

NAGALAND INFORMATION COMMISSION
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No. NIC/Appeal-6/2013-14

Dated Kohima, the 13th December, 2013.

Appellant: Sri. Soumitra Sengupta,
C/o Lt. Abdus Samad Choudhury,
House No. 34, Hemgiri Path,
South Sarania, Ulubari,
Guwahati – 781007,
District Kamrup(M), Assam,
Mobile No. 9706896033

Respondent: (i) Shri. Asangba Chuba Ao,
Commissioner of Taxes & First Appellate Authority,
Office of the Commissioner of Taxes,
Nagaland, Dimapur.

(ii) Shri. Ramziu,
Joint Commissioner of Taxes & PIO,
Office of the Commissioner of Taxes,
Nagaland, Dimapur.

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

Date of Hearing: 26.11.2013 at 1:00 PM.

Date of Decision: 13.12.2013.

Present:

1. Shri. Asangba Chuba Ao, Commissioner of Taxes & First Appellate Authority, Office of the Commissioner of Taxes, Nagaland, Dimapur.
2. Shri. Ramziu, Joint Commissioner of Taxes & PIO, Office of the Commissioner of Taxes, Nagaland, Dimapur.

The applicant(now appellant), Sri. Soumitra Sengupta, C/o Lt. Abdus Samad Choudhury, House No. 34, Hemgiri Path, South Sarania, Ulubari, Guwahati – 781007, District Kamrup(M), Assam, Mobile No. 9706896033 **did not appear**.

FACTS OF THE CASE

An applicant, Sri. Soumitra Sengupta, C/o Lt. Abdus Samad Choudhury, House No. 34, Hemgiri Path, South Sarania, Ulubari, Guwahati – 781007, District Kamrup(M), Assam, Mobile No. 9706896033 had submitted a RTI application vide No. SMT/RTI/NGLD/2013/01 dated 22.01.2013, addressed to the PIO, Office of the Commissioner of Taxes, Near DC Court Junction, Nagaland, Dimapur – 797112, alongwith prescribed fees paid through IPO No. 16F 103030 dated 17.01.2013, requesting for information on the following queries:-

- (1) Name of the bidder to whom RFP NO.CT/MMP-CT/NIC/17/10/CONTD: Supply installation Commissioning Operation & Maintenance of Hardware and Networking equipments was awarded.
- (2) Furnish me the certified copies of Letter of Intent along with Notification of Award Contract issued to the successful bidder duly certified by your department.
- (3) Soft copy of the Pre-Qualified Bid submitted by the successful bidder which is written into a CD. Provide me the copy of the same CD.
- (4) Soft copy of the Technical Bid submitted by the successful bidder which is written into a CD. Provide me the copy of the same CD.
- (5) Soft copy of the Financial Bid with full price details submitted by the successful bidder which is written into a CD. Provide me the copy of the same CD.
- (6) Provide me the names & educational qualification and experience details of the following:
 - (a) Project Managers who are full time stationed at CT Office, Dimapur, Nagaland.
 - (b) Field Engineers who are full time stationed at CT Office, Dimapur, Nagaland.
 - (c) Network Administrators who are full time stationed at CT Office, Dimapur, Nagaland.
- (7) Provide the name and designation of the First Appellate Authority of your department to whom the appeal U/S 19 of the RTI Act, 2005 can be filed if required.

The applicant had also a blank IPO No. 16F 103031 dated 17.01.2013 alongwith the application so that in the event if the first IPO does not contain the appropriate "Name of the Payee" or is not correct, the blank IPO could be correctly filled up. And in the case, the first IPO is in order; the second IPO could be utilized for making part/full payment towards cost of information/documents/CDs or can be returned to the applicant.

The RTI application dated 22.01.2013 was received by the Sr. Steno-cum-PS to Commissioner of Taxes, Nagaland, Dimapur on 24.01.2013.

On receipt of the RTI application dated 22.01.2013, the PIO had, vide letter No. CT/LEG/116/2005/1664 dated 01.02.2013 transferred it to M/s IL& FS Technologies Ltd., Jupitara Palace, Guwahati, Assam which implemented the project and to furnish the relevant information urgently.

However, the M/s IL& FS Technologies Ltd, Guwahati had, vide letters No. ITL/Nagaland/12-13/040 dated 07.02.2013 and No. ITL/Nagaland/12-13/039 dated 12.02.2013 denied providing such information under Section 8(d), 8 (e), 8(g) and 8(j) of the RTI Act, 2005.

Shri. K. Patton, Joint Commissioner of Taxes & PIO, Office of the Commissioner of Taxes, Nagaland, Dimapur, had vide letter No. CT/LEG/116/2005/1753 dated 28.02.2013 furnished replies with regard to Queries No. 1 and No. 7, however, with regard to Queries 2, 3, 4, 5 & 6, the PIO stated that the information involves confidential details about third party and, therefore, under section 8 (d), (e), (g) and (j) of the RTI Act, 2005, it cannot be furnished.

On being aggrieved with the reply /decision of the PIO dated 28.02.2013, the applicant preferred First Appeal vide No. APP/SMT(NGLD)-13-01 dated 16.04.2013 which was received by the Public Authority on 22.04.2013.

And on receipt of the First Appeal dated 16.04.2013, Shri. K. Patton, Joint Commissioner of Taxes & PIO, Office of the Commissioner of Taxes, Nagaland, Dimapur, had vide letter No. CT/LEG/116/2005/2325 dated 17.05.2013, summoned the applicant(now the appellant) to appear before the Commissioner of Taxes & FAA for hearing of the First Appeal on 03.06.2013 at 12.00

pm in the office chamber of Commissioner of Taxes, Nagaland, Dimapur. And the applicant(now the appellant) had, vide letter No. APP/SMT (NGLD)-13-01-17 dated 03.06.2013, informed his presence for the hearing on 03.06.2013. However, the Joint Commissioner of Taxes & PIO, Office of the Commissioner of Taxes, Nagaland, Dimapur, had vide letter No. CT/LEG/116/2005 dated 03.06.2013 informed the applicant(now the appellant) that the Commissioner of Taxes & FAA was called to attend an emergency Cabinet meeting called by the Nagaland Legislative Assembly on 03.06.2013 and, therefore, the hearing date had to be re-scheduled.

Shri. K. Patton, Joint Commissioner of Taxes & PIO, Office of the Commissioner of Taxes, Nagaland, Dimapur had, vide letter No. CT/LEG/116/2502 dated 07.06.2013 informed the applicant that the next date of hearing was re-scheduled on 15.06.2013 at 12:00 PM. However, the applicant(now the appellant) had, vide letter No. APP/SMT (NGLD)-13-01-17-A dated 13.06.2013, informed the Joint Commissioner of Taxes & PIO, Office of the Commissioner of Taxes, Nagaland, Dimapur, that he would not be able to attend the scheduled hearing on 15.06.2013 and further requested the FAA to dispose off the matter on the merit of the case.

Again the PIO had, vide letter No. CT/LEG/116/2005/2584 dated 20.06.2013 informed the applicant that the hearing was re-fixed on 29.06.2013 at 12:00 PM. However, the applicant(now the appellant) had, vide letter No. APP/SMT (NGLD)-13-01-17-B dated 25.06.2013 cited inability to attend the scheduled hearing on 29.06.2013 and reiterated that the FAA dispose off the matter on the merit of the case.

On not getting any response to his first appeal dated 16.04.2013, the applicant(now appellant) had vide letter No. NSIC/2013/01 dated 21.07.2013 preferred Second appeal before the Nagaland Information Commission, stating that there was no response/decision received from the First Appellate Authority, Office of the Commissioner of Taxes, Nagaland, Dimapur, to his first appeal dated 16.04.2013 which was filed against the incomplete information received from the Joint Commissioner of Taxes & PIO, Office of the Commissioner of Taxes, Nagaland, Dimapur to the RTI application dated 22.01.2013.

Since the Commissioner of Taxes & First Appellate Authority (FAA), Office of the Commissioner of Taxes, Nagaland, Dimapur had not held any hearing and disposed off/passed any decision on the First Appeal dated 16.04.2013, though the applicant(now the appellant) had in two occasions expressed his inability to attend the scheduled hearings, the Commission directed the Commissioner of Taxes & First Appellate Authority, Office of the Commissioner of Taxes, Nagaland, Dimapur to hold a hearing in the presence of the PIO concerned, and pass *ex parte* quasi-judicial decision/order **by 26.08.2013**, with a copy of the decision to this Commission and the appellant. Further, it is also notified that **no extension of time shall be given** to the Commissioner of Taxes & First Appellate Authority (FAA), Office of the Commissioner of Taxes, Nagaland, Dimapur.

And in compliance to the direction of the Commission, Shri. Asangba Chuba Ao, Commissioner of Taxes & First Appellate Authority (FAA), Office of the Commissioner of Taxes, Nagaland, Dimapur had heard the first appeal dated 16.04.2013 and passed quasi-judicial decision on 26.08.2013 that:-

1. Sl. No. 1 and 7 had already been provided by the PIO vide letter No. CT/LEG/116/2005 dated 28.02.2013 and therefore action is not required.
2. Sl. No. 2, 3, 4 5 and 6, the information cannot be denied under Section 8(d), 8(e), 8(g) and 8(j) of the RTI Act, 2005, since the tender process has already been completed and the contract has been awarded. Moreover, being a project wholly funded by the Government of India and the State Government of Nagaland, the documents sought are

therefore public in nature and may be provided within 10 (ten) days of the Order on payment of applicable fees (if any).

On receipt of the quasi-judicial decision of the Commissioner of Taxes & First Appellate Authority (FAA), Office of the Commissioner of Taxes, Nagaland, Dimapur dated 26.08.2013, the Commission had, vide letter of even No. dated 30.09.2013 directed to kindly confirm receipt of the information by the above appellant and also inform the Commission on the action taken on the above decision **by 04.10.2013**.

However, the applicant (now the appellant) had vide letter No. APP/SMT(NGLD)-13-01-17/02 dated 18.09.2013 submitted a contempt of the First Appeal Order dated 26.08.2013 to the Commissioner of Taxes & First Appellate Authority (FAA), Office of the Commissioner of Taxes, Nagaland, Dimapur and with a copy to this Commission, stating that the concerned PIO, Office of the Commissioner of Taxes, Nagaland, Dimapur had, inspite of the necessary directions, failed to furnish the necessary information and records sought. And also requested this Commission to take necessary action on the matter.

Further, the applicant (now the appellant) had vide letter No. NSIC/2013/02 dated 07.10.2013 submitted to this Commission that since neither any communication regarding deposit of cost of information from the PIO has been received nor any information as sought has been furnished, appropriate proceeding as per the provisions of the RTI Act, 2005 and necessary action as deemed fit may be initiated in the interest of justice.

In compliance to the Commission's directive dated 30.09.2013, Shri. Ramziu, Joint Commissioner of Taxes, Office of the Commissioner of Taxes, Nagaland, Dimapur, who took charge as the new PIO, had vide letter No. CT/LEG/116/2005/3511 dated 22.11.2013 submitted action taken report that all information sought by the applicant had already been furnished vide letter No. CT/LEG/116/2005/3220 dated 30.09.2013 and No. CT/LEG/116/2005/3436 dated 13.11.2013, after obtaining from the successful bidder i.e. M/s IL&FS Technologies Limited, Guwahati.

OBSERVATIONS AND FINDINGS

On the day of the hearing on 26.11.2013, the Commission received a letter No. NSIC/2013/03 dated 24.11.2013 sent by e-mail on 26.11.2013 at 9:26 AM by the applicant(now appellant) informing that he could not attend the hearing in person due to some urgent pre-occupied schedule. Further, he also clarified his stand for the hearing as follows:-

1. That certified copies of **Letter of Intent** was furnished along with the soft copy of **Technical Bid** and **Pre-Qualification Bid** on Compact disk by the PIO vide letter No. CT/LEG/116/2005/3220 dated 30.09.2013, only after the Commission's directive dated 13.08.2013 and First Appeal Order of the FAA dated 26.08.2013 and subsequently his contempt of the First Appeal Order dated 18.09.2013.
2. Initially, the **Financial Bid** could not be furnished since it was denied disclosure by the third party, M/s IL&FS Technologies Limited, Guwahati vide their letter No. ITI/Nagaland/Com Tax/2013-14/017 dated 30.09.2013, however, the new PIO, Office of the Commissioner of Taxes, Dimapur had vide letter No. CT/LEG/116/2005/3220 dated 13.11.2013, furnished soft copy of the **Commercial/Financial Bid** under Serial No. 5 of his RTI application only after the Commission had issued Notice for the hearing on 08.11.2013.
3. That the Commissioner of Taxes, Nagaland, Dimapur till date had neither returned the blank IPO being No. 16F 103031 dated 17/01/2013 which was enclosed with the

RTI application nor had provided any clarification for keeping the same in their own custody.

4. Take necessary action against the SPIO, Joint Commissioner of Taxes, Office of the Commissioner of Taxes, Dimapur, Nagaland, Govt. of Nagaland along with the First Appellate Authority (FAA), Commissioner of Taxes, Office of the Commissioner of Taxes, Dimapur, Nagaland, Govt. of Nagaland for malafidely and intentionally denying the information sought by imposing penalty under Section 20 of the RTI Act, 2005.
5. Compensation of Rs. 2000/- (Rupees Two Thousand only) towards the cost of filing the first and second appeals along with the cost of travelling to Dimapur for attending the first appeal hearing & again returning back to Guwahati wherein the First Appellate Authority (FAA) remained absent without any steps.
6. any other additional compensation as the Nagaland Information Commission may deem fit and proper in the interest of justice

During the hearing held on 26.11.2013, it was learnt that Shri. K. Patton, Joint Commissioner of Taxes & PIO, Office of the Commissioner of Taxes, Nagaland, Dimapur had on promotion, relinquished the charge as the PIO and Shri. Ramziu, had taken the charge as the new PIO in August, 2013.

On perusal of the records and documents produced by Shri. Ramziu, Joint Commissioner of Taxes & PIO, Office of the Commissioner of Taxes, Nagaland, Dimapur during the hearing, it was learnt that the soft copy of **Technical Bid** and **Pre-Qualification Bid** on Compact disk but not the soft copy of the Commercial/Financial Bid furnished to the PIO by the M/s IL&FS Technologies Limited, Guwahati, which implemented the project, vide their letter No. ITI/Nagaland/Com Tax/2013-14/017 dated 30.09.2013 were further furnished by the PIO to the applicant (now appellent) vide letter No. CT/LEG/116/2005/3220 dated 30.09.2013.

It was also observed that though M/s IL&FS Technologies Limited, Guwahati did not provide the soft copy of the Commercial/Financial Bid to the Office of the Commissioner of Taxes, Nagaland, Dimapur, Shri. Ramziu, Joint Commissioner of Taxes & PIO, Office of the Commissioner of Taxes, Nagaland, Dimapur, had vide letter No. CT/LEG/116/2005/3436 dated 13.11.2013, furnished a soft copy of the **Commercial/Financial Bid** to the applicant(now appellent) as sought for.

It also came to light that in another but related case, and in response to the RTI application No. SMT.RTI/NGLD-13-02 dated 20.09.2013 submitted by the same applicant to the same public authority i.e. Commissioner of Taxes, Nagaland, Dimapur, Shri. Ramziu, Joint Commissioner of Taxes & the new PIO, Office of the Commissioner of Taxes, Nagaland, Dimapur had, vide letter No. CT/LEG/116/2005/3512 dated 22.11.2013 furnished the certified copies of all the **contracts and agreements** entered into between the Office of the Commissioner of Taxes, Nagaland, Dimapur, and the successful bidder in all kinds & manner pertaining to the project, "Supply Installation Commissioning Operation & Maintenance of Hardware and Networking Equipments"

DECISION

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

1. Since the Commissioner of Taxes & FAA was called to attend an emergency Cabinet meeting called by the Nagaland Legislative Assembly on 03.06.2013, which was unforeseen and his presence indispensable, and that the Joint Commissioner of Taxes & PIO, Office of the Commissioner of Taxes, Nagaland, Dimapur, had vide letter No. CT/LEG/116/2005

dated 03.06.2013 informed the applicant(now the appellant) regarding the re-scheduling of the hearing date, the Compensation of Rs. 2000/- (Rupees Two Thousand only) claimed by the applicant(now appellant) towards the cost of filing the first and second appeals along with the cost of travelling to Dimapur for attending the first appeal hearing & again returning back to Guwahati and any other additional compensation, is hereby dismissed.

2. And since all the information sought by the applicant(now appellant) had been already furnished, and there is no response from the applicant(now appellant) about his satisfaction to the information so received, the appeal case be declared closed.

Decision pronounced in the presence of all parties concerned.

Copies be given to the parties:-

- i. The Commissioner of Taxes & First Appellate Authority, Office of the Commissioner of Taxes, Nagaland, Dimapur.
- ii. The Joint Commissioner of Taxes & PIO, Office of the Commissioner of Taxes, Nagaland, Dimapur.
- iii. The applicant(now appellant), Sri. Soumitra Sengupta, C/o Lt. Abdus Samad Choudhury, House No. 34, Hemgiri Path, South Sarania, Ulubari, Guwahati – 781007, District Kamrup(M), Assam, Mobile No. 9706896033.
- iv. The Computer Programmer, Nagaland Information Commission for uploading on the website and Notice Board.

Sd/-

KEVININO P. MERU

State Information Commissioner,
Nagaland, Kohima.

Sd/-

BUKCHEM PHOM

State Information Commissioner,
Nagaland, Kohima

Authenticated by:-

(SOYIMNA AIER KOZA)

Secretary