



**ARUNACHAL PRADESH INFORMATION COMMISSION, (APIC)  
ITANAGAR, ARUNACHAL PRADESH**

Appeal U/S 19(3) of RTI Act, 2005  
No.APIC-228/2021

**BEFORE THE HON'BLE FULL BENCH OF THE ARUNACHAL PRADESH  
INFORMATION COMMISSION:**

Shri Shoney Pertin  
Air Field Pasighat, Ward No.4  
PO: Pasighat, East Siang District,  
Arunachal Pradesh..... Appellant

-VERSUS -

Shri/Er. Rimmar Taso,  
PIO-cum-SE(CSQ) PWD, Itanagar,  
Arunachal Pradesh.....Respondent

Date of judgment/order: 17.03.2022

**ORDER**

This is a Second Appeal filed by the appellant U/S 19(3) of the RTI Act, 2005. Brief fact of the case that the appellant Mr. Shoney Pertin on 13.04.2021 filed an RTI application under Form-A before the PIO-cum-SE, (CSQ) PWD, whereby, seeking various information in 4(four) parts, being Part-A, Part-B, Part-C and Part-D, regarding registration, among others, of Class-I, Class-II and Class-III registered Contractors in respect of M/S Agam Construction, Pasighat, East Siang District, Arunachal Pradesh, under Enlistment Rules, 2008 (Amended upto date). And the appellant vide his another application dated-16.04.2021 submitted to the said PIO corrected his typographical error made in query Nos.1 & 3 of the Part-C of his application as Class-III to be read as Class-I. Appellant, having not received any response from the PIO, filed the First Appeal before the First Appellate Authority-cum-Chief Engineer, PWD (CSQ), Itanagar, on 02.07.2021 on the ground that no communication had been made by the PIO till filing of the First Appeal. Appellant again, having not received any response from the First Appellate Authority, filed the Second Appeal before the Arunachal Pradesh Information Commission on the ground that the information sought in item No.2 respectively of Part-A, Part-B and Part-C of his application under Form-A have not been furnished. And the Registry of the Commission (APIC), having receipt of the appeal registered the same, being vide No.APIC-228/2021, and processed for its hearing and disposal by the Commission. And, hence, the present case.

The appeal came up for hearing on 4(four) consecutive dates. During first hearing of the appeal on 11.11.2021 one Mr. Tamchi Sima, representative of the appellant, admitted to the effect that all information, except the information sought in item No.2 respectively of Part-A, Part-B and Part-C of the application under Form-



A have been received by the appellant. And, according to the representative of the appellant, PIO denied the information sought in item No.2 of the Part-A to Part-C of the RTI application to the appellant on the ground that the same are personal information of third party and that the same are exempted from disclosure under Section 8(1)(j) of the RTI Act, 2005. And, situated thus, with keeping in view that the said third party referred to by the PIO be given an opportunity of being heard under sub-section (4) of Section-19 of the RTI Act, 2005, the Commission (APIC) issued notice to the third party for hearing of the same on the next date fixed on 16.12.2021. But, since the PIO and third Party (M/S Agam Construction) were not present during second hearing of the appeal as fixed on 16.12.2022, hearing of the appeal, more particularly, of the third party was posted to next date on 03.02.2022. And, accordingly, on the next date of hearing fixed on 03.02.2022 PIO Er. R. Taso and another Shri Bomnya Kamdak (Advocate) the learned counsel for the third party (M/S Agam Construction) were both present and were being heard. During the course of hearing PIO stated in his verbal submission that since information sought in item No.2 of Part-A to Part-C, being third party information, he issued a notice to the said third party (M/S Agam Construction), if those information sought under the Act were to be furnished to the appellant or not. And the third party, whereupon, objected not to divulge or furnish the said information to the appellant and for which he has not furnished the same to the appellant. The Commission (APIC), after hearing the PIO, again informed Mr. Kamdak the learned counsel of the third party from its own side that the appellant has sought for certified copies of first experiences of completed works of his client (M/S Agam Construction) for its registration as Class-I, Class-II and Class-III registered Contractor and gave him opportunity of explaining about why the same should not be furnished to the appellant. Mr. Kamdak asked for a copy of the appeal petition and requested for grant him a reasonable time for filing of written objection against request of the appellant for furnishing of the information and same was, accordingly, granted with fixation of next date of hearing of the matter on 17.03.20022.

Today is the 17<sup>th</sup> day of March, 2022 on which the 4<sup>th</sup> hearing of the appeal, including for hearing of the third party under sub-section (4) of Section 19 of the Act is fixed. PIO, Er. R. Taso, is present and the appellant Shri Shoney Pertin is, though not present, has submitted a written application, whereby, seeking for grant of his absence on account of his 3(three) days fasting programme at New Jerusalem with a request for proceeding of the appeal in his absence. But neither the third party in person nor any of its authorized counsel(s) is present. In the meantime, one Mr. Kaku Potom, Advocate, appeared before the Commission and submitted an application in his own name with a request for adjournment of the hearing. He verbally informed the Commission that he has telephonically been instructed by Mr. Bomnya Kamdak (leading counsel) for seeking adjournment of the hearing. In this context it is pertinent to mention herein that as per available materials on record there is a team of 5(five) advocates, namely, Mr. Nalo Pada, R. Raksap, T. Darang, J. Pada and Bomnya Kamdak, who have been duly authorized by the third party (M/S Agam Construction) for representing it in this appeal before the Commission. But none of them is present and, instead, surprisingly Mr. Kaku Potom, who is not duly authorized by the third party, has moved the application in his own name for adjournment of the hearing which cannot be considered for being not an authorized



counsel of the third party. It is pertinent to mention herein also that the third party, who has raised an objection before the PIO not to furnish the information sought to the appellant, very well knows about which of the information relating to his personal information is being sought by the appellant. And the same which was very well known to the third party as aforesaid was again informed to the counsel of the third party from the side of the Commission during last hearing held on 03.02.2022 as to which of the information was sought by the appellant and was, thereafter, granted him of the opportunity of filing written objection, if any, to be so filed until today. But Mr. Kamdak, instead of availing the opportunity granted to him for filing written objection, if any, until today against the request of the appellant for furnishing of the information so sought is found to have failed or neglected to avail the said opportunity so granted to him. And, situated thus, written request of such unauthorized counsel filed in his own name for adjournment of hearing is rejected with closure of the hearing of the third party and the appeal is, thus, finally being taken up for its decision on merit.

For the purpose of arriving at a just decision of the case I have drawn the following issues for discussion as under:

**I. Whether the information required is private or public document:**

It is the plea of the appellant that the information required by him is a public document which cannot be denied to him or to any other citizen, while, on the other hand, PIO pleaded, among others, that the information required by the appellant is personal information of the third party (M/S Agam Construction). The learned counsel of the third party has, though failed to avail the opportunity of filing written objection, if any, is presumed to have raised objection from furnishing of the information to the appellant, in as much as, the third party, who is believed to have engaged a team of lawyers for raising objection in its behalf before the PIO from furnishing of the information, raised an objection from beginning before the PIO not to divulge or furnish the information to the appellant which has resulted to the filing of the present appeal. During the course of hearing the PIO admitted the fact before the Commission that the process of registering an individual as a Class-I or Class-II or Class-III registered Contractor under Public Work Department of the Government is a public activity and the information sought in the present case, being past experience of completed works, is one of the pre-requisites or requirements of the law for registering an individual as such Class of registered Contractor under Public Work Department of the Government and without which no any such individual can be registered as such contractor under works department of the Government. I have also gone through the relevant contents of the Arunachal Pradesh Enlistment of Contractor in Works Department Rules, 2008. It is evident from contents of Column 5 of the Table-I to Enlistment Rules-2018 that '*Past experience of completed works*' is a pre-requisites or requirements of the law as provided under Rule-5 of the Arunachal Pradesh Enlistment of Contractor in Works Department Rules, 2008 to be furnished to the public authority by any individual willing to get himself registered as Class-IAA to Class-V registered contractor under Public Work Department of the Government of Arunachal Pradesh.



Now after hearing the parties and also after having carefully read the relevant contents of the Arunachal Pradesh Enlistment of Contractor in Works Department Rules, 2008 it is found well established as to the fact that the third party (M/S Agam Construction), which has applied to the public authority for his registration as Class-III, Class-II and Class-I registered Contractor under Public Works Department of the Government of Arunachal Pradesh, appears to have been registered as such Contractor by the public authority through the process of registration being held by the such public authority on being found it (M/S Agam Construction) satisfying all necessary conditions, including the condition, being '*Past experience of completed works*' as required in the Table-I to Enlistment Rules, 2008 of the Arunachal Pradesh Enlistment of Contractor in Works Department Rules, 2008. Such document or information furnished by the third party to the public authority as per requirement of the rules aforesaid for his registration as a Class-III, Class-II and Class-I registered Contractor under Public Work Department of the Government of Arunachal Pradesh and based on which it has been registered by such public authority as such Class-I, Class-II and Class-III registered contractor under such works department of the Government can longer be said to be a private document. And, therefore, this issue is found going in favour of the appellant.

## **II. Whether the required information in question is exempted from disclosure under Section 8(1)(j) of the RTI Act, 2005:**

The PIO submitted that he admittedly denied to furnish the information sought to the appellant as the same happened to be a third party information, being exempted under clause (j) of sub-section (1) of Section 8 of the RTI Act. According to him he served a notice to the third party, if the same was to be furnished to the appellant or not and to which the third party (M/S Agam Construction) raised an objection not to divulge or furnish the information to the appellant. It may be reiterated herein that Mr. Kamdak the learned counsel appearing for the third party was, though given an opportunity of filing a written objection, if any, as to why the information required should not be furnished to the appellant, failed or neglected to avail the opportunity. In the face that, for arriving at a just decision of the case it is felt required to determine an issue involved in the present case as – '*if the information required by the appellant is or is not exempted from disclosure under Section 8(1)(j) of the RTI Act, 2005.*' For the purpose of determining of this issue relevant contents of Section 8(1)(j) is quoted which reads as – '*Notwithstanding anything contained in this Act there shall be no obligation to give any citizen' – "(j) information which relates to personal information the disclosure of which has no relationship to any public activity or interest or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information.*" Now, from careful reading of the contents of clause (j) of sub-section (1) of Section 8 it appears to me that for the purpose of application of this exemption clause (j), 4(four) necessary essentials (ingredients)/tests are required to be satisfied or established and those are **firstly**, *that the information sought must be available with the public authority or PIO from whom the information is sought*, **Secondly**; *information sought or required must relate to personal information of an individual or third party*, **thirdly**; *disclosure of such personal information must not have relationship to any public*



*activity or interest and, in other words, disclosure of such personal information must have relationship only to private activities or private interest and, **fourthly**; such personal information of individual or third party, if disclosed, would cause unwarranted invasion of privacy of such individual or third party.* For, more clarity about the applicability of this exemption clause, an example/ instance is cited as under: On 1<sup>st</sup> of December'2021 one **Mr. 'A'**, a Government employee, completed the construction of his private residential building on his private land which was acquired through inheritance from his father. For such construction and completion of his said residential building **Mr. 'A'** invested Rs.15 lakhs from savings of his salary and took a personal house loan of Rs.10 lakhs from the State Bank of India. After end of the year'2021 **Mr. 'A'** filed his '*Annual Property Return of the year'2021*' to his senior officer public authority or PIO, **Mr. 'B'**, on 1<sup>st</sup> day of January, 2022, wherein, he disclosed all about his personal properties including his said private residential building, completed during the year'2021, with details of his investments from his salaries and bank loans coming to a total worth of the building to 25 lakhs. Thereafter, on 31<sup>st</sup> of January'2022 another **Mr. 'C'**, an information seeker filed an RTI application before **Mr. 'B'**, whereby, seeking '*Annual Property Return*' of **Mr. 'A'** of the year, 2021. In this instance case, '*Annual Property Return of the year'2021*' submitted by **Mr. 'A'** to **Mr. 'B'** is available with **Mr. 'B'** and here first test of clause (j) about availability of information sought with the public authority/PIO is found satisfied. This '*Annual Property Return*' of **Mr. 'A'**, being sought by **Mr. 'C'** is related to personal information(s) of **Mr. 'A'**, like – construction of his private residential building on his private land acquired from his father by inheritance and investment made from savings of his salary and from bank loan obtained from State Bank of India for completion of his building. And here second test of clause (j), being information sought must relates to personal information of an individual or third party' is also found satisfied. Such disclosure of above personal information(s), i.e, **Mr. A's** construction of his private residential building on his private land inherited from his father, including, the investment made from savings of his salary and from bank loan for completion of his said private residential building have no relationship to any public activity. Here third test of clause (j) that '*personal information disclosure of which has no relationship to any public activity*' is found established. Since the said personal information(s) of **Mr. 'A'**, like - construction of his private residential building on his private land inherited from his father, including, the investment made from savings of his salary and from bank loan for completion of his said private residential building are all private activities of Mr. 'A' and, not being public activities, the disclosure of the same would cause unwarranted invasion of his (Mr. 'A's) privacy and here fourth test of clause (j) which reads as – personal information disclosure of ....., "*or would cause unwarranted invasion of privacy of individual.....*" is found established. In the whole, here - all 4(four) necessary essentials/tests of exemption under clause (j) are satisfactorily established and, **Mr. 'B'** may, therefore, deny the information sought to **Mr. 'C'** as exempted under clause (j) of sub-section (1) of Section 8 of the RTI ACT, 2005. And in this case information may be furnished by **Mr. 'B'** to **Mr. 'C'** only when he (**Mr. B**) is satisfied that the larger public interest justifies the disclosure of the said information.

Now, in the present case it is to be seen, if all 4(four) tests of clause (j) are established as all tests have been established in the above cited case for application