

GAHC040007382024



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

Case No. : WP(C)/229/2024

Taba Tokur
Son of Taba Tado, residing at D Sector near ATI Complex, PO and PS Naharlagun,
Papumpare District, Arunachal Pradesh 791110

VERSUS

The Arunachal Pradesh Information Commission and 3 Ors
represented by the Secretary, Arunachal Pradesh Information Commission, Office
near Civil Secretariat, Itanagar, PO and PS Itanagar, Papumpare District, Arunachal
Pradesh 791111

2:The Registrar
Age: 0
Occupation :

3:The Administrator cum First Appellate Authority
Age: 0
Occupation :

4:The Managing Director cum Public Information Officer
Age: 0
Occupation

Advocate for the Petitioner : Gamken Bam

Advocate for the Respondent : Rintu Saikia

**BEFORE
HONBLE MRS. JUSTICE MITALI THAKURIA**

ORDER

Date : 12.06.2024

Heard Mr. K. Apa, learned counsel for the petitioner. Also heard Mr. P. Taffo, learned Standing counsel, Arunachal Pradesh Information Commission representing the respondents.

2. This application under Article 226 of the Constitution of India has been filed by the present petitioner challenging the impugned Judgment/Order dated 24.05.2024 passed by the Information Commission through the Registrar, APIC, Itanagar (respondent No.2) in APIC No.981/2023, wherein, the matter was remanded back before the First Appellate Court (in short "FAA") for rehearing the parties under RTI Act, 2005 as well as prayed for stay of the impugned hearing notice vide No.APSCABL/RTI/63/2022/23/135 dated 10.06.2024 issued by the respondent No.3/FAA till disposal of the instant case.

3. The brief facts of the case, leading to filing of the present petition, is that the petitioner filed an application on 23.06.2023 before the Public Information Officer, Office of the Arunachal Pradesh State Co-operative Apex Bank Limited, Naharlagun seeking information under Section 6(1) of RTI Act, 2005 in regards to the appointments and joining reports and other details of the officers/officials/staffs of the concerned office. But no information was provided to the petitioner by the present respondent No.4/Public Information Officer and

being aggrieved for non-furnishing of the information even after expiry of 30(thirty) days, the petitioner preferred an appeal under Section 19(1) of RTI Act, 2005 before the First Appellate Authority (in short FAA) on 14.08.2023. After filing of the said appeal dated 14.08.2023, the present respondent No.4 furnished incomplete information vide letter No.APSCABL/RTI/63/2023-24 dated 18.09.2023 by denying that the information sought in serial No.4 (ii), (iii), (vii) and (viii) in RTI 'Form-A' application are pertaining to the third party information and hence, it cannot be furnish.

4. Thereafter, on being highly aggrieved vide letter dated 18.09.2023, the petitioner filed the second appeal in 'Form-E' under Section 19(3) of the RTI Act, 2005 on 09.10.2023 before the present respondent No.1 which was accordingly registered as APIC-No.981/2023 (Appeal) by complying mandatory provision prescribed under Section 19(3) of the Act and also notice had been issued fixing the hearing on 24.05.2024 at 1030 hrs. However, without considering the report dated 24.05.2024 and without affording any opportunity of hearing to the petitioner, the second appeal was considered as pre-matured pertaining to the full bench of 5(five) Judges Judgment/resolution drawn up dated 08.05.2024 and accordingly, the said appeal was remanded back before the FAA.

5. It is submitted by the learned counsel for the petitioner, Mr. Apa that the respondent authority had arbitrarily and whimsically pronounced in open Court without applying judicious mind stating that the matter is being pre-matured as pertaining to the 5(five) full judges of APIC, Itanagar drawn resolution dated 08.05.2024 and accordingly remanded back before the FAA by directing to hear both the parties following the principal of natural justice and thereafter, directed

to pass reasoned and speaking order on merit within a period of 3(three) weeks from the date of receipt of the order. He also submitted that as per Section 19(3) of RTI Act, 2005, the SAA has no right to remand back the matter to the FAA without hearing the petitioner and thus, the SAA passed the order whimsically and arbitrarily which is against the statutory provision of RTI Act, 2005 and hence, the same is liable to be set aside and quashed.

6. He further submitted that the minutes of meeting resolution drawn dated 08.05.2024 cannot override the statutory provision laid down under RTI Act, 2005 and as such, the impugned judgment/order dated 24.05.2024 passed in terms of minutes of the meeting resolution drawn dated 08.05.2024 are not sustainable in the eye of law and thus, same is liable to be set aside and quash for the interest of justice. Further, he prays for issuance of writ of certiorari as well as for setting aside the judgment/order dated 24.05.2024 passed by the Information Commission through the Registrar, APIC, Itanagar (respondent No.2) in APIC No.981/2023 and also prayed for stay of the impugned hearing notice vide No.APSCABL/RTI/63/2022/23/135 dated 10.06.2024, till disposal of the instant case.

7. In this regard, Mr. Taffo, learned Standing counsel, Arunachal Pradesh Information Commission for the respondents has submitted that the SAA had passed the appropriate order by remanding the matter back before the FAA. He also submitted that in pursuant to the direction of the SAA, the notice has already been issued to the parties by directing them to appear before the FAA for hearing on 13.06.2024 at 1200 hrs in the Office of Administrator, Apex Bank, Naharlagun. He further submitted that as per Section 19(3) of the Act " 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". But, here in the instant case, the SAA passed the reasoned order and remanded back the matter before the FAA with a direction to conduct hearing afresh by giving fair and equal opportunity to both the appellant and the PIO and thereafter, to pass reasoned and speaking order on merit within three weeks from the date of receipt of the order. Thus, the SAA has committed no illegality or irregularity while passing the order/Judgment dated 24.05.2024.

8. Hearing the submissions made by the learned counsels for both sides, and upon perusal of the case records, it is seen that the present petition has been preferred by the petitioner being aggrieved by the order dated 24.05.2024, wherein, the matter was remanded back before the FAA. As per the petitioner, SAA has no power under Section 19(3) of RTI Act, 2005 to pass any order of remand, rather he has to dispose of the matter finally and cannot pass such an order of remanding the matter with a direction to the FAA to disposed of the matter. But, as per Section 19(3) of RTI Act, 2005, the second appeal against the decision under Sub-Section (1) shall lie within ninety days from the date of order. But, here in the instant case, it is seen that the SAA i.e the information commission had accepted the appeal and after hearing the parties remanded the case before the FAA to dispose of the matter by giving fair and equal opportunity of hearing to both the parties and to pass the reasoned order. It is the case of the petitioner that, the FAA did not pass any reasoned order and

could not furnished all the details information as sought by the petitioner for which the SAA had remanded back the matter to the FAA only to pass the reasoned order by giving fair and equal opportunity to both the parties. The order of remand can also be considered as the order of disposal and SAA has the power/right to remand back the matter to the FAA, if they think that no reasoned order has been passed by the FAA.

9. Thus, it is seen that no error or mistake has been committed by the SAA while passing the order of remand with a direction to the authority concerned to dispose of the matter within 3(three) weeks from the date of order by giving fair and equal opportunity to both the parties. Further, the petitioner can raise his grievances before the authority concerned at the time of hearing of the case, if, he is being aggrieved by the further order of the FAA, and the petitioner will be at liberty to file another appeal against the order of FAA.

10. In view of the entire facts and circumstances of the case, this Court do not find any effective reasons to make any interference in the impugned Judgment/Order dated 24.05.2024 passed by the Information Commission through the Registrar, APIC, Itanagar (respondent No.2) in APIC No.981/2023 and thus, the same stands dismissed.

11. Accordingly, the writ petition stands disposed of at the motion stage itself. However, the FAA is hereby directed to dispose of the matter as per the direction of the SAA by giving an opportunity of hearing to both the parties.

JUDGE

Comparing Assistant