

GAHC040012462024



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

Case No. : WP(C)/422/2024

Tashi Tsering
Son of Late Genden Tsering, resident of Lebrang Village, Tawang, PO, PS and
District Tawang, Arunachal Pradesh. 790104

VERSUS

The Arunachal Pradesh Information Commission and 5 Ors
represented by the Secretary, APIC, Office near Civil Secretariat, Itanagar, PO and PS
Itanagar, Papumpare District, Arunachal Pradesh. 791111 2:The Chief Information
Commission

Age: 0

Occupation :

APIC

Office near Civil Secretariat

Itanagar

PO and PS Itanagar

Papumpare District

Arunachal Pradesh. 791111

3:The Registrar

Age: 0

Occupation :

APIC

Office near Civil Secretariat

Itanagar

PO and PS Itanagar

Papumpare District

Arunachal Pradesh. 791111

4:The Deputy Registrar

Age: 0

Occupation :
APIC
Office near Civil Secretariat
Itanagar
PO and PS Itanagar
Papumpare District
Arunachal Pradesh. 791111

5:Joi Angu
Age: 0
Occupation :
The First Appellate Authority cum Superintendent Engineer
Public Health Engineering Department
Rupa/ Shergaon Division
PO Rupa
PS Rupa
West Kameng District
Arunachal Pradesh 790003

6:Gepiam Mize
Age: 0
Occupation :
The Public Information Officer cum Executive Engineer
Public Health Engineering Department
Tawang Division
PO
PS and District Tawang
Arunachal Pradesh 79010

Advocate for the Petitioner : Binter Picha, Taying Nega, Tao Tarin, Jumgam Jini

Advocate for the Respondent : Rintu Saikia, SC(APIC)

-BEFORE-

HON'BLE MR. JUSTICE KALYAN RAI SURANA

17.09.2024

Heard Mr. B. Picha, learned counsel for the petitioners as well as Mr. R. Saikia, learned Standing counsel for the respondent Nos. 1 to 4.

2. The case of the petitioner is that he has filed an RTI application

before the Public Information Officer (for short, 'PIO'), PHED, Tawang Division seeking certain information pertaining to the period from 01.01.2012 to 31.05.2016.

3. Being aggrieved by non-providing of the information, the petitioner preferred First Appeal before the designated authority i.e. the Superintending Engineer, PHED, Shergaon Division, West Kameng District on 27.06.2024. The petitioner projects that before the PIO as well as before the First Appellate Authority, the requisite payment was made by way of challan.

4. As per sub-section 6 of Section 19 of the Right to Information Act, 2005 (for short, 'RTI'), an Appeal under Sub-Section (1) or sub-section (2) is required to be disposed of within thirty days of the receipt of the appeal or within such extended period not exceeding a total of forty-five days from the date of filing of such appeal, as the case may be, for reasons to be recorded in writing.

5. The petitioner projects that despite filing of the First Appeal, as the required information was not provided, the petitioner had filed a Second Appeal under Section 19 (3) of the RTI Act, 2005. The said appeal is dated 26.08.2024, which was filed before the Arunachal Pradesh Information Commission and requisite appeal fees was also deposited. The Second Appeal was received by the office of Arunachal Pradesh Information Commission on 26.08.2024. However, by the impugned letter dated 30.08.2024, the Registrar, Arunachal Pradesh Information Commission has returned the Appeal filed by the petitioner for the following reasons

assigned:-

“The first Appeal has not been adjudicated by the First Appellate Authority (FAA) following due process of the law i.e. by having proper hearing of the parties and/or without passing reasoned and speaking order”.

6. Being aggrieved, the petitioner has assailed the said communication dated 30.08.2024 with a further prayer to direct the respondent No. 6 i.e. the PIO to provide the information.

7. Defending the impugned communication dated 30.08.2024, the learned Standing counsel for respondent Nos. 1 to 4 has submitted that the return of the Appeal is justified because under the provisions of Rule 3 and 4 of the Arunachal Pradesh Information Commission (Appeal Procedure) Rules, 2005 (hereinafter referred to as 2005 Rules), there is a prescription about the contents of the appeal and the documents to accompany the appeal memo. Accordingly, it is submitted that as the Appeal of the petitioner was not in compliance with the requirement of Clause (i) of Rule 4 of the said 2005 Rules, the Appeal was rightly returned.

8. It is the further submission of the learned Standing counsel for the respondent Nos. 1 to 4 that under the provision of Section 18 (1) (c) of the RTI Act, 2005, State commission can be moved by a complaint by the petitioner who has not been given response to a request for information within the time limit specified. Therefore, it is submitted that the return of the appeal is justified and the petitioner may file a complaint as prescribed under Section 18 of the RTI Act, 2005 .

9. Referring to sub-section 3 of Section 19 of the RTI Act, 2005, the learned Standing counsel for respondent Nos. 1 to 4 has submitted that the said provisions also requires that the Second Appeal would be maintainable against the decision by the First Appellate Authority under sub-section 1 of Section 19 of the said Act.

10. Moreover, it is submitted that since the matter is at the motion stage, if a notice is issued he would obtain instruction and file an affidavit-in-opposition and accordingly, he prays for issuance of notice.

11. It would be relevant to quote the provisions of Section 18 (1) and sub-section 1 of sub-section 3 of Section 19 of the RTI Act, 2005 and also to quote the provisions of Rule 3 and Rule 4 of the 2005 Rules.

18 (1) Powers and Functions of Information Commission-(1) subject to the provisions of this Act, it shall be the duty of the Central Information Commission or State Information Commission as the case may be to receive and inquire into a complaint from any person,-

(a) who has been unable to submit a request to a Central Public Information Officer, or State Public Information Officer as the case may be, either by reason that no such officer has been appointed under this Act, or because the Central Assistant Public Information Officer or State Assistant Public Information Officer, as the case may be, has refused to accept his or her application for information or appeal under this Act for forwarding the same to the Central Public Information Officer or State Public Information Officer or Senior Officer specified in sub-section (1) of section 19 or the Central Information Commission or the State Information Commission, as the case may be;

- (b) who has been refused access to any information requested under this Act;
- (c) who has not been given a response to a request for information or access to information within the time limits specified under this Act;
- (d) who has been required to pay an amount of fee which he or she considers unreasonable;
- (e) who believes that he or she has been given incomplete, misleading or false information under this Act; and
- (f) in respect of any other matter relating to requesting or obtaining access to records under this Act.

19(1) Any person who does not receive a decision within the time specified in sub-section (1) or clause (a) of sub-section (3) of section 7, or is aggrieved by a decision of the Central Public Information Officer or the State Public Information Officer, as the case may be, may within thirty days from the expiry of such period or from the receipt of such a decision prefer an appeal to such officer who is senior in rank to the Central Public Information Officer or the State Public Information Officer, as the case may be, in each public authority; provided that such officer may admit the appeal after the expiry of the period of thirty days if he or she is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

19 (3) 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. Provided that the Central Information Commission or the State Information Commission, as the case may be, may admit the appeal after the expiry of the period of ninety days if it is satisfied that the appellant was prevented by sufficient

cause from filing the appeal in time;

(4) If the decision of the Central Public Information Officer or State Public Information Officer, as the case may be, against which an appeal is preferred relates to information of a third party, the Central Information Commission or State Information Commission, as the case may be shall give a reasonable opportunity of being heard to that third party.

12. Information is sought for by the petitioner, which is not provided. Therefore, in such matters, the delay in adjudication by issuance of notice will not serve the purpose of the RTI Act, 2005 and Rules framed thereunder. Accordingly, issuance of notice in the matter is dispensed with and the Court is inclined to dispose of the writ petition at the motion stage without issuance of notice on the respondents.

13. From a perusal of the provisions of section 19 (3) of the RTI Act, 2005, it is crystal clear that a Second Appeal is maintainable against the decision by the First Appellate Authority and the appeal shall also lie within 90 days from the date '*on which the decision should have been made*'. Further reading of Section 19 of the RTI Act is also indicative of the fact that an appeal would otherwise lie within 90 days from the date on which a copy of the decision is received by the person seeking information. There is nothing contained in Section 19 of the RTI Act, 2005 that an appeal under Section 19 (3) is impermissible without due filing of a complaint as envisaged under Section 18 of the RTI Act, 2005. In other words, Section 19 of the 2005 Act is not found to be subservient to the provisions of Section 18 of the said Act.

14. Therefore, in the absence of a restrictive clause in the provision of

Section 19 of the RTI Act, 2005 which debars filing of an appeal unless a complaint is first made as per Section 18 (1) (c) 2005 Act, the Court is of the considered opinion that it was incumbent on the part of the Second Appellate Authority i.e. the Arunachal Pradesh Information Commission to pass an appropriate order in such an appeal. Moreover, to return an appeal amounts to granting protection to the First Appellate Authority and harassment to an information seeker on whose first appeal, no order is passed.

15. Coming to the prescription of Rule 3 of the 2005 Rules, It is seen that though under Clause (iii) a mention is made regarding the orders against which appeal is being made where the relevant particulars of the State Public Information Officer had passed the order. But the learned counsel for the respondent Nos. 1 to 4 could not show how the 2005 Rules can be allowed to override the prescription of law which is made under sub-section 3 of Section 19 of the RTI Act, 2005. No State amendment has been brought about in the Right to Information Act, 2005 so as to exclude the operation of Section 19 (3) unless the First Appeal is disposed of either by providing requisite information or rejection of appeal is ordered. Therefore, clause ix of Rule 3 of 2005 Rules, which requires that the appeal should contain any other information which the commission may deem necessary for deciding the appeal, has to be read in consonance with the section 19 (3) of the 2005 Act which permits a Second Appeal to be filed within 90 days '*from the date on which the decision should have been made*'. Therefore, a disclosure of such information in the appeal memo filed before the Second Appellate authority that no order was

passed in First Appeal would be sufficient for the said authority to exercise its jurisdiction in entertaining an appeal under Section 19 (3) of the RTI Act, 2005.

16. The requirements of the documents to accompany the appeal is already extracted hereinbefore, which is prescribed under Rule 4 of the 2005 Rules. The requirement of Clause 1 of Rule 4 is that attested true copy of the order against which the appeal is being preferred is required to be disclosed. However, as already held hereinbefore, the provision of sub-section 3 of Rule 19 of the RTI Act, 2005 is to permit filing of a Second appeal even if no information is given within the prescribed time period, the prescription of Clause (i) of Rule 4 cannot be allowed to defeat the legislative intent of Section 19 (3) of the RTI Act, 2005. Therefore, in the considered opinion of the Court, in the event first appellate order is not made available to the party seeking information, a disclosure of such material under Clause (ii) of Rule 4 which requires copies of documents relied upon by the appellant an effort to the appeal is appended to the Memo of appeal that would constitute an appropriate disclosure by the petitioner for the Second Appellate authority to entertain the appeal.

17. The issues raised in this writ petition is a pure question of law requiring interpretation of provision of Section 19 (3), 18 (1) (b) and 18 (1) (c) read with Rule 3 & 4 of the Arunachal Pradesh Information Commission (Appeal Procedure) Rules, 2005, the Court is inclined to hold that an appeal under sub-Section 3 of Section 19 would be maintainable by an applicant on whose application any information was sought for and on whose first appeal, no orders were passed. Moreover, it is also held

that Section 19 (3) of the RTI Act, 2005 is not subservient and dependent on compliance of filing of complaint as envisaged under Section 18 (1) of the RTI Act, 2005.

18. Resultantly, it is also declared that the absence of any order in the Memo of appeal, where no such order was passed by the First appellate authority, would not entail dismissal and/ or return of the appeal in view of absence of any restrictive clause in RTI Act, 2005 that unless all the contents as mentioned under clause (i) to (ix) of the 2005 Rules cannot be filled up, the appeal would not be maintainable. Accordingly, the absence of orders can be disclosed in a Memo of appeal in terms of Clause 3 of Rules 3 and Clause-(ii) of Rule 4 would be sufficient compliance by appellant in a Second Appeal, on whose application the information is not disclosed by the State Public Information Officer. Moreover, in whose First appeal, no order is passed by the First Appellate authority.

19. In the light of the above discussions, this writ petition stands allowed without issuance of notices upon the respondents.

20. Consequently, the communication No. APIC-36 / G. Corr-MISC /2014-Vol-9 /56, dated 30.08.2024 stands set aside and quashed.

21. The Second appeal preferred by the petitioner stands restored to the file of the Arunachal Pradesh Information Commission and the petitioner would be permitted to re-file his Second appeal before the said authority within a period of 30 days from today and on presentation of the same, the Arunachal Pradesh Information Commission shall entertain the appeal in accordance with the law.

22. This writ petition is allowed on terms as indicated above.

23. There shall be no order as to cost(s).

JUDGE

Comparing Assistant