

GAHC040002402018



IN THE GAUHATI HIGH COURT

(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Itanagar Permanent Bench: Yupia

WP(c)217(AP)2018

Public Information Officer
Rural Works Circle(RWC)
Shri Tajo Kamda Tagin
Superintending Engineer
Rural Works Circle, Itanagar
Government of Arunachal Pradesh
Itanagar. Ph : 9436637678

..... Petitioner

-Versus-

1. The Arunachal Pradesh Information Commission(APIC), represented by the Secretary/Registrar APIC, located near the office of the Arunachal Pradesh Public Service Commission, Itanagar, PO/PS – Itanagar, District Papum Pare, Arunachal Pradesh.
2. Shri Marge Angu, C/o Dobum Taram, village Amba, PO/PS Doimukh, District Papum Pare, Arunachal Pradesh.

..... Respondents

By Advocates:

For the petitioner:

Mr. T. T. Tara
Mr. Marc Rime
Mr. Duksor Loyi
Mr. Binter Picha
Mr. Jungam Jini
Mr. Gamken Bam

For the respondents: Mr. Rintu Saikia, standing counsel, APIC

:::BEFORE:::

HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR

Date of hearing : 14.03.2024

Date of Judgment & Order: 14.03.2024

JUDGMENT & ORDER (ORAL)

Heard Mr. Binter Picha, learned counsel for the petitioner. Also heard Mr. Rintu Saikia, learned standing counsel, Arunachal Pradesh Information Commission(APIC), appearing on behalf of Respondent No. 1. However, none has appeared on behalf of Respondent No. 2.

2. The petitioner who is the Public Information Officer(PIO) Rural Works Circle, Itanagar, has instituted the present proceedings, being aggrieved by the order, dated 24.04.2018, issued by the Arunachal Pradesh Information Commission(APIC), Itanagar, requiring the RTI applicant to be provided with the answer sheets as prayed for by him including the answer sheets of 25(twenty five) selected candidates for the post of Surveyor along with the answer sheets of 15(fifteen) candidates who were kept in the wait list failing which it was directed that penalty as provided under Section 20(1) of the Right to Information Act, 2005, would be imposed upon the petitioner.

3. The Rural Works Department, Government of Arunachal

Pradesh, had issued an Advertisement, dated 22.09.2017, inviting applications, amongst others, for the post of Surveyor as advertised. The petitioner was one of the candidates in the said selection process, however, he did not come out successful in the said selection process.

4. The Respondent No. 2, herein, as an applicant, had filed an application under the Right to Information Act, 2005, seeking the answer sheets copies of the written examination of all the 25(twenty five) selected candidates for the post of Surveyor along with that of 15(fifteen) candidates who were kept in the wait list in the selection process for recruitment of Surveyor in the Department of Rural Works, Government of Arunachal Pradesh. The Respondent No. 2 had also sought his own answer sheets.

5. The petitioner as the Public Information Officer(PIO), furnished the answer sheets of the Respondent No. 2 to him and at the same time, refrained from furnishing the copies of the answer sheets of the said 25(twenty five) selected candidates in the said selection process for the post of Surveyor.

6. The petitioner contends that before the expiry of the period of 30 days; the Respondent No. 2 had preferred an appeal before the first appellate authority. Thereafter, on not receiving the information as sought for, the Respondent No. 2 had preferred a

second appeal before the Arunachal Pradesh Information Commission (APIC). The said appeal preferred by the Respondent No. 2 was registered as Case No. APIC-35/2018. The petitioner in terms of the directions passed by the Commission on 25.01.2018, informed all the selected candidates and requested them to give consent for disclosure of the information as sought for by the Respondent No. 2.

7. It is stated by the petitioner that the selected candidates unanimously declined to give their consent and objected to furnishing of any information in the matter pertaining to them to the Respondent No. 2. The selected candidates, thereafter, were intimated the directions of the Commission to appear before the said Commission and accordingly, the selected candidates appeared before the Commission. The Arunachal Pradesh Information Commission (APIC), on 24.04.2018, heard the matter and vide its order, dated 24.04.2018, directed the petitioner to furnish to the Respondent No. 2, the information as sought for by him i.e. photocopies of the answer sheets of the selected candidates for the post of Surveyor as well as the wait listed candidates after blanking out the names of the Examiner, Chief Examiner, their initials and Code numbers. It was further directed that in the event, the said information is not furnished to the Respondent No. 2 by the petitioner within 25.05.2018, penalty as provided for under Section 20(1) of the Right to Information Act, 2005, would be imposed upon the petitioner for the delay

occasioning in providing for the information as sought for by the Respondent No. 2. Being aggrieved, the petitioner has instituted the present proceedings.

8. A perusal of the order, dated 24.04.2018, reveals that the information as sought for by the Respondent No. 2 is admittedly third-party information and accordingly, the selected candidates whose answer sheets were sought for by the Respondent No. 2 on appearing before the Arunachal Pradesh Information Commission(APIC), had categorically appealed for non-disclosure of the answer sheets of the said recruitment process and had also expressed their unwillingness to provide the information as sought for by the Respondent No. 2.

9. The Arunachal Pradesh Information Commission(APIC), thereafter, by devising a method not provided for in the provisions of the Right to Information Act, 2005, proceeded to receive an undertaking from the Respondent No. 2, herein, to the effect that he would not share or disclose the answer sheets of the 25(twenty five) selected candidates for the post of Surveyor, if so furnished to him and thereafter, by recording an observation that the Respondent No. 2 was also cautioned not to misuse the provisions of the Right to Information Act, 2005; proceeded to issued the above-noted directions.

10. The provisions of Section 11 of the Right to Information Act, 2005, deals with third-party information and accordingly, the provisions of proviso to Section 11(1) of the said Right to Information Act, 2005, provides that disclosure of third-party information may be made after following the procedure as prescribed under the provisions of Section 11(1) if the public interest in disclosure of such information outweighs in importance any possible harm or injury to the interests of such third-party.

11. A perusal of the order, dated 24.04.2018, does not reveal that the Arunachal Pradesh Information Commission (APIC) before passing the said order, had reached a conclusion that the information as sought for by the Respondent No. 2 would be in furtherance of the public interest and disclosure of such information outweighs any possible harm or injury that would occasion to the selected candidates on account of disclosure of their answer sheets.

12. The Hon'ble Supreme Court in the case of ***UPSC v. Gourhari Kamila*** reported in ***(2014) 13 SCC 653***, dealing with the issue of disclosure of third-party information, had held that without reaching a conclusion that the disclosure of the information related to other candidates was necessary in larger public interest; the Information Commission could not have passed

orders for disclosure of such information.

13. In view of the above position and this Court having concluded that the directions for disclosure of information as passed by the Arunachal Pradesh Information Commission(APIC) to the petitioner, herein, was so passed without first arriving at a conclusion as mandated under the provisions of proviso to Section 11(1) of the Right to Information Act, 2005; the said order passed by the Arunachal Pradesh Information Commission(APIC) cannot be sustained and requires to be interfered with.

14. This Court, accordingly, sets aside the impugned order, dated 24.04.2018, on the ground that it is not in consonance with the provisions of the Right to Information Act, 2005.

15. Liberty, however, is granted to the Respondent No. 2 to take appropriate steps in the matter as may be called-for and if so advised.

16. With the above directions and observations, this writ petition stands disposed of.

JUDGE