

24/7/23



STATE INFORMATION COMMISSION, KERALA

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AP.1406(3)/2021SIC

(File No. 12499/SIC—G1/2021)

Present

Dr. K.L.Vivekanandan, State Information Commissioner

Dr.Raju NarayanaSwamy IAS,
R.G.324,Ulloor Gramam,
Medical College P.O.,
Thiruvananthapuram, Pin – 695011.

Appellant

Vs

1. The State Public Information Officer,
General Administration (AIS-A) Department,
Govt.Secretariat, Thiruvananthapuram-695001.
2. The State Public Information Officer,
General Administration (SC) Department,
Govt.Secretariat, Thiruvananthapuram-695001.
3. The State Public Information Officer
Information and Public Relations (B) Department
Govt.Secretariat, Thiruvananthapuram-695001
4. The Appellate Authority &
Joint Secretary,
General Administration (AIS-A) Department,
Govt.Secretariat, Thiruvananthapuram-695001.

Respondents

ORDER

Date of application u/s 6(1)	31.12.2020
Date of reply from the SPIO	29.01.2021, 19.04.2021
Date of first Appeal	02.02.2021
Date of decision on the first appeal	03.03.2021
Date of filing second appeal	04.10.2021
Date of receipt of second appeal	07.10.2021

Appeal Petitioner Dr.Raju Narayana Swamy IAS, has filed the second appeal under Section 19(3) of the RTI Act in compliance with the direction contained in the order of the Commission in AP No.587(3)/2021/SIC.

2. The above appeal was taken on file as AP.1406(3)/21/SIC and the Commission fixed its hearing on 31.03.2023 at Commission office.

3. In his application dated 31.12.2020, the Appellant sought the following information from the first Respondent:

- a) A copy of the minutes of the Departmental Promotion Committee as per which some IAS officers of the 1991 Batch were recommended to be promoted as Additional Chief Secretary (in the grade of Chief Secretary)
- b) A copy of the decision of the Council of Ministers held on 24th December 2020 approving the aforesaid decision of the Departmental Promotion Committee.
- c) A copy of the video recorded in full during the proceedings of the Committee (Constituted vide G.O.(Rt)No.1416/2020/GAD dated 4th May 2020) held on the 8th of May 2020.
- d) A copy of the report Submitted by the Committee constituted vide G.O.(Rt)No.1416/2020/GAD dated 4th May 2020.
- e) A copy each of every page of the note file and the correspondence file pertaining to AIS-A1/351/2019-GAD and AIS-A1/211/2019-GAD

The Reply to the above application was furnished on 29.01.2021. For furnishing information on item a,d&e of the application, SPIO directed the Applicant to remit Rs.696/- in the Government treasury or to furnish DD/Bankers Cheque/Payorders. For furnishing information under item (b) , the application was transferred

to GA(SC)Department while information sought under item (c) was denied stating that it is not available in the Department.

Aggrieved by this reply, the Appellant filed an appeal to the Fourth Respondent on 02.02.2021 stating that though the SPIO has received the said application on 01.01.2021, no decision was received thereon till date. The said appeal is seen disposed on 03.03.2021 agreeing with the decision of the SPIO.

4. The Appellate Authority in his report dated 30.12.2021, stated as follows;

“ Dr.Raju Narayanaswamy IAS had submitted an application dated 31.12.2020 under Right to Information Act, 2005 and later filed an appeal dated 02.02.2021. On receipt of reply from SPIO and AA, the applicant approached the State Information Commission by filing a complaint under Section 18 of the RTI Act. Detailed report on the complaint was filed before the Hon'ble Commission both by the SPIO and AA. Hearing in the matter was conducted on 24.08.2021 and the Hon'ble Commission was pleased to dismiss the petition.

In the order, regarding the information sought as item (c) , the Hon'ble Commission directed the complainant to file an appeal before the Commission under section 19(3) of the Act praying for a relief in the form of a direction to the Respondents to provide access to the information sought for by the complainant in RTI application along with a prayer for condonation of delay. Hence the complainant has

now filed this appeal before the Hon'ble Commission challenging the non furnishing of information pertaining to item (c) of the application.

In item (c), the applicant had sought a copy of the video recorded in full during the proceedings of the Committee (constituted vide G.O.(Rt)No.1416/2020/GAD dated 4th May 2020) and held on 8th of May 2020. It is a fact that this department had sent a letter to the Director, Information and Public Relations Department for making an audio video recording for the sake of the Secretaries Committee constituted for examining the reply furnished by the officer(here Appellant) in connection with the officer's continuous absence from service. This communication made as mentioned above was only an arrangement as per the directions of the Committee and it is not known as to whether the audio video recording was used by the Secretaries Committee or not. The Secretaries Committee was constituted as per G.O.(Rt)No.1416/2020/GAD, dated 4.5.2020. The Committee consisted of four senior Additional Chief Secretaries, which was constituted solely for the purpose of examining the reply furnished by the applicant for his continued absence from duty. No Secretarial support was given to the Committee for the said purpose. Hence as per the instructions of the Committee, a communication was sent by the First Respondent to record audio video of the meeting. It is the prerogative of the Committee as to whether such video recording is to be included as part of the report or not. Since the audio video recording was not submitted by the Secretaries Committee along with the report, the same would not become part of official report. When

the Committee submitted its report on 18.05.2020, the said Committee was disbursed after the purpose was over. At the time of receipt of application under RTI Act, from the Appellant, the Committee was not in existence. The Committee was for a limited and specified purpose only.

As per the RTI Act, a public authority is supposed to furnish only that information to the applicant which is held by it or under its control in material form. The audio video unit of information & Public Relations Department was requested to video record the proceedings of the Committee for the purpose and the said unit did not record the proceedings as a part of their own procedure but on the insistence of the Committee. Therefore the Audio Video unit ideally should have handed over the recordings of the proceedings to the Committee. The unit is not supposed to keep the copy of recording in their possession as it was only for the sake of the Committee. Therefore it is evident that the communication sent by this Department for video recording of the proceedings and the video recording done by the unit of Information and Public Relations Department are Acts as agents and on the behest of the Committee. Therefore it cannot be considered that the unit of I&PRD is a separate entity and public authority for his purpose. Therefore, First Respondent has not transferred the application to the Public Authority of information and Public Relations Department.

It is submitted that pursuant to the application received under RTI Act, this Respondent had furnished all the information available

with it to the Appellant in true spirit of the Act. The video recording could not be provided to the applicant since it is not available in this department and State Public Information Officer of this department was never in possession of such a video recording. It is submitted that the SPIO has already furnished all the available information to the Appellant."

5. On scrutinizing the appeal petition, the Commission finds that the Appellant had submitted that the First Respondent has failed in his duty to furnish the name and address of the public authority with whom the information is available as regards item(c). He has also pointed out that the First Respondent has not transferred his application to the concerned public authority within the statutory time limit as prescribed under section 6 (3) of the RTI Act. He has further submitted that the First Respondent himself had sent a letter to the Public Relations Department on the 7th of May 2020 for taking audio and video recording of the meeting on 8th May 2020.

After taking into account the submissions put forth by the SPIO at the time of hearing, the Commission finds that the First Respondent has not give a proper reply to the Appellant on time. The Commission also finds that the reply provided by the First Respondent relating to his 6(1) application was illegal and incorrect. The then SPIO had also failed to transfer the 6(1) application under Section 6(3) of the RTI Act to the SPIO, Information and Public Relations Department within the stipulated 5 days for information relating to item(c). Thereafter the SPIO had also illegally requested the Appellant to remit fee relating to

items a,d&e, though the Appellant was eligible to receive the documents free of cost as the information sought by him had not been supplied to him within the stipulated time limit.

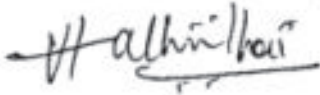
At the time of hearing, the SPIO submitted that item (c) relating to video recordings was not available with his office. The Commission had thereupon instructed the SPIO to transfer the 6(1) application to the SPIO, Information & Public Relations Department so that the Appellant could be provided item (c). The Commission finds that the SPIO of the Information and Public Relations (B) Department vide a communication dated 18.4.2023 informed the Appellant that the rushes of the video recording of the Committee meeting held under the Chairmanship of Additional Chief Secretary on 8.5.2020 was not available with them. The Commission is of the opinion that this is a serious lapse and cannot be wished away in this manner and directs the Third Respondent to take immediate steps to retrieve the video recording and provide the same to the Appellant within 15 days of the receipt of this order and to submit the Action taken report to the Commission without fail.

The above lapses on the part of the First and Third Respondents amount to violation of Sec 7(1) of the Act and warrants penal action under section 20(1) of the Act. The Commission provisionally decides to take penal action against the then First and Third Respondents with regard to the above lapse. They are directed to furnish their explanations within 15 days of receipt of this order lest the Commission be constrained to issue final orders under section 20(1) of the Act. If the First and Third Respondents want to represent anything

in person before the Commission, the same should be made clear in their explanation.

5. The Commission provisionally disposes of this Appeal Petition accordingly on the 10th day of May, 2023.

Authenticated copy



Joint Secretary(Finance)

CC/



So/-

Dr.K.L.Vivekanandan

State Information Commissioner/-