

No. NIC/APPEAL-42/2022-23

/1865

Dated Kohima, the 20th January, 2023

Appellants : Shri. Kiboto Sumi,
Dimapur,
Mobile No. 9362358838.

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 12:30 PM.

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.

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.
3. The applicant (now appellant), Shri. Kiboto Sumi of Dimapur, Ph. No. 9362358838.

FACT OF THE CASE

An applicant, Shri. Kiboto Sumi had submitted an RTI application dated 30.08.2022 addressed to the PIO, NSDMA, Kohima, Nagaland, along with application fee of Rs. 10/-, seeking the following information with reference to information furnished earlier by the department vide No. BSDMA/RTI/247/2019(Pt-II)/6461 dated 07.07.2022: -

1. According to your department reply, under NDRF scheme only the restorative works are undertaken by DDMA's under DNRF in Nagaland from the financial assistance sanctioned by Govt. of India from 2018-22. Therefore kindly furnish allocation order towards DDMA's against the restorative works during the year 2018 – till date since all restorative works were undertaken by DDMA's as per the reply of the Department. You are also requested to give the list of work and amount against the work undertaken by DDMA's from 2018 – till date.
2. Government of India has sanctioned an amount of Rs. 9,90,00,000/- (Nine Crores, Ninety Lacs only) towards SDRF however only an amount of Rs. 5,38,21,994/- (Five Crores, thirty eight lacs, twenty one thousand, nine hundred ninety four) was utilized by the department. You are requested to provide information regarding the utilization of the remaining balance under SDRF-2018.

3. Government of India has sanctioned an amount of Rs. 10,80,00,000/- (Ten Crores, eighty lacs only) towards SDRF out of which an amount of Rs. 6,32,16,620/- only (Six Crores, thirty two lacs, sixteen thousand, six hundred and twenty) was utilized by the department, as per the documents furnished by the department. You are requested to give further information regarding the utilization of the remaining balance under SDRF 2019.
4. Government of India has sanctioned an amount of Rs. 41,00,00,000/- (Forty one crores only) towards SDRF. However an amount of Rs. 5,56,66,855/- (five crores, fifty six lacs, sixty six thousand, eight hundred fifty five) was utilized by the department as per the documents furnished by the department. You are requested to give further information regarding the utilization of the remaining balance under SDRF 2020.
5. Government of India has sanctioned an amount of Rs. 16,40,00,000/- (sixteen crores, forty lacs) towards SDRF out of which an amount of Rs. 1,56,65,480/- (one crore fifty six lacs, sixty five thousand, four hundred and eighty) was utilized by the department, as per the documents furnished by the department. You are requested to give further information regarding the utilization of the remaining balance under SDRF 2021.
6. Whether the financial assistance under SDRF was credited directly from the office of NSDMA or through the DDMAs? Kindly specify the mode of payment to the beneficiaries.
7. Kindly furnish photocopy of allocation order against each districts under SDRF from 2018 till date.
8. Furnish the allocation order or bank statements of financial assistance towards the Emergency Relief Fund under SDRF during 2018 – till date. Provide information regarding the utilization of the emergency relief fund against each sanction as specified in the documents furnished by the department.

Since there was no response from the PIO to the above RTI application even after expiry of stipulated time limit of 30 days, the applicant had submitted a First Appeal dated **10.10.2022** addressed to the FAA, NSDMA, Nagaland, Kohima. However, again since there was no response of the FAA within the stipulated time of 30 days, the applicant had submitted a Second Appeal dated **08.12.2022** which was received by the Commission on **09.12.2022**. The applicant (now appellant) had, in his Second Appeal to the Commission stated that there was no response to his RTI application inspite of repeated reminders after the expiry of one month. Also the department was non-responsive to the various complaints registered. Further, the applicant (now appellant) informed that there was allegation of misappropriation of funds in the department in respect of SDRF & NDRF which is a scheme of financial assistance provided by the Government of India.

Since there was no response from the PIO to his RTI application dated **30.08.2022** and FAA to the First Appeal dated **10.10.2022**, the Commission had decided to hear the above mentioned Second appeal giving opportunity of being heard to all the parties on **19th January, 2023 (Thursday) at 12:30 PM** 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, NSMDA, Home Department, Nagaland, Kohima.
2. Shri. Lhouchalie Viya, IAS, Secretary & PIO, NSDMA, Home Department, Nagaland, Kohima.
3. The applicant (now appellant), Shri. Kiboto Sumi of Dimapur, Ph. No. 9362358838.

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, NSMDA, Home Department, Nagaland, Kohima and Shri. Lhouchalie Viya, IAS, Secretary & PIO, NSDMA, Home Department, Nagaland, Kohima, notice for hearing was served on 14.12.2022, giving them opportunity of being heard on 19.01.2023 at 12:00 noon, 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.

The applicant (now appellant), Shri. Kiboto Sumi, Dimapur did not appear for the hearing. During the hearing, he did not respond at all inspite of attempts by several staff of the Commission to contact him over the phone.

After the Notice for hearing dated 14.12.2022 was issued, the Commission had on 12.01.2023 received the FAA's decision vide No. NSDMA/RTI/274/2019(Pt)/3177 dated 19.12.2022 from Shri. Temsuwangshi Jamir, Assistant Manager & new FAA, NSDMA, Home Department, Nagaland, Kohima, stating that two hearings were held on 16.11.2022 at 12:00 PM and 02.12.2022 at 3:00 PM, however, the applicant did not appear and therefore, the appeal was disposed of on the ground that PIO was unsuccessful in contacting the applicant 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 12:30 PM.

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 applicant (now appellant), Shri. Kiboto Sumi of Dimapur, Ph. No. 9362358838.
5. Office Copy.

Sd/-

I. MEYIONEN JAMIR
Chief Information Commissioner

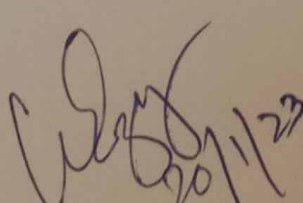
Sd/-

NOSAZOL CHARLES
State Information Commissioner

Sd/-

T. KEKONGCHIM YIMKHIUNG
State Information Commissioner

Authenticated true copy:


(Worhonthung Ezung)
Deputy Secretary