

**OFFICE OF THE
ASSAM INFORMATION COMMISSION****JONAKKEE COMPLEX, SHILPGRAM ROAD, PANJABARI, GUWAHATI- 781037**

Phone : (0361) 2332704, 2337900, 2331193 :: Fax : 2332704 :: email : secretary.sicassam@gmail.com

Case No. : SIC/KP(M)18/2021
Complainant/ Appellant : Shri Joydeb Das
Respondent : SPIO of the Office of Gauhati University, Gopinath
Bardoloi Nagar Guwahati
Date of Hearing : 8-2-2021
Complaint/ Second : Dr. A.P.Rout, IPS(Retd)
Appeal heard by : State Chief Information Commissioner, Assam

O R D E R
8-2-2021

1. The petitioner Shri Joydeb Das is present. The petitioner in his RTI petition dated 14/12/2020 has written to the SPIO of Gauhati University to furnish the copies of Minutes of Executive Council resolution (without annexure) from April 2018 till date. He has filed his 2nd appeal petition on 18/1/2021 before the Commission. He has shown court order on the role of SPIO.
2. The Public Authority is represented by Dr. Prasanta Barman, Deputy Registrar and SPIO, Gauhati University.
3. The SPIO vide his letter no. GU/PIO/RTI/2021/214 dated 2/2/2021 has replied to the appellant that the information is voluminous in nature and not specified. Hence collecting and compiling the information sought would disproportionately divert the resources of the University. Hence the disclosure of information is exempted as per Section 7(9) of the RTI Act.
4. He further informed that the appellant can inspect the relevant records at the University as per convenient date and time.
5. The SPIO has mentioned the following vide letter no. GU/PIO/RTI/2021/221 dated 4/2/2021 addressed to the Commission:-

As per Section 5(4) of the RTI Act 2005, assistance has been sought from the Registrar, GU vide letter no. GU/PIO/RTI/2020/136 dated 16.12.2020. Subsequently, a reminder letter has also been sent to the Registrar, GU vide GU/PIO/RTI/2021/203 dated 29/1/2021 with a request to arrange the desired information so that the same could be provided to the petitioner as per the provision of RTI Act, 2005.

Meanwhile a reply was sent to the petitioner Shri Joydeb Das on 2/2/2021 vide letter no. GU/PIO/RTI/2021/214 dated 2/2/2021 (copy enclosed).

The PIO has mentioned about non receipt of appeal at 1st Appellate Authority level. However, the Commission feels that this provision is not mandatory as there is no punishment prescribed for 1st Appellate Authority in the RTI Act, 2005.

6. The Commission enlightens the SPIO on the letter issued to the appellant on 2/2/2021 that as per the Act, the SPIO is to function independently and he is not supposed to be directed by any other authority.
Section 7 and Section 11 of RTI Act, 2005 clearly defines the role of PIO and Section 20 of the RTI Act, 2005 also defines the penalty provision.
7. . The Central Information Commission, New Delhi and various courts have already decided on the application of Section 7(9) of the Act which infact does not provide the ground for denial of information. A few of such decisions are reproduced as follows:- **Quote i) Decision No. CIC/OP/A/2009/000204-AD dated 12.01.2010**

As for information having been denied since its is voluminous, the Commission holds that Section 7(9) of the does not allow denial of information but denial of providing the same in the form in which it has been

sought in the event this leads to disproportionate diversion of resources of the Public

ii) Decision dated 12.3.2009 in appeal No.CIC/WB/A/2007/01042:

This would mean that allowance is given where compiling information already held would present the difficulties described in the law to the public authority concerned. *Information can in no case be denied u/s 7(9)*, which has only a qualifying clause and no exemption such as is proved u/s 8 sub sec (1). The decision of Dr. Aditya Arya is, therefore, flawed, and is set aside. He will now review his decision in light of the above and ensure that appellant Shri Ajit Kar is proved the information to which he is entitled under the law within twenty working days of the date of issue of this decision Notice. Appellant Sri Ajit Kar specifically invited our attention to the information sought in para 30, which may be taken into consideration examination. The appeal is thus allowed.

iii) Decision dated 25.2.06 in appeal No.10/1/2005-CIC

Section 7(9) of the Act does not authorize a public authority to deny information. It simply allows the authority to provide the information in a form easy to access

iv) Decision dated 26.3.2008 in appeal No. CIC/WB/A/2007/00349

It was explained to respondents that Section 7(9) does not authorized refusal of information but only disclosure in a form other than that asked for, for reasons given that Section.

v) Decision dated 9.1.2009 in appeal No. CIC/OK/A/2008/01256

The denial of information on the basis of Section 11 and Section 7(9) of the Act was without any basis of law. Denial of information can only be under Section 8(1) or Section 9. Section 11 sets out a procedure for giving the opportunity to a third party to give his objections and Section 7(9) can be invoked only to state that information in the format demanded by the appellant is not possible. However the PIO would have to offer the information in an alternate format when invoking Section 7(9)

vi) Decision dated 22.10.08 in Appeal No. CIC/WB /A/2007/00528-SM

“...It is true that the Section 7(9) provides that information sought in a particular form should be provided in that form unless it would disproportionately divert the resources of the public authority or would be detrimental to preservation of record in question. That means, the public authority concerned should provide the information sought in a different form if he thinks, on reasonable grounds, that the form in which it has been sought would disproportionately divert the resources of the public authority. This provision in Section 7 is not a license to deny information. ...”

vii) Decision No. CIC/OK/A/2008/01256/SG/0937 dated 09-01-2009.

Denial of information can only be under Section 8 (1) or Section 9. Section 11 sets out a procedure for giving the opportunity to a third party to give his objections and Section 7 (9) can be invoked only to state that information in the format demanded by the appellant is not possible. However the PIO would have to offer the information in an alternate format when invoking Section 7 (9). Besides the queries do not lend themselves at all to using Section 11 or Section 7 (9). The PIO is directed to give the information to the appellant. *He is also warned that denying information in this casual manner will invoke the penal provisions of Section 20 of the Act.*

viii) Extract from judgement dated 07-01-2010 of HIGH COURT OF JUDICATURE AT MADRAS in W.P.NO.20372 of 2009 and M.P.NO.1 OF 2009

. The other objections that they are maintaining a large number of documents in respect of 45 departments and they are short of human resources cannot be raised to whittle down the citizens' right to seek information. It is for them to write to the Government to provide for additional staff depending upon the volume of requests that may be forthcoming pursuant to the RTI Act. It is purely an internal matter between the petitioner archives and the State Government. The right to information having been guaranteed by the law of Parliament, the administrative difficulties in providing information cannot be raised. Such pleas will defeat the very right of citizens to have access to information. Hence the objections raised by the petitioner cannot be countenanced by this court. The writ petition lacks in merit.”

ix) Judgement dated 30-08-2010 of Hon'ble Kerala High Court in WP(C).No. 6532 of 2006(C)

The Standing Counsel for the Public Service Commission

also raises a contention that if all the candidates apply for copies of answer papers, it would disproportionately divert the resources of the public authority and therefore disclosure of the same is exempt under Section 7(9) of the Act. *I am of the opinion that the said contention is misconceived.* That Section reads thus:

That Section does not even confer any discretion on a public authority to withhold information, let alone any exemption from disclosure. It only gives discretion to the public authority to provide the information in a form other than the form in which the information is sought for, if the form in which it is sought for would disproportionately divert the resources of the public authority. In fact there is no provision in the Act to deny information on the ground that the supply of the information would disproportionately divert the resources of the (xvii), the object of which is to facilitate easy supply of the by them for valuation of answer papers of students and the same has been followed by another learned single judge in a common judgment in W.P.(C) Nos. 33443/2007 & 6836/2009.....

8. Though the role of SPIO in furnishing the information has been abundantly described vide Section 7 & Section 11 of the RTI Act, the Commission still wants to point out the pronouncement of the following principles by Delhi High Court vide WP(C) 900/2021 and CM Appeal 2395/2021 dated 22.1.2021
 - (i) Government departments ought not to be permitted to evade disclosure of information. Diligence has to be exercised by the said departments, by conducting a thorough search and enquiry, before concluding that the information is not available or traceable;
 - (ii) Every effort should be made to locate information, and the fear of disciplinary action would work as a deterrent against suppression of information for vested interests;
 - (iii) PIO/SPIO cannot functioned merely as “post office” but instead are responsible to ensure that the information sought under the RTI Act is provided;
 - (iv) A PIO/SPIO has to apply their mind, analyze the material and then direct disclosure or give reasons for non-disclosure. The PIO cannot rely upon subordinate officers;

- (v) Duty of compliance lies upon the PIO/SPIO. The exercise of power by the PIO/SPIO has to be with objectivity and seriousness the PIO/SPIO cannot be causal in their approach. *Unquote.*

Thus, under the RTI Act, the CPIOs have a solemn responsibility. Section 5(3) requires that every CPIO or SPIO shall deal with requests for information and 'render reasonable assistance' to the persons seeking information. CPIOs or SPIOs can seek assistance from higher/other officials in the organisation in order to enable them to furnish the information sought for the 'proper discharge' of their duties, as per Section 5(4). *Such other officers from whom assistance may be sought would also be treated as CPIOs, under Section 5(5).* CPIOs are thus expected to look into queries raised by the Applicants under the RTI Act, and fulfil an important responsibility while furnishing the said required information, in a fair, non arbitrary and truthful manner. The organisation, as a whole, also has to cooperate in the functioning of the CPIOs.

- (9) The content and intent of the RTI Act, 2005 has been maximum disclosure with minimum exemption as per Section 8 of the RTI Act,2005.

Right to Information is a Fundamental Right derived from Article 19 of the Constitution of India.

- (10) Further in analyzing the above CIC and Court orders, **the Commission therefore directs the SPIO to provide the information within 7 days i.e., by 15th February, 2021(2 months from the date of RTI petition i.e., 14/12/2020 otherwise the provision of Section 20 of the RTI Act will come to force w.e.f 16/2/2021.**

- (11) The Commission directs to draw the attention of the SPIO to the provision of Section 5(4), 5(5) and Section 20 of the RTI Act 2005 and he is also advised to bring it to the notice of the treated PIO.

Sd/-
(Dr. A.P. Rout)

Authenticated true copy.

Sd/-
Joint Registrar i/c
Assam Information Commission

Memo No. SIC/ KP(M).18/2021

Dtd. 8 .2.2021

Copy to:

1. Dr. Prasanta Barman, SPIO & Deputy Registrar, O/o the Gauhati University, Gopinath Bordoloi Nagar, Jalukbari, Guwahati-14 for information and compliance of the above order.
2. The Registrar, Gauhati University for information and compliance.
3. Sri Joydeb Das, S/o Late Karunamoy Das, H.No-16, Kushal Konwar Road, Near Mayur Krishna Cinema Hall, Ambari Fatashil, Ghy-25, Assam for information.
4. Computer Section for uploading in the Website.
5. Office File.
6. Order Book.

Joint Registrar i/c
Assam Information Commission