

NAGALAND INFORMATION COMMISSION
AGRI-FARM COLONY, LANE-6, H/NO. AFC-578
NAGALAND, KOHIMA-797001

Email: cic.nagaland@gmail.com | Website: www.nlsic.nagaland.gov.in



No. NIC/APPEAL-34/2022-23

Dated Kohima, the 4th November, 2022

Appellant : Smti. Nuksungtila,
The Chambers, Advocates,
Agri-Farm Colony,
Kohima, Nagaland, Mobile No. 9862375703.

Respondents : (i) Shri. Abhijit Sinha, IAS,
Home Commissioner & First Appellate Authority,
Home Department,
Nagaland, Kohima

(ii) Shri. Lhouchalie Viya, IAS,
Secretary & PIO,
Home Department (NSDMA),
Nagaland, Kohima

Public Authority : Home Department (NSDMA), Nagaland, Kohima.

Date of hearing : 26.10.2022 at 11:00 AM.

Date of Decision : 04.11.2022

Present:

1. Shri. Lhouchalie Viya, IAS, Secretary & PIO, NSDMA, Home Department, Nagaland, Kohima.
2. Shri. Temsuwangshi Jamir, Assistant Manager (Research & Planning) & APIO, NSDMA, Home Department, Nagaland, Kohima, Mobile No. 8974539125.
3. Shri. Kevisede Usou, Section Assistant (Research & Planning), NSDMA, Home Department, Nagaland, Kohima, Mobile No. 7204242480.
4. The applicant (now appellant), Smti. Nuksungtila, The Chambers, Advocates, Agri-Farm Colony, Kohima, Nagaland, Mb- 9862375703.

The following did not appear for the hearing:

Shri. Abhijit Sinha, IAS, Home Commissioner & First Appellate Authority, NSDMA, Home Department, Nagaland, Kohima.

FACT OF THE CASE

Smti. Nuksungtila had submitted RTI application dated 01/07/2022 addressed to the PIO, NSDMA, Home Department, Nagaland, Kohima along with RTI application fee of Rs. 10 seeking the following information:-

1. *Furnish me a copy of the members of the State Disaster Committee and Members of all the District Disaster Committee including the Meeting Minutes from 2013-2021.*
2. *Furnish me a copy of the sanction letters/ funds released from NDRF (National Disaster Relief Fund)/ Ministry of Home Affairs/ Ministry of Finance/ Any Ministry/ NDRF/NEC/ for implementation and execution against COVID-19. Specify the exact amount received along with a copy of the sanction letter from the state Finance Department to NSDMA against Covid-19.*
3. *Furnish me a copy of the following information sought where grant-in-aid/ relief/ money sanction is allocated/ forwarded/ fund released to organization, agencies, NGO, Government department or individuals against or to combat Covid-19.*

- a. *Name, address and contact number of the individuals/ organization/ agencies, NGO, Government department who have received financial assistance/ grant-in-aid or normal fund from NSDMA for Covid-19.*
- b. *Copy of the banker cheque/APR/ forwarding letter signed against the fund received by the individuals/ organization/ agencies/ NGO, Government Department against Covid-19.*
- c. *Nature/ orientation of work or the type of relief executed against the fund released by NSDMA to individuals/ organization/ agencies/ NGO/ Government department against Covid-19.*
- d. *Copy of the amount utilized by the NSDMA office itself to combat Covid-19 along with a copy of the Cash memo/ invoice or any other document to proof the proper and correct utilization of money by NSDMA office against Covid-19.*
4. *Furnish me a copy of all the sanction letters from Ministry of Home Affairs/ Ministry of Finance/ National Disaster Relief Fund/ North Eastern Council/ any other ministry or agency which has financially sanction or release fund to Nagaland State Disaster Management Authority (NSDMA) as grant-in-aid/ Disaster Management fund/ State Disaster Response Fund/ normal sanction etc. from 2013-2021.*
5. *Furnish me a copy of all the sanction order/ release order from the department of finance, Govt. of Nagaland to NSDMA from 2013-2021*
6. *Furnish me a copy of all the Utilization Certificate/ letter against the money sanction from the Central Ministry from 2013-2021.*
7. *Furnish me a copy of banker cheque/ APR against the fund released to individual/ Organization/ District Disaster Committee for disaster/ nature calamities from 2013-2021.*
8. *Furnish me a copy of the actual design/ architectural design of the civil work submitted by the affected individual/ organization or prepared by the department against natural disaster and which are selected and grant-in-aid released to them from 2013-2021.*
9. *Furnish me a copy of all the project, program, or any other works which was executed by the department (NSDMA) itself and also the expenditure amount of each project, program and works incurred from the sanctioned amount from 2013-2021.*
10. *Furnish me a copy of the Rules & Regulation/ Guidelines to be followed by Nagaland State Disaster Management Authority (NSDMA) while implementing/ executing the work/ scheme/fund sanction/ grant-in-aid/ financial assistance etc. against any disaster or natural calamities in our State.*
11. *Furnish me a copy of the following information sought where grant-in-aid/ relief compensation was given/ fund released to individuals or Organization against disaster or natural calamities from 2013-2021:-*
 - a. *Name, address and contact number of the individuals/ organization who have received assistance from NSDMA.*
 - b. *Copy of the banker cheque/ APR signed and received by the individuals/ organization against disaster or natural calamity.*
 - c. *Nature/ orientation of work or the type of relief executed against the fund released.*
 - d. *Total No. of Civil work/ construction work along with proper and correct address/ geo-tagging where the said work was executed.*
12. *Name and Designation of the officer who handles the Accounts of NSDMA and also the name of DDO/ releasing authority on behalf of the department.*
13. *What are the procedure/ guidelines to be followed by an individual/ organization that are affected by natural calamities in order to avail financial/ grant-in-aid which are sponsored/ sanction by the central ministry?*
14. *Which Administrative head/ Political head is the final authority to approve/ select the grant-in-aid for individual/ Organization against disaster/ natural calamities?*
15. *Furnish me a copy of the final approves list of beneficiaries where the approving authority had annexed his/ her signature along with the final file note sheet from 2013-2021.*
16. *Furnish me a copy of the type of capacity building executed by the department to different individual and organization, and also a copy of the date and place the capacity building was executed, name and address of individuals/ organization that have avail the capacity building sponsored by the department from 2013 – 2021.*
17. *Furnish me a copy of the amount incurred in sponsoring/ executing the capacity building by the department from 2013-2021.*
18. *Furnish me a copy of the number of individual/ organization with name and address who have avail training on disaster management along with the date, place, amount incurred for training from 2013-2021.*
19. *Furnish me a copy of the following information sought from 2013-2021:-*

- a. *Type of equipment's that are purchased for search and rescue.*
- b. *Total number of equipment purchased.*
- c. *Photographic evidence of the equipment which are purchased/ bought.*
- d. *Name of the company/ Shop from where the equipment is ordered/ purchased.*
- e. *Copy of the invoice/ cash memo of all the equipment's that are purchased for search and rescue.*
- f. *Copy of the approval letter from the Govt. of Nagaland for procurement of equipment's for search and rescue under NSDMA.*
- g. *Name and designation of administrative head/ political head/ committee that decides/ approve the procurements of equipment's for search and rescue under NSDMA.*
- h. *Copy of the amount sanctioned by the finance department, Govt. of Nagaland to procure equipment's for search and rescue under NSDMA.*
- i. *Copy of the number of equipment purchased each year along with date and the approval from the Govt.*

On receipt of the above RTI application dated 01/07/2022 by the public authority on **04/07/2022** as evidenced on the body of the application, Shri. Lhouchalie Viya, IAS, Secretary & PIO, NSDMA, Home Department had, vide letter **No. NSDMA/RTI/274/2019(Pt.II)/6493** dated **15/07/2022** requested the applicant to consider additional 30 days to furnish the information as the sought information pertains to every activity of NSDMA from 2013-2021 which is then when NSDMA was established officially in 2011.

However, on non-receipt of any information to her RTI application, the applicant had submitted first appeal dated 10/08/2022 to the Appellate Authority, NSDMA, Home department stating that, under section 7(6) of the RTI Act, 2005, the information should be provided free of cost where the public authority had failed to provide the information within the specific time limit and had enclosed the letter of Secretary & PIO, NSDMA, Home Department, requesting for additional 30 (thirty) days to furnish the information.

On receipt of the first appeal dated **10/08/2022** by the public authority on **22/08/2022**, Shri. Lhouchalie Viya, IAS, Secretary & PIO, NSDMA, Home Department had, vide letter **No. NSDMA/RTI/274/2019(Pt.II)/6748** dated **22/09/2022** issued notice for hearing to be held on 01/10/2022 at 11:00 A.M in the office chamber of the Home Commissioner.

Referring to her RTI application dated 01/07/2022 which was received by the public authority on 04/07/2022, Shri. Lhouchalie Viya, IAS, Secretary & PIO, NSDMA, Home Department had, again vide letter **No. NSDMA/RTI/274/2019(Pt.II)/6786** dated **28/09/2022** conveyed to the applicant regretting that NSDMA was constrained to furnish the information sought by her quoting the Hon'ble Madras High Court decision in the matter of N. Saravanan Vs. Chief Commissioner, Tamil Nadu, SIC, W.P (MD) No. 4336 of 2017 dated 15/03/2017, wherein it was observed that “ *the laudable objects of the RTI Act cannot be used for personal ends and should not become a tool in the hands of the advocate for seeking all kinds of information in order to promote his practice*”, and therefore, requested the applicant to consider and accept the limitations of NSDMA to provide the information of your interest based on the decision of the Hon'ble Court.

On non-furnishing of the information by the PIO to his RTI application and subsequent First Appeal, the applicant had submitted Second Appeal to the Nagaland Information Commission dated **29/09/2022**.

On receipt of the notice for first appeal hearing Smti. Nuksungtila had, vide letter dated **01/10/2022** conveyed her regret to attend the first appeal hearing stating that she had preferred an second appeal before the State Information Commissions and was not in a position to appear before the FAA.

Since the appellant did not turn up for the hearing, the hearing was pronounced ex-parte vide Decision **No. NSDMA/RTI/274/2019(Pt-II)/6820** dated **03/10/2022** wherein the FAA had disposed the appeal stating that the RTI applicant is a practising advocate and the decision of the Hon'ble Madras High Court in the matter of N. Saravanan Vs. Chief Commissioner, Tamil Nadu, SIC, W.P (MD) No. 4336 of 2017 dated 15/03/2017.

Relying on the above Hon'ble Madras High Court decision since the applicant (now appellant) was denied information by the PIO and also by the FAA, the Commission had decided to hear the above mentioned appeal by giving opportunity of being heard to all the parties on **26th October, 2022 (Wednesday) at 11:00A.M in the Hearing Room of Nagaland Information Commission, Agri-farm Colony, Lane-6, H/No. AFC/578, Nagaland, Kohima** and had also directed the following parties to appear before this Commission and **also to bring the files and relevant documents** in question for scrutiny on the above date and time for hearing with preventive measures such as wearing of face mask and social distancing etc.

1. Shri. Abhijit Sinha, IAS, Home Commissioner & First Appellate Authority, NSMDA, Home Department, Nagaland, Kohima.
2. Shri. Lhouchalie Viya, IAS, Secretary & PIO, NSDMA, Home Department, Nagaland, Kohima.
3. The applicant (now appellant), Smti. Nuksungtila, The Chambers, Advocates, Agri-Farm Colony, Kohima, Nagaland, Mb- 9862375703.

OBSERVATIONS AND FINDINGS

The Commission had received a letter No. NSDMA/RTI/274/2019 (Pt. II)/6950 dated 25.10.2022 from Shri. Abhijit Sinha, IAS, Home Commissioner & First Appellate Authority, NSMDA, Home Department, Nagaland, Kohima informing his inability to attend the hearing in view of the pre-occupation with the arrangements for the visit of the Hon'ble President of India to Nagaland the following week (on 3.11.2022).

During the hearing, the applicant (now appellant) stated that she is a bonafide citizen of India and had sought for a public document, however, relying on the judgment of the Hon'ble Madras High Court in the matter of N. Saravanan vrs. Chief Commissioner, Tamil Nadu, SIC, in W.P (MD) No. 4336 of 2017 dated 15/03/2017, the PIO, NSDMA had wrongly interpreted the said judgment and denied the information. She submitted that the judgment relied upon by the PIO was that 'a practicing advocate cannot seek information relating to the case instituted by him on behalf of his client', however, '*relating to the case instituted by him on behalf of his clients*' was kept silent. She opined that the PIO should have read the High Court judgment as a whole and not extract part of it. She also pointed out that additional 30 days extension was given as requested by the PIO though there is no such provision for extension of time limit in the RTI Act. However, even after the expiry of the 30 days time, no information was furnished to her. She further stated that she did not attend the first appeal hearing as she had appealed before the Commission. The FAA had also denied furnishing the information, hence she prayed that strict penalty be awarded to the PIO and FAA.

Shri. Lhouchalie Viya, IAS, Secretary & PIO, NSDMA, Home Department, Nagaland, Kohima submitted that the information was denied relying on the judgment of the Hon'ble Madras High Court in the matter of N. Saravanan Vs. Chief Commissioner, Tamil Nadu, SIC, in W.P (MD) No. 4336 of 2017 dated 15/03/2017. Secondly, he pointed out that before the FAA could hear the first appeal on 01.10.2022, the applicant had approached the Information Commission directly by preferring second appeal on 29.09.2022 without following the procedures and had failed to attend the FAA's hearing on her first appeal. Thirdly, the office was burnt down in February, 2017 and all records were lost in the fire incident, and a copy of the FIR was produced before the Commission. He further added that the information sought was too voluminous and hence the information could not be provided.

The Commission pointed out that the applicant (now appellant) gave her address as 'The Chambers, Advocates, Agri-Farm Colony, Kohima, Nagaland, Mobile No. 9862375703' and no designation was mentioned while seeking the information. However, the PIO presumed that the applicant was an advocate and relying on the Hon'ble Madras High Court judgment had denied the information. Further on being asked by the Commission, the PIO could not prove that the applicant is an advocate.

Also, the Commission did not agree with the reply of the PIO since the Madras High Court case and the present appeal case were in different context and that the PIO had wrongly relied on the High Court judgment and jumped to the conclusion that applicant (now appellant) is an advocate and denied the information.

The applicant(now appellant) pointed out that the first appeal dated 10.08.2022 was received by the public authority on 22.08.2022, however the public authority had wrongly entered the date of receipt as 22.09.2022. The Commission also pointed out that two (2) copies of the same First Appeal dated 10.08.2022 were found enclosed. One was received by the Disaster Management Branch of the Home Department, Nagaland Civil Secretariat **vide Receipt No. 22-58 dated 22.08.2022** and the other was received by the C Branch under Home Department, Nagaland Civil Secretariat **vide U.O No. NIL dated 10.09.2022**.

The Commission observed that referring to the first appeal dated 10.08.2022 received by the public authority on **22.08.2022 vide Receipt No. 22-58** by the Disaster Management Branch of the Home Department, Nagaland Civil Secretariat, and only on the last day of the 30 days time limit for the FAA to take decision on the first appeal i.e. on 22.09.2022, Shri. Lhouchalie Viya, IAS, Secretary & PIO, NSDMA, Home Department had, vide letter **No. NSDMA/RTI/274/2019(Pt.II)/6748 dated 22/09/2022** issued notice for hearing to be held on 01/10/2022 at 11:00 A.M in the office chamber of the Home Commissioner. The Commission further observed that deciding appeal is the responsibility of the FAA, and hence the FAA should have notified for the hearing and decide on the first appeal within the 30 days time limit as envisaged under Section 19(6) of the RTI Act which stipulates that:

An appeal under sub-section (1) or sub-section (2) shall be disposed of within thirty days of the receipt of the appeal or within such extended period not exceeding a total of forty-five days from the date of filing thereof, as the case may be, for reasons to be recorded in writing.

The Commission observed that the FAA should have been heard and pass decision on the first appeal within 30 days i.e on or before **22.09.2022**, however, the FAA had failed to hear or give decision on the first appeal within the 30 days from the date of the receipt of the first appeal, and there was no reason recorded in writing about the extension of the time. Moreover, since there was no information received nor any decision of the FAA within the 30 days time for the FAA as envisaged under Section 19(6), the applicant had preferred second appeal on 29.09.2022 before the Commission, under Section 19(3) of the RTI Act which states that:

A second appeal against the decision under sub-section (1) shall lie within ninety days from the date on which the decision should have been made or was actually received, with the Central Information Commission or the State Information Commission:

Provided that the Central Information Commission or the State Information Commission, as the case may be, may admit the appeal after the expiry of the period of ninety days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

The Commission observed that referring to the First Appeal dated 10.08.2022 which was received on 22.08.2022, the PIO had issued summon for a hearing before the FAA. Further, the FAA had also in his first appeal decision order referred to the first appeal received on 22.08.2022. The FAA could hear the appeal only on 01.10.2022 and had passed decision on 03.10.2022. Hence, there was no violation of the procedures in approaching the Commission before the FAA heard the first appeal.

The Commission also observed that the RTI application dated 01.07.2022 was received on 04.07.2022, hence the 30 days time limit expired on 03.08.2022. Further, even after considering the additional 30 days requested by the PIO on 15.07.2022, no information was furnished to the applicant till the date of hearing today i.e on 26.10.2022. Hence, from the date of receipt of the RTI application dated 01.07.2022 on 04.07.2022 to the date of hearing on 26.10.2022, there was a total of 114 days. And considering the 30 days time limit for the PIO to furnish information, the number of days of delay becomes, $114 - 30 = 84$ (**eighty four**) days for which penalty was attracted.

Regarding the FIR on fire incident in 2017, the PIO could have informed the applicant about the fire incident and could have furnished the information pertaining to the records after the fire incident i.e. from 2017 onwards till 2021.

The APIO also stated that the office of the NSDMA used to scrutinise RTI applications since some people seek information for personal interest and not for public interest, and had therefore resorted to the High Court judgment. However, the Commission clarified that the nature of information sought by the present applicant do not fall under the exemption and hence cannot rely on the Madras High Court judgment since the context is different.

Referring to a previous complaint case No. **NIC/Complaint-3/2017-18** in Shri. Akavi Sumi vrs. NSDMA, wherein the applicant, Shri. Akavi Sumi, House No. 168, Lower Forest Colony, Kohima, Nagaland, Mobile No. 9402403339/7105321808, had sought the following information from the PIO, Home Department, Natural Calamities & Disaster Management Authority, Kohima, Nagaland vide RTI application dated **21.06.2017**:-

- i. *The sanction accord from the ministry since 2010 till date (i.e. 21/06/2017) for the State of Nagaland (year wise).*
- ii. *The sub allocation of works and amounts placed under respective districts and name of the Contractor/Firms.*
- iii. *The nature of works and completion of work's certificate with enclosed photos, mentioning the location of works.*
- iv. *All the ongoing works and newly projected works be furnished with all required documents details.*

The NSDMA, Nagaland, Kohima had furnished the information along with the copies of the following documents regarding district-wise Civil Works under NDRF to the applicant.

- i. *District-wise Physical and Financial progress for 1st Phase of NDRF Civil Works for 2013-14;*
- ii. *District-wise Physical and Financial progress for 2nd Phase of NDRF Civil Works for 2013-14;*
- iii. *District-wise Assessment of damages of road during 2014-15 under NDRF;*
- iv. *District-wise Expenditure Statement for NDRF Civil Works from 2012 to 2015;*
- v. *List of proposal for District Disaster Management Authority(DDMA) for 2016-17.*

Since the **period** and **nature** of information sought in the above complaint case were very similar to the present appeal, and that information was already furnished to the applicant (now complainant), the Commission finds no reason or justification on the PIO in denying the information in the present appeal. Further, in the present appeal case, the PIO had taken the excuse of the fire incident in February, 2017 in not furnishing the information to the applicant. The Commission pointed out that in the earlier complaint case, the issue of losing all records in the fire incident did not come up during the hearing and why this time? Hence the excuse of the PIO in not furnishing on time on account of the above grounds submission was **not tenable**.

The Commission also viewed that for voluminous information, the applicant may be invited to inspect the records and take whatever is necessary, and not simply deny just because the information is huge.

DECISION

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

1. Shri. Lhouchalie Viya, IAS, Secretary & PIO, NSDMA, Home Department, Nagaland, Kohima shall furnish the complete information to the applicant (now appellant), Smti. Nuksungtila **within twenty (20) days** from the date of receipt of this decision and with a copy to this Commission. The information shall be furnished **free of cost** to the applicant (now appellant) u/s 7(6) of the RTI Act, 2005.
2. On receipt of the information from the PIO, the applicant (now appellant) shall submit satisfaction or non-satisfaction to the PIO and with a copy to the Commission **within 15 (fifteen) days** from the date of receipt of the information. In case, no confirmation is received from the applicant (now appellant) within the time frame given by the Commission, the case shall be presumed as satisfied and no further request to re-open the case shall be entertained.
3. Under Section 20 (1) of the RTI Act 2005, penalty at the rate of Rs. 250/- per day of delay for the total delay of **eighty four (84) days**, amounting to **Rs. 21,000/-** (Rupees twenty one thousand only) is imposed on Shri. Lhouchalie Viya, IAS, Secretary & PIO, NSDMA, Home Department, Nagaland, Kohima for contributing to the delay in furnishing the information to the applicant (now appellant) without reasonable cause.

The above penalty amount shall be paid within **within 15 (fifteen) days** from the date of receipt of this decision. Since penalty is imposed personally, the penalty amount shall be

deposited into the Government account under his name, designation and signature through **treasury challan** in favour of the Accounts Officer, Nagaland Information Commission, Kohima under the Head of Account given below, with a copy of the **treasury challan** (in original) to this Commission:-

0070 - Other Administrative Services

60 - Other Services

118– Receipts under RTI Act, 2005

Decision pronounced in the presence of both the parties on 26.10.2022 at 11:00 A.M.

Copies be given to:

1. Shri. Abhijit Sinha, IAS, Home Commissioner & First Appellate Authority, NSMDA, Home Department, Nagaland, Kohima.
2. Shri. Lhouchalie Viya, IAS, Secretary & PIO, NSDMA, Home Department, Nagaland, Kohima.
3. The Accounts Officer, Nagaland Information Commission for information.
4. The Computer Programmer, Nagaland Information Commission for uploading on the website.
5. The applicant (now appellant), Smti. Nuksungtila, The Chambers, Advocates, Agri-Farm Colony, Kohima, Nagaland, Mb- 9862375703.
6. Office Copy.

Sd/-

I. MEYIONEN JAMIR
Chief Information Commissioner

Authenticated true copy:

(Worhonthung Ezung)
Deputy Secretary