

No. NIC/APPEAL-37/2022-23 /1857

Dated Kohima, the 20th January, 2023

Appellants : i) Shri. Roka Swu,
Mobile No. 9366071145, and
ii) Shri. Cheno,
Mobile No. 872999303

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 : 19.01.2023 at 11:30 AM.

Date of Decision : 20.01.2023.

Present:

1. Shri. Temsuwangshi Jamir, Assistant Manager & FAA, NSDMA, Home Department, Nagaland, Kohima, Mobile No. 8974539125.
2. Shri. Thejangulie Zao, Assistant Manager & PIO, NSDMA, Home Department, Nagaland, Kohima, Mobile No. 9436282824.
3. Shri. Kevisede Usou, Section Assistant & APIO, NSDMA, Home Department, Nagaland, Kohima, Mobile No. 7204242480.
4. The applicant (now appellant), Shri. Roka Swu, Dimapur, Mobile No. 9366071145.

The following did not appear for the hearing:

1. Shri. Abhijit Sinha, IAS, Home Commissioner & First Appellate Authority, NSDMA, Home Department, Nagaland, Kohima.
2. Shri. Lhouchalie Viya, IAS, Secretary & PIO, NSDMA, Home Department, Nagaland, Kohima.

FACT OF THE CASE

Two applicants Shri. Roka Swu and Shri. Cheno had jointly submitted an RTI application dated **NIL** along with application fee of **Rs. 10/- only** to the PIO, Nagaland State Disaster Management Authority, Nagaland requesting to furnish the following information *under the implementation of the State Disaster Mitigation Fund 2021-2022, Central Ministry sanctioned amount of Rs. 8.20 crores and State Disaster Response Fund 2021-2022, Central Ministry Sanctioned amount of Rs. 32.80 crores.*

1. Sanctioned order fund released by the central ministry under SDMF and SDRF 2021-2022.
2. Utilization Certificate of SDMF and SDRF.
3. Abstract name details of all the beneficiaries along with the details of Project and amount released to beneficiaries of all the districts.
4. Provide details on the Mode of Payment whether banking or cash disbursement.
5. All other related documents under SDMF and SDRF 2021-2022

On receipt of the RTI application on **05/07/2022**, Shri. Lhouchalie Viya, IAS, Secretary & PIO, NSDMA, Home Department, Nagaland had, vide letter No.

NSDMA/RTI/274/2019(Pt)/6583 dated 09/08/2022 furnished the information to the applicants as below:-

Reply to Queries:

Query No. 1 - Enclosed in Annexure- I.

Query No. 2 - Enclosed in Annexure- II.

Query No. 3 - the list of beneficiaries under SDRF is enclosed in Annexure-III. Apart from the relief amount released to beneficiaries, SDRF had been utilized as per the break-up provided below in accordance with the notification by the State Executive Committee (Notification enclosed in Annexure-IV).

Sl. No	Particulars	Amount (in Rupees) 2021
1	Relief to beneficiaries as furnished in Annexure-III	Rs. 19,583,078.
2	Administrative cost of NSDMA	Rs. 81,319,461.
3	Capacity building and training for Disaster management	Rs. 48,791,677.
4	Procurement of equipment's for Search and Rescue	Rs. 32,527,784.
5	Others: As per MHA(DM) revised guidelines vide letter No.33-4/2020-NDM-1 dated 15/04/2021 (enclosed Annexure-V), upto 50 % of the sanctioned SDRF can be utilized for COVID-19 pandemic management	Rs. 18,22,22,000.
Total:		Rs. 36,44,44,000.

Query No. 4 - Provide details on the Mode of Payment whether banking or cash disbursement.

Query No. 5 - All other related documents under SDMF and SDRF 2021-22.

On receipt of the above reply from the PIO, the applicant had preferred/submitted the First Appeal dated 12.09.2022 to the Appellate Authority, NSDMA stating that the provided information was fabricated which leads to incomplete documents, with no proper details record of where and how the fund has been implemented and monitored. Further there were repeated names typed in the beneficiary list without any enclosed identification authority, and that the department had only highlighted the work in the paper without any evidence to support the development.

On receipt of the First Appeal dated 12/09/2022 by the public authority on 13/09/2022, since there was no action or response from the FAA to their First Appeal, the applicants (now appellants) had submitted second appeal dated 27/10/2022 to the Commission.

Since there was no action or response of the FAA even after the expiry of 45 (forty five) days to their First Appeal which was submitted against the "incomplete and fabricated information" hence non-satisfaction of the information provided by the PIO, the Commission has decided to hear the above mentioned Second Appeal by giving opportunity of being heard to all the parties on 19th January, 2023 (Thursday) at 11:30 A.M in the Hearing Room of the 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, NSDMA, Home Department, Nagaland, Kohima.
2. Shri. Lhouchalie Viya, IAS, Secretary & PIO, NSDMA, Home Department, Nagaland, Kohima.
3. The applicants (now appellants), Shri. Roka Swu, M. No. 9366071145, and Shri. Cheno, M. No. 872999303.

OBSERVATIONS AND FINDINGS:

During the hearing, the Commission pointed out that since the present appeal happened during the tenure of Shri. Abhijit Sinha, IAS, Home Commissioner & First Appellate Authority, NSDMA, Home Department, Nagaland, Kohima and Shri. Lhouchalie Viya, IAS, Secretary & PIO, NSDMA, Home Department, Nagaland, Kohima, notice for hearing was served on 06.12.2022, giving them opportunity of being heard on 19.01.2023 at 11:30 AM., however, they did not appear

for the hearing and there was no reason or prior intimation to the Commission regarding their non-appearance before the Commission.

Referring to the Notification No. NSDMA/RTI/274/2019(Pt.III) dated 28.10.2022 issued by the Home Department, NSDMA regarding designating of **new and junior** FAA, PIO and APIO, since the Commission could not accept the above Notification of the Home Department, NSDMA as it was not in conformity with and spirit of the RTI Act, 2005 and the government guidelines for designating of FAA, PIO and APIO, the Commission had vide its letter No. NIC/RTI-MISC/17 dated 11.11.2022, advised the Home Department (NSDMA) to review the above Notification so that the FAA, PIO and APIO would perform their duties effectively, however, there was no update or compliance from the NSDMA till the date of hearing.

The observation of the Commission is reproduced as shown below:-

1. *Public Information Officer (PIO) of a public authority is responsible to supply correct and complete information to an information seeker under the Right to Information Act, 2005 within the specified time. Hence, he should be an officer who have some authority and fair knowledge of the working of the public authority so that information can be accessed easily from the branches and provide within the stipulated time limit. With this aim, the government had notified regarding designating of PIOs & APIOs vide Notification No. AR-3/Gen-147/2002 dated 6th October, 2005 which is enclosed for your ready reference.*
2. *Under Section 19(1) of the RTI Act, 2005, the Appellate Authority is an officer who is senior in rank to the PIO. Deciding an appeal is a quasi-judicial function hence when appointing Appellate Authorities, a balance needs to be struck between ensuring that they are accessible to the public, but at the same time that they are sufficiently senior officials to override the decision of the PIO and make hard decisions or order for disclosure of information. Otherwise, if the Appellate Authority is too junior in the overall hierarchy of the public authority, they may tend simply to support the PIO and may be hesitant to call for a hearing of the PIO or other senior officers and hence will not be able to pass a sound or impartial decision, and in which most likely, result in second appeals before the Information Commission. Likewise, the other senior officers may also not feel comfortable to abide or comply to the summons and the directions of the junior FAA. Hence, in recognition of this fact, the head of the public authority is preferred to be the Appellate Authority.*

In the light of the above, it is therefore advised to kindly review the above notification so that the FAA, PIO and APIO would perform their duties effectively.

After the Notice for hearing dated 06.12.2022 was issued, the Commission had on 12.01.2023 received the FAA's decision vide No. NSDMA/RTI/274/2019(Pt)/3169 dated 16.12.2022 from Shri. Temsuwangshi Jamir, Assistant Manager & new FAA, NSDMA, Home Department, Nagaland, Kohima, stating that two hearings were held on 7.11.2022 at 12:00 PM and 02.12.2022 at 2:00 PM, however, the applicants did not appear and therefore, the appeal was disposed of on the ground that PIO was unsuccessful in contacting the applicants and had failed to turn up for the hearings.

The Commission observed that disposing of appeals just simply on the ground that the applicants could not be contacted and did not appear for the hearing was **not tenable**. The Commission also made it clear that once an appeal lies with the Commission, the appeal can be closed or disposed of only by the Commission and not by the FAA.

DECISION

On the above observations and findings, since the hearing could not be proceeded in the non-appearance of the rightful FAA and PIO, the Commission decided to **reserve its decision** till the next hearing which shall be notified later.

Decision pronounced in the presence of both the parties on 19.01.2023 at 11:30 AM.

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 Computer Programmer, Nagaland Information Commission for uploading on the website.
4. The applicants (now appellants), Shri. Roka Swu, Mobile No. 9366071145, and Shri. Cheno, Mobile No. 872999303.
5. Office Copy.

Sd/-

I. MEYIONEN JAMIR
Chief Information Commissioner

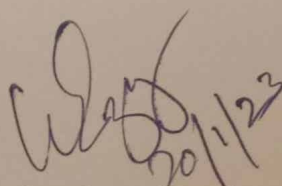
Sd/-

NOSAZOL CHARLES
State Information Commissioner

Sd/-

T. KEKONGCHIM YIMKHIUNG
State Information Commissioner

Authenticated true copy:


(Worhonthung Ezung)
Deputy Secretary