

Case No. : SIC/OS.07/2021.
Complainant/ Appellant : Shri Anil Goenka.
Respondent : The SPIO, O/o the BDO, Lakhipur Development Block,
P.O. Fulertal, Distt. Cachar, Assam, PIN Code 788106.
Date of Hearing : 02-11-2021
Complaint/ Second
Appeal heard by : Shri Samudra G. Kashyap.
State Information Commissioner, Assam

O R D E R
02-11-2021

1. The appellant Shri Anil Goenka is not physically present, but is connected to the hearing over telephone/Audio on request.
2. The SPIO, O/o the Block Development Officer, Lakhipur Development Block, Distt. Cachar, is absent. But the Commission has received a letter No. LDB.87/PD/PG/RTI/2020-21/228 dated 30.10.2021 from the Block Development Officer, Lakhipur Development Block, Distt. Cachar, informing that the SPIO and Asstt. BDO, Smti Jayasree Das is not in a position to attend the hearing today (no reason for inability to attend has been cited). The BDO, Lakhipur Development Block has also authorized Shri K. Kunjadhan Singha, i/c G.P. Secretary, Fulertal G.P. under Lakhipur Development Block, to attend the hearing on behalf of Smti Jayasree Das, SPIO and Asstt. BDO, Lakhipur Development Block. Accordingly Shri K. Kunjadhan Singha, i/c G.P. Secretary, Fulertal G.P. has been permitted to attend the hearing on the strength of the BDO's letter. He has also submitted photocopy of his voter id card which has been put on record.
3. From perusal of records it is seen that the appellant Shri Anil Goenka on 16.11.2020 sent an RTI application to the BDO, Lakhipur Development Block, requesting for 9 (nine) different informations related to approval of houses under IAY and PMAY-G programme of the government and release and disbursement of funds to authorized persons under these schemes in the jurisdiction of tea gardens namely Dilkhoosh, Alynee and Naraindhar Tea Estate, under Lakhipur Block, Binnakandi and Dilkhush G.Ps.
4. The appellant in his RTI application had also requested for inspection of files and records of the above mentioned three tea estates at the O/o the BDO, Lakhipur Development Block, under provisions of Sections 2(f), 2(i), and 2(j) of the RTI Act, 2005. Records provided by the appellant as part of the Appeal/Complaint received by the Commission on 07.04.2021, show that the RTI application dated 16.11.2020 received by the BDO was returned to the applicant Shri Anil Goenka by the BDO, Lakhipur Development Block vide letter No. LDB.60/Misc/2020-21/Pt-I/63 dated 10.12.2020, with the information that tea estates which Shri Anil Goenka had mentioned in his RTI application falls under the jurisdiction of Binnakandi Development Block, Distt. Cachar (meaning, it did not fall under jurisdiction of Lakhipur Development Block). Following this, the appellant Shri Anil Goenka re-sent his RTI application to the BDO, Lakhipur Development Block, Cachar, on 30.12.2020, pointing out that his RTI application was sent back in violation of Section 6(3) of the RTI Act, 2005, which specifically states that a Public Authority is required to transfer the application, or such part of it as may be appropriate, to the other Public Authority if the information is held by another Public Authority, and should inform the applicant immediately about such transfer. The particular Section also provides for transferring such RTI applications "as soon as practicable, but in no case later than 5 days from the date of receipt of the application." In the meantime, the appellant Shri Anil Goenka had also submitted an Appeal to the FAA, O/o the Lakhipur Development Block, on 28.12.2020, expressing his grievance for not

getting any response against his RTI application dated 16.11.2020. On 13.02.2021 the appellant Shri Anil Goenka, sent a reminder to the BDO, Lakhipur Development Block, pointing out that he had not received any information as sought for in his RTI application dated 16.11.2020. In his reminder the appellant/complainant Shri Anil Goenka also quoted provisions of Section 5 (2) and Section 6(3) of the RTI Act which provides for disposal of RTI applications or providing the information to the applicant as expeditiously as possible, and in any case within 30 (thirty) days of the receipt of the request. Following this, the appellant/complainant Shri Anil Goenka received a letter No. LDB.87/RD/PG/RTI/2020-21/120 dated 25.02.2021 in which the BDO, Lakhipur Development Block, informed him that the information he had sought vide his RTI application dated 16.11.2020 had been furnished to him by the Secretary, Fulertal G.P. vide letter No. FGP.76/RTI/2018-19/02 dated 14.12.2020. The BDO, also mentioned in the said letter that the FAA had held a hearing on his 1st Appeal in the office chamber of the Project Director, DRDA Cachar, on 12.01.2021, in which Shri Anil Goenka was found to be absent. (Mr. Goenka however during today's hearing stated over the telephone that he had not received any notice of hearing on his 1st Appeal as mentioned by the BDO in his letter dated 25.02.2021.) In the letter written by the Secretary, Fulertal GP, to Shri Anil Goenka vide FGP.76/RTI/2018-19/02 dated 14.12.2020, a copy of which was enclosed with the BDO's letter dated 25.02.2021, it was stated that only one of the three tea estates mentioned in the RTI application falls under Fulertal G.P. under jurisdiction of Lakhipur Development Block (i.e. Alynee Tea Estate/grant) and that a few houses had been constructed under Alynee grant between 2011-12 and 2015-16, and the list of the houses was apparently enclosed. The Secretary, Fulertal G.P. also informed the appellant/complainant that he himself could collect the information from the G.P. office for the detail information as sought by 22.12.2020, during office hours. Mr. Anil Goenka however contended that he had not received the said letter of the G.P. Secretary, Fulertal G.P. There were also 2 (two) hand written statements, one written by the Secretary, Fulertal G.P. on 29.12.2020, and the other by the BDO, i/c Lakhipur Development Block on 12.01.2021, contents of both being that the beneficiaries have asked the Secretary, Fulertal G.P. and the BDO, Lakhipur Development Block to not to share their individual details with the applicant. Records provided by the appellant/complainant Shri Anil Goenka also contains a letter by the President, Fulertal G.P. (no date mentioned) in which Shri Anil Goenka was informed that while only Alynee Tea Estate is under Fulertal G.P. under Lakhipur Development Block, as such he can share information about IAY/PMAY-G houses only about Alynee Tea Estate. The G.P. President also requested Shri Anil Goenka to visit a particular website (www.shseparting.nic.in) for further information. The President of Fulertal G.P. also provided the appellant/complainant with a printout having mention of names of 5 (five) beneficiaries of the IAY/PMAY-G schemes.

5. Given the above, it is seen that the contentions of Shri Anil Goenka that his RTI dated 16.11.2020 had been returned even after being received by the BDO is correct. Section 6(3) of the RTI Act, 2005, clearly states that "Where an application is made to a public authority requesting for an information,—

(i) which is held by another public authority; or

(ii) the subject matter of which is more closely connected with the functions of another public authority, the public authority, to which such application is made, shall transfer the application or such part of it as may be appropriate to that other public authority and inform the applicant immediately about such transfer: Provided that the transfer of an application pursuant to this sub-section shall be made as soon as practicable but in no case later than five days from the date of receipt of the application."

In the instant case, the BDO had failed to discharge his duty as provided in Section 6 (3) of the RTI Act, 2005, vide which he should have transferred the RTI application instead of sending it back to

the applicant without assigning any valid reason in particular reference to one part of the information sought.

6. This appears to be a case of a citizen being denied information under the RTI Act, 2005, by way of allegedly malafidely denying the request and or allegedly intentionally providing untruthful, false, incorrect, misleading and wrong information.
7. The appellant/complainant has prayed for 4 (four) reliefs –
 - i. To impose maximum prescribed penalty as provided in Section 20 (1) of the RTI Act upon the PIO & FAA.
 - ii. Recommending disciplinary action against the concerned PIO and FAA.
 - iii. Any other relief which the Commission may consider appropriate in this case.
 - iv. Compensation under Section 19 (8) (b) of the RTI Act, 2005, and as deemed fit & just for the “mental agony, anxiety, wastage of valuable time & energy” and costs for intentionally giving “untruthful, misleading and suppressing” information.

While considering the prayer/relief sought by the appellant/complainant Shri Anil Goenka, the Commission is of the view that since the concerned PIO and the FAA are not present in today's hearing, as such it would not be appropriate to come to a conclusion or take any decision on the basis of the complaint and the prayer. The person who is representing the BDO, being Secretary of the Fulertal G.P. cannot be held personally responsible or cannot be held guilty for the complaint and allegation leveled by the appellant/complainant Shri Anil Goenka.

8. **In view of the facts contained in the preceding para, the Commission directs the BDO/PIO/FAA, Lakhipur Development Block to personally appear before this Commission on 28.01.2022 at 12:00 PM. He/she is also directed to submit a written statement explaining why penalty under Section 20 (1) of the RTI Act, 2005, shall not be imposed on him/her for allegedly denying and failing to furnish the sought for information within stipulated time period and even after lapse of more than 10 (ten) months of the submission of the original RTI application.**
9. **Shri K. Kunjadhan Singha, i/c G.P. Secretary, Fulertal G.P. himself should also appear in the next date of hearing, as the G.P. is the starting point from where the process of selection of beneficiaries for IAY/PMAY-G houses began. Shri K. Kunjadhan Singha, i/c G.P. Secretary, Fulertal G.P. is also directed to send a copy of the office letter dated 14.12.2020 along with the 2 (two) page enclosures to the appellant Shri Anil Goenka immediately with a information to the Commission.**
10. **The SPIO, o/o the Block Development Officer, Lakhipur Development Block is also directed to furnish the informations sought by the appellant Shri Anil Goenka, within 21 (twenty-one) days of receipt of this order, provided that the informations sought are not exempt under Section 8 (1) of the RTI Act, 2005, or under purview of any court order restricting sharing of the same. The information shall be provided free of cost. The SPIO shall also submit an Action Taken Report to the Commission on this order on expiry of the 21 (twenty-one) day period.**
11. **This order shall constitute the notice of hearing.**

Sd/-
(Samudra G. Kashyap)
State Information Commissioner,
Assam.

Authenticated true copy.

Sd/-
Secretary & Registrar
Assam Information Commission

Memo No. SIC/OS.07/2021

Dated: 02-11-2021

Copy to:

1. The SPIO, O/o the BDO, Lakhimpur Development Block, P.O. Fulertal, Distt. Cachar, Assam, PIN Code 788106, for information and necessary action. He/She is directed to present his/her case personally in the next date of hearing.
2. Shri K. Kunjadhan Singha, i/c G.P. Secretary, Fulertal G.P. Lakhimpur Development Block, P.O. Fulertal, Distt. Cachar, Assam, PIN Code 788106, for information and necessary action. He/She is directed to present his/her case personally in the next date of hearing.
3. First Appellate Authority/ O/o the BDO, Lakhimpur Development Block, P.O. Fulertal, Distt. Cachar, Assam, PIN Code 788106, for information and necessary action.
4. The petitioner, Shri Anil Goenka, 8, Bankim Mukharjee Sarani, New Alipore, Kolkata PIN Code 700053, for information and necessary action..
5. Computer section for uploading in the website.
6. Office File.
7. Order Book.



Secretary & Registrar
Assam Information Commission.