



**OFFICE OF THE
ASSAM INFORMATION COMMISSION
JONAKEE COMPLEX, PANJABARI, GUWAHATI-781 037**

Case No. : DBR. 15/2017
Complainant/ Appellant : Shri Anil Kumar Baruah
Respondent : Health & Family Welfare Department, Govt. of Assam
Date of hearing : 14.2.2018
Complaint/ Second : Shri H. S. Das, IAS (Rtd)
Appeal heard by : Chief Information Commissioner, Assam

O R D E R

05.3.18

1. The petitioner Shri Anil Kumar Baruah was represented by Shri Biswa Bijay Phukan as authorized by the petitioner vide his letter dated 12.2.18. The public authority was represented by Shri A.S.A. Barbhuyan, SPIO, Health & Family Welfare Department. In compliance of this Commission's previous order dated 5.1.18, the Joint secretary, Health & Family Welfare Department Shri K. Choudhury, ACS submitted a written statement dated 12th February, 2018, which was entered into the case records. The Deputy Secretary & SPIO Shri A.S.A. Barbhuyan was present and submitted a separate written statement dated 14th February, 2018 along with a copy of his letter dated 13th February, 2018 addressed to the Secretary, Health & FW Department, which were also entered into the case records.

2. Shri K. Choudhury, Joint secretary, Health & FW Department, in his WS made the following submissions:-

- (a) The submissions made by the Joint secretary, Shri A. Rajkhowa before this Commission on 24.10.17 regarding creation of additional budget provision by way of supplementary demand or CF advance, as the case may be, to clear the outstanding liability of petitioner Shri A.K. Baruah during the current financial year after issuing necessary administrative approval and sanction – was without prior approval of higher authorities and that Shri Rajkhowa has been asked to clarify the grounds for making such commitment before the Commission without any authority;
- (b) The SPIO and Deputy Secretary of Health & FW Department, Shri A.S.A. Barbhuyan has also been asked to clarify the grounds for making similar statements before this Commission on 5.1.18 without approval of higher authorities;
- (c) That the PWD has been requested vide letters dated 17.10.17, 17.11.17, 4.12.17, 19.1.18 and 1.2.18 to ascertain the volume of works executed and the genuineness of the claims for payment;

and,

- (d) That the Joint Secretary, Shri K. Choudhury, ACS himself is not the competent authority to take a decision regarding making of payment as claimed by the petitioner Shri A.K. Baruah for making necessary budget provision.

3. From the documents available in the case records it is seen that the Executive Engineer, PWD, Dibrugarh Building Division reported to the Chief Engineer, PWD (Building)

vide letter no.C-28/WP(C)/8908/2005/ Anil Baruah/4783-85 dated 15.11.15 that an amount of Rs.10,63,435 was pending in favour of Shri A.K. Baruah, contractor against court case no. WP© 8908/2005 on which Hon'ble Gauhati High Court passed orders on 29.9.2008 for payment of pending bills. It is also seen from the Chief Engineer, PWD Building's letter no. CE/BLD/ADT-II/5/2006/13.dated 31.3.17 addressed to the commissioner & Spl. Secretary to the Govt. of Assam, PWD (Building & NH) Department that the construction work was allotted to Shri A.K. Baruah on the basis of go ahead by the Health &FW Department vide letter No. HLA.650/2000/98 dated 7.4.1001, and that due to non receipt of payment, the said contractor had stopped the execution of work after achieving 40% progress and filed a court case before the Hon'ble Gauhati High Court to pass orders as mentioned in the preceding sentence. Further, the reports submitted by the Joint Secretary, Health & FW Department, Shri A. Rajkhowa, copy of which was enclosed with the affidavit dated 24th October, 2017 that approximately 28% of the work valued to the tune of Rs. 10 lakh as reported by the Deputy Commissioner, Dibrugarh was executed till 2003. **Therefore, the Joint Secretary, Shri K. Choudhury's affidavit dated 12th February, 2018 does not seems to be in consonance with the submissions made by his superior officer, namely, the Commissioner & Secretary, Health &FW Department, Govt. of Assam.**

4. **It is not clear whether the Joint Secretary of the Health & FW Department was authorized by the competent authority to disown the statements made by the SPIOs of the Department, who are designated as such statutorily u/s 5(1) of the RTI Act, 2005.** It is also noted that excerpt from mentioning the correspondence made with the PWD, the Joint Secretary Shri K. Choudhury did not throw any further light about actions taken by him to resolve the issues involved in the RTI petition filed by the petitioner Shri A.K. Baruah or to provide necessary assistance to the duly designated SPIO of the Department to furnish appropriate information to the petitioner in response to his RTI petition dated 20.1.17. This Commission also takes note of the letter dated 13.2.18 addressed by Shri A.S.A. Barbhuyan, Deputy Secretary & SPIO of Health & Family Welfare Department to the Secretary, Health &FW Department, Govt. of Assam with copy to the Registrar of this Commission stating that he took prior approval of the Secretary, Health & Family Welfare Department in concerned filed No. HLA/880/2016 before submitting his written statement dated 4.1.18 before this Commission. It, therefore, appears that the present Joint Secretary, Shri K. Choudhury is making statements which are not borne out by their office records, which are available with this Commission. **This appears, prima facie, to be misrepresentation of the facts.**

5. It is also noted that in his WS dated 12th February, 2018 the Joint Secretary, Shri K. Choudhury did not deny that he is dealing with budgetary matters and that his assistance was sought for by the SPIO of the Department. Therefore, u/s 5(5) of the RTI Act, 2005 he is also treated as the deemed SPIO of Health &FW Department.

6. This Commission, further notes that due to the contradictory statements made by the officers of the Health &FW Department and their apparently dilatory tactics, this Commission has not been able to pass any final order so far in this second appeal case in spite of several hearings. **Meanwhile the petitioner/appellant Shri Anil Kumar Baruah continues to be**

deprived of his right to information, which is recognized as a Fundamental Right under Article 19 of the Constitution of India.

7. To conclude the instant second appeal case without further delay, the Commissioner & Secretary of health & FW Department is directed to be personally present to clarify the factual position in the matter or authorize any other officer not below the rank of Secretary of the Department to clarify the matter before this Commission on the next date of hearing. The designated SPIO of the Department and deemed PIO, Shri K. Choudhury, ACS is also directed to be present on the next date of hearing and they may be required to make statements under oath on that date. The Commissioner & Secretary, PWD (Building) is also directed to be personally present or authorize any other officer not below the rank of Secretary of the Department, who is competent to make submission on behalf of the department on the next date of hearing.

Issue notices to all concerned including the petitioner, Shri A.K. Baruah accordingly for their appearance on the next date of hearing.

Fix 12.30 PM on 02.4.2018 for next hearing.

Sd/-

(H. S. Das)

Chief Information Commissioner, Assam
Panjabari, Guwahati

Authenticated true copy.

Sd/-

Registrar

Assam Information Commission

Memo No. SIC/DBR.15/2017/

Dated 05.3.2018

- Copy to:
1. The Commissioner & Secretary to the Govt. of Assam, Health & Family Welfare (A) Department, Dispur, Guwahati-6 for information and necessary action.
 2. The Commissioner & Secretary to the Govt. of Assam, Public Works (Building) Department, Dispur, Guwahati-6 for information and necessary action.
 3. The SPIO of the Health & F.W.(A) Department, Govt. of Assam, Dispur, Guwahati-6 for information and necessary action.
 - 4..Shri K. Choudhury, ACS, Joint Secretary & deemed PIO to the Govt. of Assam, Health & F. W. (A) Department, Dispur, Guwahati-6 for information and necessary action.
 5. Shri Anil Kumar Baruah, G-4, Arora Complex, Near Reliance Trends, Radha Nath Changkakoti Path, Thanachariali, Dibrugarh, Dist. Dibrugarh, Assam, PIN-786001 for information.
 6. Computer Section for uploading in the Website.
 7. Office File.
 8. Order Book.

Registrar

Assam Information Commission