD-1/2015-16 dated 08.06.2016 on 29.07.2016 at 2:00 P.M, the Commission had passed its decision of even No. dated 24.08.2016 directing the PIO to furnish the information sought by the applicants (now appellants) within 30 (thirty) days from the date of issue of the decision.

And in compliance to the directive of the Commission, the Deputy Director & PIO, Directorate of New & Renewable Energy had, vide letter No. DNRE/RTI-4/2010(pt-II)/421 dated **09.09.2016** furnished the information to the applicants (now appellants) and with a copy to this Commission.

On receipt of the information, the applicants (now appellants) had, vide letter No.PGD-1/2015-2016 dated **05.09.2016** submitted that they were not satisfied with the information so received. However, the Commission had received it only on **06.10.2016**.

The Commission had decided to hear the case on **26th October, 2016 (Wednesday) at 11:00 A.M.** in the **Hearing Room of the Nagaland Information Commission, Old Secretariat Complex, Nagaland, Kohima**. The Commission had also directed all the concerned parties to bring the files and relevant documents in question for scrutiny, on the above date and time for hearing.

OBSERVATIONS AND FINDINGS

During the hearing, Shri. Kedou Wetsah, co- applicant had submitted that he had received the three (3) information from the PIO which was furnished in compliance to the decision of the Commission dated **24.08.2016**.

1. Regarding No. 1: Utilization Certificate for Thizaru MHEP, the applicants(now appellants) submitted that the information furnished to them were **not satisfied** since, instead of UC for Thizaru MHEP only, they had received a Utilisation Certificate (UC) amounting to Rs. 1.99 Crores which included three (3) projects namely, Mayemong MHEP, Thizaru MHEP and Noiroi MHEP. The applicants(now appellants) stated that since they wanted to know how much money was spent on the Thizaru MHEP, they had sought the UC for Thizaru MHEP only.

In this regard, the PIO clarified that since the funds for the above three (3) projects came combined in a single sanction order, the Utilisation Certificate (UC) was also given for the three (3) projects combined. Moreover, since the applicants (now appellants) also wanted to know the expenditure incurred in the Thizaru MHEP, the expenditure statements/amounts can be furnished as bill vouchers for the projects were available.

The Commission observed that since the fund for the three (3) projects was received in a single Sanction Order, a single Utilisation Certificate (UC) for the three (3) projects combined was given accordingly. Moreover, as submitted by the public authority that since the bill vouchers for all the three (3) MHEPs were available, a break-up of funds for the three (3) projects can be given separately to the applicants (now appellants).

2. Regarding No. 2: APR for Thizaru MHEP: the applicants (now appellants) had stated that five (5) Nos. of APRs were received, however, on scrutiny it was found that there was no running bill voucher for **Rs. 11,08,710.00** and hence had questioned the public authority as to how and why the amount was released without bill vouchers?

The PIO clarified that the amount for Rs. 11,08,710.00 was payment made to local contractors which was included in the original work order and was also reflected in the bill vouchers.

The applicants (now appellants) had expressed satisfaction with the explanation.

3. Regarding No.4: APR (Mobilization Advance payment) for Noiroi MHEP. The applicants (now appellants) had submitted **satisfaction** since the PIO had furnished the APRs (Actual Payee Receipts) and the UCs (Utilisation Certificate).

On the advice of the Commission in its decision dated **24.08.2016** to give a list regarding those information which were not satisfied to the Directorate of New and Renewable Energy, Nagaland, Kohima, the applicants(appellants) had, vide letter No. PGD-1/2015-16 dated 01.08.2016 submitted a list of **seven (7) queries** with the following details:-

1. *Furnish xerox copy of Govt. approval order for escalation of amount/amendment of work for the five (5) MHEPs.*
2. *Furnish a copy of segregation of fund received from different heads i.e MNRE, SPA, NEC, NLCPR and State matching share for the five (5) MHEPs and also furnish xerox copy of the sanction letters of the same.*
3. *Furnish completion statement and the payment made to the contractor till date in all the five (5) MHEPs.*

4. *Furnish cash memos/ voucher of both civil and electrical works in which payment were made to the contractor in all the five (5) MHEPs.*
5. *Furnish clarification of the amount variation in estimated cost of DPR, running bills amount, work order amount, NIT amount and invoice amount in all the five (5) MHEPs.*
6. *Furnish department standing order and govt. approval order for sub-letting contract works of all the five (5) MHEPs.*
7. *Furnish the payment made as mobilization advance, running bills and balance amount to the contractor in all the five (5) MHEPs.*

Er. Thungpemo Ezung, Deputy Director & PIO, Directorate of New & Renewable Energy , Nagaland, Kohima had, vide letter No. DNRE/RTI-4/2010(pt-II)/420 dated **09.09.2016** furnished the above seven (7) information including enclosures of documents and annexures to the applicants (now appellants).

During the hearing, Er. T. S. Angami, Director & FAA, New and Renewable Energy, Nagaland, Kohima submitted that he could not attend the last hearing held on 29.07.2016 since he was on leave. He however, questioned the applicants regarding the intention of filing the RTI. He stated that in the first appeal hearing, the applicants could not even spell out their non-satisfaction even though much more information had been furnished. Further, even after the last decision of the Commission, the applicants were given all the information, yet they were not satisfied with the information. Therefore, he desired that if the applicants could pinpoint the areas for their non-satisfaction.

In response, Shri. Moa Emchen, who represented Shri. Haiying, co-applicant clarified that there was no intention in filing the RTI. He submitted that since he had received incomplete information and was not satisfied as his co-applicant had stated earlier, the appeal was filed.

The Commission pointed out that the FAA should not have raised the issue of intention of filing the RTI application since under Section 6 (2) of the RTI Act, 2005, the applicant need not give any reason or intention of filing RTI application.

During the hearing, on the replies to the additional information regarding the seven (7) queries, the applicants (now appellants) had submitted that they **were satisfied** with the replies to query Nos. 5, 6 and 7, however, they were **not satisfied** with the replies to the query Nos. 1, 2, 3 & 4.

1. **Regarding query No. 1 i.e. xerox copy of Govt. approval order for escalation of amount/amendment of work for the five (5) MHEPs,** the applicants(appellants) pointed out that the Government approval order for cost escalation of Tsutsung MHEP only was furnished and not for the other MHEPs.

The officer-in-charge of Hydro Projects, Er. Kimaba, Joint Director, New and Renewable Energy, Nagaland, Kohima clarified that there was cost escalation at Tsutsung MHEP only and the copy of the Government approval order for cost escalation of Tsutsung MHEP was furnished. However, since there was no cost escalation in the other MHEPs, furnishing of approval order for the other projects did not arise.

The applicants(appellants) submitted satisfaction with the above explanation, however, they felt that if there was no cost escalation in the other MHEPs, the PIO should have given the reply accordingly. The Commission also viewed that such explanation should have been given earlier for the other MHEPs to dispel the above misgivings.

2. **Regarding query No. 2 i.e. copy of segregation of fund received from different heads i.e MNRE, SPA, NEC, NLCPR and State matching share for the five (5) MHEPs and also furnish xerox copy of the sanction letters of the same.**

Er. T. S. Angami, Director & FAA, New and Renewable Energy, Nagaland, Kohima, explained that the project cost for Tsutsung MHEP was Rs. 15.95 Crores. However, since the limit of the MNRE (Ministry of New and Renewable Energy) is only Rs. 5.00 crores per Mega Watts irrespective of the capacity of the project, the amount from the MNRE was inadequate. And out of the total project cost, the MNRE had, during 2012 sanctioned only Rs. 5.00 crores. Hence the balance amount of Rs. 10.00 crores was kept as gap-funding. The remaining balance requirement was received from the DONER(Department of North East Region), NEC (North East Council) and the SPA (Special Plan Assistance).

The applicants (now appellants) also pointed out that since the funds received for the other MHEPs were also from the MNRE, NEC, SPA and State Plan, there should be separate Utilization Certificates. However, the FAA had clarified that the UCs were shown according to the sanctions received.

Further, the applicants (now appellants) had expressed non-satisfaction since there was an Audit objection as per the Audit Statement obtained from the office of the AG (Accountant General). However, the FAA had stated that the Audit had dropped the audit para.

3. **Regarding query No. 3 i.e. completion statement and the payment made to the contractor till date in all the five (5) MHEPs,** the officer incharge of the Hydro Projects, Er. Kimaba, Joint Director, New and Renewable Energy, Nagaland, Kohima informed the progress of the construction works as follows:-
 - a. Mayemong MHEP = 100%
 - b. Thizaru MHEP = 10% (initial stage)
 - c. Noiroi MHEP = 50%
 - d. Tsutsung MHEP = 90%

The first three (3) MHEPs at Mayemong, Thizaru and Noiroi were sanctioned/funded under one head of account. The applicants(appellants) submitted that they **were satisfied** with the MHEP at Mayemong since the work has been completed.

4. **Regarding query No. 4 i.e. cash memos/ voucher of both civil and electrical works in which payment were made to the contractor in all the five (5) MHEPs,** the applicants (now appellants) were not satisfied since only department running bills and payment statements by cheque to the contractors were given and not cash memos or bill vouchers for both civil and electrical works though payments were made to the contractors in all the five (5) MHEPs.

Er. T. S. Angami, Director & FAA, New and Renewable Energy, Nagaland, Kohima, submitted that since the works were done on turn-key basis, the contractors do not submit cash memos but bills were entered into the MBs (Measurement Books) for payment.

The Commission also observed that since all the projects were executed on turn-key basis, only bills and no cash memos were submitted which were recorded and maintained in the MBs (Measurement Books).

The Commission observed that on receipt of the RTI application dated NIL on 08.12.2015, the information was furnished on the 31st day i.e. 08.01.2016. However, on close examination, it was found that the RTI application was received on 08.12.2015 **by the APIO and not by the PIO.** Hence, under Section 5(2) of the RTI Act, 2005, 5(five) days shall be added to the 30 days time limit and the deadline to furnish the information (35 days) becomes **12.01.2016.** And since the PIO had on 08.01.2016 intimated the cost of information and had also furnished the information, the Commission was of the view that there was no delay and hence no penalty was attracted.

DECISION

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

1. **Regarding Utilization Certificate for Thizaru MHEP:-**

The applicants (now appellants) were satisfied with the explanation of the PIO that since the funds for the three (3) projects were received in a single sanction order, a single UC was also given for the 3 projects combined. However, since the applicants (now appellants) had also wanted to know the expenditure incurred in the Thizaru MHEP, the PIO is directed to furnish the break-up of the expenditure statements/amounts for each of the MHEP separately.

2. **Regarding query No. 1 i.e. xerox copy of Govt. approval order for escalation of amount/amendment of work for the five (5) MHEPs:**

As explained during the hearing, since there was cost escalation in Tsutsung MHEP only and not in the other MHEPs, the Commission directed that the PIO shall furnish the reply for the other MHEPs to the applicants(appellants) accordingly.

3. **Regarding query No. 2 i.e. copy of segregation of fund received from different heads i.e MNRE, SPA, NEC, NLCPR and State matching share for the five (5) MHEPs and also furnish xerox copy of the sanction letters of the same:**

Since the funds were received from different agencies such as the MNRE, NEC, SPA, SP etc, the PIO shall give the **segregation of funds** for each of the projects alongwith a **copy of the Audit Report**.

4. **Regarding query No. 3 i.e. completion statement and the payment made to the contractor till date in all the five (5) MHEPs:**

The PIO shall furnish as submitted/explained above, the progress of work for each of the MHEPs including the reasons for the delays for completion of the projects.

5. **Regarding query No. 4 i.e. cash memos/ voucher of both civil and electrical works in which payment were made to the contractor in all the five (5) MHEPs:**

Since all payments of bills were maintained in the MBs (Measurement Books), the PIO shall furnish copies of the MBs wherein payments made to the contractors and received by the contractors were recorded.

6. The above information be furnished to the applicants (now appellants), with a copy to the Commission **within 2 (two) weeks** from the date of receipt of this Decision.

7. On receipt of the information from the PIO, the applicants(now appellants) shall also submit satisfaction or non-satisfaction to the public authority and with a copy to the Commission.

Decision pronounced in the presence of all the parties present on 26.10.2016.

Copy given to:-

1. Er. T. S. Angami, Director & FAA, New and Renewable Energy, Nagaland, Kohima, Mobile No. 7085022440.
2. Er. Kimaba, Joint Director, New and Renewable Energy, Nagaland, Kohima, Mobile No. 9436010489.
3. Er. Thungpemo Ezung, Deputy Director & PIO, Directorate of New and Renewable Energy, Nagaland, Kohima, Mobile No. 9436215367.
4. Er. Imliakum, J.E (Electrical) & APIO, Directorate of New and Renewable Energy, Nagaland, Kohima, Mobile No. 9615936058.
5. The applicants (now appellants), Shri. Kedou Wetsah, Member, PGD, NPCC, Kohima, Mobile No. 9436001640 and Shri. Moa Emchen, Member, PGD, NPCC, Kohima, Mobile No. 9862749595.
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Sd/-
TOSHI AIER, IAS (Retd.)
Chief Information Commissioner

Sd/-
CHANBEMO LOTH
State Information Commissioner

Authenticated true copy:

(WORHONTHUNG EZUNG)
Secretary

Date of application	NIL	
Date of received by APIO	08/12/2015	
Date of intimation of cost of information	08/01/2016	31
Date of payment of cost of information		
Date of furnishing by PIO	08/01/2016	
Date of received by Applicant		
DEADLINE		
Date of first appeal	NIL	
Date of receipt of first appeal	08/02/2016	
Date of hearing	25/02/2016	
In compliance to FAA decision, PIO had furnished the info	03/03/2016	
DEADLINE		
Date of second appeal	08/06/2016	
Date of receipt of second appeal by NIC		
Date of Hearing	26/07/2016	
Date of issue of Notice for Hearing		
Date of Decision	24/08/2016	
Compliant by Applicants	29/08/2016	
In compliance to NIC decision, PIO had furnished the info	09/09/2016	
Compliant by Applicants	05/09/2016	05/10/2016?
2nd Hearing on	26/10/2016	11:00 AM
2nd Decision		