

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



Appeal Under Section 19(3) of RTI Act, 2005

- Vide Appeals:(1) No.APIC-54/2021
(2) No.APIC-55/2021
(3) No.APIC-56/2021
(4) No.APIC-57/2021
(5) No.APIC-59/2021
(6) No.APIC-60/2021
(7) No.APIC-61/2021
(8) No.APIC-62/2021
(9) No.APIC-183/2021
(10) No.APIC-184/2021
(11) No.APIC-139/2021
(12) No.APIC-140/2021

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

1. Shri Takar Goi
Village Yagrung
PO: Yagrung, East Siang District,
Pasighat, Arunachal Pradesh
2. Shri Tadam Baja
Press Colony, Papu Nallah,
PO/PS Naharlagun, A. Pradesh
3. Shri Tatung Taching
Pappu Nallah, PO/PS Naharlagun,
Arunachal Pradesh.....Appellants

-VERSUS -

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

Date of judgment/order: 08.03.2022

ORDER

All above 12 Nos of Second Appeals have been filed by 3(three) different appellants named aforesaid against the same PIO-cum-SE(CSQ) of the office of the Chief Engineer (CSQ), PWD, AP, Itanagar, seeking for similar nature of information under RTI Act, 2005. All appeals, being similar and analogous in nature the same have been dealt with or heard by the Commission (APIC) under a common hearing of all appeals together.

Brief fact of the case is that the first appellant Shri Takar Goi filed as many as 6(six) RTI applications on 17.11.2020, whereby, seeking similar nature of information from the PIO, being CTCs of application forms along with the information, among others, all CTCs of Work Experience Certificates submitted by 6(six) different Firms namely; (i) M/S O.G Enterprises, (ii) M/S Koze Zango Enterprises (iii) M/S Asean Agencies, (iv) M/S J.B Construction (v) M/S T.J Enterprises and (vi) M/S Sedi Allied Agencies for enlistment as Class V to Class-I registered Contractors. Having receipt of the same, PIO on the same date on 9th December/2020 furnished RTI replies to the appellant in all six cases in the manner, firstly; that information regarding registration of Class-V and Class-IV, being done within the jurisdiction of concerned SE Circles, were not available in his office and, secondly; that all other information in item Nos. 3, 4 & 5 regarding registration of Class-III to Class-I registered contractors, being exempted under Section 8(1)(j) of the RTI Act as third party information, could not be furnished to him. Being aggrieved by such orders of the PIO, the said appellant, filed the First Appeals against the said orders of the PIO on all six applications before the FAA on the same date on 28.02.2020. Having not received any response in time from the FAA, the appellant filed the second appeals before the Arunachal Pradesh Information Commission (APIC) on the same date on 15.02.2021. And the Registry of the Commission (APIC), having receipt of all six appeals aforesaid, registered the same, being APIC-54/2021, APIC-55/2021, APIC-56/2021, APIC-60/2021, APIC-61/2021 and APIC-62/2021. Appellant on 02.11.2021 submitted another RTI application, whereby, seeking same nature of information, among others, in respect of 10(ten) Firms, namely – (1) M/S Eastern Engineers and Fabricators, (2) M/S M.G.D Enterprises, (3) M/S M.M Enterprises, (4) M/S Tani Takar Enterprises, (5) M/S Asum Engineering, (6) M/S Big Enterprises, (7) M/S M.B Enterprises, (8) M/S K.D Enterprises, (9) M/S Oishy Enterprises and (10) M/S K.B.M Enterprises for enlistment as Class-III registered contractors. Having receipt of the same, PIO vide his letter dated 16.11.2020 responded that M/S Eastern Engineers and Fabricators and M/S M.M Enterprises are not Class-III registered Contractors while all information sought against other firms, being personal information, are exempted from disclosure under Section 8(1)(j) of the RTI Act. Being not satisfied with the response received from the PIO, the appellant filed the First appeal before the FAA on 02.12.2021 and again, having not received any response in time from the FAA, he filed the Second Appeal before the Commission, being APIC-57/2021. Similarly on 29.10.2020 appellant filed an application seeking similar nature of information in respect of five other Firms for enlistment as Class-III registered Contractors, Namely – (1) M/S Agam Constructions, (2) M/S Purvanchal Enterprises, (3) M/S Tusin Rodong Enterprises, (4) M/S Kine Nane Enterprises and (5) M/S Y.P Enterprises. Having not received any response from the PIO within prescribed period of 30 days, appellant filed the First Appeal before the FAA and again, having not received any response either from the FAA in time filed the Second Appeal before the Commission (APIC) on 15.02.2021, being APIC-59/2021. Appellant on 12.03.2021 submitted another 2(two) applications seeking information in respect of two Firms, namely – (1) M/S M.M Enterprises and (2) M/S Eastern Engineers and Fabricators and the first part of the information so sought are same as those of other applications aforesaid while second part of the information so sought in first application is about CTC of

application for giving prior intimation or seeking sanction by Er. Tapi Darang to the Government of AP, etc, and of the second application is about CTC of application for giving prior intimation or seeking sanction by Er. Atop Lego to the Government of AP, etc. PIO in response to the same furnished replies to the appellant to the effect that the information so sought in item No.1 of both applications, being purely third party information, are exempted from disclosure under Section 8(1)(j) of the RTI Act while information so sought in item No.2 in both applications are not available in his office. Being not satisfied with the replies of the PIO appellant filed the First Appeal in both cases on 22.04.21 and, having not received timely response from the FAA, he filed the Second Appeals before the Commission (APIC) on 28.12.2020 respectively, being APIC-183/2021 and APIC-184/2021.

Apart from the first appellant Shri Takar Goi two other appellants, namely - Shri Tadam Baza and Shri Tatung Taching also filed two separate applications before the same PIO on two different dates, whereby, seeking similar information in both their application respectively against 2(two) separate Firms, namely - (1) M/S O.G Enterprises and (2) M/S M/S Asean Agencies. The first part of the information so sought in both applications are regarding Work Experience Certificates of the proprietors as that of the information sought in other applications as mentioned aforesaid and the rest parts of information so sought in both applications are regarding Machenary (T&P) and technical personnel's with certificates and mark sheets, etc. PIO vide his letters dated-30.03.2021 denied in both cases aforesaid to furnish information to the appellant. Being not satisfied with the replies of the PIO both appellants filed the First Appeals before the FAA on two different dates respectively on 06.05.2021 and on 30.04.2021. Both appellants, having not received timely response from the PIO, filed Second Appeals before the Commission on 09.06.2021 in respect of their applications respectively, being APIC-139/2021 and APIC-140/2021.

All 12(twelve) appeals, after being duly registered and named as aforesaid, were processed to the Commission for hearing and disposal. Initially Appeals Nos. vide APIC-54/3021 to APIC-62/2021 came up for hearing for the first time before the Single Bench of the Hon'ble Commissioner Shri Genom Takseng on 09.04.2021, while two other Appeals vide APIC-137/2021 and Apic-149/2021 came up on 27.08.2021 and the rest other two Appeals vide Nos.APIC-183/2021 and APIC-184/2021 came up on 08.10.2021. However, having all appeals, being found similar and analogous in nature Hon'ble Single Bench decided to take up all cases together under a common hearing for disposals of all appeals together. In the meantime, due to certain unavoidable circumstances the Hon'ble Single Bench requested the Hon'ble SCIC for hearing of all appeals by Full Bench of the Commission and the same, as such, came up for hearing before the Commission on various dates in the whole on 09.04.2021, 27.08.2021, 10.09.2021, 17.09.2021, 08.10.2021, 20.10.2021, 29.10.2021, 07.12.2021, 25.01.2021 and 08.03.2021. During hearing of all appeals before the Single Bench of the Commission notices to the third parties were duly served for hearing under sub-section (4) of Section 19 of the Act and, resulting whereby, almost all third parties of the appeals were represented by their respective learned counsels during different dates of hearing, being held by the Full Bench of the Commission on 29.10.2021, 07.12.2021 and on 25.01.2022.

It is felt necessary to make a special reference of hearing of all appeals held by the Full Bench on 25.01.2021 on which almost all third parties or concerned Firms were represented by their respective counsels. Learned counsels (1) Mr. K. Mibang appeared for M/S O.G Enterprise in APIC-54/2021, (2) Mr. H.K Jamoh appeared for M/S Koze Zango Enterprises in APIC-55/2021, (3) Mr. H.K Jamoh appeared for M/S Asean Agencies in APIC-56/2021, (4) Mr. L. Murtem appeared for M/S M.B Enterprises, M/S K.D Electricals, M/S KBN Enterprises, & M/S Oishy Enterprises in APIC-57/2021, (5) Mr. A. Tatak appeared for M/S Agam Constructions, M/S Purvanchal Enterprises, M/S Tusin Rodong Enterprises, M/S Kine Nane Enterprises & M/S Y.P Enterprises in APIC-59/2021, (7) Mr. L. Murtem appeared for M/S J.B Enterprise in APIC-60/2021, (8) Mr. D. Boje appeared for T.J Enterprises in APIC-61/2021, (9) None appeared for M/S Sedi Allied Agencies in APIC-62/2021, (10) Mr. H.K Jamoh appeared for M/S Asean Agencies in APIC-139/2021, (11) Mr. K. Mibang appeared for O.G Enterprise in APIC-140/2021, (12) Mr. A. Tatak appeared for M/S M.M Enterprise in APIC-183/2021 and Mr. K. Mibang appeared for M/S Eastern Engineers & Fabricators. During the presence and hearing of all learned counsels named above PIO, on the query of the Commission during the course of hearing on this date, revealed the fact that all concerned third parties are very well aware about which of the information are being sought by the appellant as he had already served due notice of the same to them all. Apart from such revelation by the PIO, Commission also informed from its side to all counsels aforesaid about which of the information are being sought by the appellants and asked them to come forward for hearing of the matter as provided under sub-section (4) of Section 19 of the Act, in lieu of insisting too much on technicality of law on procedure as provided under CPC, in seeking copies of appeal petitions from the appellants, with having kept in mind that the RTI cases are time bound matters unlike that of other cases of regular courts with having regards also of the fact that the present appeals are all long pending appeals of 2020. But since all learned counsels of the third parties pressed or insisted for furnishing of copies of appeal petitions along with related documents thereof for enabling them for filing written objections the Commission directed the appellant Mr. Takar Goi to furnish each copy of appeal petitions to all respective counsels of the third parties through the Commission (APIC) within 10 days from this date of order on 25.01.2022 with a direction either to the learned counsels of the third parties to collect the copies of appeal from the Commission within 20 days from this date of order and to file their written objection, if any, against the request of the appellant for furnishing information in question on or before the next date of hearing fixed on 8th day of March'2022. And, in terms of the direction of the Commission, appellant submitted required copies of appeal petitions to the Commission (APIC) within given period of time for timely collection of the same by respective learned counsels of the third parties for enabling them for filing written objection, if any, on or before the next hearing of the appeal fixed on 08.03.2022. As per available materials on record before the Commission Mr. D. Boje learned counsel for M/S T.S Enterprise collected a copy of appeal petition of the appellant from the Commission's Office on 10.02.2022, Mr. Mr. H.K Jamoh learned counsel for M/S Koze Zango Enterprise and M/S Asean Agency collected on 14.02.2022, Mr. L. Murtem, learned counsel for M/S Enterprise, M/S K.D Enterprise, M/S M/S Oishy Enterprise and M/S J.B Enterprise collected on 14.02.2022, Mr. A. Tatak counsel for M/S Eastern

Engineering, M/S Agam Construction, M/S Purvanchal Enterprise, M/S Tusin Rodong Enterprise, M/S Kine Nane Enterprise and M/S Y.P Enterprise collected on 25.02.2022, Mr. A. Tatak, also collected copies for M/S M.M Enterprise and M/S K.B.M Enterprise on 08.03.2022 and Mr. Kaling Mibang learned counsel for M/S O.G Enterprise collected on 08.03.2022.

Today is the 8th day of March'2022 fixed for receiving of written objection, if any, from the learned counsels of the third parties and for further hearing of all appeals. But, to an utter surprise of the Commission, almost all, except four, of the respective counsels of the third parties are absent and those all counsels either present or absent are found to have failed or neglected to file written objection within the given period of time against the request for information in question. One amongst the teams of authorized counsels in APIC-139/2021 & APIC-140/2021 Mr. Toni Dameng, inspite of himself being present in the hearing, submitted as many as 8(eight) applications in total on behalf of three other counsels namely, Mr. H.K Jamoh, Mr. Ninong Ratan and Mr. Adam Tatak in his own name and signature, whereby, seeking for adjournment of hearing of the appeals, stating, inter-alia, that he has been telephonically instructed by them for seeking adjournment of hearing of the appeals vide Nos.57/2021, APIC-59/2021, APIC-60/2021, APIC-139/2021, APIC-155/2021, APIC-156/2021, APIC-183/2021 & APIC-184/2021. Mr. Kaling Mibang another counsel, inspite of his being present in the hearing, submitted two applications on behalf of another counsel Mr. V. Jamoh for adjournment of hearing of Appeals vide APIC-54/2021 & APIC-140/2021. Mr. D. Boje attending the hearing for M/S T.J Enterprise and Mr. A.K Singh attending the hearing for M/S Sedi Allied Agency, having failed to file written objection in the given period of time, sought for adjournment of hearings of the appeals, being APIC-61/2021 and APIC-169/2021 and for grant of some more time for filing written objection. Commission (APIC) declined to accept such prayers of all four counsels present during the hearing as not genuine and, in lieu whereof, allowed them to make their objection, if any, through verbal submission but all of them refused or declined to do so and left the court room of the Commission without leave of the Commission. Such conduct and attitude of all learned counsels, who have been allowed by the Commission to represent all concerned third parties, are unfortunate and the same give rise to a circumstance appearing to be that they have been so doing as in the manner as discussed here-to-before with deliberate intention of delaying the process of hearing of all appeals and of disposal of the same for the purpose of harassing the appellants as well as to the PIO. And, situated thus, Commission rejected all applications of respective counsels of the third parties and proceeded the case with the hearings of the PIO and the appellant.

Be that as it may, with keeping in view that the justice be done to all parties concerned in accordance with law, the Commission, instead of passing any such direct order for furnishing of the information so sought for such failure or refusal on the part of the learned counsels for availing the opportunity granted to them for hearing under sub-section (4) Section 19 of the Act, is of the considerate view to decide the appeals on merit. And, therefore, following issues have been drawn for just decision of the appeals:

1. Whether the information sought are exempted from disclosure under clause (d) of sub-section (1) of Section 8 of the Act:

As per available material on record proprietors of M/S Sedi Agencies, M/S JB Construction, including few others, in responses to third party notices issued against them by the PIO objected not to furnish the information sought to the information seeker as the same are exempted from disclosure under Section 8(1)(d) of the RTI Act. During first hearing of the Appeals vide APIC-183/2021 & APIC-184/2021 held through audio conferencing on 10.09.2021 Hon'ble Single Bench of the Commission (APIC), finding the PIO of having not given clear decision on the request of the appellant for information for being not consented to by the third parties, directed the PIO to give a clear decision in terms of law as to whether or not to furnish the information so sought to the appellant. And, in terms of such direction of the Commission, PIO on 13.09.2021 & 14.09.2021 passed ex-parte orders, whereby, holding not to furnish the information sought in respect of M/S Sedi Allied Agencies, M/S J.B Construction and M/S KBM Enterprises to the appellant as exempted from disclosure under Section 8(1)(d) & (j) of the RTI Act. And, on the other hand, it is the plea of the appellant Shri Takar Goi that the information sought is not exempted under any exemption clauses of Section 8 of the RTI Act. In so far as exemption claimed under clause (j) the same would be discussed at later stage but at the moment the fact or issue remains at hand for determination is, **'if the information sought in question is exempted under clause (d) of sub-section (1) of Section 8 of the Act.'** To kick off with on this aspect of the matter, it is to be understood the related provisions of the exemptions as provided in Section 8(1)(d) of the RTI Act, 2005. In terms of this provisions of law Public Information Officer (PIO) is under no obligation to furnish or to give any citizen – *"(d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party unless....."* In so far as the information so sought in the present case is concerned it is a 'Work Experience Certificate' or 'certificates of past experience of completed works/credential certificate' which is required under Arunachal Pradesh Enlistment of Contractor in Works Department Rules, 2008 to be submitted by any individual applying for his registration or enlistment as Class-V or Class-VI or Class-III or Class-II or Class-I registered Contractors in the Public Works Department of the Government. And this information required for enlistment as registered contractor of any Class or of any category, being not an information of commercial confidence, trade secrets or intellectual property and disclosure of which has no any scope of harming any competitive position of any third party, is in no way exempted under this clause (d) of sub-section (1) of Section 8 of the RTI Act, in as much as, this information is not in any manner attracted under this exemption clause. It is pertinent to point out herein that during the course of hearing PIO also squarely admitted the fact that exemption provided under clause (d) is not application to the information so sought in the present case. Learned counsels of the respective third parties, having failed or neglected to avail the opportunity of hearing under sub-section (4) of Section 19 of the Act, have no any say on this aspect of the matter. In view of facts and circumstances aforesaid Commission (APIC) has arrived at a conclusion that the information so sought is not exempted from disclosure under

Section 8(1)(d) of the RTI Act. This issue is, thus, found going in favour of the appellant.

2. Whether the information sought are exempted from disclosure under clause (g) of sub-section (1) of Section 8:

As in the similar manner as discussed in the preceding 'Issue' PIO, in terms of the direction passed by the Hon'ble Single Bench of the Commission (APIC), passed ex-parte orders dated-13.09.2021, whereby, denying to furnish the information sought to the appellant as categories of information exempted under clause (g) of sub-section (1) of Section 8 of the RTI Act. During the course of hearing of the appeals PIO stated that he passed the ex-parte orders in denial of information as exempted from disclosure under this clause (g) on the basis of the claims being made by the concerned Firms, being M/S Agam Construction, M/S Purvanchal Enterprises, M/S Kine Nane Enterprises, M/S Tusin Rodong Enterprises, M/S Y.P Enterprises M/S Asean Agencies and M/S Koze Zango Enterprises. According to him, he was of the belief of the fact that such disclosures of the certificates of past experiences of work completion being submitted by the third parties may also be threat to their life and physical safety as were being so claimed by them. But on query of the Commission, he stated before the Commission that none of the third parties has laid before him any such proof of danger to actual threat to their life and physical safety being posed by any particular person(s) or from any particular place(s), or in any particular situation, etc. This exemption clause is applicable only in such circumstances or situation where such disclosure of information would be dangerous to actual threat of life or physical safety to the person of whose information is disclosed. In the considerate opinion of the Commission the disclosure of the information so sought, being only records of past experiences of completed works of the third parties, would not, in normal situation or circumstance, create any such danger to actual threat of life or physical safety of the third parties or else of any other person. Situated thus, exemption as provided in clause (g) to sub-section (1) of Section 8 of the RTI Act is found not applicable to the information sought in the present case. And this issue is also found going in favour of the appellant.

3. Whether the information sought are exempted from disclosure under clause (j) of sub-section (1) of Section of Section 8 of the Act:

It is the plea either of the PIO or of the third parties that '*certificate of past experience of completed works*, submitted by the third parties or proprietors of all concerned Firms to the office of the PIO for their registration or enlistment as Class-V to Class-I registered Contractors are purely personal information of the third parties which are exempted from disclosure under Section 8(1)(j) of the RTI Act, 2005. But the appellants, in contra, pleaded among others that the information so sought are not exempted in any of the exemption clauses of Section 8 of the RTI Act. Now, the dispute or the core issue arisen before us for determination, is '*if the information required by the appellants are or are 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 the Commission 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 held by or available with the public authority or with the 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 or, 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 the purpose of clarity of the applicability of this exemption clause, an example/ instance is cited as under: On 1st of December'2021 one **Mr. 'X'**, 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. 'X'** 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 the end of the year'2021 **Mr. 'X'** filed his '*Annual Property Return of the year'2021*' to his senior officer, i.e, Public Authority or PIO, **Mr. 'Y'**, on 1st 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 made from his salaries and from bank loans coming to a total worth of his building to a tune of Rs.25 lakhs. Thereafter, on 31st of January'2022 another **Mr. 'Z'**, an information seeker filed an RTI application before **Mr. 'Y'**, whereby, seeking '*Annual Property Return*' of **Mr. 'X'** of the year, 2021. In this instance case, '*Annual Property Return of the year'2021*' submitted by **Mr. 'X'** to **Mr. 'Y'** is held by or available with **Mr. 'Y'** and, here - the first essential or test of clause (j) of sub-section (1) of Section 8 of RTI Act that the information sought must be held by or available with the public authority is satisfactorily established. This '*Annual Property Return*' of **Mr. 'X'**, being sought by **Mr. 'Z'** is related to personal information(s) of **Mr. 'X'**, 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 by him from State Bank of India for completion of his private residential 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 the personal information, like - **Mr. X'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 obtained by him from State Bank of India for completion of his said private residential building have no relationship to any public activity. Here the 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 of **Mr. 'X'**, like - construction of his private residential building on his private land inherited from his father, including,