



J&K State Information Commission
Wazarat Road, Near D.C. Office, Jammu /
Old Assembly Complex, Srinagar.

File No. SIC/CO/Comp/118/2015
Decision No. SIC/ CO/Comp/118/2015/792

Appellant : Raman Sharma

Respondent : PIO Home Department

Date of hearing : 23-06-2015 (partly heard)

Date of Decision: 15.9.2015

Chief Information Commissioner: G.R.Sufi

Referred Sections: Section of the J&K RTI Act, 2009.

Result: Appeal disposed of.

Facts:-

1. Shri Raman Sharma, a resident of the State and a social activist who has been exercising his right to information and has filed certain RTI applications on very important social issues had approached this Commission with a complaint on 25.3.2015 complaining therein that he had filed an RTI application before the PIO Home Department seeking the following information regarding the compliance to the directions issued by the Hon'ble Supreme Court of India in the matter of State of Gujarat V/s Kishanbhai Etc (2014)5 SCC 108:-

“Certified copies of the following information from your public authority regarding compliance with the directions issued by the Hon’ble Supreme Court of India in the matter of State of Gujarat vs Kishanbhai Etc.,(2014)5SCC 108 regarding action to be taken in the case of acquittals in criminal proceedings:

1. All office memoranda/circulars/guidelines/instructions issued by your Department to ensure compliance with the said directions, till date;
2. List of members of the Standing Committee constituted to implement the Court’s directions with names, designations and contact details;
3. Minutes of all meetings of the Standing Committee held till date;
4. The complete list of instances of acquittal in criminal proceedings examined by the Standing Committee till date and the considerations recorded by it. The IPC Sections and/or complete title of Special Laws with relevant Sections applicable to reach instance of acquittal may please be provided;
5. All training materials developed for investigating and prosecuting officials as per the Court’s directions along with the name and contact details of the persons/agency employed for designing and developing such training materials;
6. The number of trainings including refresher courses conducted till date for investigating and prosecuting officials along with name, designations of participants, duration of each training programme, dates and venue;
7. The number of cases in which departmental action has been initiated against erring police officials and prosecutors till date in relation to acquittals. Please provide details such as designation of the official, office address and date of initiation of departmental action along with the status of such proceedings as on the date of this RTI application (name of the official is not required).
8. Details of monitoring mechanism established for assessing the performance of investigation and prosecution officials who have undergone training as per the Court’s directions and
9. The URL of the web pages where any or all of the information described above is uploaded on your official website.”

The information seeker had also brought it to the notice of the PIO that this information was required to be disclosed pro actively by the public authority as per section 4 of the J&K RTI Act, 2009. As he had not found such information on the website of the public authority, therefore, he filed RTI application under section 6(1) of the J&K RTI Act, 2009. As per Section 7, the PIO was under legal obligation to respond to this request for information as expeditiously as possible but not later than 30 days. As the complainant did not receive any response from the PIO even after lapse of maximum time i.e

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30 days, he preferred a complaint before this Commission under section 15 of the Act.

3. The Commission Registry posted the complaint for hearing and sought counter statement from the PIO by 19.05.2015. However, the PIO did not attend on the said date neither any counter statement was given. Therefore, the Commission again posted the hearing for today i.e 23.6.2015 and Shri Syed Sarfaraz Rizvi, PIO Home Department attended. He is a Law Officer posted in the Home Department and he has submitted before the Commission that he has been designated as PIO w.e.f 8.5.2005. It is stated by him that his staff did not put up RTI application to him on time on the plea that the same was not received. He received RTI application only through the Commission. Shri Raman Sharma, complainant was contacted on phone by this Commission as he could not travel from Jammu to attend this Commission at Srinagar. He informed the Commission that as per postal authorities print out, this RTI application was duly delivered to the addressee on 31.12.2014. Therefore, it seems to the Commission that the concerned staff in the Home Department has without any due verification reported to the officer about the non delivery of the RTI application. The Commission is being repeatedly told by the PIO(s) and other authorities about the unverified statements and reports given by the junior staff which unfortunately are being accepted by the officers as gospel truth. The Commission would like to emphasize the officers not to accept the irresponsible and un-verified statements of their staff to avoid the compliance of RTI applications. The onus for ensuring the compliance is on the PIO and not on the staff and penal actions are also on him and him

alone. Therefore, before accepting any loose and un-verified statement from the irresponsible junior staff, he should make necessary investigation into the truthfulness or otherwise of the statement.

4. Having made these observations, Commission would now like to observe that the information seeker has asked an important information on an equally important issue faced by the society which is with regard to the compliance with the Hon'ble Supreme Court's directions in their judgment in the case titled State of Gujarat v/s Kishenbhai Etc(2014)5 SCC 108 as referred above. The Commission has gone through this important judgment. This judgment relates to alleged kidnapping/ abduction of a six year old girl child. This toddler was raped and murdered by inflicting injuries on her head and other parts of the body. In order to rob the silver anklets which the girl child was wearing, the murderer and rapist had chopped off her feet to get the possession of the silver anklets. On the evidence produced before the trial court, the trial court had sentenced the accused to death subject to the confirmation of the Gujarat High Court. However, the trial court's decision was reversed by the Hon'ble Gujrat High Court by giving him benefit of doubt. Not being satisfied with this decision, the prosecution had approached the Hon'ble Supreme Court. The Hon'ble Supreme Court again went through the evidence and deficiencies and found number of deficiencies in the case. The shody handling of the case by the Prosecution resulted in acquittal of the accused with following observations:-

“The investigating officers and prosecuting officers involved in presenting this case, have miserably failed in discharging their duties. They have been instrumental in denying to serve the

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cause of justice----- . The perpetrators of a horrendous crime, involving extremely ruthless and savage³ treatment to the victim (six year old girl) have remained unpunished. A heartless and merciless criminal, who has committed an extremely heinous crime, has gone scot free. He must be walking around in Ahmedabad, or some other city/town in India with his head held high----- fearless now because he could not be administered the punishment, he ought to have suffered”.

The Hon’ble Court had to painfully observe:-

“We feel crestfallen, heartbroken and sorrowful. We could not even serve the cause of justice to the innocent and immediate family”

While concluding its judgment, the Hon’ble Court directed as under:-

“It is, therefore, essential that every state should put in place a procedural mechanism, which would ensure that the cause of justice is served, which would simultaneously ensure the safeguard of interest of those who are innocent----- . It is considered to be essential to direct the Home Department of every state to examine all orders of acquittal and to record reasons for the failure of each prosecution case. A standing Committee of senior officers of the police and prosecution departments should be vested with aforesaid responsibility. The consideration at the hands of the above committee, should be utilized for crystallizing mistakes committed during investigation and/or prosecution, or both. The Home Department of every State Government will incorporate in its existing training programmes for junior investigation/prosecution officials course-content drawn from the above consideration. The same should also constitute course-content of refresher training programmes, for senior investigating/prosecuting officials. The above responsibility for preparing training programmes for officials, should be vested in the same committee of senior officers referred to above. Hon’ble Supreme Court has further desired that the present

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judgment and other judgments highlighting the glaring lapses in the investigation and prosecution have to be added to the training programmes and the course contents will be reviewed by the above committee annually on the basis of fresh inputs including emerging scientific tools of investigation, judgments of courts and on the basis of experiences gained by the standing committee while examining failures, in unsuccessful prosecution of cases. The Hon'ble Supreme Court had put a six months time for starting such training programmes. The purpose of these training programmes was to fix the responsibility for lapses committed by the officers. The Supreme Court had further held that concerned investigating and prosecuting officers responsible for acquittals must necessarily be identified. Each erring officer must suffer the consequences of his lapse, by appropriate departmental action. Accordingly, Home Department of every state was directed to formulate a procedure for taking action against all erring investigating/prosecuting officials/officers".

5. This judgment has been delivered in January, 2014 i.e more than one and half years earlier. The Home Department of J&K has received this judgment on 21.1.2014. The Home Department has forwarded a copy of the judgment to the Director General of Police with a request to ensure that directions passed by the Hon'ble Supreme Court are implemented in letter and spirit. He was also required to intimate the action taken in the matter. The Supreme Court had directed to give effect to these directions within six months without any lapse.

4. During the hearing, the PIOs in the office of Director General of Police and PIO IGP Kashmir's office was also heard. Similarly. PIO in the office of Director General of Police informed the Commission that the DG's office immediately after receipt of directions from the Home Department had issued directions to IGP's of Kashmir and Jammu zones bringing to their notice the gist of the Hon'ble Supreme Court's decision and the suggestions made by the Hon'ble Court which

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included conducting a training programme for Investigating officers/Prosecuting officers/refresher courses for investigating/prosecuting officers with the directions that these courses will be reviewed by a committee annually on the basis of fresh inputs including emerging scientific tools of investigation, judgments of courts on the basis of experience gained by the committee while examining the failures in unsuccessful prosecution of cases till any efforts are made at the Government level. The office of DG had also directed the subordinate formations to circulate judgment among all the subordinate formations and ensure that the directions passed by the Hon'ble Supreme Court are implemented in letter and spirit. The Commission was further informed that the comments sought from Zonal IGPs were also obtained vide letter dated: 13.5.2015 and ultimately these comments were sent to Principal Secretary to Government, Home Department.

5. The Commission has perused the records and gone through the submissions made by the appellant as well as the respondents. Though the cognizance of the Hon'ble Supreme Court's decision was taken by the Home Department as early as 5.3.2014 and DG office also responded very promptly i.e on 26.3.2014, however, the subsequent action by the lower authorities in the Police Department seems to have been started only after it came under the consideration of the Commission. It seems that the important directions of the Hon'ble Supreme Court i.e for constituting a committee has not so far been implemented. The Commission would request the concerned authorities that keeping in view the extra ordinary importance of the issue which deals with the punishing the criminals who are indulging in heinous crimes against the society, the recommendations of the Hon'ble Supreme Court be implemented in letter and spirit by the concerned authorities.

6. As the RTI application was filed before the PIO in the Home Department and which was not replied within the time prescribed under the Act, therefore, the then PIO Home Department Shri Yaqoob Malik is directed to explain why penalty may not be imposed on him under section 17 of the J&K State RTI Act, 2009. His reply, if any, must reach this Commission within 15 days from the date of receipt of this order with cogent reasons supported with evidence. Present PIO Home Department, Shri Syed Sarfraz Rizvi is directed to serve a copy of this order on ex PIO Shri Yaqoob Malik.

7. The Commission, before concluding this order would advise the complainant that better course for him was to file first appeal and then second appeal before this Commission if the information was not given even after the intervention of the FAA. The information seeker has been using the right to information given to him under the Act since its very inception. Therefore, it is expected that he is aware about the decision of the Hon'ble Supreme Court in the case of Chief Information Commissioner of Manipur & Another V/s State of Manipur in Civil Appeal Nos:10787-10788 of 2011. The Hon'ble Supreme Court in its decision has explained the mandate of Section 15 and 16. The provisions of Section 16 of the J&K State RTI Act, 2009 are mandatory whereas the provisions of Section 15 are supervisory in nature.

The complaint is disposed of subject to the finalization of the penalty proceedings.

Sd/-

(G.R. Sufi)

&K State Chief Information Commissioner

No: SIC/CO/Comp/118/2015

Dt:-

Copy to:-

1. Principal Secretary to Government, Home Department, Civil Sectt. Srinagar
2. Principal Secretary to Hon'ble Chief Minister, J&K
3. Director General of Police, J&K Srinagar
4. Inspector General of Police (ZPHQ), Srinagar
5. PIO, office of the Director General of Police, Srinagar
6. PIO, office of the IGP(ZHQ), Srinagar
7. Public Information Officer, Home Department, Civil Sectt. Srinagar
8. Shri Raman Sharma R/o 236 K. Mastgarh, jammu-180001
9. Guard file

(G.Q. Bhat)
Registrar

J&K State Information Commission