

DESPATCHED
On 15/10/19



STATE INFORMATION COMMISSION, KERALA
PUNNEN ROAD, THIRUVANANTHAPURAM 695 001
Tel: 0471 2561600, 2561613, 2561614, 2561615 Fax: 0471 2330920

Email: sic@kerala.nic.in

Proceedings of the Appeal Petition No.1449(1)/2019/SIC
(File No.12300/SIC-Gen4/2019)

PRESENT

Vinson M. Paul, Chief Information Commissioner

✓ Dr. T.P. Senkumar IPS (Rtd.),
Pratheeksha, Anand Lane,
PTP Nagar, Vattiyoorkavu P.O.,
Thiruvananthapuram - 13.

Appellant

- ✓ 1. The State Public Information Officer &
Under Secretary ,
General Administration (SC) Department,
Government Secretariat, Thiruvananthapuram.
- ✓ 2. The State Public Information Officer &
Under Secretary ,
Home (SSA) Department,
Government Secretariat, Thiruvananthapuram
- ✓ 3. The Appellate Authority &
Special Secretary,
Home (SSA) Department,
Government Secretariat, Thiruvananthapuram.

Respondents

Date of application u/s 6(1)	7.5.2019
Date of reply	31.5.2019, 1.6.2019
Date of filing first Appeal	14.6.2019
Date of decision on the first Appeal	11.7.2019
Date of filing 2 nd appeal in the Commission	19.7.2019
Date of receipt of 2 nd appeal in the Commission	20.7.2019
Date & Venue of Hearing conducted	5.9.2019, Commission's Headquarters
Presence in the Hearing	SPIO present. Appellant absent
Date of Report called for by the Commission	3.8.2019
Date of receipt of report in the Commission	19.8.2019

ORDER

Appeal petitioner Dr. T.P. Senkumar IPS (retired) represented before the Commission that the information requested by him was not fully provided stating that the files concerned could not be traced. He stated that the information sought by him related to cabinet minutes and hence the reply furnished cannot be accepted. He also stated that the information sought by him was required in connection with his court cases.

2. In his first application submitted before the SPIO of the office of the Chief Secretary, the Appellant sought the following information :

1. Copy of the Government notification G.O. No.27707/SS/A3/1996/Home dated 27.6.1996 and 8.7.1996 regarding withdrawal of the consent given to the CBI
2. Instructions issued by the Government of Kerala following the Judgement of the Hon'ble High Court of Kerala in OP Nos.12247/1996, 12428/1996, 15363/1996 and 16358/1996.

In the second application, the Appellant sought the following information :

1. Copy of the minutes of the Cabinet meeting leading to GO (Rt) No.1625/96/Home dated 10.7.1996.
2. Copy of the written statement of Government in OS No. 370/2003 of Sub Court, Thiruvananthapuram.
3. Name of Chief Minister and other cabinet ministers and the Chief Secretary involved in the decision making of the above Government order.
4. Copy of the minutes of the Cabinet meeting which took decision to withdraw the consent accorded as per notification No.66329/SSA3/1994/Home dated 2.12.1994 vide Kerala Gazette extra ordinary notification No.27707/SSA3/1996/Home dated 27.6.1996.
5. Name of the Chief Minister and other cabinet members and Chief Secretary responsible for the issuance above of Government Order.

Reply to the above application was furnished by the first Respondent stating that the information sought is connected with Home Department and hence the application of the Appellant was transferred to the SPIO of the above

department under section 6(3) of the RTI Act. It was also stated that the existing practice in the GAD (SC) was to forward the extracts of the file on which cabinet decision was made to the department concerned. It was further stated that the records pertaining to the decision of the council of ministers during the period mentioned in the application are now kept in the State Archives Department and that the details as to whether the orders were issued based on the decision of the council of ministers could be ascertained only from the files of the Home department. Thereafter, the second Respondent furnished reply to the Appellant stating that information relating to item no.1 would be furnished on remittance of Rs.6/- With regard to item no.2, it was stated that despite thorough search, disposal relating to OP Nos. 12247, 15363, 16358 of 1996 could not be traced. As such, all departments in the Government Secretariat, the offices of the Advocate General, State Police Chief and District Government Pleader have been requested to locate the missing disposal and furnish the same to the Government and the information sought by the Appellant would be provided on locating the file. With regard to the second application, it was stated that the information sought in item 1,3,4 and 5 cannot be provided as the disposal leading to G.O (Rt) No.1625/96/Home dated 10.7.1996 could not be traced and hence all departments concerns have been requested to locate the missing disposal if available with them and furnish the same to the Government. With regard to item No.2, the Appellant was directed to remit Rs.16/- . The Appellant filed his first appeal before the third Respondent stating that the second Respondent failed to provide the entire information sought by him. He stated that the plea that the information sought was not available was not acceptable. The above appeal was disposed of by the third Respondent stating that the disposal leading to GO (Rt) No.1625/96/Home dated 10.7.1996. (File No.27707/SSA3/1996/Home) could not be traced and hence the second Respondent cannot be considered to have denied the information sought by him. It was also stated that the second Respondent would furnish the information once the untraced file is located. With regard to the second application, it was stated that the disposal relating to OP nos. 12247/96, 15363/96, 16358/96 could not be traced and the information furnished by the second Respondent was factual. Here again, it was stated that the information sought by the Appellant would be furnished on locating the file. The third Respondent, in the light of the facts stated, upheld the decision of the 2nd Respondent.

3. The Appellant, in his hearing note submitted before Commission stated that Crime no.246/1994 of Vanchiyoore Police Station, Thiruvananthapuram City was initially investigated by the Thiruvananthapuram City Police and thereafter by the CBCID. Later, the above case was transferred to the CBI. The CBI filed a refer charge in the case during 1996. The State Government in 1996 took a decision to withdraw the consent given to the CBI for further investigation of the case and the Appellant was appointed as the Investigating Officer of the above case vide G O (Rt) No.1625/96/Home dated 10.7.1996. The Appellant stated that the Government of Kerala in 2018 falsely represented matters relating to the above case before the Central Government in connection with his appointment to the Kerala Administrative Tribunal. There was also a damage suit filed by Sri. Nambi Narayanan in Sub Court, Thiruvananthapuram in which the Appellant was arrayed as a Respondent and the Government of Kerala had given a detailed written statement stating that the role of by the Appellant in the case was purely a part of his official duty. However, the State Government represented wrong facts before the Kerala Administrative Tribunal. He stated that he required the information sought by him to establish real facts before the concerned. He further added that the information sought by him is deliberately being withheld as disclosure of the information sought by him would clearly establish facts to the contrary. He requested the Commission to direct the concerned to furnish the information sought by him.

4. On scrutinising the appeal petition and connected documents, the Commission finds that item no.2 in the first application submitted by the Appellant is yet to be furnished to him. The contention of the second Respondent that in the file containing disposal of OP Nos. 12247, 14248, 15363, 16358 of 1996 could not be traced cannot be accepted. In case the file referred to was destroyed on expiry of its retention period, relevant details thereof should have been furnished to the Appellant. In the absence of any such information, the Appellant is entitled to receive the information sought by him and hence the Commission directs the second Respondent to trace the file concerned and furnish the information sought by the Appellant free of cost within 25 days of receipt of this order. Only item no.2 in the second application is seen furnished to the Appellant. With regard to item nos. 1,3,4 and 5, it was stated that disposal leading to G.O (Rt) No. 1625/96/Home dated 10.7.1996 (File No.27707/SSA-3, 1996/Home) could not be traced. The above response is equally unacceptable under the RTI Act. Here again, the second Respondent

equally unacceptable

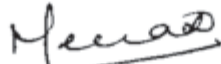
should trace the above file and furnish the information sought by the Appellant in item nos. 1,3,4 and 5 free of cost within 25 days of receipt of this order. Copy of the minutes of the cabinet meeting leading to issue of G.O (Rt) No. 1625/96/Home dated 10.7.96 and other details as sought by the Appellant can easily be traced from the State Archives Department as old records pertaining to the decision of the Council of Ministers are kept in the State Archives Department. Hence the Commission directs the second Respondent to obtain the records from the State Archives and furnish the information to the Appellant. In fact the General Administration (SC) Department transferred the application of the Appellant to the Home (Secret Section A) Department without proper application of mind. It was the responsibility of the General Administration (SC) Department to obtain the above and furnish the same to the Appellant after ascertaining the period of the Cabinet decision as the Business Rules stipulate that Government Orders should be issued within 48 hours of Cabinet decision. The Commission directs the second Respondent to obtain the above information as otherwise considerable delay would be caused in re-routing the application of the Appellant through the General Administration (SC) Department. If the information sought by the Appellant cannot be provided within the time limit prescribed, the Additional Chief Secretary (Home) should furnish a detailed written affidavit before the Commission as to why the Home Department should not be directed to suitably compensate the Appellant under section 19(8) (b) of the RTI Act on account of its failure to furnish the information to the Appellant. The Commission directs the Secretary to the Commission to forward a copy of this order to the Additional Chief Secretary (Home) for furnishing the above affidavit.

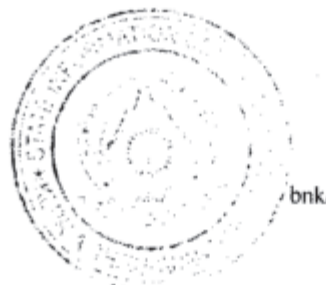
5. The Commission disposes of this appeal petition provisionally as stated above on the 17th day of September, 2019.

Sd/-

Vinson M. Paul
Chief Information Commissioner

Authenticated Copy


Commission Secretary



bnk/

Lalith Babu www.rtiexpert.com

SPATCHED
04/06/2020

Lalith Babu



സംസ്ഥാന വിവരാവകാശ കമ്മീഷൻ കേരളം,
തിരുവനന്തപുരം 695 001

ഫോൺ: 0471 2561614, ഫാക്സ്: 0471 2330920

E-mail: sic.ker@nic.in

A.P.1449(1)/2019/SIC തീർപ്പു കല്പിച്ചു കൊണ്ടുള്ള നടപടിക്രമം

File No. 12300/SIC-G4/2019

സന്നിഹിതൻ

ശ്രീ. വിൻസൻ എം. പോൾ, മുഖ്യ വിവരാവകാശ കമ്മീഷണർ

✓ ഡോ. ടി.പി. സെൻകുമാർ ഐ.പി.എസ് (റിട്ടയേർഡ്)
പ്രതിഷ്ഠ
ആനന്ദ് ലെയിൻ, പിറ്റിപി നഗർ
വട്ടിയൂർക്കാവ് പി.ഒ.
തിരുവനന്തപുരം - 13

അപ്പീൽ ഹർജിക്കാരൻ

✓ സ്റ്റേറ്റ് പബ്ലിക് ഇൻഫർമേഷൻ ഓഫീസർ &
അണ്ടർ സെക്രട്ടറി
ജനറൽ അഡ്മിനിസ്ട്രേഷൻ (എസ്.സി) ഡിപ്പാർട്ട്മെന്റ്
ഗവൺമെന്റ് സെക്രട്ടേറിയറ്റ്
തിരുവനന്തപുരം

എതിർകക്ഷികൾ

✓ സ്റ്റേറ്റ് പബ്ലിക് ഇൻഫർമേഷൻ ഓഫീസർ &
അണ്ടർ സെക്രട്ടറി
ആഭ്യന്തര (എസ്എസ്എ) ഡിപ്പാർട്ട്മെന്റ്
ഗവൺമെന്റ് സെക്രട്ടേറിയറ്റ്
തിരുവനന്തപുരം

✓ അപ്പീൽ അധികാരി &
സ്പെഷ്യൽ സെക്രട്ടറി
ആഭ്യന്തര (എസ്എസ്എ) ഡിപ്പാർട്ട്മെന്റ്
ഗവൺമെന്റ് സെക്രട്ടേറിയറ്റ്
തിരുവനന്തപുരം

അന്തിമ ഉത്തരവ്

മേൽ അപ്പീൽ ഹർജിയിൽ രണ്ടാം എതിർകക്ഷി ഹാജരാക്കിയ റിപ്പോർട്ടിന്റെ അടിസ്ഥാനത്തിൽ ഈ അപ്പീൽ ഹർജിയിലെ നടപടികൾ അവസാനിപ്പിച്ചു കൊണ്ട് ഈ ഉത്തരവ് ഇന്നേ ദിവസം 2020 മാർച്ച് മാസം 14-ാം തീയതി കമ്മീഷൻ പുറപ്പെടുവിക്കുന്നു.

(ഒപ്പ്)

വിൻസൻ എം. പോൾ
മുഖ്യ വിവരാവകാശ കമ്മീഷണർ

സാക്ഷ്യപ്പെടുത്തിയ പകർപ്പ്

കമ്മീഷൻ സെക്രട്ടറി



Lalith Babu *www.rtiexpert.com*