Order

The Second Appeal filed by Mr. L. Biaktluanga, ITI Veng, Aizawl against Mizoram Building & Other Construction Workers’ (MB&OCW) Welfare Board was taken up for Hearing. Mr. Rotluanga, Departmental Appellate Authority (DAA) and Mr. Francis Lianmawia, State Public Information Officer (SPIO), herein after called the Respondents were heard on 30.09.2013. Subsequently Mr. L. Biaktluanga, herein after called the Appellant was heard in person on 29.10.2013.

Brief Story:

1. The Appellant through the RTI application dt. 12.06.2013 sought information on 6 points relating to Labour Cess as under:

   a) Name and Address of all contractors who had given Labour Cess to the Mizoram Building & Other Construction Workers’ Welfare Board and the amount of labour cess each Contractor has given to the Board;

   b) The total amount of money that has been spent for the salaries of the staffs of the Mizoram Building & Other Construction Workers’ Welfare Board;

   c) Specific details of other expenditures besides the salaries of the staffs of the Mizoram Building & Other Construction Workers’ Welfare Board;

   d) The names of the Banks/Financial Institutions (mentioning the Branch) where the money has been deposited/invested including the amount of interest;

   e) The total amount of money that the Mizoram Building & Other Construction Workers’ Welfare Board at the time of giving these information;
vi) The names, including their father's/husband's name and addresses of all the staffs employed by the Mizoram Building & Other Construction Workers' Welfare Board, including their qualifications/experiences, and the dates of their appointment and the mode of their recruitment.

Unquote

2. The Respondent (SPIO) furnished his reply to the Appellant on 11.07.2013 as follows:

Quote

i) Many of Labour Cess has been deducted by the DDOs of the concerned Government Departments and the specific details of all contractors could not be furnished from the Board.

ii) The Amount that has been spent for salaries of Welfare Staff till the month of June, 2013 is Rs.21,60,146/-.

iii) Welfare Scheme Administration (excluding salaries of staff) = Rs.4,00,46,400/-

iv) The amount of interests are as below :-
   (a) State Bank of India (Main Branch) = There is no interest as it is Current A/C.
   (b) Mizoram Rural bank (Aizawl Branch) = Rs.3,73,666/-
   (c) Apex Bank (Dawrpui Branch) = Rs.6,03,760/-

v) Total A/C balance of Mizoram Building and Other Construction Workers' Welfare Board as on dt.30.06.2013 is Rs.7,66,55,267/-

vi) Board Staff were engaged on the basis of Agreement (MOU) by invitation on co-terminus with the scheme.

Note : As per Sec.43(2) of the Building and Other Construction Workers' Welfare Board, "The Director General or the Chief Inspector, as the case may be, may employ experts or agencies having such qualification and experience and as such terms and condition as may be prescribed".

The personal details of the Board Staffs could not be disclose because, as per the RTI Act [Exemption from disclosure of information]. "The disclosure of information which relates to personal information, which has not relationship to any public activity or interest, or which would cause unwarranted invasion of privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the Appellate Authority is satisfied that the larger public interest justifies the disclosure of such information. (Ref: Freedom of speech, Right to know and Right to Privacy as per recommendation by 179th Report of Law Commission of India.)
3. The Appellant, being dissatisfied with the reply to points No.1, No.3, No.4(a) and No.6, directly approached the Mizoram Information Commission vide his letter dt.17.07.2013. He was informed by the Commission vide letter No.C.31018/1/2012-MIC dated 22.07.2013 to lodge his First Appeal to the Appellate Authority of the Mizoram Building & Other Construction Workers’ Welfare Board.

4. Meanwhile, on 19.07.2013, the Appellant had submitted another RTI application to the SPIO, Mizoram Building & Other Construction Workers’ Welfare Board seeking information on 5 points:-

i) Name of the Contractors who had given Labour Cess with amount of Cess.

ii) Name of Govt. Departments who had given Cess with amount of Cess;

iii) Name of different Companies who had given Cess with amount of Cess;

iv) If any other persons/authorities who had given Cess with amount of Cess;

v) Any other source of income of the Board, other than Labour Cess, with amount.

The Respondent (SPIO) sent his reply to the Appellant on 16.08.2013 Copy of which was not submitted to the Mizoram Information Commission by the Applicant but subsequently furnished by the Respondent No.1 (SPIO) which is as follows:-

Quote

i) Name of Contractors with the amount of Cess deposited cannot be disclosed directly by the Board as it concerns Third Party information. Request is being made for disclosure of the same and their response is still awaited.
(Ref : RTI Act 2005, Section 11(1), Third Party information)

ii) Same as (i) above as this also concerns Third party information. Request is being made for disclosure of the same and their response is still awaited.
(Ref : RTI Act 2005, Section 11(1), Third Party information)

iii) Disclosure of Name of different companies who had given Cess with the amount of Cess also cannot be given as their replies still awaited.
(Ref : RTI Act 2005, Section 11(1), Third Party information)

iv) There are no other persons/authorities who had given Cess.

v) Member Registration Fee amounting to Rs.18,54,115/- has been collected other than Labour Cess.

Note : Besides what had been mentioned above, the total amount of Cess collected by the Mizoram Building & Other Construction Welfares’ Board is Rs.14,19,55,788/- only.

Unquote
5. The Appellant, not satisfied with the information received, filed the “First Appeal” to the Departmental Appellate Authority on 25.08.2013. The DAA heard both the parties but failed to make formal Decision/Order in this regard as required under the RTI Act, 2005. The Respondents then supplied him a bunch of documents and the Appellant paid additional fee of Rs.1,621/- (Rupees one thousand six hundred twenty one) only for cost of the documents/information. According to the Appellant these documents are irrelevant and not the required information.

6. The Appellant, still being aggrieved, filed his “Second Appeal” before the Mizoram Information Commission on 12.09.2013 wherein he stated that he was not furnished the following points of information:-

Quote
(a) The amount of income and source of income of the Mizoram Building & Other Construction Workers’ Welfare Board from its establishment to till date on the following points wise:-
   (i) Name of Contractors who deposited Labour Cess with amount,
   (ii) Name of Govt. Departments who deposited Cess with amount,
   (iii) Name of different Companies who deposited Cess with amount,
   (iv) Any other authorities, if any who deposited Cess with amount.

(b) Specific details of other expenditures besides the salaries of the staffs of the Mizoram Building & Other Construction Workers' Welfare Board.

(c) The names including their father’s names and addresses of all the staffs employed by the Mizoram Building & Other Construction Workers’ Welfare Board including their qualifications/experiences and the dates of their appointment and mode of their recruitment.

Unquote

7. The Respondents, during the “Hearing” before the Commission on 30.09.2013, submitted files and documents connected with the present case, which were subsequently returned to them. The Commission asked the Respondent No.1 (SPIO) (i) whether he made any response to the RTI application within 30 (thirty) days?; (ii) whether he supplied bundles of documents and if so, whether or not he had informed about the documents in advance to the Applicant or shown him before furnishing the documents on payment?

The Respondent(SPIO) informed the Commission that (i) he had sent the reply within 30 days and (ii) he also said that he had supplied the bundles of documents containing 1621 pages to the Applicant in good faith as he considered, in one way or another, they have relevance to the case and that he had neither informed in advance about the documents nor shown them to the Applicant.

The Commission asked Respondent No.2 (DAA) whether (i) he received the First Appeal (ii) if so, what action has been taken by him? (iii) what was his decision/ruling on this case and whether decision was made in writing?
The Respondent No.2 (DAA) stated that he was recently posted in the Welfare Board and being new as DAA he is not well aware of the RTI Act and Rules. He further said that he just accepted the “First Appeal” and “Hearing” was conducted, he however, had not made or passed any formal/written Order/Ruling in this regard.

8. The Respondents informed the Mizoram Information Commission that in regard to supply of the information respecting to the Para 6(a) above, despite the O.M. issued by the Govt. of Mizoram vide No.B.16012/2/2011-LE&IT dt.29.05.2012 wherein it is stated “all the Departments of the State Governments are directed to deduct the Labour Cess at source and submit the amount so deducted to the Secretary, Mizoram Building & Other Construction Workers’ (MB&OCW) Welfare Board, Department of Labour Employment & Industrial Training, Govt. of Mizoram through Account Payee Cheques / Bank Draft”, many public authorities did not strictly follow the O.M. and payment of Cess has been done in cash without indicating names of the respective Contractors, name of works, amount of works, etc. This has created problems in the maintenance of records, registers, etc. for the Welfare Board.

9. The Appellant appeared before the Commission and was heard on 29.10.2013. During hearing, the Appellant informed the Commission that he had learned that ‘Second Appeal’ could be submitted to the Commission on seeing the ‘RTI Talk Show’ programme of the Chief Information Commissioner, MIC, which was televised in the Zonet Cable TV, and he also learned about the role of the general public for implementation of the RTI Act. On enquiry by the CIC as to whether he received the RTI reply within the specified time, he stated that the Respondent No.1 (SPIO) furnished the reply within the specified time frame of the RTI Act but found it to be incomplete and unsatisfactory. When he filed his First Appeal to the Departmental Appellate Authority on 25.08.2013, he stated that the Departmental Appellate Authority (DAA) failed to make any written Order and instead of giving him the required information, the Respondents supplied him with copies of a bunch of documents which, according to him, have no relevance/connection with his application. He further added that he was charged Rs.1,621/- (Rupees one thousand six hundred twenty one) only as Additional Fee for supply of the documents. The Appellant produced the Cash receipt, a photo copy of which was made by the Commission for record in the concerned File. He also stated that many Companies, Corporations, Government Departments, Contractors, even he himself, being 4th Class Contractor, have been depositing large amount of money for Labour Cess to the Welfare Board and he wanted to know where such money had been spent or utilized by the Welfare Board. The Appellant also pointed out that he felt the information sought by him could be given without any delay by the Respondents.
DECISION

10. The Mizoram Information Commission (MIC) directed that the State Public Information Officer (SPIO) and the Departmental Appellate Authority (DAA) to be more careful in dealing with the RTI matters in future and be fully conversant with the RTI Act, 2005 and the Mizoram RTI Rules, 2010. Moreover, the DAA should be well conversant with Section 19 of the RTI Act, 2005 and Rule 7 of the Mizoram RTI Rules, 2010, which concern conducting ‘Hearing’ and deciding of the First Appeal.

11. The Mizoram Information Commission is sad to learn from the Respondents that the O.M. No. B.16012/2/2011-LE&IT dt. 29.05.2012 issued by the Government of Mizoram regarding mode of payment of Labour Cess has not been complied with by many Government Departments (ref para 8 above). Non-compliance of the OM such as non-deduction of Labour Cess at source; possible non-submission of the Amount deducted to the Secretary MB & OCW’s Welfare Board; contrary to the provisions of the OM, resorting to payments of Cess being done by Cash without giving the names of the Contractors, the names of Work and the amount of Work etc, is considered to be a serious matter. The Departmental Appellate Authority (DAA), also being the Director of LE & IT Department, is directed to take up the matter again with the appropriate authority for the proper implementation of the contents of the said Office Memorandum.

12. The Mizoram Information Commission is of the view that the information sought by the Appellant does not fall under the exempted categories of the RTI Act, 2005. Moreover, some information sought by the Appellant, which have been indicated to be of “Third Party” information by the Respondent (SPIO) are considered to be not “Third Party” information but ‘Transfer’ case as the information should be available on the records of the other Departments/Public Authorities concerned. Therefore, the SPIO is directed to provide point-wise information whatever available with him as per Para 6(a)(i) to (iv) within 15 days from the receipt of this Order. He should also obtain the rest of information available from Departments concerned by way of ‘Transfer’ and furnish them to the Appellant.

13. The Mizoram Information Commission directed that since the bulky documents supplied by the Respondents have been supplied without any prior information in advance or without having been shown to the Appellant and these documents are not the required information sought by him, the SPIO is directed to take back the documents and refund the cost of information amounting to Rs.1,621/- (Rupees one thousand six hundred twenty one) within 10 days from the date of receipt of this Order.
14. The Guide on RTI Act, 2005 states “It is observed that some applicants seek information in respect of many subjects by way of one application. It creates problems for the Public Information Officer as well as the Applicant. The Applicant should, therefore, see to it that by way of one Application, he seeks information in respect of one subject only”. Under these Guidelines multiple information can be sought under the same subject whereas completely separate subject cannot be clubbed together in one Application. Since the Appellant in this case, while seeking several information on the Labour Cess issue had also clubbed together many other requests for information on various Administrative and Establishment matters such as recruitment, salaries and the details of the families of personnel in the (MB&OCW) Welfare Board etc, the Appellant is directed to make a separate application on the queries of Para 6(b) & Para 6(c) if the information is still required.

Compliance to the above ‘Order’ may be intimated to the Mizoram Information Commission.

The Appeal is disposed of by the Commission with the above directions / observations.

(L. HRANGNAWNA)  
Information Commissioner,  
Mizoram Information Commission  
Mizoram Aizawl

(LAL DINGLIANA)  
Chief Information Commissioner  
Mizoram Information Commission  
Mizoram Aizawl