

No. NIC/APPEAL-46/2022-23 /1907

Dated Kohima, the 20<sup>th</sup> March, 2023

Appellants : i) Shri. Avituo,  
ii) Shri. Atuolie,  
iii) Shri. Asa, and  
iv) Shri. Akum, Mobile No. 936692557.

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 : 15.03.2023 at 12:00 Noon.

Date of Decision : 20.03.2023.

Present:

1. Shri. Thejangulie Zao, Assistant Manager, NSDMA, Home Department, Nagaland, Kohima, Mobile No. 9436282824.
2. Shri. Kevisede Usou, Section Assistant, NSDMA, Home Department, Nagaland, Kohima, Mobile No. 7204242480.
3. The applicants (now appellants), Shri. Atuolie and Shri. Akum, Mobile No. 936692557.

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, Commissioner & Secretary, NSDMA, Home Department, Nagaland, Kohima, Mobile No 7085053755.
3. Shri. Temsuwangshi Jamir, Assistant Manager, NSDMA, Home Department, Nagaland, Kohima, Mobile No. 8974539125.
4. The other applicants (now appellants), Shri. Avituo, and Shri. Asa.

#### FACT OF THE CASE

Four (4) applicants, Shri. Avituo, Shri. Atuolie, Shri. Asa, and Shri. Akum had jointly submitted an RTI application dated 18.10.2022 addressed to the PIO, NSDMA, Nagaland, Kohima and along with an application fee of Rs. 10/- seeking the following information regarding district/ block-wise of project/ activities undertaken by NSDMA of NDRF & SDRF from 2018 till date: -

1. Detail statement of fund sanctioned by finance Commission GoI for the year 2018-19-20-21-22 (Yearly).
2. From 2018-19, 2019-20, 2020-21, 2021-22, be furnished in detail along with the amount utilized and the remaining balance.
3. Name of village and project along with specific location of the project.

4. Name of beneficiaries and amount sanctioned for each beneficiaries/ project/ activity.
5. Xerox copy of Aadhaar and utilization certificate.
6. Actual payment receipt (APR).
7. List of cheques issued against each beneficiaries/ project/ activity.

On receipt of the above RTI application, Shri. Thejangulie Zao, PIO & NO, NSDMA, Home Department, Nagaland had, vide No. NSDMA/RTI/274-1004/2019/3044 dated 15.11.2022, denied the applicants of the information sought stating that: -

*"Under Section 3 of the RTI Act confers Right to Information to all citizens. Section 6(1) further provides that a 'person' who desires to obtain information under the Act shall make a request in writing. The legislature in its wisdom has used the word 'person' to denote an applicant, appellant or complainant in various Sections viz., 5(1), 6(1), 6(2), 7(1), 7(3), 7(4), 7(5), 7(6), 7(8), 8(3), 18(1), 19(1) and 26(2).*

*A conjunctive reading of all these Sections, especially section-3 with 6(1), would make it clear that a Citizen as a person can seek public information. A "Citizen", under the Constitution Part II, that deals with "citizenship" can only be a natural born person and it does not even by implication include a legal or a juristic person like the corporation, banks. (Prabhakar S. yende v PIO, Mapusa, Municipal Council, Goa). Section 2(1) of the Citizenship Act defines that a "person" does not include a company, an association or a body of individuals whether incorporated or not.*

*You (in this case, a group of individuals) are therefore requested to consider and accept the limitations of NSDMA to provide you with the information of your interest based on the above provisions of the RTI Act, 2005."*

On being denied the information by the PIO, the applicants had submitted a First Appeal dated 29.11.2022 to the FAA, NSDMA, Home Department, Nagaland for intervention and necessary action.

On receipt of the First Appeal, the FAA had, vide Notice No. NSDMA/RTI/274-1004/2019/3186 dated 21.12.2022, notified for a hearing of the First Appeal on 16.01.2023 at 12:00 PM in the conference room of the NSDMA.

After hearing of the First Appeal on 16.01.2023, the FAA had, citing the above mentioned sections of the RTI Act, 2005, rejected the Appeal, thus denied furnishing of the information sought.

On being not satisfied with the FAA, the applicants (now appellants) had preferred Second Appeal dated 03.02.2023 to the Commission.

Since the applicants (now appellants) were aggrieved by the FAA and PIO by denying furnishing of the information, the Commission has decided to hear the above mentioned Appeal giving opportunity of being heard to all the parties on 15<sup>th</sup> March, 2023 (Wednesday) at 01:30 PM in the Hearing Room of Nagaland Information Commission, Agri-farm Colony, Lane-6, H/No. AFC/578, Nagaland, Kohima and had directed all the 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. The following under mentioned officials are also requested to attend the hearing with preventive measures such as wearing of face mask and social distancing, etc.

1. The First Appellate Authority, NSDMA, Home Department, Nagaland, Kohima.
2. The PIO, NSDMA, Home Department, Nagaland, Kohima.
3. The applicants (now appellants), Shri. Avituo, Shri. Atuolie, Shri. Asa, and Shri. Akum, Mobile No. 936692557.

### **OBSERVATIONS AND FINDINGS**

Out of the four applicants, only two of them, namely, Shri. Atuolie and Shri. Akum had appeared for the hearing. From the respondent side, Shri. Thejangulie Zao, Assistant Manager,



NSDMA, Home Department, Nagaland, Kohima, and Shri. Kevisede Usou, Section Assistant, NSDMA, Home Department, Nagaland, Kohima, had appeared for the hearing.

On the day of the hearing i.e. on 15.03.2023, the Commission had received letter No. NSDMA/RTI/274-1004/2019/236 dated 10.0.2023 submitted by Shri. Temsuwangshi Jamir, new FAA, NSDMA, Home Department, Nagaland, Kohima informing his inability to attend the hearing due to his ongoing medical treatment since the 8<sup>th</sup> of March in Delhi.

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 03.03.2023, giving them opportunity of being heard on 15.03.2023 at 1:30 PM, 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.

Though Shri. Thejangulie Zao, Assistant Manager, NSDMA, Home Department, Nagaland, Kohima, and Shri. Kevisede Usou, Section Assistant, NSDMA, Home Department, Nagaland, Kohima, had appeared for the hearing, since the present RTI application was dated 18.10.2022 which was before the Notification dated 28.10.2022 issued by the NSDMA, the Commission observed that the present RTI case pertain to the tenure of Shri. Lhouchalie Viya, IAS, Secretary & PIO, NSDMA, Home Department, Nagaland, Kohima, and hence an opportunity of being heard was given to him, however, in his absence, the hearing could not be held.

Shri. Thejangulie Zao, Assistant Manager, NSDMA, Home Department, Nagaland, Kohima stated that he had appeared for the hearing thinking that the RTI case was during his time and for which he had apologised 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, 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 6<sup>th</sup> 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 Commission had also observed that though the FAA had, on **21.12.2022** notified for a hearing of the First Appeal on **16.01.2023** at **12:00 PM** in the conference room of the NSDMA, there was no record of the decision of 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 15.03.2023 at 1:30 PM.

Copies be given to:-

1. Shri. Abhijit Sinha, IAS, Home Commissioner & First Appellate Authority, NSMDA, Home Department, Nagaland, Kohima now Principal Secretary to the Chief Minister and Development Commissioner, Nagaland.
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. Avituo, Shri. Atuolie, Shri. Asa, and Shri. Akum, Mobile No. 936692557.
5. Office Copy.

Sd/-

**I. MEYIONEN JAMIR**  
Chief Information Commissioner

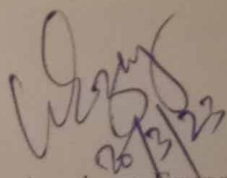
Sd/-

**NOSAZOL CHARLES**  
State Information Commissioner

Sd/-

**T. KEKONGCHIM YIMKHIUNG**  
State Information Commissioner

Authenticated true copy:

  
(Worhonthung Ezung)  
Deputy Secretary