

NAGALAND INFORMATION COMMISSION

BELOW RAJ BHAVAN, OFFICERS' HILL COLONY

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No. NIC/Appeal-25/2016-17

Dated Kohima, the 30th November, 2017

- Appellants : Shri. Peina N dang,
Telephone Exchange BSNL, Peren.
- Respondents : i) The Chief Engineer & First Appellate Authority,
Irrigation & Flood Control,
Nagaland, Kohima.
ii) The Executive Engineer & PIO,
Irrigation & Flood Control,
Jalukie, Nagaland.
- Public Authority : Office of the Executive Engineer,
Irrigation & Flood Control,
Jalukie, Nagaland.

Date of 1st hearing : 09.11.2017 at 12:00 P.M

Date of decision : 30.11.2017

Present:

1. Er. Kughato Sema, Chief Engineer & FAA, Irrigation & Flood Control, Nagaland, Kohima.
2. Er. Vikehiehol, Executive Engineer & PIO, Irrigation & Flood Control, Jalukie, Nagaland.

The applicant (now appellant), Shri. Peina N dang did not appear for the hearing.

FACTS OF THE CASE

Under Section 19 of the RTI Act, 2005, the Nagaland Information Commission had received a second appeal dated 16.01.2017 by email from Shri. Peina N dang, Telephone Exchange BSNL, Peren, Mobile No. 9402832636, email: cele_joe@yahoo.com against non-response by the PIO and the First Appellate Authority to his RTI application and subsequent first appeal.

The applicant, Shri. Peina N dang had earlier submitted an RTI application dated 16.11.2016 addressed to the PIO, O/o the Executive Engineer, Irrigation & Flood Control, Jalukie, Nagaland along with the application fee of ` 10/- in cash seeking the following information in regard to Peren district for the financial year 2010-11 to 2013-14:

1. *Total number of applicants for various projects and names of the applicants selected with the criteria from the final selection board of Kohima along with their names and addresses.*
2. *Total amount sanctioned for each project and name of the projects along with beneficiary's names and addresses.*
3. *Total amount sanctioned from central government and the total amount utilized on the completion of the projects.*
4. *Total fund balance in hand due to incompleteness of projects.*
5. *Total amount of money paid to different underground groups along with receipts.*
6. *Spot verification of all the completed projects along with the applicant to justify the genuineness of the projects and fund utilized.*

On receipt of the RTI application dated 16.11.2016 on 16.11.2016 as evidenced on the body of the above RTI application, since there was no response to his RTI application dated 16.11.2016 from

the PIO, the applicant had submitted a first appeal dated 17.12.2016 by speed post dated 17.12.2016 addressed to the First Appellate Authority, Irrigation & Flood Control, Nagaland, Kohima.

On not getting any response to his first appeal dated 17.12.2016 even after the expiry of the stipulated time limit, the applicant had preferred a second appeal dated 16.01.2017 before this Commission by email.

Since the first appeal was not heard by the First Appellate Authority, Irrigation & Flood Control, Nagaland, Kohima, the Commission had, vide letter of even No. dated 07.09.2017 directed the Chief Engineer & First Appellate Authority, Irrigation & Flood Control, Nagaland, Kohima to hear the first appeal in the presence of the PIO concerned and the applicant (now appellant) and pass decision within forty five (45) days from the date of issue of the directive and submit a copy of the decision to this Commission.

The Chief Engineer, Irrigation & Flood Control, Nagaland, Kohima had, vide letter No. IFC-RTI-TECH/Case No. 27/2016-17/2166-68 dated 18.09.2017 submitted to this Commission stating that the applicant (now appellant) had, vide letter dated 04.04.2017 withdrawn the RTI application dated 16.11.2016, and had enclosed a copy of the withdrawal letter which was addressed to the Executive Engineer, Irrigation & Flood Control, Jalukie.

The Commission did not accept the withdrawal letter dated 04.04.2017 submitted by the applicant (now appellant) and therefore decided to hear the appeal case, giving opportunity of being heard to all the parties on 9th November (Thursday), 2017 at 12:00 P.M. in the Hearing Room of Nagaland Information Commission, Below Raj Bhavan, Officers' Hill Colony, Nagaland, Kohima.

OBSERVATIONS AND FINDINGS

The applicant (now appellant), Shri. Peina Nidang did not appear for the hearing and the appeal case was heard ex parte in the presence of the respondents Er. Kughaho Sema, Chief Engineer & FAA, Irrigation & Flood Control, Nagaland, Er. Vikehiehol, Executive Engineer & PIO, Irrigation & Flood Control, Jalukie and Shri. Viekhrotso Koza, LDA, O/o of the Chief Engineer, Irrigation & Flood Control, Nagaland, Kohima.

During the hearing, Er. Vikehiehol, Executive Engineer & PIO, Irrigation & Flood Control, Jalukie submitted that the RTI application dated 16.11.2016 was initially received on 16.11.2016 when his predecessor, Er. Keduvizo Sophie was posted as Executive Engineer, Irrigation & Flood Control, Jalukie. On receipt of the RTI application, Er. Keduvizo Sophie had, vide letter No. IFC/JLK/RTI/2015-16 dated 08.12.2016 transferred the RTI application to the PIO, O/o the Chief Engineer, Irrigation & Flood Control, Nagaland, Kohima as the information sought by the applicant were not available in the Executive Engineer's Office, Jalukie.

He further submitted that on receipt of the information from the PIO, O/o the Chief Engineer, Irrigation & Flood Control, Nagaland, the information sought was kept ready to be furnished to the applicant (now appellant) vide letter No. IFC/JLK/TECH-7/2013-14 dated 04.04.2017, however, the applicant (now appellant) had submitted a letter dated 04.04.2016 to the Executive Engineer, Irrigation & Flood Control, Jalukie withdrawing the RTI application dated 16.11.2016.

The Commission had observed that the applicant (now appellant) had, vide letter dated 04.04.2017 submitted the withdrawal of the RTI application to the Executive Engineer, Irrigation & Flood Control, Jalukie, which in the opinion of the Commission was not proper. The Commission was of the opinion that since the applicant (now appellant) had preferred the second appeal before this Commission and since the appeal case had already been registered, the withdrawal of the RTI application should have been submitted to this Commission and not to the Executive Engineer, Irrigation & Flood Control, Jalukie.

On perusal of the records and documents brought during the hearing, the Commission observed that the PIO, O/o the Chief Engineer, Irrigation & Flood Control, Nagaland had submitted the

information to the Executive Engineer & PIO, Irrigation & Flood Control, Jalukie only on 30.03.2017 whereas, the RTI application was transferred to the PIO, O/o the Chief Engineer by the Executive Engineer & PIO, Jalukie on 08.12.2016 thus, causing considerable delay and therefore, under section 5(5) of the RTI Act, 2005, the PIO, O/o the Chief Engineer, has now become '**Deemed PIO**'.

Since the withdrawal of the RTI application was not submitted to the Commission, the Commission had not accepted the withdrawal submitted by the applicant (now appellant). In order to work out the delay in furnishing the information to the applicant (now appellant), the Commission had taken into consideration the date of the letter i.e. **04.04.2017** written by Er. Vikehiehol, the present Executive Engineer & PIO, Jalukie, for furnishing of the information to the applicant (now appellant). The Commission had observed that the information was furnished only on **04.04.2017** i.e. after **139 days** from the date of receipt of the RTI application on **16.11.2016**. After scrutinizing and cross examining the various records produced during the hearing, the Commission had concluded that Er. Keduvizo Sophie, the then Executive Engineer & PIO, Irrigation & Flood Control, Jalukie, the concerned PIO (**now deemed PIO**), O/o the Chief Engineer, Irrigation & Flood Control, Nagaland, Kohima and Er. Vikehiehol, the present Executive Engineer & PIO, Irrigation & Flood Control, Jalukie had contributed to the delay in furnishing the information to the applicant (now appellant).

| Name of PIO/Deemed PIO | Date of receipt of RTI application | Date of transfer/furnishing | No. of days taken |
|--|---|------------------------------------|--------------------------|
| Er. Keduvizo Sophie, Former Executive Engineer & PIO, Irrigation & Flood Control, Jalukie. | 16.11.2016 | 08.12.2016 | 22 days |
| The concerned PIO (now deemed PIO), O/o the Chief Engineer, Irrigation & Flood Control, Nagaland, Kohima. | 08.12.2016 | 30.03.2017 | 112days |
| Er. Vikehiehol, the present Executive Engineer & PIO, Irrigation & Flood Control, Jalukie. | 31.03.2017 | 04.04.2017 | 5 days |
| Total | | | 139 days |

The Commission had decided to condone the period from 31.03.2017 to 04.04.2017 i.e., five (5) days since Er. Vikehiehol, the present Executive Engineer & PIO, Irrigation & Flood Control, Jalukie took over the charge of the Executive Engineer, Irrigation & Flood Control, Jalukie only in the month of March, 2017.

From the date of expiry of **30 days** prescribed for the PIO to furnish the information, the number of days of delay becomes (134-30) days = **104 days**. However, since section 20(1) provides for imposing penalty for maximum of 100 days of delay, the Commission had worked out the delay contributed by each of the two **PIOs** in a proportionate ratio as under:

| Name of the PIO/Deemed PIO | No. of days of delay |
|--|-----------------------------|
| Er. Keduvizo Sophie, Former Executive Engineer & PIO, Irrigation & Flood Control, Jalukie, Nagaland. | 16 days |
| The concerned PIO (Deemed PIO), O/o the Chief Engineer, Irrigation & Flood Control, Nagaland, Kohima. | 84 days |
| Total | 100 days |

DECISION

On the above observations and findings, the Commission decided that under section 20(1) of the RTI Act, 2005 penalty at the rate of ` 250/- per day of delay for a total delay of 100 days amounting to ` 25000/- (Rupees twenty five thousand only) is imposed for failure to furnish the information sought by the applicant (now appellant) within the prescribed period of 30 days. The penalty amount shall be shared among the two PIOs for contributing to the delay in furnishing the information to the applicant (now appellant).

| Name of the PIO/Deemed PIO | No. of days of delay | Penalty @ of ` 250/- per day of delay |
|--|-----------------------------|--|
| Er. Keduvizo Sophie, Former Executive Engineer & PIO, Irrigation & Flood Control, Jalukie, Nagaland. | 16 days | ` 4000/- |
| The concerned PIO (Deemed PIO), O/o the Chief Engineer, Irrigation & Flood Control, Nagaland, Kohima. | 84 days | ` 21000/- |
| Total | 100 days | ` 25000/- |

The penalty amount shall be paid **within one (1) month** from the date of receipt of this decision. The penalty amount shall be deposited into the Government account through treasury challan in favour of the Consultant (Accounts), Nagaland Information Commission, Kohima under the Head of Account given below, with a copy to this Commission:

0070- Other Administrative Services
60 – Other Services
118 – Receipt under RTI Act, 2005

Decision pronounced in the presence of only the respondents on 09.11.2017.

Copy be given to:

1. Er. Kughato Sema, Chief Engineer & FAA, Irrigation & Flood Control, Nagaland, Kohima, Mobile No. 9436000183.
2. Er. Vikehiehoh, Executive Engineer & PIO, Irrigation & Flood Control, Jalukie, Nagaland, Mobile No. 9436005066.
3. Er. Keduvizo Sophie, Former Executive Engineer & PIO, Irrigation & Flood Control, Jalukie, Nagaland.
4. The concerned PIO (**Deemed PIO**), O/o the Chief Engineer, Irrigation & Flood Control, Nagaland, Kohima.
5. The applicant (now appellant), Shri. Peina N dang, Telephone Exchange BSNL, Peren, Mobile No. 9402832636.
6. The Computer Programmer, Nagaland Information Commission for uploading on the website and Notice Board.
7. Office Copy.

(KEVIZATUO MIACHIEO)
State Information Commissioner

(CHANBEMO LOTH A)
State Information Commissioner

(WORHONTHUNG EZUNG)
Secretary