

NAGALAND INFORMATION COMMISSION
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No. NIC/Appeal-3/2014-15

Dated Kohima, the 1st August, 2014.

Appellant: Shri. C. Zungkum,
Chairman,
Yakor Village Council,
Tuensang District,
Nagaland, Mobile No. 8413000543

Respondents: 1. Shri. T. Mhabemo Yanthan,
Deputy Commissioner & FAA,
Tuensang District, Nagaland.

2. Shri. Robert Longchari,
Additional Deputy Commissioner & PIO,
Office of the Deputy Commissioner,
Tuensang District, Nagaland.

Public Authority: Office of the Deputy Commissioner, Tuensang District, Nagaland.

Date & time of first hearing: 11.06.2014 (Wednesday) at 2:00 PM.

Date & time of second hearing: 30.07.2014 at 2:00 PM.

Date of decision : 01.08.2014

Present:

1. Shri. T. Mhabemo Yanthan, Deputy Commissioner & FAA, Tuensang District, Nagaland.
2. Shri. Robert Longchari, Additional Deputy Commissioner & PIO, Office of the Deputy Commissioner, Tuensang District, Nagaland.
3. The applicant(now the appellant), Shri. C. Zungkum, Chairman, Yakor Village Council, Tuensang District, Nagaland, Mobile No. 8413000543.
4. Shri. Kiumukum, Head GB, Yakor Village Council, Tuensang District, Nagaland.
5. Shri. T. Ramyi, VCC, Yakor Village Tuensang District, Nagaland, Mobile No. 9862813509.
6. Shri. Vikuolie, Advocate, representative of the applicant (now appellant), Mobile No. 9612878750.

FACTS OF THE CASE

An applicant, Shri. C. Zungkum, Chairman, Yakor Village Council, Tuensang District, Nagaland, Mobile No. 8413000543 had submitted a RTI application dated Nil addressed to the PIO, Office of the Deputy Commissioner, Tuensang District, Nagaland alongwith an application fee of Rs. 10/-, seeking the following information:-

1. The complaint lodged by Bamatyanu Chang which was registered as Misc. Case No. 72 before the Court of the Ld. Additional District Magistrate, Tuensang.

2. Extract copy of the Order of the Additional District Magistrate, Tuensang about the registration of the complaint lodged by Bamatyanu.
3. Statements of the parties and witnesses recorded in Misc. Case No. 72.
4. Report of the investigation conducted by the Additional District Magistrate, S. S. Rai on 22.01.1973.
5. A legible copy of the Order dated 17.02.1973 passed by the then Ld. Additional District Magistrate.

The above RTI application dated Nil was received by the public authority on **26.08.2013** as evidenced on the photocopy of the RTI application.

However, on not getting any response to his RTI application dated Nil within the stipulated time frame of the 30 days under the RTI Act, 2005, the applicant had preferred first appeal dated **17.02.2014** to the Deputy Commissioner & FAA, Tuensang District, Nagaland. The first appeal dated 17.02.2014 was received by the public authority on **24.02.2014** as evidenced on the photocopy of the first appeal.

Further, on not getting any response from the Deputy Commissioner & FAA, Tuensang District, Nagaland to his first appeal dated 17.02.2014, the applicant(now the appellant) had preferred second appeal dated **25.04.2014** before this Commission, stating that there was no response from the First Appellate Authority, Office of the Deputy Commissioner, Tuensang District, Nagaland to his First Appeal dated 17.02.2014, which was submitted against the non response of the ADC & PIO, Office of the Deputy Commissioner, Tuensang District, Nagaland to his RTI application dated Nil.

Since there was neither any response to the RTI application dated Nil from the ADC & PIO, Office of the Deputy Commissioner, Tuensang District, Nagaland nor to the subsequent first appeal dated 17.02.2014 from the Deputy Commissioner & FAA, Tuensang District, Nagaland, the Commission has decided to hear the appeal, giving opportunity to the parties, on **11th June, 2014 (Wednesday) at 2:00 P.M.**

However, on the hearing date, only the applicant alongwith his representative appeared before the Commission. And on telephonic confirmation with the respondents i.e. the Deputy Commissioner & FAA, Tuensang, it was learnt that the Deputy Commissioner & FAA, Tuensang did not receive the Notice for Hearing dated 12.05.2014, and hence could not appear for the hearing.

The appellant was heard. But due to the absence of the respondents i.e. Deputy Commissioner & FAA, Tuensang and the ADC & PIO, Tuensang (for the reasons mentioned above), the Commission could not proceed with the case further and hence reserved its judgement for the next hearing.

The Commission had vide it's Notice for hearing dated 13.06.2014 notified for the next hearing on **30.07.2014 at 2:00 PM.**

OBSERVATIONS & FINDINGS:

During the hearing on 30.07.2014, the Commission observed that on receipt of the RTI application on 26.08.2013 by the Office of the Deputy Commissioner, Tuensang District, Nagaland, the RTI application requesting for a copy of Misc. Case 72 of 1973 was transferred to the office of the District and Session Judge, Tuensang. The Addl. District & Session Judge,

Tuensang had returned the RTI application to the Office of the Deputy Commissioner, Tuensang stating that after checking, the records are not available since the District Court, Tuensang was set up only in 1986.

The public authority had submitted that on receipt of the RTI application on 26.08.2013, Shri. Sushil Kumar Patel, IAS, the Additional Deputy Commissioner & PIO, Office of the Deputy Commissioner, Tuensang District, Nagaland had, vide letter No. RTI-2005/Tsg/2012-13/224 dated 24.09.2013 replied to the applicant (now appellant) that the information sought was not available in the office records even though efforts were made to trace out the information, and moreover, stated that the information sought was more than 20 years old which do not come under the purview of the RTI Act, 2005. A copy of the above letter was also produced before the Commission during the hearing.

Shri. T. Mhabemo Yanthan, Deputy Commissioner & FAA, Tuensang District, Nagaland had also submitted that a two member magisterial enquiry Committee, with Smti. Nikesono Kevichusa, EAC (Hq) as the Convenor and Shri. Kikato K. Chishi, EAC (Hq) as the Member Secretary was constituted vide Notification No. RTI-2005/PIO/TSG/2014-15/566 dated 04.07.2014 to find out the records pertaining to the complaint lodged by Bumatyano of Chingmei village which was registered under Misc. Case No. 72 before the Learned Additional District Magistrate, Tuensang and to submit the inquiry report by 21.07.2014. And a copy of the **inquiry report** dated 21.07.2014 was also produced before the Commission during the hearing, wherein it stated that even after a thorough search of all available office records was carried out spanning several days personally, the said records could not be found, and also a copy of the report was not available with the office of the District and Session Judge/ Addl. District & Session Judge as the office was not yet established during the said period.

The new incumbent, Shri. Robert Longchari, ADC & PIO, Office of the Deputy Commissioner, Tuensang had submitted that a reply was also given to the applicant (now appellant) vide letter No. RTI-2005/PIO/TSG/2014-15/567 dated 28.07.2014 that an inquiry committee was constituted to find out the required information, but the records could not be traced out, and with a copy of the **inquiry report** dated 21.07.2014 enclosed.

During the hearing on 30.07.2014, the representative of the applicant submitted that the order of Misc. Case 72 of 1973 was a criminal case relating to boundary issue between Yakor and Chendang Villages, and the order of Misc. Case 72 of 1973 requested by the applicant was the subject of interest since in the orders of 1986 and 2001 which they possess, had stated that 'in case of dispute, the order of Misc. Case 72 of 1973 shall prevail'.

The Commission observed that the submission of the then ADC & PIO, Office of the Deputy Commissioner, Tuensang that the information sought related to more than 20 years old records under the RTI Act, 2005 and hence cannot be provided was not tenable since, the Commission contented that the information sought (regarding Misc. Case 72 of 1973) have larger public interest.

DECISION/ ORDER

On the above observations and findings, since the records pertaining to Misc. Case 72 of 1973 could not be found, a magisterial inquiry Committee was also constituted to locate the records. And since the Committee had also submitted an **inquiry report** dated 21.07.2014 stating that the records could neither be found in the Office of the Deputy Commissioner, Tuensang nor in the office of the District and Session Judge/ Addl. District & Session Judge,

Tuensang, the Commission decided that the Office of the Deputy Commissioner, Tuensang shall, **within 15 (fifteen) days** from the date of issue of this Commission's decision, submit the status in **sworn Affidavit** declaring that the records under reference requested by the applicant could not be found. A copy of the Affidavit be given to the applicant (now appellant) and to this Commission.

This appeal case shall be declared closed only after compliance to this Commission's decision is received.

Decision pronounced in presence of all concerned on 30.07.2014.

Copy be given to:-

1. Shri. T. Mhabemo Yanthan, Deputy Commissioner & FAA, Tuensang District, Nagaland.
2. Shri. Robert Longchari, Additional Deputy Commissioner & PIO, Office of the Deputy Commissioner, Tuensang District, Nagaland.
3. The applicant(now the appellant), Shri. C. Zungkum, Chairman, Yakor Village Council, Tuensang District, Nagaland, Mobile No. 8413000543.
4. The Computer Programmer, Nagaland Information Commission for uploading on the website.
5. Office Copy.

Sd/-
(BUKCHEM PHOM)
State Information Commissioner,
Nagaland.

Authenticated by:-

(SOYIMNA AIER KOZA)
Secretary