

NAGALAND INFORMATION COMMISSION
OLD SECRETARIAT COMPLEX
POST BOX NO. 148
NAGALAND
KOHIMA – 797001

No. NIC/Appeal-43/2010/

Dated Kohima, the 2nd June, 2010,

Appellant - Shri NSN Lotha, Ex. President, Nagaland Students' Federation (NSF) Kohima.
Shri Limaakum Jamir, Ex. President, All Nagaland College Students Union (ANCSU)

Respondent - Department of Finance, Nagaland, Kohima.
Public Authority Office of the Director of Lotteries, Nagaland, Kohima.

Date of Hearing - 5.5.2010

Present:

Shri NSN Lotha
Shri K. Tohovi Sema PIO
Shri Wopen Lotha, Appellate Authority and Director, Nagaland State Lotteries

Date of Decision - 2.6.2010

Present

1. Shri NSN Lotha, Ex. President, Naga Students' Federation (NSF) Kohima, Mobile No. 9436013273.
2. Shri Limmaakum Jamir, Ex. President, All Nagaland College Students Union (ANCSU) Mobile No. 9436266025.
3. Shri K. Tohovi Sema, Public Information Officer, Nagaland State Lotteries, Kohima.
4. Shri A. Wopen Lotha, Appellate Authority & Director, Nagaland State Lotteries, Kohima.

Facts

The Commission received an appeal under Section 19 of the Right to Information Act 2005 on 13.4.2010 from Shri NSN Lotha, ex President NSF and Shri Limaakum Jamir, ex President ANCSU stating that they had submitted RTI application on 19.2.2010 to the Public Information Officer of Nagaland State Lotteries, Kohima seeking 11 items of information, but the PIO had not furnished all the information sought and appealed to the First Appellate Authority, whose decision has not satisfied them.

The PIO, Shri K. Tohovi Sema received the RTI Application dated 19.2.2010 on the same day and furnished information sought at items 1,2,4,5,6,7,8,9,10 of the RTI application, on 18.3.2010. The applicants sought at item 3. the contents of the Memorandum of understanding/contract agreements entered in between the Government of Nagaland and the Distributor (s) / Stockiest (s) of Nagaland Lotteries both paper and on-line. The PIO informed the

applicants that the contents of the Deed of Agreement both paper and online lotteries could not be provided/disclosed, since the matter came under purview of the 'Commercial confidence' of the Government under Section 8 (1) (d) of the RTI Act, 2005. At item No. 11, the applicant asked for the total amount of revenue earned so far by the State Government since the last five (5) years and how has it been utilized. The PIO informed that the total revenue earned by the State out of Nagaland Lotteries for the last 5 (five) years upto 31.3.2009 was Rs. 47,84,54,818/- and the same were deposited into the consolidated fund of the State Government.

Not satisfied with the reply, the applicants appealed to the first Appellate Authority on 24.3.2010. The Appellate Authority upheld the replies given by the PIO. The appellants were aggrieved by the decision of the Appellate Authority and submitted appeal to the Commission on 13.4.2010 against the decision of the Appellate Authority.

During the hearing on 5.5.2010 Shri NSN Lotha Appellant stated that the MOU entered in between the Government of Nagaland and the Distributor (s) Stockiest (s) of Nagaland Lotteries is not a commercial confidence, State Lotteries being a Government activity in the interest of the public and there is no harm to Government interest by giving the MOU Copy.

The PIO Shri K. Tohovi Sema submitted that Lottery is a sensitive business and if the MOU is disclosed it will hamper the business of third party. He stated that the Agreement was entered into before the enactment of the RTI Act 2005 and hence the MOU/Deed of agreement can not be given. He also said that the Lottery Sale proceeds are deposited on monthly basis into Treasury under Revenue Head of Account 0075-MGS-103.

The Director of Lotteries Shri Wopen Lotha stated that the MOU is sought to serve individual interest, not public interest, hence it is not necessary to furnish the MOU. He said that Lottery is a sensitive matter and if disclosed, may jeopardize the position of the Government.

The Appellant informed that if there is proof that the Lottery Department has been directed by Government to deposit all sale proceeds into the consolidated fund of the Government, then the Department will not be asked to give Accounts of utilization.

The Commission directed the PIO to submit to the Commission a Copy of the Government directive to deposit all Lottery Sale deposits into the consolidated fund of the Government including the Head of Account, within 10 days.

After request for extension of time, the Director of Lotteries on 21.5.2010 submitted the Major and Minor Heads of Account for receipts of Lottery Department revenue as – 0075 – Miscellaneous General Services 103 - State Lotteries, but did not furnish the copy of the direction of the Government requiring all Lottery Sale proceeds to be deposited to the Government Treasury.

The Commission note that the Nagaland State Lotteries is a Public Authority and its functions are in public interest. In course of its activities, various negotiations and deals with tenderers, agents/franchises may be conducted, which may be competitive in nature and if disclosed prematurely, may harm the competitive position of the third party – the Tenderers/ quotationers. Once the tenders/quotationers are opened and awards are made, the MOU or agreement entered into between the Government in the Department and the awardee/agent does not become a confidential and secret document and will not come within the purview of section 8 (1) (d) of the RTI Act 2005 for exemption.

The Department of Lottery, Nagaland having been created to conduct State Lotteries and earn Revenue for the State, it is understood that its entire earnings will go into the State Government revenue under the appropriate Head of Account classified and indicated by the Government in the Finance Department. The Major and Minor Heads of Account have been submitted, but copy of the direction of the Government that the revenue earned should all be deposited into the Government Treasury have not been furnished by the Department. However the Heads of Accounts for deposit of the State Lottery having been made clear, and the Department having disclosed the revenue earned and deposited into the Consolidated Fund of the State Government, the Lottery Directorate may not be in a position to indicate the details of utilization.

Under provisions of the RTI Act 2005, any occurrence, event or matter which has taken place, occurred or happened twenty years before the date on which any request is made under section 6 shall be provided to any person making a request under that section. The contention that the MOU/agreement was made before enactment of RTI Act 2005 and hence will not be disclosed, is not tenable.

DECISION.

The Commission finds that Memorandum of Understanding (MOU)/ Contract Agreements entered into between the Government of Nagaland and Distributor (s)/Stockiest(s) of Nagaland State Lotteries both on Paper and on line does not come under the purview of exemption under Section 8 (1) (d) of the RTI Act 2005. The Commission therefore direct the Public Information Officer, Directorate of State Lotteries, Nagaland to furnish the contents of the Memorandum of understanding (MOU)/Contract/Agreement entered into between the Government of Nagaland and the Distributor(s)/Stockiest(s) of Nagaland State Lotteries both paper and on-line to the Appellants, free of cost, duly observing the provisions of the RTI Act 2005 within 10 (ten) days from the date of pronouncement of this decision and confirm to the Commission.

Pronounced in open proceedings today

Copies be given to the Parties.

Copy be sent to

1. The Additional Chief Secretary and Finance Commissioner, Nagaland, Kohima.
2. The Director, Nagaland State Lotteries, Kohima.

Sd/-

P. Talitemjen Ao, IAS (Rtd)
Chief Information Commissioner,
Nagaland

Sd/-

Rev. Dr. W. Pongsing Konyak
State Information Commissioner,
Nagaland

Authenticated by

Sd/-

Dr. Kuhoi K Zhimomi
State Information Commissioner,
Nagaland.

Under Secretary
Nagaland Information Commission
Kohima

