

MIZORAM STATE INFORMATION COMMISSION

KHATLA : AIZAWL

Complaint No. C. 05/07-MSIC

- 1) Tuikhuahtanga, Desk Editor, Zozam Weekly,
Treasury Square, Aizawl ... Complainant
Vrs
SPIO & Joint Director, Directorate of Health &
Medical Education, Mizoram, Aizawl. ... Non-applicant
- 2) Tuikhuahtanga, Desk Editor, Zozam Weekly,
Treasury Square, Aizawl ... Complainant
Vrs
SPIO & Deputy Secretary, Home Department,
Government of Mizoram. ... Non-applicant

ORDER

(7.6.2007)

These two cases are complaints arising out of refusal by the 2 SPIOs to furnish information (copy of Post Mortem Examination Report and copy of Forensic Science Examination Results) to the complainant.

The short facts of the case are that Pu C. Lalbiakliana (L), Mission Vengthlang, Aizawl, died on May 8, 2007 allegedly in the hands of Central YMA's SRS activists who allegedly committed violation of human rights. Station House Officer, Bawngkawn Police Station, Aizawl, Mizoram, has registered a murder case and 6 persons have been arrested and were released on bail. On the requisition made by the Station House Officer, Bawngkawn Police Station, Post Mortem Examination of the dead body of late C. Lalbiakliana was done, copy of which was applied for by the complainant to the SPIO & Joint Director, Directorate of Health & Medical Education, Mizoram, who refused to give copy of the Post Mortem Report on the ground that such copy cannot be given without the permission of District Magistrate as the matter is under investigation by the Police. Dissatisfied with the refusal by the SPIO to give copy of Post Mortem Report,



the complainant has filed an application under Section 24(4) of the RTI Act to this Commission for permission to obtain copy of Post Mortem Report. Original application case No. 05/07-MSIC was registered and the parties concerned were noticed. As the matter involves delicate legal issues, open notice was also published for legal advice of knowledgeable persons and legal experts who may be interested in the matter.

In the meantime, the complainant had also made an application to SPIO & Deputy Secretary, Government of Mizoram, Home Department, for copy of Forensic Laboratory report of late C. Lalbiakliana. The SPIO refused copy of the Forensic Laboratory Report to the complainant on the ground that it is exempted by Notification No. F. 13011/16/2005-IPR dated 27th March, 2007 at sl. 3. Aggrieved by the refusal, the complainant has filed another application under Section 24(4) of the RTI Act.

The two applications, being similar in nature, have been clubbed and dealt with in the same case file.

The applicant-complainant appeared in person.

The SPIO & Joint Director, Directorate of Health & Medical Education, Mizoram, Dr. Lalrinliana Sailo, appeared in person.

The SPIO has been asked to clarify his position as to why copy of the Post Mortem Report should not be given to the applicant and as to under what Section of RTI Act permission of District Magistrate is required for giving copy of Post Mortem Report. The SPIO has not been able to support his grounds for rejection of copy of the Post Mortem Report to the applicant-complainant. The SPIO stated that copy of Post Mortem Report is not available in his Department and that Post Mortem Examination was conducted on the requisition made by Station House Officer, Bawngkawn Police Station and the same would be available from them and that he should have transferred the original application to the concerned Department instead of rejecting the application. Thus, the SPIO cannot support his grounds for rejection of the application.

At the same time, the applicant-complainant has been asked to justify the maintainability of his applications under Section 24(4) of the RTI Act. The applicant-petitioner admitted that since Section 24(4) of the RTI Act is applicable only when it relates to the Intelligence Organization or Security Organization established by the State



Government on the ground of violation of human rights or corruption and since the present incident did not occur in the hands of Intelligence Organization or Security Organization established by the State Government, the matter would not be covered by Section 24(4) of the RTI Act. However, the applicant-complainant has made an oral request to convert his application under Section 24(4) of the RTI Act into a complaint under Section 18 of the RTI Act. Since the two SPIOs had refused the information requested by the applicant-complainant, the applications submitted by the applicant-complainant under Section 24(4) of the RTI Act, in fact, is on account of grievance out of the refusal by the two SPIOs to give the information requested for. The application is, in fact, in the nature of a complaint although a wrong Section has been quoted by the applicant-complainant. It is an accepted legal principle that Courts should look into the substance of the matter rather than the form. The substance of the case is that the applicant-complainant is aggrieved by the rejection of his application for copy of Post-Mortem Report and has come up to the rescue of the Commission. The Commission, by exercising its inherent power under the Act, finds it legal and proper to accept the application as a complaint under Section 18(1)(b). The request has been accepted and a complaint has been registered for the two applications.

As a result of open notice published in daily newspapers, a good number of written response has been received from citizens. However, the response from citizens are not based on the legal provisions of RTI Act and cannot be used for basing decision of the Commission. Most citizens responded by saying that it is a clear case of violation of human rights and the Commission is competent to give copy of the Post Mortem Report and should be given.

The Superintendent of Police, Aizawl, has also given written response. His contention is that since the Police has taken up the matter for investigation by registering a criminal case, the allegation of human rights violation was automatically turned into a commission of crime and is no longer covered by the term "*violation of human rights.*" His contention, in short, is that there is no more question of violation of human rights at this juncture. The contention of the learned Superintendent of Police, Aizawl, is misplaced with reference to the application made by the complainant. The complainant's allegation is that there was violation of human rights; the contention of the learned Superintendent of Police, Aizawl, is there is no violation of human rights. Since the two contentions differ in terms of time and space, the contention of the Superintendent of Police, Aizawl, needs no further discussion as it is not relevant for deciding the issue.

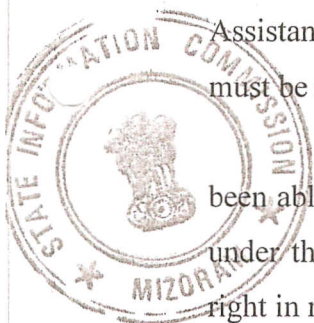


The learned Superintendent of Police, Aizawl, contended also that since the matter is under Police investigation, exemption contained under Section 8(1)(h) will come into play; that Post Mortem Examination Report is a privilege and confidential document, furnishing copy of which to third person during pendency of the investigation can be detrimental to the process of investigation. However, the learned Superintendent of Police, Aizawl, has not explained how furnishing copy of Post Mortem report can be detrimental to the process of investigation. His claim is, therefore, not supported by any substantive probability and cannot be accepted.

The learned Extra Assistant Commissioner (J), Aizawl, has also made a written submission that the Post Mortem Examination report can be treated as a privilege document that cannot be furnished to any third party and, during trial process, the same has to be handed over to the accused persons as provided under Section 207 Cr.P.C in the form of delivery of documents. This contention of the learned Extra Assistant Commissioner (J), Aizawl, can also not be accepted on the ground that Post Mortem Examination Report can be treated as a privilege has as a ground for rejection of the application for copy of the Post Mortem Report no legal basis under RTI Act. We are dealing the matter under the RTI Act. In case of any conflict with the provisions of any other law, the provisions of RTI Act is to prevail as provided for under Section 22 of the RTI Act. Therefore, what cannot be given has to be prohibited by RTI Act only, not by any other Act or Rules or instructions. Since the contention of the learned Extra Assistant Commissioner (J), Aizawl, is not based on any provision under the RTI Act, it must be rejected under RTI Act.

As far as the Post Mortem Examination Report is concerned, no one has been able to bring out any case against furnishing copy of the Report to the complainant under the RTI Act. Accordingly, it must be held that the non-applicant SPIO was not right in refusing to give copy of the Post Mortem Examination Report to the complainant.

In respect of rejection of request for copy of Forensic Laboratory Report by the SPIO, Home Department, Government of Mizoram, Pu K. Thanzama, the SPIO, appeared in person. He contended that Forensic Laboratory Report is exempted by Notification No. F. 13011/16/2005-IPR dated 27.3.2007 at sl. 3 and, therefore, cannot be given to the complainant. A perusal of the Notification at sl. 3 makes it clear that what it exempts is State Police formations at all levels and not Forensic Laboratory Report. The contention of the learned SPIO cannot, therefore, be accepted as the notification does not exempt Forensic Laboratory Report. Moreover, the complainant made a request to the SPIO, Home Department, Government of Mizoram, which is not an Intelligence Organization nor a Security Organization of the State Government which can be



exempted by notification under Section 24(4) of the RTI Act. The SPIO was, therefore, wrong in not furnishing the Forensic Laboratory Report requested for by the complainant.

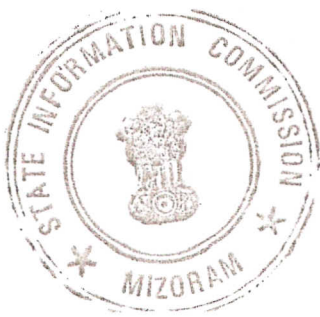
It may also be noted that the allegation of violation of human rights is by t CYMA's SRS and not violation in the hands of any Intelligence Organization or Security Organization established by the State Government. Since the alleged violators are not intelligence organization nor security organization of the State Government, the matter is squarely covered by Section 7(1) read with Section 6(1) of the RTI Act. Under proviso to Section 7(1) of the RTI Act *where the information sought for concerns the life or liberty of a person, the same shall be provided within 48 hours of the receipt of the request.* The SPIO ought to have provided the required information under the proviso to Section 7(1) of the RTI Act.

On the basis of the foregoing discussions, the complaints are accepted. The matter is remitted back to the SPIOs with the following directions :-

- 1) The SPIO & Joint Director, Directorate of Health & Medical Education, Government of Mizoram, shall furnish to give the copy of Post Mortem Examination Report of late C. Lalbiakliana within a period of 48 hours from receipt of copy of this order, and
- 2) the SPIO & Deputy Secretary, Home Department, Government of Mizoram, shall arrange to furnish copy of the Forensic Laboratory Report of the dead body of late C. Lalbiakliana within a period of 48 hours from receipt of copy of this order.

Both the information shall be supplied under Section 7(1) proviso of RTI Act.

The two SPIOs shall report compliance to this Commission of the above order within a period of 7 (seven) days from the date of furnishing the required information.




(ROBERT HRANGDAWLA)
State Chief Information Commissioner.

Copy to.

1. SPIO & Jt Director, Directorate of Health & Medical Education, Govt of Mizoram for information and compliance.
2. SPIO & Deputy Secretary, Home Department, Govt. of Mizoram for information and compliance
3. District Magistrate, Aizawl District for information.
4. Superintendent of Aizawl for information.
5. Pu Tuikhuahthanga, Desk Editor, Zozam Weekly, Treasury Square, Aizawl for information.

