

THE HIGH COURT OF TRIPURA
AGARTALA

W.P. (C) 42 of 2015

Smt. Supriya Das,
Daughter of Chandramani Das
of Uttar Ramnagar, PO. Bimangarh,
PS. Airport, District – West Tripura.

..... *Petitioner*

- Vs. -

1. The State of Tripura,
To be represented by the Secretary/Commissioner,
Department of Youth and Sports Affairs,
Government of Tripura,
New Secretariat Complex, Kunjaban,
Agartala, West Tripura, PIN 799006.
2. The S.P.I.O.,
In the O/o. the Directorate of Youth Affairs &
Sports, Government of Tripura,
D.D.S.S. Complex, Badharghat, Agartala,
West Tripura, PIN 799
3. The Deputy Director,
In the O/o. the Directorate of Youth Affairs &
Sports, Government of Tripura,
D.D.S.S. Complex, Badharghat, Agartala,
West Tripura, PIN 799
4. The First Appellate Authority,
Under the Right to Information Act, 2005,
In the O/o. the Directorate of Youth Affairs &
Sports, Government of Tripura,
D.D.S.S. Complex, Badharghat, Agartala,
West Tripura, PIN 799
5. Tripura Information Commission,
(To be represented by the Secretary,
Tripura Information Commission,
P.N. Complex, Gurkhabasti,
Agartala, PO. Kunjaban,
West Tripura, PIN 799006.

..... *Respondents*

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA
HON'BLE MR. JUSTICE S. TALAPATRA

For the Petitioner : Mr. K. Nath, Advocate.
Mr. S. Bhattacharjee, Advocate.

For the respondent-State : Mr. T. Datta Majumder, GA.

Date of hearing & : 09.03.2015.
delivery of
Judgment & order

Whether fit for : Yes.
reporting

JUDGMENT & ORDER (ORAL)

(Deepak Gupta, CJ.)

By means of this writ petition, the petitioner has prayed for various reliefs, but at this stage, we are only dealing with the issues which relate to the Right to Information Act, 2005 (hereinafter referred to as 'the RTI Act').

2. Briefly stated the facts of the case are that the petitioner along with many others applied for being appointed as Jr. Physical Instructor on 15th March, 2010. It appears that she was interviewed by the Board, but the result was not declared. Therefore, on 29th November, 2013, the petitioner filed an application under Section 6 of the RTI Act to the State Public Information Officer (hereinafter referred to as 'the SPIO') of the Department concerned to supply her with the entire copy of the file. This application was filed on 29th November, 2013. The document asked for was as follows:-

"Photocopy of the entire file in connection with selection a appointment of Junior Physical Instructor in the Deptt of YA & Sports."

3. On 10th December, 2013, the SPIO communicated the following order to the petitioner:-

***"No.F. 4(43)-DYAS/2005/10,395
Government of Tripura
Directorate of Youth Affairs & Sports
Agartala***

Dated, Agartala, the 10/12/2013

***To
Smt. Supriya Das,
D/O Sri Chandramani Das
Vill – Uttar Ramnagar, PO – Airport***

Subject:- Seeking information under R.T.I. Act of 2005.

Sir,

In reference to your application dated 29/11/2013, on the subject cited above, I am to inform you that as per provision of RTI-2005, it does not cover for supplying the information/materials because the issue is under process.

This is for your information please.

Yours faithfully

***S/d illegible
(Alok Mukherjee)
S.P.I.O.
Deputy Director
Directorate of Youth Affairs & Sports
Tripura"***

4. The only ground for rejection was that since the issue is under process, the petitioner is not entitled to the information claimed. Aggrieved by this order, the petitioner filed an appeal before the First Appellate Authority under the provisions of the RTI Act and again claimed that she be given the copy of the entire file. Various grounds were raised as enumerated in the grounds and there are as many as 15 grounds raised in the petition. The First Appellate Authority gave various dates and finally rejected the

Government of Tripura, Agartala in view of the fact that the process of selection for the post has not been completed. After the selection is over, the Department is under obligation to place the entire matter in public domain.

***Yours faithfully,
S/d illegible
(Dr Manash Dev)
Secretary
Tripura Information Commission"***

6. The RTI Act, 2005 enacted by Parliament gives a very valuable right to the citizens of the country to obtain information as a matter of right from any Government department. This Act has been brought in with a view to bring in transparency in public action. We may refer to the opening portion of the Act which reads as follows:-

"An Act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto.

Whereas the Constitution of India has established democratic Republic;

And WHEREAS democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed;

AND WHEREAS revelation of information in actual practice is likely to conflict with other public interests including efficient operations of the Governments, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information;

AND WHEREAS it is necessary to harmonise these conflicting interests while preserving the paramountcy of the democratic ideal;

NOW, THEREFORE, it is expedient to provide for furnishing certain information to citizens who desire to have it."

7. We may now make reference to the Constitution of the State Information Commission which consists of a State Chief

Information Commissioner and at least one State Information Commissioner. The importance of these posts can be gauged from the fact that the appointments to these posts are made by the Governor on the recommendations of a Committee consisting of the Hon'ble Chief Minister, the leader of the opposition and a cabinet minister to be appointed by the Chief Minister. Section 19 of the Act deals with the Appellate powers. Sub-Section (3) of Section 19 provides that a second appeal against the order of the appellate authority shall lie to the Central Information Commission or the State Information Commission as the case may be. We may make reference to sub-Section (4) also which provides that if any third party is likely to be affected by the disclosure of the information then such party must also be heard by the Information Commission. Sub-Section (5) of Section 19 provides that in any appeal, the onus to prove that a denial of a request was justified shall be on the State Public Information Officer. Therefore, though the appeal may have been filed by the person seeking the information, the burden still lies on the State Public Information Officer to satisfy the Commission that the denial of the request for information was justified. The Central Information Commission or the State Information Commission are the final authority and they have to pass a decision. Sub-Section (10) provides that the Central Information Commission and the State Information Commission shall decide the appeal in accordance with procedure as may be prescribed.

8. Section 27 of the RTI Act empowers the State Government to frame Rules. The State of Tripura has framed the Tripura Right to Information Rules, 2008. Rule 21 deals with lodging and disposal of second appeals to the State Commission. Sub-Rules (5), (6), (9), (12) and (13) are important for our purpose. Sub-Rule (13) mandates that the Commission must fix a date for hearing of the appeal and notice of the said date should be served upon the appellant and the respondent in the manner prescribed for service of summons as provided in the Code of Civil Procedure. Sub-Rule (5) lays down that the appellant and the respondent can appear in the hearing either personally or through duly authorized representatives. The Commission, however, has the power to insist that the appellant or the respondent, as the case may be must appear in-person. Sub-Rule (6) provides that the appellant should be intimated of the date of hearing in Form 20 and in case of the respondent Form 29 should be used. Sub-Rule (9) provides that where any appeal is to be rejected, the Commission is bound to record the reasons for research rejection. Sub-Rule (12) provides that if the interest of any third party is likely to be affected then notice to said third party should be issued in Form 26 and such party should also be heard before disposal of the appeal.

9. A bare perusal of the Rules makes it absolutely clear that the State Commission has no power to dispose of appeal

without hearing the parties. Furthermore, the State Commission is duty bound to record its reasons while deciding the appeal.

10. Furthermore, Section 19(6) of Act provides that the appeal by the State Commission normally be disposed of within 30 days and under no circumstances beyond 45 days. Penalty can be imposed if the applications or appeals are not disposed of in the time provided. We are not going into these matters in this case, but we are surprised that what has been conveyed to the petitioner on October 16, 2014 is only an information by the Secretary of the Tripura Information Commission informing him that her appeal has been rejected. There is no reference to any hearing having been given to the petitioner. There is no reference to any decision which may have been passed by the State Information Commission. We would like to reiterate that the decision in the appeal has to be passed by the State Information Commission which must be a reasoned order dealing with all points raised in the appeal and cannot be a laconic order just rejecting the appeal in a single line. In effect what has been stated in the letter dated October 16, 2014 is that the appeal of the petitioner along with the decision of the authorities were placed before the Commission and the Commission has upheld the said decision. What were the reasons which weighed with the State Information Commission for upholding the order have not been mentioned. This Court has time and again held that the reasons

are the heart and soul of any judicial order. An order which does not contain reasons is an arbitrary order and cannot be termed to be a judicial order. The State Commissioners enjoy vast powers under this Act and it is expected that they should exercise the duties as envisaged by the law makers while framing the RTI Act.

11. The manner in which this case has been dealt leaves much to be desired. We could have said much more but since now the State has in fact virtually provided most of the information with the reply affidavit and has also stated that any balance information will be supplied to the petitioner within 15 (fifteen) days, we are not going into these aspects of the matter. However, we must clarify that merely because the Government or its officials take years to take decisions cannot be a ground to deprive the applicant of the information required. One of the reasons for seeking information can be why no decision has been taken for such a long time. This information cannot be denied only on the ground that the matter is still pending. As held by us above, Section 19(5) places the burden on the authorities to prove that there is justification for denial of the request. We would like to make it clear that even where the final decision in any ongoing process has not been taken those portions of the file which do not affect any secrecy have to be disclosed to the applicant and the only exceptions are those envisaged in Section 8 of the RTI Act. When any authority whether it is the SPIO or the Appellate

Authority or the Commission is rejecting the prayer of a petitioner for grant of any documents, it must make reference to the specific provision which it relies upon while denying the documents.

12. A copy of this order shall be sent to the Secretary of the Tripura Information Commission, who shall ensure that it is placed before the Tripura Information Commission.

13. A copy of this order shall also be sent to the Chief Secretary of the State of Tripura who shall ensure that it is circulated amongst all SPIOs and Appellate Authorities so that this judgment is followed in letter and spirit in future.

14. As far as the present case is concerned, the matter has virtually become infructuous. Therefore we dispose of the same, but with liberty reserved to the petitioner to challenge the selection process, if she is so advised, in accordance with law.

JUDGE

CHIEF JUSTICE

sima