

MANIPUR INFORMATION COMMISSION, IMPHAL

Appeal case No.1 of 2007.

Prof. Akham Biradhwaja Singh,
Achanbigei, P.O. Mantripukhri-795002,
Imphal East District, Manipur.
----- Appellant.

-Versus -

1. Shri. S. Budhachandra Singh I.A.S. Former Director, Directorate of Education (Schools,) Government of Manipur, Lamphelpat, Imphal S.P.I.O.
2. The Director of Education (Schools) Manipur ----- S.P.I.O.
3. The Commissioner\Secretary (Education Schools) Government of Manipur, Appellate Authority
4. The Deputy Secretary. (Education), Government of Manipur, S.P.I.O.

DECISION

26.5.2007

FACTS

Prof. Akham Biradhwaja Singh of Achanbigei, Imphal East, Manipur, the present Appellant, Respondent No4 and the representatives of Respondent Nos 2 and 3 are present. The present hearing has been necessitated because of the filing of a petition by the Respondent No 4, who has been recently impleaded as a party, on account of the failure to respond in time by the then S.P.I.O. Had the matter been pointed out in time that the note sheets belong to the Secretariat, the matter would have been referred to the appropriate S.P.I.O. The hearing of the present case has already been completed; the only stage left is the consideration of the quantum of the penalty to be imposed upon, depending on the conduct of the S.P.I.O.s. However considering the fact that the Respondent No 4 has been recently impleaded, an opportunity was given to consider his petition dated 11th May 2007, filed to this Commission.

2. In his petition, the Respondent No 4, the S.P.I.O. Secretariat, Education Branch Government of Manipur has submitted that the remaining document which is the **Note Sheets** cannot be furnished as per provisions of sub Section 1(e) of Section 8 of the R.T.I. Act 2005; hence, the exemption of this document from furnishing to the petitioner is claimed.

3. The arguments of the parties are heard. The Section 8 of the R.T.I. Act. 2005 states “(1) notwithstanding anything contained in this Act, there shall be no obligation to give any citizen:-

(a) information.....

(b) (c) (d)

(e) information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information; (f), (g) (h) (i)”

The “fiduciary relationship “has not been defined in the R.T.I.Act.2005 therefore, we have to rely on the commonly accepted meaning. The fiduciary relationship is the relationship between the trustees and their **cestui que trust** (The person who possesses the equitable or beneficial right to property, the legal estate of which is vested in a trustee). In short it is a relationship between the trust and the trustee, whereas, the relationship among the persons or officials involved in producing “**Note Sheets**” is that of employer and employee, master and his subordinates, giving advice on the prevailing rules and regulations, the course of action to be taken up in matter under discussion, agreement or disagreement by the competent authority on the suggestion made etc. Therefore, the relationship among the staff involved in the note sheets cannot be taken as that of fiduciary relationship, rather it is more of the vicarious liability; the binding liability among them is vicarious liability. To avoid the vicarious liability, an employer must **demonstrate** either that the employee was not negligent in that, the employee was reasonably careful or that the employee was acting in his own right rather than on employer’s business.

4. **Noting on files** are an integral part of a file, it is the soul of the file, access to the note sheets is crucial, to make a process transparent and accountable, it is extremely essential to know issues like, who were all the people involved in the process for taking the decision. Who circumvented the rule, who twisted and convoluted the facts involved, how much time was taken, who recommended what to whom in a file noting, who diluted it, who overruled it, why did a bureaucrat or an authority hold on a file for six months? .The access to file notings is a crucial information on the Government’s decision-making process because these help track responses, identify who did what, when and why, therefore for honest officers this usually will be their defence and protection.

5. A combined reading of Section 2(f), (i) and (j) would indicate that a citizen has the right of access to a file of which file notings are an integral part. The R.T.I.Act.2005 makes a bold attempt to define “information”, as explicitly as possible. According to this , **information** means any material in any form, including records, documents, memos, e-mails, contracts , reports, papers, samples ,models ,data material held in any electronic and information relating to any private body which can be accessed by a public authority under any other law for time being in force.

6. The Central Information Commission in their decisions vide Satyapal VS.CPIO, TCIL, Ms. Suchi Pandey Vs Ministry of Urban Development. Government of India and other cases have already held that information contains the notings on the note sheets. Till date no orders have been issued by any competent authority stating that note sheets are not part of the file.

7. It has been argued that disclosing notings will put officials in an awkward position, which is not correct. No honest and sincere officer would write any thing in a file that he would not like it to be scrutinized and criticized by the public at a later date; honest and unintended mistake may be made of course.

DECISION

In the result stated above, it is held that notings in the file are an integral part of a file and they are records; hence, any citizen can have an access to these notings, except those exempted cases under the Act.

Therefore, there is no reason to change the earlier decisions of this Commission, dated 4 th April 2007, 18 th April, 2007, 25th April, 2007, 2 nd May, 2007, and 5 th May, 2007, and the Respondents should furnish the information on or before 30 .5.2007.

The next date is fixed on 1.6.2007.

R.K.Angousana Singh

State Chief Information Commissioner, Manipur.

Copy to ---

1. Shri Budhachandra Singh I.A.S. Former Director, Directorate of Education (Schools,) Government of Manipur,
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