

**MEGHALAYA STATE INFORMATION COMMISSION,
SHILLONG**

...

MIC/COMPLAINT/14/2009/11,

Bisonroy Iano of Raliang

- Complainant

-Vrs-

Shri B.Pachiang, PIO & Jt. Secretary, Executive Committee,
J.H.A.D.C., Jowai.

- Respondent

22-4-2009

ORDER

The Respondent-PIO, Shri B.Pachiang is present in the Commission today along with the following APIOs of the Public Authority viz.,

1. Shri N.N.Kalita, Chief Engineer i/c Civil Works Department, JHADC, Jowai
2. Shri F.W.Blah, Chief Forest Officer i/c Forest Department, JHADC, Jowai
3. Smti O.Shylla, Finance & Account Officer i/c Finance & Account Deptt., JHADC, Jowai
4. Smti B.Bthuh, Administrative Officer i/c Political Department, JHADC, Jowai
5. Shri S.Passah, Special Officer i/c A.S.F.M., Department, JHADC, Jowai.

The Secretary to the Executive Committee, J.H.A.D.C., Jowai, Shri S.Pde is also in attendance. The Complainant is however absent.

The PIO and all the APIOs filed their show cause through a joint-affidavit.

The fact of this case is as follows:

The Complainant filed an RTI application before the PIO on 23-12-2008 requesting him to furnish the list of certain schemes implemented by the J.H.A.D.C., under the 13-Raliang & 14-Mookaiaw Constituency for the financial year 2001 upto 2008-09. The PIO however failed to furnish the information to the Complainant within the statutory period of 30 days and hence the instant complaint before this Commission.

The Respondent-PIO was asked to justify denial of the information to the Complainant. During the process of enquiry the PIO submitted that the

information requested by the Complainant is not under his custody and that the information is in fact held by the APIOs named above. That he had taken immediate steps to seek their assistance for furnishing the information but they failed to comply with his request. As a result, it has not been possible for him to furnish the information to the Complainant within the statutory period of 30 days. He had in fact responded to the Complainant on 23-1-2009 vide letter No.JHADDC/PUB/RTI/5/2008/10 informing him that he does not hold information under his custody but had called for the same from the respective APIOs and that information will be furnished when the materials are received from the concerned APIOs. It was only on 6-3-2009 that he could furnish information on item No.7 i.e. G.R. Relief and Natural Calamities as furnished by the Finance Officer and on 17-3-2009 on items 1, 2, 3, 4 & 14 of the application, on receipt of the material from the Chief Engineer. The rest of the information he could furnish only on 13-4-2009 on receipt of information from the concerned APIOs. He also submitted that he had deemed all the concerned APIOs as PIOs under section 5(5) of the RTI Act so that they are answerable for the delay in furnishing the materials for information.

The issue for decision by the Commission is therefore:-

Whether the PIO and APIOs (deemed PIOs) are liable for penalty under RTI Act for refusal access to information to the Complainant?

The affidavit filed before this Commission confirms the statement made by the PIO that the information is not available with him but held by the concerned APIOs. From the evidence on record it also appeared that the PIO had called for the assistance of the APIOs in furnishing the materials. He even reminded them of the legal requirement. He had also informed the Complainant that the reason for delay in furnishing the information is not because of any refusal on his part but because of the fact that information is not held by him and that he had not received the relevant materials from the APIOs he had asked for. It is, therefore, evident that the PIO had been rendered helpless due to failure on the part of the APIOs to furnish the information to him it is also on record the he had deemed them PIOs under section 5(5) of the RTI Act.

As per affidavit filed by the APIOs it appears that they had submitted the files containing the relevant information to the respective Executive Member in-charge

for their approval in pursuance of some decision of the Executive Committee of the Council requiring all branches officer to furnish the information under RTI only after obtaining the approval of the Executive Member in-charge of the subject concerned. They, therefore, pleaded that in pursuance of the above decision they have put up to the respective Executive Member in-charge for approval before they could sent the material to the PIO but for reason best known to the concerned Executive Members they did not dispose of the files containing the information within the statutory period of 30 days. As a result, they have been hindered from discharging their lawful duties as APIOs within the time stipulated by Law.

The Commission, on examination noted that the Executive Committee, JHADC, Jowai had, vide decision No.2 dated 9-1-2009 made the following decision, viz., “Furnishing of information under RTI Act: Discussed in the meeting that most of the information so far furnished to the applicant were effected without the approval of the Executive Member in-charge. It is decided that henceforth any information required by the public or any party shall be given to them only after obtaining the approval of the Executive Member in-charge of the subject”.

The Commission observed that the Autonomous District Councils in the State are all public authorities under the RTI Act and being such public authorities under the Law it is their bounded duties to follow strictly the provisions of Law in relation to requests of information and timely supply of the information requested. The Commission, therefore, holds that any decision or Orders made by any public authority so identified/constituted under the Law, which tend to defeat the purpose of the Law, is by itself illegal and should be avoided.

The Commission therefore, makes it very clear that any officer designated under the Law are not bound to carry out an Order or a decision that tends to defeat the purpose of the Law and if they choose to do so they do it at their own risk.

On the assurance by the Secretary to the Executive Committee, JHADC, Jowai that the public authority of JHADC will rectify matters in consonance with the provision of the Law, the Commission admitted the show cause by the PIO/APIOs.

However, considering the fact that the Complainant had suffered loss/detriment due to delay in furnishing the information by the Public Authority, this Commission decided that the public authority of the JHADC, Jowai pay him an amount of Rs.2500/- (Rupees two thousand five hundred) only as **Compensation** within a period of 20 days from the date of this Order with a report of compliance to this Commission.

Case disposed off.

(G.P.Wahlang)
C.I.C.

Memo. No. MIC/Complaint/14/2009/11-A Dated Shillong, the 22nd April, 2009

Copy to:-

1. Shri S.Pde, Secretary, Executive Committee, J.H.A.D.C., Jowai.
2. Shri B.Pachiang, Jt. Secretary, Executive Committee, J.H.A.D.C, Jowai.
3. Shri N.N.Kalita, Chief Engineer i/c Civil Works Department, JHADC, Jowai
4. Shri F.W.Blah, Chief Forest Officer i/c Forest Department, JHADC, Jowai
5. Smti O.Shylla, Finance & Account Officer i/c Finance & Account Deptt., JHADC, Jowai
6. Smti B.Bthuh, Administrative Officer i/c Political Department, JHADC, Jowai
7. Shri S.Passah, Special Officer i/c A.S.F.M., Department, JHADC, Jowai
8. Shri Bison Roy Iano of Raliang (Phone No. 98561-55895).

(P.T.Rani)
Under Secretary,
Meghalaya State Information Commission,
Shillong.