

Case No. : SIC/KP(M).376/2021
Complainant/ Appellant : Sri Joydeb Das
Respondent : SPIO, Office of the Commandant, 4th Assam
Police Battalion, Kahilipara, Guwahati
Date of Hearing : 10/12/2021
Complaint/ Second : Dr. A.P.Rout,
Appeal heard by : State Chief Information Commissioner, Assam

O R D E R
13/1/2022

1. The petitioner Sri Joydeb Das is present. The petitioner has filed his RTI application before the PIO, O/o the Commandant 4th APBN, Kahilipara, Guwahati on 5.10.2021 seeking following information :
 - (a) Whether Sri R. Chandranathan, IPS presently posted in Meghalaya as DG, retained Government quarter in 4th APBN from August,2018 to till date if yes, please furnish the following details:
 - Please furnish who given approval for retaining Government quarter.
 - Has the quarter given to him monthly rental basis if yes, please furnish an amount of rent per month and total amount paid for rent and details of electricity bill paid till date.
 - If the quarter not given him to monthly rental basis, please furnish under which Government procedure he occupied the quarter.
 - Has the any penal rent recovered due to occupancy of quarter by him after transfer of six months (i.e., 1st February 2019 to till date). If yes, please furnish in details of total amount recovered.
 - If no any penal rent recovered from him, please furnish reason thereof.
 - Please furnish whether any Assam Police vehicle attached with him if yes, please furnish vehicle number with details of monthly expenditure for Fuel, Driver and maintenance (i.e., 1st February 2019 to till date.)
 - Please furnish number of Police Man and Class IV employee are attached with him and details of their monthly salary (i.e., 1st February,2019 to till date).
2. In response to petitioner's RTI application, the PIO submitted a reply vide letter no. Bn4/R/RTI/2021/4471 dated 30.10.2021 enclosing a copy of Government notification dated 8th March,2006 which exempted Assam Police Battalions from the purview of the Right to Information Act,2005 as per Section 24(4) of the Act.
3. Being not satisfied with the reply, the petitioner filed 1st appeal before the 1st Appellate Authority of the Office of Commandant 4th APBN, Kahilipara, Guwahati on 1.11.2021. Then he filed complaint petition before the Commission on 15.11.2021 and accordingly the matter was taken up for hearing.
4. The Public Authority is represented by Smti Sumita Shormah, APS, 21/c, 4th APBN, Kahilipara accompanied by Sri Jayanta Kumar Roy, R.I. 4th APBN, Kahilipara, Guwahati.
5. With reference to the contention of the SPIO and First Appellate Authority, the petitioner says that information could not be exempted u/s 24(4) as this does not relate to normal security and intelligence of the Battalion, which the government intended in the notification, rather it relates to unauthorised retention of quarters, misuse of official power, non-payment of electricity dues, misuse of government resources including manpower. PIO/SPIO at the hearing reiterates whatever the Commandant has mentioned in the reply vide letter no. Bn4/R/RTI/2021/4471 dated 30.10.2021. In addition to the earlier reply to the petitioner, the SPIO has mentioned at the hearing that since the officer concerned is DGP of Meghalaya, the information need not be given.

6. The 1st Appellate Authority took recourse to the exemption provided u/s 8(1)(g) which quote *information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes*; unquote

The petitioner claimed that through his RTI petition he wanted to expose misuse of official power, corruption, wastage of Government money and Government resources particularly when the Government is taking vigorous steps to stop crime i.e., Stoppage of illegal cattle trade, drug smuggling, and other illegal activities like sale of illicit liquor and practice of "teer" etc. The information is sought in public interest as tax payers money is misused/ wasted. Further such information in no way will compromise the security of the officer and will not come under section 8(1)(g) of the RTI Act 2005.

The petitioner also emphasized that he has not asked any information on PSO, House Guard, Escort and their weaponry, issue of bullet proof jackets, issue of bullet proof vehicles etc which are the components of security and may hit the provision of Section 8(1)(g) of the RTI Act, 2005.

After careful examination, The Commission decides that alleged unauthorized stay in allotted Government quarters, non payment of electricity dues, use of Government vehicles, use of non-security personnel (Police personnel, Class IV personnel, Contingency personnel etc) will not come under exemption of Clause 8(1)(g) of the RTI Act, 2005.

7. The Commission on the basis of the serious allegation of corruption and misuse of government resources, non realization of cost of the usage of vehicles, non-realisation of the cost of non security police personnel and Class IV personnel attached with the officer, would like to examine the applicability of Section 24(4) of the RTI Act:

Section 24(4) of the RTI Act Quote Nothing contained in this Act shall apply to such intelligence and security organisations, being organisations by the State Government, as that Government may, from time to time, by notification in the Official Gazette, specify: Provided that the information pertaining to the allegations of corruption and human rights violations shall not be excluded under this sub section: Provided further that in the case of information sought for is in respect of allegations of violation of human rights, the information shall only be provided after the approval of the State Information Commission and, notwithstanding anything contained in Section 7, such information shall be provided within forty five days from the date of the receipt of request. Unquote

8. The Commission would like to refer to the recent Supreme Court judgment in overruling the judgment of Mumbai High Court decision on applicability of POCSO Act on the plea that there was no skin-to-skin contact and interpretation of the Supreme Court that in an Act passed by any authority, the intent not the content is the main force in interpretation particularly in Act/Rules. In drawing analogy to the Honourable Supreme Court order, the Commission would like to comment that the intention of the Government order in exempting the Battalion from the purview of RTI Act vide Section 24(4) is on the ground of intelligence and security not on the ground of alleged corruption, wastage of government resources and misuse of manpower.
9. Further the Commission would like to refer to Supreme Court in **Vijay Dheer Versus State Information Commission, Punjab & Ors. (LNIND 2013 PNH 2263)** which held that *Quote* The object and reasons of RTI Act recite that the provisions of RTI Act are to ensure maximum disclosure and minimum exemptions consistent with the constitutional provisions and to provide for an effective mechanism for access to an information and disclosure by authorities. Still further RTI Act has been enacted in order to promote transparency and accountability in the working of every public authority. The State Information Commission while passing the impugned order has attempted to strike a balance between public interest as also the privacy of the individual concerned. The Public Information Officer concerned has been directed to provide such part of the information sought by Respondent No. 3 which primarily relates to the mode of appointment and promotion of the Petitioner to a public post. Impugned order has been passed on valid and cogent reasoning and conforms to the scheme of disclosure under RTI Act. No basis found that would warrant interference with the same- Petition dismissed. *Unquote.*

10.After careful examination of the points discussed above, the Commission is of the opinion that information sought by the petitioner is on the serious allegation of corruption, misuse of government resources and ensuring transparency in public functions.

Further it will in no way is going to compromise the security and the intelligence of the Battalion and invite exemption u/s 24(4) of the RTI Act,2005.

Hence, the Commission directs the SPIO to furnish the information within ten days.

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

Authenticated true copy.

Sd/-
Secretary & Registrar
Assam Information Commission

Memo No. SIC/KP(M).376/2021

Dtd. 13.1.2022

Copy to:

1. The Commissioner & Secretary, Home & Political Department, Govt. of Assam for information.
2. The SPIO, Office of the Commandant, 4th Assam Police Battalion, Kahilipara, Guwahati 34 for information and necessary action.
3. The petitioner Sri Joydeb Das, S/o Late Karunamoy Das, House No.16, Ambari Fatashil, Kushal Konwar Road, Near Mayur Krishna Cinema Hall, Guwahati 25 Assam for information.
4. Computer Section for uploading in the Website.
5. Office File.
6. Order Book.

Secretary & Registrar
Assam Information Commission