

BEFORE DR. GITA RAWAT, JOINT SECRETARY & FIRST
APPELLATE AUTHORITY
(Under Section 19 of RTI Act, 2005)
MINISTRY OF LAW & JUSTICE: DEPARTMENT OF LEGAL AFFAIRS
ROOM NO. 40B-B, 'A' WING, SHASTRI BHAWAN, NEW DELHI 110001

Appeal No.21(442)/2014 -IC

Date:9.7.2014.

In the matter of

Fionna Grove,
The Rising Sun Farm,
Survey No. 119, 366 Ramagondahalli,
P.O. Whitefield,
Bangalore-560066

Appellant

Versus

Central Public Information Officer
Ministry of Law & Justice
Department of Legal Affairs
Shastri Bhawan
NEW DELHI – 110001
Respondent

Date: 9.7.2014

ORDER

The appellant has filed an appeal on 27.6.2014 received on 30.6.2014 under Section 19 of the RTI Act for not getting the information furnished by the CPIO, the respondent vide letter NO. 21(442)/2014 dated 15.5.2014

Brief facts of the case:

1. The appellant vide his application dated 19.4.2014 received on 24.4.2014 sought information relating to Notary Public.
2. The respondent has collected the information from the concerned sections of this Ministry and sent the reply to the appellant vide letter No. 21(442)/2014-IC dated 15.5.2014.
3. Being aggrieved with the information of the respondent the appellant has filed an appeal received on 9.6.2014.
4. I undersigned have been appointed as Appellate Authority in the matter on. After perusal of the facts of the case it appears that no hearing is required in this matter.

6. I have assessed the facts and circumstances of the case and come to the conclusion that the CPIO, the respondent has acted as per provisions of the Act. In view of keeping the principles of natural justice the appeal is rejected.
7. The appellant may kindly note that since the proceeding has been closed, no further hearing may be conducted in this matter. Moreover, if there is any grievance against the order of the Appellate Authority, he may file second appeal before the Hon'ble CIC sitting at 2nd Floor, August Kranti Bhawan, Bhikaji Cama Place, New Delhi 110066(within 90 days)i.e period as prescribed under the provision of RTI Act, 2005.

(DR. GITA RAWAT)
Joint Secretary & Appellate Authority
Date:09.07.2014

Copy to:

1. Fionna Grove, The Rising Sun Farm, Survey No. 119, 366 Ramagondahalli, P.O. Whitefield, Bangalore-560066
2. Smt. Asha Sota, CPIO/Under Secretary, Deptt. of Legal Affairs.

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~~APPEAL~~
URGENT
Put up on file. 3076
B
1/7/14

Fionna Grove
The Rising Sun Farm,
Survey No:119,
366,Ramagondahalli,
P.O.Whitefield,
Bangalore - 560066

27th June 2014

To,
Dr. (Smt.) Gita Rawat
Joint Secretary & Legal Advisor.
Ministry of Law & Justice,
Department of Legal Affairs,
Room No: 406 - B,
'A' Wing, 4th Floor, Shastri Bhawan,
New Delhi - 110001.

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01-07-14
21(442) 2014-II - 1 Appeal

First Appeal under Sec.19(1) of RTI Act:

Appellate Authority: Dr. (Smt.) Gita Rawat, Joint Secretary & Legal Advisor.

Public Information Officer: PIO, Notary Cell, Ministry of Law & Justice.

Reference:

- 1) Original application under RTI Act dated 19.04.2014 and received by ^{Notary} NOTARY CELL office on 24.4.2014.
- 2) Reply to the RTI Application dated 15.05.2014 received by me on 29.05.2014.

Madam,

I had filed an application under the RTI Act for

- 1) All applications and correspondences for initial application and renewal of Certificate of Practice for Sri. Shettar Sangameshwar, Notary appointed by the Central Govt. vide Reg. No: 205, Registration Date 11.09.1985; for the years 1985 - 2006.
- 2) All Annual Returns available with your department from 1985 - 2006 for the said Notary, Shri. Shettar Sangameshwar.

I was not in Bangalore when the reply had been delivered by the postal department on 29.05.2014. I have only returned yesterday and have seen the reply. However I am filing this return within the prescribed period of limitation for filing the 1st Appeal of 30 days.

I have perused the reply that I had received and as such it has been clearly mentioned in the Annexure - A that "The information is denied being the Third Party Information under Section 11 of the RTI Act, 2005"

I am filing this appeal keeping the following points in mind.

- (1) As per Section 11 (1) of the RTI Act, 2005, which specifically and categorically specifies the

RTI Cell
30/6/14
P.T.S. - F.A.A.

procedure to be followed in the case of information pertaining to a third party, I quote as under.

“Where a Central Public Information Officer or a State Public Information Officer, as the case may be, intends to disclose any information or record, or part thereof on a request made under this Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the Central Public Information Officer or State Public Information Officer, as the case may be shall within 5 days from the receipt of the request, give a written notice to such third party of the request and of the fact that the Central Public Information Officer or State Public Information Officer, as the case may be, intends to disclose the information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party shall be kept in view while taking a decision about disclosure of information.”

The reply to my application received from the PIO does not make any mention of the above procedure being followed. It appears on the surface that the PIO has replied my original application under the RTI Act, 2005 without issuing notice to the third party. The third party being a notary appointed by the said Notary Cell should have made inquiry with the said Notary and kept such an oral or written submission by the said Notary in mind while taking a decision on the disposal of the application filed by me. I am also of the understanding that such a notice to the third party is not a discretionary decision that can be taken by the PIO, but is a due process of law and must be complied with.

- (2) The general public at large have got no way to verify the genuineness of a Notary. Most notaries do not display any certificate of practice at their place of practice. Indeed, many Notaries have a small table in the court complex or other Government offices and there are practical difficulties in displaying the same too. However, the public have no way of verifying whether a certain Notary is indeed licensed to practice as a Notary of the Government. As per the Notary Act, 1952, Sec 5 (1) & (2), the validity of a Notary's certificate of practice is 5 years following which, the Notary has to file an application with the Government Authority that appointed him to renew his certificate of practice. The general public have no easy way of knowing whether a certain notary has indeed renewed his certificate of practice or not. We are also not aware whether a notary has let his certificate lapse before renewing further. The renewal of a notary certificate of practice is automatic, but only on the payment of the prescribed fees.

The law is very clear that documents/ instrument that are notarized / certified by a person (Notary) who is not empowered by any Authority to do so will be treated as if the said document / instrument is not notarized or certified. Notaries enjoy high status in the country and are a respected section of society. There are also Notaries appointed by various Government Authorities and for a lay person to verify that a particular Notary is empowered to admit / certify / attest his precious documents is virtually impossible. Due to this there are hardships faced by members of the public.

- (3) In the case of T.L.Nagendra Babu vs Manohar Rao Pawar in the Karnataka High Court, Equivalent Citations: ILR 2005 KAR 884 in the Order dated 16th December 2004, the Hon'ble Judge has dismissed an appeal based on a power of attorney which is presupposed to be executed before the notary Sri. Sangameshwar. In the said case, the DW1 has said ***“he enquired the Notary Sri Sangameshwar, who said such name and signature was not there, thereby referring to the plaintiff”***. In the specific case, it appears that there is a notary by the name of Sri. Sangameshwar who had admitted a document for execution before him. However, some

years later, he came to know that there is no such notary?. This is confusing and a great deal of concern. Particularly when (in Karnataka State), a Power Of Attorney executed before a Notary is valid for the attorney holder to further execute a transfer of property based on the GPA document.

- (4) As per the Notary Rules 1956, Sec 14, "Every Notary shall, in the first week of January every year, submit to the appropriate Government, an Annual Return in Form XIV of the notarial acts done by him during the preceding year".

A reading of the Notary Rules, 1956 as quoted above makes it clear that a Notary has to submit an Annual Return to the Authority that appointed him in January. I have asked for a copy of the Annual return filed by the said Notary for any year that he may have submitted for and is available with the PIO. As can be seen from my request, I am not asking for any particular year to trace any particular record. I am only interested to know whether the concerned Notary has been in the habit of complying with Sec.14 of The Notary Rules 1956 and a certified proof of the same.

- (5) The information I have sought relates to documents of a person of Civil Stature but who has the Authority of the Government Of India to conduct his business. Without the Authority of The Government, he has no right to admit any document for execution. Bearing this in mind, what information I have requested is the property of the Government Of India and not of the Notary. The notarial annual returns (Form XIV) in particularly are a record of all notarial acts done by the notary in the preceding year. Once this is submitted to the Government Of India, it ceases to be the personal information of the notary. If indeed such a stand is taken by the Government regarding the release of information which is available with it, this would set a dangerous precedent. Agents and Officials of the Government of India will refuse information on the basis that another person / authority has approved / executed / administered / accepted / decided and would term that information as third party information. This is against the terms of fair and just governance and defies the very basis of the RTI Act, 2005.

PRAYER:

I humbly request you to instruct the PIO to issue me certified copies of the documents requested in my original RTI Application. I would also prefer to be informed whether any inquiry was made with the third party (Notary) as per the Section 11 (1) of the RTI Act, 2005.

Thanking You,

yours sincerely,


Fiona Grove

Enclosed xerox copies of:

- 1) Original application under RTI Act dated 19.04.2014
- 2) Reply to my RTI Application dated 15.05.2014 received on 29.05.2014.

442/2014-IC
nt of India
aw & Justice
Legal Affairs
IMPLEMENTATION CELL

Shastri Bhawan, New Delhi.
Dated 15.05.2014

To

Ms.Flonna Grove,
The Rising Sun Farm,
366, Ramagoundahalli,
P.O.-Whitefield,
Bangalore-560066
(Karnataka)

Subject:- Information under RTI Act, 2005.

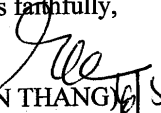
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Sir,

I am to refer to your RTI application dated 19.04.2014 (received on 24.04.2014) on the subject mentioned above and to say that concerned Section of this Department has furnished the information which is enclosed at **Annexure-'A'**.

2. Dr.(Smt.) Gita Rawat, Joint Secretary & Legal Adviser, Ministry of Law & Justice, Department of Legal Affairs, Room No. 406-B, 'A' Wing, 4th Floor, Shastri Bhawan, New Delhi-110001, Tel No. 23384630, is the Ist Appellate Authority. The period of limitation for filing the Ist Appeal is 30 days.

Yours faithfully,


(K. GINKHAN THANG)
DS&Central Public Information Officer
Tele: 23384706

Issued
21/05/2014

Annexure - A

Department of Legal Affairs
Notary Cell

F.No. 5A(138)/2014-NC

Sub: Information sought for by Ms. Fionna Grove, Bangalore under RTI Act, 2005

CAPIO, LA vide O.M. No. 21(442)/2014-IC dated 25.04.2014 has forwarded a copy of RTI request of Ms. Fionna Grove, Bangalore seeking information under RTI Act.

2. Vide his application(F/A), Ms. Fionna Grove, Bangalore wanted to know the information regarding asking for photocopies of application, renewed certificate of practice and annual returns of Shri Shettar Sangameshwar, Notary Public, Regd. No. 205.

3. We may, if approved, provide following information to CAPIO for onward submission to the applicant:

"The information is denied being the Third Party Information under Section 11 of the RTI Act, 2005."

4. The information being provided is not barred from disclosure under the RTI Act.

Submitted for approval please.

[Signature]
15/5/14
S.O.(N.C.)

DLA&CA

[Signature]
15/5/14

[Signature]
15/5

S.O. (I.C.)

52
15/5/14

EH-421742463IN-22/4/14

Applicant:

Ms. Fionna Grove
The Rising Sun Farm,
366, Ramagondahalli,
P.O. Whitefield,
Bangalore - 560066.
19th April 2014

To,
The Public Information Officer
The Competent Authority (Notaries)
Ministry of Law & Justice.
Department of Legal Affairs.
4th Floor, A Wing,
Shastri Bhawan,
Dr. Rajendra Prasad Road,
New Delhi - 110001

Dear Sir,

Application under RTI ACT for :

- 1) All applications and correspondences for initial application & renewal of Certificate of Practice for Sri. Shettar Sangameshwar, Notary appointed by the Central Govt. vide Reg. No: 205, Registration Date: 11.09.1985; for the years 1985 - 2006
- 2) All Annual Returns available with your department from 1985 - 2006 for the said Notary, Shri. Shettar Sangameshwar.

I am also enclosing an Indian Postal Order (for initial fee of Rs.10/-) bearing No:22F 182027 along with my application.

Thanking you,

yours sincerely,


Fionna Grove

R7/1CA
Sri RT
24/4/14

R&IDy. No. 664
Dated 24-4-14

IMPLEMENTATION CELL
FTS Dy. No. 442
Date 25-04-14