

No. NIC/Appeal-8/2016-17

Dated Kohima, the 16th September, 2016.

Subject: Closing Order of Appeal case.

WHEREAS under Section 19 of the Right to Information Act, 2005, the Nagaland Information Commission had received a Second Appeal dated 16.05.2016 from Sri. Soumitra Sengupta, C/o Lt. Samir Jiban Sengupta, Flat E-01, 1st Floor, Shanti Enclave, Namghar Path, Panjabari, Guwahati – 781037, Assam, Mobile No. 9706896033 stating that he was not satisfied with the decision of the First Appellate Authority, Office of the Commissioner of Taxes, Nagaland, Dimapur, to his first appeal dated 07.05.2016 which was filed against the non furnishing of information by the PIO, Office of the Commissioner of Taxes, Nagaland, Dimapur to the RTI application vide No. SMT.RTI/NLGD-16-01 dated 25.02.2016.

AND WHEREAS, the above applicant had earlier submitted an RTI application vide No. SMT.RTI/NLGD-16-01 dated 25.02.2016 addressed to the State Public Information Officer(SPIO), Office of the Commissioner of Taxes, Near D.C Court, Nagaland, Dimapur alongwith the prescribed fees paid through IPO No. 35F 481006 dated NIL drawn in favour of "Commissioner of Taxes, Dimapur, Nagaland" payable at "Dimapur", requesting for information regarding the RFP No. CT/MMP-CT/NIC/17/10/CONTD: "Supply Installation Commissioning Operation & Maintenance of Hardware and Networking Equipments" on the following queries:-

- (1) *Basic educational as well as technical criteria/qualification as set by your office/department for the post of Project Manager, Field Engineers and Network Administrator.*
- (2) *Educational and Technical qualification possessed by Mr. Samrat Ghosh as Project Manager including copies of Curriculum Vitae and other educational & technical qualification certificates.*
- (3) *Educational and Technical qualification possessed by Sri Moktadir Rahman & Sri Ram Bahadur Sonar as Field Engineers including copies of Curriculum Vitae and other educational & technical qualification certificates.*
- (4) *Name of the agency/establishment under whose payroll the concerned Field Engineers Sri Moktadir Rahman & Sri Ram Bahadur Sonar were deputed along with their individual date of joining.*
- (5) *Copies of record pertaining to the pay slips issued to the concerned Field Engineers Sri Moktadir Rahman & Sri Ram Bahadur Sonar along with their salary structure.*
- (6) *Copies of record pertaining to the "Joining Instructions/Joining Letter/Appointment Letter" or any such issued to the concerned Field Engineers Sri Moktadir Rahman & Sri Ram Bahadur Sonar by your office/department or by the successful bidder.*
- (7) *Name, designation and complete postal address of the First Appellate Authority under RTI with whom an appeal can be preferred u/s 19(1) of the R.T.I Act, 2005 (if required).*

The above RTI application was sent to the Office of the Commissioner of Taxes, Nagaland, Dimapur by Speed Post bearing No. RS074611945 IN dated 25.02.2016.

AND WHEREAS, on receipt of the above RTI application, Shri. C. Lima Imsong, Deputy Commissioner of Taxes & PIO, Dimapur had, referring to the applicant's earlier RTI matter replied to the applicant vide letter No. CT/ESTT/623/2012 dated 23.03.2016 that the information from **Sl. No. 1, 2 and 3** had already been furnished in response to an earlier RTI application dated 22.01.2013 vide letter No. CT/LEG/116/2005/3220 dated **30.09.2013** and the appeal case disposed off on 13.12.2013 vide the Commission's Decision No. NIC/Appeal-6/2013-14/565 dated 13.12.2013. However, the information for **Sl. No. 4, 5 and 6** could not be furnished since the third party did not agree to furnish the information under Section 11, Section 8(d), 8(e), 8(g) and 8 (j) of the RTI Act, 2005. Further, the persons mentioned under **Sl. No. 2 and 4** were not employed by the Government of Nagaland and moreover, the contract with the third party had been terminated since 31.03.2015 on completion. And while for **Sl. No. 7**, the PIO replied not applicable.

AND WHEREAS, on non-receipt of the reply of the PIO within the stipulated time frame, the applicant had submitted first appeal vide No. APP. SMT.RTI/NLGD-16-01 dated 08.04.2016

addressed to the First Appellate Authority, Office of the Commissioner of Taxes, Near D.C. Court, Dimapur, Nagaland - 797112.

AND WHEREAS, on receipt of the First Appeal dated 08.04.2016 on 12.04.2016, the Commissioner of Taxes & First Appellate Authority, Nagaland, Dimapur had, after hearing the first appeal on 05.05.2016 in his Office Chamber observed the following:-

- i) On the request of the applicant, the matter was decided in his absence since he resides in Guwahati.
- ii) the SPIO had vide letter **No. CT/ESTT/623/2012 dated 23.03.2016** sent the reply to the applicant, however, since the applicant had in his first appeal letter stated that the reply of the PIO was never received, the FAA presumed that the applicant had filed the first appeal before receiving the reply sent by the PIO.
- iii) the information sought by the applicant was not held in any form in the Office as defined under Section 1(f) of the RTI Act, 2005, and also **Para 9** of the Guidelines for the Public Authorities under the RTI Act 2005 circulated by the Ministry of Personnel, Public Grievances and Pensions, Government of India vide OM No. 1/4/2008-IR dated 25th April, 2008, since the details of the persons sought were not employees of the State Government but of the agency contracted to undertake work for computerisation of the Department.
Para 9 states that: "Only such information is required to be supplied under the Act which already exists and is held by the public authority or held under the control of the public authority. It is not required under the Act to create information; or to interpret information; or to solve the problems raised by the applicants; or to furnish replies to hypothetical questions."
- iv) the SPIO had requested the contracting agency concerned, named M/s IL&FS Technologies Limited for sharing the information with the department via email, however, the agency replied via **email on 11th March 2016 and 26th March, 2016** declining to share the information stating that the information sought pertains to Sections 8(d), 8(e), 8(g) and 8 (j) and Section 11 of the RTI Act.
- v) referring to an earlier RTI case submitted by the same applicant in 2013, since all the information pertaining to the contract with the concerned agency had already been furnished to the applicant, the Nagaland Information Commission had also, vide **No. NIC/Appeal-6/2013-14 dated 13.12.2013** closed the case.
- vi) the said project had been terminated since 31st March, 2015 and the department had no information about the whereabouts of the persons who had worked in the project.

AND WHEREAS, on the above observations, the Commissioner of Taxes & First Appellate Authority, Office of the Commissioner of Taxes, Nagaland, Dimapur had passed the following decision dated **07.05.2016 disposing the appeal case** on the following grounds:-

- a. *It is established that the information available in the office has been communicated to the applicant in the earlier RTI application and the matter decided by the Nagaland State Information Commission. It is also established that there is no information as defined in the Act that is being wilfully or otherwise denied to the applicant. Under the circumstances, the appeal is dismissed on the ground that "information" as defined in the RTI Act 2005 **does not apply** to the present case for such information that is not held in the office in any form;*
- b. *It is also established that the third party in his case, M/s IL&FS Ltd. is **not a public authority** under the RTI Act 2005 and therefore they cannot be directed to mandatorily supply the information sought by the applicant.*

AND WHEREAS, on not being satisfied with the above decision dated 07.05.2016 of the Commissioner of Taxes & First Appellate Authority, Office of the Commissioner of Taxes, Nagaland, Dimapur, the applicant(now appellant) had submitted a Second Appeal dated 16.05.2016 before this Commission stating the following:-

- (i) That as per the Right to Information Act, 2005, the appellant hereby contends that there does not exist any section i.e. 1(f) of the R.T.I Act, 2005 under which the information sought by the applicant (herein the appellant) are not held by the concerned Public Authority.
- (ii) It is well submitted that though the employees working/deputed for the purpose of the computerization are not employees of the Government but the Government had prescribed certain guidelines for deputation of the aforesaid project wherein certain personnel were hired for the same purpose irrespective of outside agencies; the norms prior obtaining a

seat in the Office premises of the Government authority required certain approvals and permissions. Further the concerned department had allotted specific categorical funds in respect of the power deputed or to be deputed for the same project. The appellant hereby would like to draw certain provisions of the contract agreement dated **21st April, 2012** entered between the concerned Public Authority and the contracting agency named M/s IL&FS Technologies Limited.

iii) That the queries sought in the instant RTI application pertaining from **Point No. 1 to Point No. 3 relates to the basic education and technical qualification of the personnel** deputed in the said project whereby the concerned authority i.e. the Government had allotted funds to be expended for the said purpose which might have been expended on them and without prior authenticating the educational and the technical qualification, the said personnel might not have been deputed therein.

(iv) That in **Point 4 to 6 of the RTI** petition, the query pertains to the **cost remitted** to the concerned personnel deputed therein against which the concerned agency have disbursed and utilized the funds against which necessary Fund Utility Certificate might have been provided to the public authority i.e. the Government authority.

(v) Further, the Public Authority is also responsible and accountable in respect of the funds expended and cost incurred as the funds pertains to public funds and its proper utilization is a key to clean, clear, crystal democracy.

(vi) Furthermore, it is to submit that **no communication has been provided by the SPIO, Department of Commercial Taxes; Nagaland** though stated by the concerned First Appellate Authority vide his letter dated 07.05.2016.

(vii) It is to submit that the information sought in the said RTI petition does not come under the provisions of Section 8 and 11 of the RTI Act, 2005.

The above applicant (now appellant) had also requested to admit this appeal, call for records and held hearing of the parties and to quash and set aside the order of the First Appellate Authority and direct the SPIO to furnish the required information sought free of cost.

AND WHEREAS, on receipt of the Second Appeal dated 16.05.2016, the Commission had, on examination of the appeal observed that as pointed out by the PIO and the FAA, the Commission had, in 2013 vide No. NIC/Appeal-6/2013-14 disposed off similar appeal case on the **same nature of information/matter** submitted by the **same applicant** against the **same public authority**. Referring to the earlier appeal case of 2013 closed by the Commission, the above replies of the PIO dated **23.03.2016** to the RTI application dated 25.02.2016 and the decision dated **07.05.2016** of the FAA to the First Appeal dated 08.04.2016, the Commission had observed the following:-

1. that the information sought by the same applicant in his earlier RTI application dated 22.02.2013 at Sl. **No. 6** and again this time in his RTI application dated 25.02.2016 under **Sl. No. 1, 2 and 3** relating to the basic educational & technical qualifications of the personnel were **very similar** and **had already been furnished** earlier by the public authority vide No. CT/LEG/116/2005/3220 dated 30.09.2013 in response to his earlier RTI application dated 22.02.2013. Further, it may be also mentioned that in the earlier RTI case of 2013, the PIO had given even the Technical Bid, Pre-Qualification Bid and Commercial/Financial Bid on CD (Compact Disk) alongwith the Contract Agreement between the Department of Taxes, Nagaland, Dimapur and M/s IL&FS Technologies Limited to the applicant (now appellant).
2. relating to query **No. 4, 5 and 6** of the RTI application dated 25.02.2016, it was observed that after observing all technical and codal procedures and norms, M/S IL&FS Technologies Limited was found qualified for the project work and hence entered into contract agreement with the user department i.e. Office of the Commissioner of Taxes, Dimapur. Since the firm was awarded with the project work, it was the prerogative of the firm to appoint according to the nature of work entrusted/allotted by the department. Accordingly the firm had, depending on the educational qualifications and experiences appointed Sri Moktadir Rahman & Sri Ram Bahadur Sonar as the Field Engineers. And since the Field Engineers were appointed by the firm, they were in the payrolls of the firm, M/s IL&FS Technologies Limited i.e. third party and not with the public authority i.e Office of the Commissioner of Taxes, Dimapur. As the information were not available with the public authority i.e Office of the Commissioner of Taxes, Dimapur, the PIO of the public authority had sought the consent of the firm, M/S IL&FS Technologies Limited. However, since the concerned contracting agency, namely M/S IL&FS Technologies Limited which in this case, was now a **third party did not agree to share the information** under Sections 8(d), 8(e), 8(g), 8 (j) and 11 of the RTI Act, 2005 as communicated via e-mails **on 11th March 2016 and 26th March, 2016**, the PIO could not furnish the information to the applicant.

3. The **query No. 7** of the present RTI application dated 25.02.2016 which pertain to the details of the First Appellate Authority of the Taxes Department, do not fall under the exempted category of information or denial by the third party i.e. M/s IL&FS Technologies Limited and hence can be furnished to the applicant (now appellant).

AND WHEREAS, on the above observations and findings, the Commission decided that:-

1. regarding query **Nos. 1, 2 and 3**, since the same information had already been furnished vide No. CT/LEG/116/2005/3220 dated 30.09.2013 in response to the applicant's earlier RTI application dated 22.02.2013 as pointed out by the PIO in his reply dated **23.03.2016** to the RTI application dated 25.02.2016 and the decision dated **07.05.2016** of the FAA to the First Appeal dated 08.04.2016, there is no obligation to furnish the same information again to the same applicant as the applicant had already have the same information.
2. regarding query **Nos. 4, 5 and 6**, the Commission also agreed with the submission of the PIO that the information cannot be furnished since the third party i.e. M/S IL&FS Technologies Limited had declined to share the information under Sections 8(d), 8(e), 8(g) and 8 (j) and 11 of the RTI Act.
3. regarding query **No. 7** i.e the details of the First Appellate Authority of the Taxes Department shall be furnished to the applicant (now appellant), since it does not fall under the exempted category of information or denial by the third party i.e. M/s IL&FS Technologies Limited.

AND WHEREAS, since the Commission had earlier in 2013 heard similar appeal case on the **same nature of information** submitted by the **same applicant** against the **same public authority**, and had closed the appeal case after the information had been furnished to the applicant, and also that in the present first appeal dated 08.04.2016, the Commissioner of Taxes & FAA, Nagaland, Dimapur had on 07.05.2016 disposed off the appeal, the Commission is exhausted to hear it again and therefore decided to declare the case as **closed**.

NOW THEREFORE, it is notified to the following parties that the appeal case is hereby declared **closed**:-

1. The Commissioner of Taxes & First Appellate Authority, Nagaland, Dimapur.
2. Shri. C. Lima Imsong, Deputy Commissioner of Taxes & PIO, Nagaland, Dimapur.
3. The applicant(now appellant), Sri. Soumitra Sengupta,Guwahati, Assam.

Sd/-

TOSHI AIER, (IAS Retd.)

Chief Information Commissioner

Dated Kohima, the 16th September, 2016.

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Copy to:-

1. The P.S to the Chief Information Commissioner, Nagaland Information Commission for kind information of the CIC.
2. The P.A to the State Information Commissioner, Nagaland Information Commission for kind information of the SIC.
3. The Commissioner of Taxes & First Appellate Authority, Office of the Commissioner of Taxes, Nagaland, Dimapur.
4. Shri. C. Lima Imsong, Deputy Commissioner of Taxes & PIO, Office of the Commissioner of Taxes, Nagaland, Dimapur.
5. The applicant(now appellant), Sri. Soumitra Sengupta, C/o Lt. Samir Jiban Sengupta, Flat E-01, 1st Floor, Shanti Enclave, Namghar Path, Panjabari, Guwahati – 781037, Assam, Mobile No. 9706896033
6. The Computer Programmer, Nagaland Information Commission for uploading on the website and Notice Board.
7. Office Copy.

(WORHONTHUNG EZUNG)

Secretary