

NAGALAND INFORMATION COMMISSION

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Nagaland, Kohima - 797001.

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No. NIC/Appeal-8/2015-16

Dated Kohima, the 21st August, 2015.

Appellant: L. Haolai,
DC(G),
Zotlang BSF Camp,
Lunglei,
Mizoram, 796691,
Mobile No. 9436824524

Respondent(s) :

- 1) Shri. Kesonyu Yhome, IAS,
Deputy Commissioner & FAA,
Office of the Deputy Commissioner,
Dimapur, Nagaland;
- 2) Smti. Elizabeth Ngully,
Addl. Deputy Commissioner & PIO,
Office of the Deputy Commissioner,
Dimapur, Nagaland;
- 3) Shri. Anoka H. Assumi,
SDO(C) & APIO,
Office of the Deputy Commissioner,
Dimapur, Nagaland
- 4) Shri. P. James Swu,
SDO(C) & APIO,
Office of the Deputy Commissioner,
Dimapur, Nagaland;
- 5) Shri. Moa Sangtam,
SDO(C),
Office of the Deputy Commissioner,
Dimapur, Nagaland;
- 6) Smti. Temjensangla,
SDO(C), Hq,
Office of the Deputy Commissioner,
Dimapur, Nagaland;

Public Authority : Office of the Deputy Commissioner,
Dimapur, Nagaland.

Date of hearing : 18.08.2015 at 1:30 PM.

Date of Decision : 21.08.2015.

Present:

- i. Shri. Kesonyu Yhome, IAS, Deputy Commissioner & FAA, Office of the Deputy Commissioner, Dimapur, Nagaland;
- ii. Smti. Elizabeth Ngully, Addl. Deputy Commissioner & PIO, Office of the Deputy Commissioner, Dimapur, Nagaland;
- iii. Shri. Moa Sangtam, SDO(C), Office of the Deputy Commissioner, Dimapur, Nagaland;

The following did not attend the hearing:-

- i. Shri. Anoka H. Assumi, SDO(C) & APIO, Office of the Deputy Commissioner, Dimapur, Nagaland
- ii. Shri. P. James Swu, SDO(C) & APIO, Office of the Deputy Commissioner, Dimapur, Nagaland;
- iii. Smti. Temjensangla, SDO(C), Hq, Office of the Deputy Commissioner, Dimapur, Nagaland;
- iv. The applicant(now appellant), L. Haolai, DC(G), Zotlang BSF Camp, Lunglei, Mizoram - 796691, Mobile No. 9436824524.

FACT OF THE CASE

An applicant, Shri. L. Haolai, DC(G), Zotlang BSF Camp, Lunglei, Mizoram - 796691, Mobile No. 9436824524 had filed an RTI application vide No. DC(G)/LLI/Req Docs//2014/660 dated **13.10.2014**, addressed to the PIO (RTI), Addl. Deputy Commissioner, Dimapur, Nagaland seeking the following information:-

- i. What is the punishment for a State Govt. servant who wilfully nominate and influence the villagers to elect him as chairman of village council?*
- ii. Had the District Administration approved the election of Thangngul Khongsai, UDA/Revenue of DC Office as Chairman of Phai pijang village? If so, on what ground? The approval order alongwith the notings by the concerned authority may be provided to me.*
- iii. What is the maximum educational qualification claimed by Thangngul Khongsai in his service record. The duplicate marksheet and the pass certificates may be provided to me.*

There is no record of payment of the prescribed application fee of Rs. 10/-. However, the above applicant had mentioned that the required amount for providing the information would be paid on intimation.

On receipt of the above RTI application dated 13.10.2014, Shri. Anoka H. Assumi, SDO(C) & APIO, Office of the Deputy Commissioner, Dimapur, Nagaland had, vide letter No. RTI-3/2014-D/9061 dated **13.11.2014** replied to the applicant stating that since the application fee was not paid, no information could be provided. And had also requested to pay as per RTI Fee Rules, either in cash against receipt/demand draft/banker's cheque so that the requirement could be fulfilled on time.

The applicant had, vide No. DC(G)/LLI/Req Docs//2014 dated **20.11.2014** preferred a **first appeal** addressed to the Deputy Commissioner, Appellate Authority & Principal Officer(RTI), DC Office, Dimapur, Nagaland stating that he had not received any information to his letter No. DC(G)/LLI/Req Docs//2014/660 dated 13.10.2014, and assured that he shall pay for the cost of providing the information.

The applicant had filed another RTI application dated **28.11.2014**, addressed to the State PIO, Addl. Deputy Commissioner, DC Office, Dimapur, Nagaland seeking **the same information** relating to election to village council chairman and educational qualification of Thangngul Khongsai.

- i. What is the punishment for a State Govt. servant who wilfully nominate and influence the villagers to elect him as chairman of village council?*
- ii. Had the District Administration approved the election of Thangngul Khongsai, UDA/Revenue of DC Office as Chairman of Phai pijang village? If so, on what ground? The approval order alongwith the notings by the concerned authority may be provided to me.*
- iii. What is the maximum educational qualification claimed by Thangngul Khongsai in his service record. The duplicate marksheet and the pass certificates may be provided to me.*

The applicant had stated that the period for the above query No. (i) requested was for **2011-14**, and that the information shall be collected in person.

The above applicant had also stated that the actual postal charges shall be included in providing the information for which an P.O for Rs. 10/- towards was attached, **however, no proof of such payment was found enclosed**. The applicant also stated that the application fee will be deposited as soon as the amount is intimated.

Again, Shri. Anoka H. Assumi, SDO(C) & APIO, Office of the Deputy Commissioner, Dimapur, Nagaland had, vide letter No. RTI-3/2014-D/9845 dated **10.12.2014** wrote to the applicant stating that since the application fee was not paid, no information could be provided. And had also requested to pay as per RTI Fee Rules, either in cash against receipt/demand draft/banker's cheque so that the requirement could be fulfilled on time.

Smti. Elizabeth Ngully, ADC & PIO, Office of the Deputy Commissioner, Dimapur, Nagaland had, vide letter No. RTI-3/2014-D/10884 dated **21.01.2015** replied to the applicant stating that the RTI application was received on **17.11.2014** and the information sought had been furnished by enclosing a reply from the General Branch & Est. Branch, Office of the Deputy Commissioner, Dimapur, Nagaland and had enclosed the following:-

i) a copy of the letter No. GEN-28/RTI/2013-D/10620 dated **16.01.2015** issued by Shri. Moa Sangtam, SDO(C), Office of the Deputy Commissioner, Dimapur, Nagaland forwarding the reply to the RTI application of Shri. Laljatong Haolai to the SDO(C) & APIO, Office of the Deputy Commissioner, Dimapur, Nagaland referring to the letter No. RTI-3/2014-D/10446-48 dated **09.01.2015** stating as follows:-

***Reply to Query No. 1:** As per the Nagaland Village and Tribal Councils Act, 1978, there is no directive that calls for punishment to a State Government servant.*

***Reply to Query No. 2:** The approval of the election of a village council chairman is not the prerogative of the District Administration. The village council members duly appointed by the Government select the Chairman from amongst them. However, the approval order in this particular case **cannot be traced out** from the office records.*

(ii) And a photocopy of Service Book wherein the educational qualification of Shri. L. Thangkhongul Khongsai was recorded was enclosed.

The applicant had filed another RTI application dated **08.02.2015**, addressed to the State PIO, Addl. Deputy Commissioner, DC Office, Dimapur, Nagaland seeking similar information relating to election to village council chairman and educational qualification of Thangngul Khonsai and Thangtong Khonsai.

- i. *Did the District Administration approved the election and formation of present Phaipijang village council members (especially appointment of Thangtong Khongsai, a Surveyor of Land Records Office at Dimapur as GB and Thangngul Khongsai, UDA/Revenue of DC Office as Chairman of Phaipijang village)? If so, on what ground? The approval order alongwith the notings by the concerned authority may be provided to me. If not, why?*
- ii. *What is the maximum educational qualification claimed by Thangngul Khongsai, UDA/Revenue of DC Office and Thangtong Khongsai, a Surveyor of Land Records Office at Dimapur in their Service Record? Photostats mark sheets, pass certificates, Registration cards, Admit Cards and others that claims of their educational qualification of Matric, PU, BA etc. may be provided to me.*

The period for query No. (i) requested was for **2011 -15**.

The applicant had mentioned that an IPO for Rs. 10/- towards the application fee was enclosed, however, no proof of such payment was found enclosed.

The applicant had again filed first appeal dated **10.02.2015** addressed to the Appellate Authority, Deputy Commissioner, Dimapur, Nagaland stating that response received was not satisfied.

Shri. P. James Swu, SDO(C) & APIO, Office of the Deputy Commissioner, Dimapur, Nagaland had, vide letter No. RTI-1/2015-D/23875 dated **11.03.2015** wrote to the applicant stating that the information sought was being furnished by enclosing a reply from the General Branch & Est. Branch, Office of the Deputy Commissioner, Dimapur, Nagaland and had enclosed the following:-

- i. a copy of the letter No. DCD/ESTT-1/RTI-1/2013-D/23856 dated **11.03.2015** written by Smti. Temjensangla, SDO(C), Hq, Office of the Deputy Commissioner, Dimapur, Nagaland to the SDO(C) & APIO, Office of the Deputy Commissioner, Dimapur, Nagaland forwarding the educational qualification certificate in respect of Shri. L. Thangkhongul Khongsai alongwith NBSE Admit Card, HSLC Mark Sheet and Marksheet of P.U (Arts).
- ii. a copy of the letter No. GEN-28/RTI/2013-D/23772 dated **10.03.2015** written by Shri. Moa Sangtam, SDO(C), Office of the Deputy Commissioner, Dimapur, Nagaland forwarding the reply **to Sl. No. 1** of the RTI application of Shri. Laljatong Haolai to the SDO(C) & APIO, Office of the Deputy Commissioner, Dimapur, Nagaland referring to the letter No. RTI-1/2015-D/12330-32 dated 24.02.2015 stating as follows:-

***Reply to Query No. 1:** The approval of the election of a village council chairman is not the prerogative of the District Administration. The village council members duly appointed by the Government select the Chairman from amongst them. However, the approval order in this particular case **cannot be traced out** from the office records.*

The above applicant(now appellant) had submitted a Second Appeal dated 07.04.2015 before this Commission, which was received on 21.04.2015, stating that in response to his RTI application dated 13.10.2014, the District Administration, Dimapur had deliberately not only delayed but also provided incomplete, irrelevant, false and unsatisfactory reply, and had also demanded compensation and punishment as per under the RTI Act, 2005.

Further, the above applicant(now appellant) had, in his second appeal dated 07.04.2015 before this Commission, questioned:-

- i. the reply of the SDO(C) & APIO, DC Office, Dimapur that as to how the District Administration had approved the membership of Shri. Thangngul Khongsai as the Chairman of the Phaijjang Village Council when the Nagaland Village Council Act, 1978 under **Section 16(6)** clearly states ‘..... a person shall be disqualified from being selected as member of a VC if he is a salaried Govt. servant’.
- ii. the reply of the SDO(C) & APIO, DC Office, Dimapur that ‘VCM are duly appointed by Govt.’, whereas the Nagaland Village Council Act, 1978 under **Section (4)** states ‘..... a VC shall consist of members chosen by villagers’. When had the Government of Nagaland started ‘duly appointing villages council members’?
- iii. the reply of the SDO(C) & APIO, DC Office, Dimapur that records **could not be traced out**, which is not even five (5) years old?
- iv. On asking the Matric Pass Certificate of Thangngul Khongsai, UDA/Rev of DC Office, Dimapur, the SDO(C) & APIO, DC Office, Dimapur had deliberately avoided providing him the information. Further, to an earlier application, the SDO(C) & APIO, DC Office, Dimapur had, vide letter No. RTI/DC-Dmpr/Thangngul/700 dated 28.11.2014 provided with an irrelevant document.

Since it was observed that the above applicant(now appellant) had filed three (3) RTI applications dated 13.10.2014, 28.11.2014 and 08.02.2015, and that the applicant(now appellant) had in his second appeal dated 07.04.2015 before this Commission stated that the District Administration, Dimapur had deliberately not only delayed but also provided incomplete, irrelevant, false and unsatisfactory reply, and had also **demand compensation and punishment** as per under the RTI Act, 2005; and further that there were neither any responses to the first appeals dated 20.11.2014 and 10.02.2015 nor any records of hearing of the first appeals, the Commission has decided to hear the appeal, giving opportunity to the parties on **3rd June, 2015 (Wednesday) at 2:30 PM**, in the **Hearing Room of the Nagaland Information Commission, Old Secretariat Complex, Kohima**, and had also directed the parties **to bring the files and relevant documents** in question for scrutiny, on the above date and time for hearing.

However, since the Deputy Commissioner & FAA, Dimapur had, vide letter No. RTI-1/2015-D/4525 dated 22.05.2015, requested to refix the date of hearing on account of attending training (Mid-Career Training Phase-III for IAS Officers) at LBSNAA, Mussoorie from 29th May, 2015 to 20th July, 2015, and also that the applicant(now appellant) had requested vide letter No. cic-ngld/notic/rti/15-01 dated 20.05.2015 for postponement of the hearing scheduled on **3rd June, 2015 (Wednesday) at 2:30 PM.** the Commission had accepted the request of both the parties and had, vide letter of even No. dated 26.05.2015 postponed the above hearing to a later date.

And the Commission had vide letter of even No. dated 16.07.2015, notified that the hearing on **3rd June, 2015 (Wednesday) at 2:30 PM.** which was earlier postponed was now scheduled on **18th August, 2015 (Tuesday) at 1:30 PM.**

OBSERVATIONS AND FINDINGS:

The applicant(now appellant) did not appear for the hearing.

During the hearing, Smti. Elizabeth Ngully, ADC & PIO, Office of the Deputy Commissioner, Dimapur, Nagaland submitted that the first RTI application dated 13.10.2014 was received on 11.11.2014, however, since the application fee was not found enclosed, on 13.11.2014 the applicant was requested to pay the application fee as per the RTI Rules, either in cash against receipt/demand draft/banker's cheque so that the requirement could be fulfilled on time. However, instead of paying the prescribed application fee, the applicant(now appellant) had submitted a first appeal dated 20.11.2014 and another RTI application dated 28.11.2014 seeking the same information for the **second time** alongwith an application fee which was received on **17.12.2014.** And on receipt of the prescribed application fee, the information was furnished to the applicant on **21.01.2015.**

Further, Smti. Elizabeth Ngully, ADC & PIO, Office of the Deputy Commissioner, Dimapur, Nagaland submitted that another similar RTI application dated 08.02.2015 was received on 23.02.2015 for **the third time** and for which reply was given on **11.03.2015.**

The Commission observed that the applicant had, without paying the prescribed application fee or even without waiting for the stipulated time limits envisaged in the RTI Act, filed three (3) RTI applications dated 13.10.2014, 28.11.2014 and 08.02.2015, and two(2) first appeals dated 20.11.2014 and 10.02.2015.

Shri. Kesonyu Yhome, IAS, Deputy Commissioner & FAA, Office of the Deputy Commissioner, Dimapur, Nagaland informed that he took over the charge of the Deputy Commissioner, Dimapur on 07.03.2015. He admitted that there were some lapses in the office as there was no record of hearing held on the first appeal dated 20.11.2014 which was received on 08.12.2014. Further, he submitted that another first appeal dated **10.02.2015** submitted by the applicant for the second time was **never received.**

On being asked by the Commission regarding the approval order of the Chairman of a village council, Shri. Moa Sangtam, SDO(C), Office of the Deputy Commissioner, Dimapur, Nagaland (since he gave the reply), submitted that he was not the APIO, however, he clarified that approval of the Government is not required for the Chairman of a village council, since the village council choose a member as Chairman of the council. And on choosing a Chairman of a village council, the district administration issue a letter informing the appointment of a Chairman. And in the present case, the letter issued by the district administration could not be traced out.

The Commission reminded that under the RTI Act, the responsibility of furnishing information lies only with the PIO and not with the APIO, and advised that in future, all replies to RTI matters should be under the name and signature of the concerned PIO.

DECISION:

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

1. The Deputy Commissioner & FAA, Office of the Deputy Commissioner, Dimapur, Nagaland shall constitute an inquiry committee to inquire into the appointment order of Shri. Thangngul Khongsai, UDA/Revenue of DC Office as Chairman of Phaijijang Village Council and submit the inquiry report to this Commission within 10 days i.e. on or before **28.08.2015**.
2. Since the first appeals dated 20.11.2014 and 10.02.2015 were not heard, the Deputy Commissioner & First Appellate Authority, Office of the Deputy Commissioner, Dimapur, Nagaland shall hear the first appeals with both the parties i.e. the PIO/APIO and the applicant(now appellant) and submit its decision to the Commission within **two (2) months** from the date of receipt of this decision.

Decision pronounced in the presence of only the respondents on this day, the 18.08.2015.

Copy be given to:-

1. Shri. Kesonyu Yhome, IAS, Deputy Commissioner & FAA, Office of the Deputy Commissioner, Dimapur, Nagaland, Mobile No. 9612416337.
2. Smti. Elizabeth Ngully, Addl. Deputy Commissioner & PIO, Office of the Deputy Commissioner, Dimapur, Nagaland, Mobile No. 9436009224.
3. Shri. Anoka H. Assumi, SDO(C) & APIO, Office of the Deputy Commissioner, Dimapur, Nagaland.
4. Shri. P. James Swu, SDO(C) & APIO, Office of the Deputy Commissioner, Dimapur, Nagaland, Mobile No. 9436832576.
5. Shri. Moa Sangtam, SDO(C), Office of the Deputy Commissioner, Dimapur, Nagaland, Mobile No. 9862141351.
6. Smti. Temjensangla, SDO(C), Hq, Office of the Deputy Commissioner, Dimapur, Nagaland.
7. The applicant(now appellant), L. Haolai, DC(G), Zotlang BSF Camp, Lunglei, Mizoram - 796691, Mobile No. 9436824524.
8. The Computer Programmer, Nagaland Information Commission for uploading on the website and Notice Board.
9. Office Copy.

Sd/-

KEVININO P. MERU
Chief Information Commissioner

Sd/-

BUKCHEM PHOM
State Information Commissioner

Authenticated true copy:-

(WORHONTHUNG EZUNG)
Deputy Secretary