

Case No.	:No.KP(M)949/2017
Complainant/ Appellant	:Sri Dulal Bora
Respondent	:Political Department, Govt. of Assam
Date of Hearing	:21-09-2018
Date of order	: 08.10.2018
Complaint/ Second appeal heard by	:Shri H. S. Das, IAS (Retd) :State Chief Information Commissioner, Assam

**O R D E R**  
**08-10-2018**

1. The appellant/ petitioner Sri Dulal Bora is present. The public authorities are represented by:- (1) Sri Biman Dutta, Deputy Secretary and SPIO of Political Department and (2) Sri Pancham Pawe, Sr. A.A in Chief Secretary's office. The SPIO of Chief Secretary's office sent a written communication dated 20<sup>th</sup> September 2018 stating that she is unable to attend the hearing on 21<sup>st</sup> September, 2018 as she was out of station on leave and official duties. She also mentioned that all concerned documents and explanations had already been submitted before this Commission and there is nothing new to add. Her written communication is entered into the case records.
2. (a) The second appeal petition dated 24-7-2017 with reference to the RTI petition dated 30-7-2016 and First Appeal petition dated 16-5-2017 is taken up for further hearing in pursuance of this Commission's earlier orders, the last one being dated 6-8-2018.  
  
(b) The gist of the case is that the appellant Sri Dulal Bora filed a complaint petition dated 23-5-2016 addressed to the Chief Secretary to the Government of Assam containing allegations against Sri A. P. Rout, IPS and Sri S.N. Singh, IPS for their alleged involvement in the so called Saradha Scam relating to alleged collection of deposits from the common people of the State by a company called Saradha . The petitioner alleged in his complaint petition that Vigilance and Anti-Corruption wing of the State Government sought permission from the Home Department to interrogate the two IPS Officers mentioned above, but home Department did not give such permission. He contended that - how fraudulent firms like Saradha defrauded the common people of the State of crores of rupees would come to light if the above mentioned two IPS officers were interrogated and their statements are recorded. By his complaint petition he requested the Chief Secretary to give the sought for permission to the Directorate of Vigilance and Anti-Corruption, Assam.  
  
(c) He followed up the above mentioned complaint petition by an RTI petition dated 30-7-2016 addressed to the PIO of the office of Chief Secretary, Govt. of Assam. By his RTI petition he sought the following informations:-

- (i) *The number of the file from which inquiry was ordered into the allegations mentioned in his complaint petition dated 23-5-2016 and name of the Inquiry Officer with his designation;*
- (ii) *Names and addresses of the persons mentioned in the complaint petition dated 23-5-2016, and*
- (iii) *Photo copy of the inquiry report submitted by the Inquiry Officer to his higher authorities.*

(d) Since the name of the accused persons are already mentioned in the complaint petition, this Commission is of the view that furnishing of information against 2© (ii) above is not considered necessary.

3. (a) The SPIO of Political Department submitted a W/S dated 9<sup>th</sup> April, 2018 enclosing a letter of the same date from the Additional Secretary, Political (Vigilance Cell) Department stating that the Office of Vigilance and Anti-Corruption, Assam sought Govt. permission to record the statements of Sri Sudipta Sen, CMD, Saradha Realty India Ltd. and Sri Sadananda Gogoi, in connection with Saradha scam. It also mentioned that Political (Vigilance cell) Department was not aware as to whether any permission was sought for by the Office of the Vigilance and Anti-Corruption, Assam for recording the statements of Sri A. P. Rout, IPS and Sri S.N. Singh, IPS. It was further mentioned that if the petitioner was in possession of any communication or any other record to that effect, he was requested to furnish copy of the same.
- (b) Accordingly vide its order dated 27-4-2018 (para-7) this Commission also directed the petitioner Sri Dulal Bora to make available within 15 days copy of any communication or any other record in this regard that might be in his possession. On 13-6-2018, Sri Dulal Bora submitted before this Commission orally that in compliance with the Commission's order dated 27-4-2018 he had furnished copy of the relevant documents to the SPIO of Political Department.
- 4.(a) The Deputy Secretary and SPIO of Political Department submitted a written statement dated 18<sup>th</sup> September, 2018 enclosing a copy of his earlier letter dated 6<sup>th</sup> August, 2018 addressed to the Registry of this Commission stating that no communication had been received from the petitioner Sri Dulal Bora in support of his contention that Director, Vigilance and Anti-Corruption, Assam sought permission from the State Govt. for recording the statements of Sri A. P. Rout, IPS and Sri S.N.Singh, IPS. The written statement is entered into the case records.
- (b) The petitioner Sri Dulal Bora submitted before this Commission on 24-9-2018 a copy of letter No. DGVA/RI/2016/452 dated 4-12-2016 from the Additional DGP, Vigilance and Anti-Corruption, Assam, addressed to the Additional Chief Secretary, Home and Political Department, Govt. of Assam. By this letter the office of the Director General of Vigilance and Anti-Corruption sought permission of Govt. of Assam to record the statements of Sri Sudipta Sen, CMD, Sardha Realty India Ltd., and Sri Sadananda Gogoi in connection with Vigilance and Anti-Corruption Regular Inquiry No. 52(12)2015. There was no mention in that letter of any

permission sought for to record the statements of Sri A.P.Rout, IPS and Sri S. N. Singh, IPS, as alleged by the petitioner in his original complaint petition dated 23-5-2016 addressed to the Chief Secretary to the Govt. of Assam. The petitioner's RTI petition dated 30-7-2016 was with reference to and as a follow up of his complaint petition dated 23-5-2016.

**( C ) The petitioner is, therefore, directed to be more careful about the facts and contents of his complaint petitions and RTI petitions as well as subsequent appeal petitions.**

5. The case records and the deliberations in course of hearing of the second appeal petition dated 24-7-2017 with reference to the RTI petition dated 30-7-2016, revealed that :-

- (a) **The above mentioned regular inquiry No. 52(12)2015 was initiated against Sri A.P.Rout , IPS , the then ADGP (Law and Order) and others in connection with Sardha scam at the instance of Govt. of Assam,**
- (b) **There was no request from the Directorate of Vigilance and Anti-Corruption, Assam, seeking State Govt's permission to record the statements of Sri A. P. Rout, IPS and Sri S.N.Singh, IPS in connection with the above mentioned R.E , and**
- (c) **The Vigilance and Anti-Corruption Directorates' Regular Inquiry No. 52(12)/2015 is still alive, but has been kept in abeyance in pursuance of Govt. of Assam's letter No. PLA(V) 327/2014/138 dated 20<sup>th</sup> February, 2016, and it remains so till date.**

6. Informations as recorded in para-5 above appear to fully meet the requirements of the petitioner Sri Dulal Bora's RTI petition dated 30-7-2016. Hence the second appeal petition dated 24-7-2017 is liable to be disposed of.

7. (a) However, before disposing of the second appeal petition, it may be pertinent to put on record that this Commission required several hearings to elicit the above factual informations, which could have been easily furnished by the concerned SPIO and by the concerned officials of Political (VC) Department had they been more persevering in locating the relevant file.

(b) It is seen from the case records that the petitioner Sri Dulal Bora's RTI petition dated 30-7-2016 was transferred by the SPIO of Chief Secretary's office to the Joint Secretary, Home Department, Govt. of Assam vide letter No. CS/RTI/16/199 dated 4<sup>th</sup> August, 2016. Thereafter, the Joint Secretary and SPIO of Home Department transferred the RTI petition to the SPIO of Political Department vide letter No. HMA.636/2016/4 dated 27<sup>th</sup> October, 2016. The SPIO of Political Department, vide his letter No. PLA(V).107/2017/04 dated 1<sup>st</sup> April, 2017 sought the assistance of the Joint Secretary, Political (VC) Department under Section 5(4) of the RTI Act, 2005, wherein it was clearly mentioned that

the Joint Secretary , Political (V) Department will be responsible as the deemed PIO if he fails to provide the required information within the stipulated time.

(c) More than nine months after that, vide letter No. PLA(V).18/2018/11 dated 9<sup>th</sup> January , 2018 the Addl. Secretary, Political (Vigilance Cell) Department informed the Joint Secretary and SPIO of Political Department that the concerned file was not available with the Political (VC) Department as the same was put up to “superior authority”, without identifying who the “superior authority” was. This Commission is of the view that **he could have easily found it out by following the trail of file movement from the relevant file movement registers.**

(d) The Addl. Secretary of Political (VC) Department also mentioned in his letter dated 9-1-2018 that - after receipt back of the file due information could be furnished. The Additional Secretary also mentioned in his letter that the matter of Saradha along with other similar scams was already under investigation by the CBI. **It appears to this Commission that as the deemed PIO he seems to have paid no heed to the time period stipulated under the RTI Act.2005 to furnish such information. The Additional Secretary, Political (V.C) Department’s letter appears to be an effort to avoid disclosure of the sought for information.**

(e). Meanwhile, this Commission passed an order dated 17-11-2017 where , inter alia, the SPIO of the office of Chief Secretary was directed to apprise the Chief Secretary, Govt. of Assam, who is the head of the administrative machinery, including Vigilance and RTI administration, about the pending RTI petition. However, as reported by the SPIO of Chief Secretary’s office vide her written submission dated 17<sup>th</sup> May, 2018, the said order was misplaced in Chief Secretary’s office.

There was no mention in her W/S whether she apprised the then Chief Secretary of the matter, as was directed at paragraph 5 of the Commission’s order dated 17-11-2017.

Copy of the order dated 17-11-2017 were given to the SPIO of Political (VC) Department also. But he also did not seem to have taken any steps to get back the file back from the “superior authority” who was holding the file at that time.

(f). By a letter No. PLA(V).18/2018/22 dated 23<sup>rd</sup> February, 2018 the Additional Secretary, Political (VC) Department requested the Joint Secretary and SPIO of Political Department to seek 15 days’ time from this Commission for submitting the required information. By his written submission vide letter No. PLA(V).107/2017/21 dated 24<sup>th</sup> February, 2018 the Joint Secretary and SPIO of Political Department sought one months’ time to collect the information from Political (VC) Department and then to furnish the same to the petitioner in response to his RTI petition dated 30-7-2016.

(g) Thereafter, in a hearing on 5<sup>th</sup> March, 2018 **the SPIO of Political Department made an oral submission that the relevant file had been traced out to have been pending with the then Chief Secretary and that it was yet to be received back in the Political Department.**

(h) By a W/S vide letter No. CS/RTI/Dulal Bora/18/60 dated 19<sup>th</sup> March, 2018 **the SPIO of Chief Secretary's office informed the Commission that the relevant file " had re-surfaced on account of cleaning of Chief Secretary's chamber prior to his superannuation" and that the file was pending with the Chief Secretary "by mistake" as noted by then Chief Secretary himself, who superannuated on 28-2-2018.** The SPIO of Chief Secretary's office also mentioned that the file was sent back to the Political Department on 28-2-2018 with a request to take immediate action.

(i) In her W/S dated 19<sup>th</sup> March, 2018 referred to above, the SPIO to Chief Secretary's office also mentioned that the new Chief Secretary has been fully informed of the RTI case.

(j) Meanwhile, this Commission took a hearing on 29<sup>th</sup> January, 2018 and passed an order on the same date, copy of which was given to the Chief Secretary's office, besides others concerned. But surprisingly copy of this order was also not received in the office of the SPIO to the Chief Secretary as reported by her vide her W/S dated 17<sup>th</sup> May, 2018 referred to at paragraph 7(e) above.

(k) By a written report dated 17-3-2018, the Sr. Administrative Assistant of Chief Secretary's office's RTI cell Sri Pancham Pawe also reiterated that copy of the AIC order dated 29-1-2018 was not received in the office of the SPIO, but upon inquiry it was found to have been received in the office of the Dak Section of the Chief Secretary on 13<sup>th</sup> February, 2018. In this Commission's Dak book also the order dated 29-1-2018 is shown to have been received on 13-2-2018 by Chief Secretary's office. Surprisingly, in the copy of this order, bearing initial of the new Chief Secretary, which was enclosed by the SPIO of Chief Secretary's office with her W/S dated 27<sup>th</sup> May, 2018, the receipt date was recorded not as 13<sup>th</sup> February ,2018, but as "13<sup>th</sup> MAR" on the seal of Chief Secretary's office , where the letters "MAR" were written by hand.

(l) The chain of misplacement, disappearance and manipulation/ tampering of records and obfuscation of the actual position in the matter by both the parties as mentioned in the preceding paragraphs while the 2<sup>nd</sup> appeal proceedings were being heard by this Commission appear to be **not only a subversion of the implementation of the RTI Act, 2005, but also an obstruction to the lawful discharge of public duty by this Commission.**

(m) It is apparent from the preceding paragraph that throughout the pendency of the RTI petition dated 30-7-2016 and subsequent second appeal petition dated 24-7-2017, the relevant file was held by the then Chief Secretary till the date of his retirement, on 28<sup>th</sup> February, 2018.

8. (a) The SPIO of the office of the Chief Secretary mentioned in her W/S dated 17<sup>th</sup> May, 2018 that she had – **quote:** “no information about the said file’s whereabouts and more importantly of its existence as the role of nature of communication of Staff Officer to Chief Secretary is not through files. As you may be aware, the Staff Officer to Chief Secretary is also not privy to many communications of sensitive nature” :**unquote.**

(b) The discomfiture and difficulty of the personal staff of the Chief Secretary and the concerned SPIO’s in retrieving a file from the custody of the Chief Secretary, is understandable. This Commission is of the view that they ought to have been more diligent and forthcoming in making their submissions before this Commission.

9. (a) From the aforesaid, it appears that there was a conscious and willful attempt to deny or delay furnishing of the sought for informations to the petitioner and impede the second appeal proceedings that were going on in this Commission. From the facts and circumstances narrated above, it is difficult to accept that the SPIO and the deemed PIO of the Political Department as well as the Chief Secretary himself and his office were unaware of the whereabouts of a sensitive file of Political (Vigilance Cell) Department involving a matter having substantial public importance while the file was actually with the Chief Secretary himself. **It may be recalled that thousands of unsuspecting depositors, mostly the poor people from rural Assam, lost their hard-earned savings due to alleged frauds amounting to several crores of rupees perpetrated on them by Saradha Realty India Ltd and such other fraudulent firms.**

(b) This seems to be a serious matter that needs to be looked into at the highest level of the State Govt.

10. Therefore, in exercise of the powers conferred under Section- 19(8)(a) of the RTI Act, 2005, read with Section 25(5) of the RTI Act, 2005, the following orders are passed :-

**a) The Additional Chief Secretary, Govt. of Assam, Home and Political Department is directed to ensure that, in compliance with Section 4(1) (c) and 4 (1) (d) of the RTI Act, 2005, the SPIO of Political Department puts in the State Govt. website, any decision, as and when taken, with regard to the abeyance letter No. PLA(V).327/2014/138 dated 20<sup>th</sup> February, 2016, as to whether it is decided to drop the Vigilance Regular Inquiry No.**

52(12)/2015, or ask the Directorate of Vigilance and Anti-Corruption to proceed with it,

b) The Chief Secretary to the Govt. of Assam is directed to cause an inquiry into the matter of non-availability of the relevant file for nearly two years so that necessary corrective measures can be taken for future guidance, besides any other action that Govt. of Assam may deem necessary on the basis of the inquiry report. This Commission is of the view that such an inquiry will be in consonance with the objectives of transparency, accountability and containment of corruption as mentioned in the Preamble of the RTI Act, 2005 as also with the State Government's declared policy of zero tolerance of corruption.

(c) Commissioner and Secretary, Personnel and Administrative Reforms Department is directed to -

(i) evolve a suitable mechanism to monitor the movement and disposal of files at all stages in all Departments so that no file is left un-attended to beyond a reasonable time period, and

(ii) arrange appropriate training programmes as mandated under Section 26(1) (d) of the RTI Act, 2005 for the State Govt. officers, including those in the Assam Secretariat, for proper administration of the provisions of the RTI Act, 2005.

11. With the above orders the second appeal petition dated 24-7-2017 is disposed of.

Sd/-

(H. S. Das)  
Chief Information Commissioner, Assam,  
Panjabari, Guwahati

Authenticated true copy.

Sd/-  
Registrar I/c  
Assam Information Commission.

Memo No. KP(M).949/2017/

Dated 8<sup>th</sup> October, 2018

Copy to :-

1. Chief Secretary to the Government of Assam, Dispur, Guwahati-6 for information and necessary action as ordered above.
2. Additional Chief Secretary, Govt. of Assam, Home and Political Department, Dispur, Guwahati -6 for information and necessary action as ordered above.
3. The Principal Secretary to the Chief Minister, Assam, Janata Bhawan, Guwahati-781 006 for information.

4. The Commissioner & Secretary to the Govt. of Assam, Personnel, A.R & Training Department, Dispur, Guwahati-6 for information and necessary action as ordered above.
5. SPIO of the office of Chief Secretary, Assam, Dispur, Guwahati-6 for information and necessary action.
6. SPIO of Political (Vigilance Cell) Department, Govt. of Assam, Dispur, Guwahati-6 for information and necessary action.
7. Sri Dulal Bora, Koinadhara Tiniali, (House No.-118) ,Khanapara, Guwahati-22 for information.
8. Computer section for uploading in the Website.
9. Office order.
10. Office file.

**Registrar I/c  
Assam Information Commission.**