

NAGALAND INFORMATION COMMISSION

Old Secretariat Complex,

Post Box No. 148

Nagaland, Kohima - 797001.

Tel: 0370-2291798, Fax: 2291774, Website: www.nlsic.gov.in



No. NIC/Appeal-16/2012-13

Dated Kohima, the 13th December, 2012.

Appellant: Mr. Kevi,
Assembled Organisation,
C/O Post Box No. 721,
Kohima Head Post Office,
Mobile No. 961529746

Respondents:

1. Shri. K. T. Sukhalu, IAS, Commissioner & Secretary & FAA, Food & Civil Supplies Department, Nagaland, Kohima
2. Shri. Ramongo Lotha, IAS, Addl. Secretary & PIO, Food & Civil Supplies Department, Nagaland, Kohima,
3. Shri. H. Lungalang, Joint Secretary, Food & Civil Supplies Department, Nagaland, Kohima

Public Authority: Department of Food & Civil Supplies, Nagaland, Kohima.

Date of hearing: 13.12.2012 at 12:00 PM.

Date of Decision: 13.12.2012

Present:

1. Shri. K. T. Sukhalu, IAS, Commissioner & Secretary & FAA, Food & Civil Supplies Department, Nagaland, Kohima
2. Shri. Ramongo Lotha, IAS, Addl. Secretary & PIO, Food & Civil Supplies Department, Nagaland, Kohima,
3. Shri. H. Lungalang, Joint Secretary, Food & Civil Supplies Department, Nagaland, Kohima.
4. Shri. Kevi, Assembled Organisation, C/O Post Box No. 721, Kohima Head Post Office, Mobile No. 961529746
5. Shri. Rügeisier, Assembled Organisation, C/O Post Box No. 721, Kohima Head Post Office.

FACT OF THE CASE.

The applicant, Shri. Kevi of Assembled Organisation had submitted a RTI application dated 01.05.2012 by **post** alongwith the prescribed application fee of Rs. 10/- vide IPO No. 69E 928392 dated 01.05.2012 addressed to the PIO, Office of the Secretary, Food & Civil Supplies Department, Nagaland seeking information on the following 4 (four) queries:-

- i. Copy of allotment order/permit issued to the beneficiaries under TPDS items namely, APL Rice, APL wheat, Levy Sugar during 2007 to 2011;
- ii. Copy of Govt. appointment order for State Stockist under TPDS items APL Rice, APL wheat, Levy Sugar during 2007 to 2011;
- iii. Copy of Power of Attorney Holder Order for State Stockist of APL Rice, APL wheat, Levy Sugar during 2007 to 2011;
- iv. Copy of Guidelines given by the Government of India for distribution of TPDS in the State.

Since there was **no response** from the concerned PIO within the stipulated time frame of 30 days, the applicant (now appellant) had submitted **first appeal dated 05.06.2012** addressed to the Secretary & FAA, Food & Civil Supplies Department, Nagaland, Kohima by **post** on 08.06.2012, and which was received by the Department of Food & Civil Supplies, Nagaland, Kohima on **12.06.2012** as evidenced from the Postal receipt of the Sub-Post Master, New Secretariat Complex, S.O, Kohima enclosed by appellant.

Referring to the first appeal dated 05.06.2012 and NOT to the RTI application dated 01.05.2012, Shri. Ramongo Lotha, IAS, Addl. Secretary & PIO, Food & Civil Supplies Department, Nagaland, Kohima, had vide letter No. SPLY-1/16/2011 dated **20.06.2012** informed the applicant(now appellant) that the said 'application' was received by the Department **by post only on 14.06.2012** and that the information requested would be furnished on or before 14.07.2012.

Also, Shri. K. T. Sukhalu, IAS, Commissioner & Secretary & FAA, Food & Civil Supplies Department, Nagaland, Kohima vide letter No. SPLY-1/16/2011 dated **13.07.2012**, referring to the first appeal dated 05.06.2012 had informed the applicant(now appellant) that the information sought was ready for collection on payment of Rs. 10,163.00 (Rupees ten thousand one hundred and sixty three only) being the cost of paper @ Rs. 3/- per page(legal) and Rs. 2/- per page (A4) under Section 7 of the RTI Act, 2005, read with Rule 4(a) of the Nagaland State RTI (Regulation of Fees & Cost) Rules, 2005;

On 26.07.2012, the applicant(now appellant) wrote to the Commissioner & Secretary & FAA, Food & Civil Supplies Department, Nagaland, Kohima **seeking refund of the amount of Rs. 10,163.00** which was paid as the cost of information, on the ground that the **information was provided after the expiry of the 30 days time limit** under the provisions of Section 7(6) of the RTI Act, 2005.

Shri. H. Lungalang, Joint Secretary, Food & Civil Supplies Department, Nagaland, Kohima, had vide letter No. SPLY-1/16/2011 dated **07.08.2012** informed the applicant (now appellant) that the Department had furnished the information within the stipulated time frame of 30 days as per Section 7(1) of the RTI Act, 2005, and also referred to the Department's letter No. SPLY-1/16/2011 dated 20.06.2012 wherein it was informed about the receipt of the application by post and the date as to when the information is to be furnished.

The applicant (now appellant) had submitted second appeal dated NIL to the Nagaland Information Commission stating that the PIO, Food & Civil Supplies Department, Nagaland, Kohima had not replied to his RTI application dated 01.05.2012 within the stipulated time frame of 30 days. And on being informed in the **afternoon of 16.07.2012 to collect the information**, the applicant (now appellant) went to collect the information on 17.07.2012, but he was told that unless Rs. 10,163.00 as the cost of Xerox is paid, the reply could not be given. The applicant (now appellant) tried to reason out with the lady officer on duty that the authority should inform in advance about the payment according to the RTI Act. **Moreover, the lady officer on duty also told him that the boss had ordered not to disclose in advance about the required payment.** Having no alternative, the applicant (now appellant) paid the amount and collected the information. The applicant (now appellant) also stated that the concerned authority did not inform him about the cost under the provision of Section 7(3)(a) of the RTI Act, 2005.

The applicant (now appellant) also maintained that the Department had received the first appeal letter dated 05.06.2012 **on 12.07.2012 and not on 14.07.2012 as evidenced from the receipt provided by the Sub-Post Master, New Secretariat Complex, S.O, Kohima** substantiating his claims, and therefore, sought refund of the cost of information paid to the public authority.

OBSERVATIONS:

During the hearing, Shri. Ramongo Lotha, IAS, Addl. Secretary & PIO, Food & Civil Supplies Department, Nagaland, Kohima submitted that the RTI application dated 01.05.2012 sent by post **was never received**. However, the applicant (now appellant) maintained that since the RTI application was sent by Registered Post, it should have been received. The Commission also observed that though the applicant(now appellant) had submitted the RTI application dated 01.05.2012 by post, there was no evidence regarding the receipt of the RTI application by the Department and that the PIO cannot act on the RTI application unless it is received. The only evidence of Postal receipt is the receipt of the first appeal dated 05.06.2012.

A copy of the RTI application dated 1.05.2012 was handed over to the PIO during the hearing.

On receipt of the first appeal dated 05.06.2012 and having acknowledged it, the PIO should have enquired about the RTI application dated 1.05.2012, which was the cause of the first appeal. Moreover, there was neither any effort or action taken to ascertain whether the RTI application was actually received by the Department nor to trace the RTI application if it was received, who received it, when it was received and why it was not handed over to the concerned PIO.

Moreover, the Commission observed that the correspondences of the Commissioner & Secretary & FAA, Addl. Secretary & PIO and the Joint Secretary (who took charge as the PIO during the leave of absence of Shri. Ramongo Lotha, IAS, Addl. Secretary & PIO), Food & Civil Supplies Department, Nagaland, Kohima to the applicant(now appellant) referred to the first appeal dated 05.06.2012 and NOT to the RTI application dated 01.05.2012 in counting of the time limits is not as per the provisions of the RTI Act and hence not tenable. The Commission reminded that the time limit of 30 days is to be counted from the date of (receipt of) RTI application and NOT from the date of First appeal. However, in this case, since the information was provided after the 30 days time limit of the RTI application, under Section 7 (6) of the RTI Act, the information should have been provided free of cost.

The Commissioner & Secretary & FAA, Food & Civil Supplies Department, Nagaland, Kohima had taken some action on the first appeal dated 05.06.2012 by writing to the applicant about the cost of information. However, as the FAA, he should have held a hearing of the parties and pass quasi-judicial decision.

The submission of the applicant(now appellant) that at the time of collecting the information, a **'lady officer'** on duty in the Department told him that **the boss had ordered not to disclose in advance about the required payment** is in contravention to Section 7(3) of the RTI Act, 2005, which mandates that the PIO is to intimate the cost of information to the applicant alongwith the details of calculations. However, during the hearing, the Commissioner & Secretary & FAA, Food & Civil Supplies Department, Nagaland, Kohima submitted that there was no such order or instruction.

The applicant(now appellant) submitted that he was satisfied with the information so provided, however, since the information was provided after the time limit of 30 days, counted from the date of the RTI application and NOT from the date of First appeal, had sought refund of Rs. 10,163.00 (Rupees ten thousand one hundred and sixty three only) paid as the cost of information to the public authority, which was the main point of the appeal.

In view of the above, the Commission observed that the Department is not fully aware of the RTI Act and do not take RTI matters seriously.

DECISION:

Taking into consideration the facts of the case and the observations above, the Commission decides as follows:

1. The Commissioner & Secretary & FAA, Food & Civil Supplies Department, Nagaland, Kohima shall initiate an inquiry as to whether the RTI application dated 01.05.2012 sent by post was actually received by the Department. If it was received, to identify the person who received it, when it was received and why it was not handed over to the concerned PIO. A copy of the inquiry report and suitable action taken on any erring person should be forwarded to this Commission **within one (1) month** from the date of receipt of this Commission's Decision Order.
2. As observed above, since the Department of Food & Civil Supplies did not take the RTI matter seriously and the lapses of the officers, the Commission decides that the information be provided free of cost to the appellant.
3. The Commissioner & Secretary & FAA, Food & Civil Supplies Department, Nagaland, Kohima is advised to sensitise all the employees in the Department, particularly the PIOs & APIOs, about the RTI Act, to take RTI matters seriously and ensure that such lapses do not occur in future.
4. The Commissioner & Secretary & FAA, Food & Civil Supplies Department, Nagaland, Kohima is also advised that whenever first appeals are received in the Department in future, hearing of parties (PIO and appellant) should be held and quasi-judicial decision passed.

Decision made in the presence of all parties present on this day the 13.12.2012.

Copy be given to all concerned:-

1. Shri. K. T. Sukhalu, IAS, Commissioner & Secretary & FAA, Food & Civil Supplies Department, Nagaland, Kohima
2. Shri. Ramongo Lotha, IAS, Addl. Secretary & PIO, Food & Civil Supplies Department, Nagaland, Kohima,
3. Shri. H. Lungalang, Joint Secretary, Food & Civil Supplies Department, Nagaland, Kohima
4. Shri. Kevi, Assembled Organisation, C/O Post Box No. 721, Kohima Head Post Office, Mobile No. 961529746

Sd/-

Kevinino P. Meru

State Information Commissioner,
Nagaland, Kohima.

Sd/-

Bukchem Phom

State Information Commissioner,
Nagaland, Kohima

Authenticated by:-

(Worhonhung Ezung)

Under Secretary

Nagaland Information Commission
Nagaland, Kohima.