



Jammu and Kashmir State Information Commission
(Constituted under The Right to Information Act, 2009)
Wazarat Road, near DC Office Jammu, 0191-2520947, 2520937
Old Assembly Complex, Srinagar, 0194-2506660, 2506661
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File No. SIC/K/SA/44/2015
Decision No. SIC/K/SA/44/2015/74

Appellant : Prof. A.G. Bhat
Respondent : PIO Islamia College of Science & Commerce
Date of last hearing : 20.08.2015
Date of decision : 27.08.2015

Brief facts of the case are that the Commission received a 2nd Appeal on 01.09.2014 from the appellant, Prof. Ab. Gani Bhat against First Appellate Authority and Public Information Officer Islamia College of Science & and Commerce, submitting that he applied to PIO Islamia College about certain information vide application dated 28.06.2014, but PIO denied the information vide letter dated 12.07.2014. That FAA failed to respond to his first appeal dated 28.07.2014 till date. Accordingly, the appellant has filed the 2nd appeal on following grounds:-

- I. *“Hence this II Appeal for appropriate action against the Respondents, for providing the information to me, for providing damages to me and for imposing penalty on the respondents as is envisaged under RTI Act.*
- II. *The appellant has not filed any other appeal for the subject matter projected in this appeal before this Commission or before any court or tribunal or other authority and no other request has been filed and is not pending with any public authority.*

The appellant has as such prayed for following directions:

Respondents to pay damages to the appellant for denying him information, mental agony and for loss of time, energy and hard earned money etc.

Impose statutory penalty under section 17 of the J&K Information Act,
Recommendations under Section 17(2) of the Act for against the Res.-1,
Directions to provide information/ documents to the appellant forthwith,
And any further order or direction as the Commission may deem fit and proper under the facts and circumstances of the case.

On scrutiny of the appeal, certain deficiencies were found and appellant was informed vide notice of Commission dated 01.10.2014 to remove the deficiencies within ten days. The appellant made up the deficiencies vide his letter dated 23.03.2015, after around more than five months and thus the appeal was barred by limitation. Therefore, the Commission vide notice dated 06.04.2015, asked the appellant to submit cogent reasons that prevented him in

filing the appeal within the time prescribed under the Act. The appellant submitted the reasons for delay vide his communication dated 11.04.2015 received in Commission on 13.04.2015. The reasons for delay put forth by the appellant vide his application dated 11.04.2015, were considered by the Commission and accordingly the appeal was admitted on 12.05.2015.

The RTI application addressed to PIO ICSC has sought following information:-

- 1. Copy of letter No. ICS/701/R-16 dated 22.05.2014, alongwith its enclosures, from Principal Islamia College to SHO Police Station Nowhatta, Srinagar.*
- 2. Examination of the relevant files containing the original documents of the enclosures of the above said letter to the SHO P/S Nowhatta, Srinagar.*

This RTI application has been responded to by Shri Altaf-ur-Rehamn PIO on 12.7.2014 informing appellant that the matteris currently pending before CJM SrinagarTherefore, the matter being sub-judice, no further information for time being can be given to the appellant.

During proceedings in the Commission on 16.06.2015, PIO was directed to refer relevant provisions of the Act, under which information has been denied and also substantiate with further evidence in support of such denial. Further, FAA/Principal Islamia College of Science & Commerce was directed to file counter reply within 10 days.

In compliance to the directions of Commission, the PIO Islamia College of Science and Commerce, Srinagar filed response on 26.06.2015, relevant portion of which interalia is as under:-

- i. *“In the instant case the matter is being investigated by S H O Police Station Nowhatta, Srinagar and he had sought information from the college vide letter No. Comp/5A/NWT, dated 22.05.2014 (Annexure D) and at the same time the matter was pending in the court of C J M.*
- ii. *As such the provision of RTI Act section 8-(1) (g) are attracted as case was under investigation with the Police and was under trial in different courts including Hon’ble High court of J&K State”.*

The case was again heard by Commission on 09.07.2015. The oral arguments of the appellant and PIO were recorded as under:-

“In compliance to the notice of the Commission PIO Islamia College of Science and Commerce, Srinagar has referred to Section 8(1)(g) of the RTI Act in denying the information. In support, he has stated that the instant matter is being investigated by SHO Police Station Nowhatta, Srinagar and he had sought information from the College vide letter dated 22.05.2014 and at the same time the matter was pending in the court of CJM. He has also referred to various cases filed by Abdul Gani Bhat v/s Altaf-ur-Rehman. On these grounds he has concluded that provisions of Section 8(1)(g) of the Act are attracted as the case was under investigation with the Police and was under trial in different courts including Hon’ble High Court of J&K State. The appellant submitted that he will argue orally and his arguments be recorded during proceedings. The appellant submitted that he sought documents from College which relate to present PIO Altaf-ur-Rehman.

The appellant brought attention of the Commission towards Section 8(1)(g) of the Act and submitted that this Section is not applicable because he is the complainant in this case before CJM who has forwarded the said complaint to SHO Nowhatta for investigation and that the information sought by him pertains to communication of Principal ICS&C dated 22.05.2014 to SHO Police Station Nowhatta. Therefore, letter of Principal dated 22.05.2014 is in reference to the communication of SHO on the subject complaint against Altaf-ur-Rehman. The argument of the appellant is that the information, if given to him, would facilitate investigation rather than impeding the investigation and would help in apprehending the offender.

The appellant also submitted extracts of decision of Central Information Commission dated 18.02.2009 wherein the Commission has held that a matter being sub-judice cannot be used as a reason for denying information under the Right to Information Act. This document is taken on record. Further his plea is that he is seeking information from the College whereas the complaint as referred by SHO is in respect of person Mr. Altaf-ur-Rehman.

PIO submitted that the case is under investigation and he apprehends that if the documents are given to the complainant, he may use it against Shri Altaf-ur-Rehman. He further submitted that documents have been provided to the Police Station Nowhatta and complainant can get these documents from police who are best persons to judge whether these papers attract provisions of Section 8(1)(g) of the Act”.

In pursuance to directions of the Commission passed on 09.07.2015, FAA/Principal ICSC filed reply/ counterstatement dated 21.07.2015 concluding *“I am of the view that the provision of RTI Act Section 8(1)(g) are attracted as case was under investigation with the Police and was under trial in different courts including Hon’ble High Court of J&K State”*. He has also

clarified/ explained his position vide communication No. ICS/16/7/R-16 dated 01.08.2015.

Further, as per directions of the Commission dated 09.07.2015, Superintendent of Police North Zone City Srinagar filed response vide letter No. SPN/RTI/2014/9384 dated 08.08.2015 as under:-

“In compliance to Dy. Registrar, J&K State Information Commission letter No. SIC/K/SA/44/2015/1468-69 dated 22.07.2015, it is submitted that the report sought from SDPO Khanyar vide letter No. SDPK/2015/RTI/7052 dated 06.08.2015, reveals that applicant had earlier requested for providing of letter No. ICS/701/R-16 dated 22.05.2014 along with its enclosures under RTI Act-2009, received by Police station Nowhatta through DPO Srinagar’s letter No. HQ/2014/RTI/S-66/226 dated 09.08.2014, which has been provided to the Dy. Superintendent of Police HQR’s Srinagar (PIO DPO Srinagar) vide P/S Nowhatta letter No. Complaint/2014/NHT/5A/381 dated 11.08.2014. However, report further reveals that providing of original letter No. ICS/701/R-16 dated 22.05.2015 along with its enclosures to applicant will hamper for conclusion of the enquiry proceedings.”

During hearing of the appeal before Commission on 10.08.2015, a copy of report of S.P. North and copy of reference made to SP by the Commission were provided to the appellant as per his request.

In response to above references, the appellant filed reply vide communication dated 18.08.2015, interalia submitting as follows:-

“.....there is no law and precedence of seeking support for its decision by the Commission, and seeking interpretation of a clause in the Act, from a petty policeman is not a law expert and

who has remotely anything to do with the interpretation clauses of the Act and with the decision making activity of the Commission.

.....

The SP North in his reply has stated that I had approached the PIO Police Head Quarters for the documents under question and the documents were provided to me. So when there was no problem with the police in divulging the information to me how could it be problem some for the PIO Islamia College, and deny the information on the lame excuse that it would hamper investigation , when he was conducting no enquiry against himself.”

In compliance to the directions of the Commission dated 20.08.2015, DySP/PIO DPO Srinagar submitted vide letter dated 24.08.2015 that Prof. A.G. Bhat submitted an application on 8.8.2014 for providing information, whereunder amongst other information, copy of letter No. ICS/701/R-16 dated 22.05.2014 was requisitioned. The information comprising of 44 leaves including the copy of letter No. **ICS/701/R-16 dated 22.05.2014** were sent to the applicant vide office letter dated 16.08.2014 alongwith its enclosures.

DySP DPO, Srinagar has enclosed RTI application of Prof. A.G. Bhat dated 8.8.2014 and copy of letter No. ICS/701/R-16 dated 22.05.2014 from Principal Islamia College to the address of SHO Nowhatta on the subject “complaint against Mr. Altaf-ur-Rehman Sofi, PTI of Islamia College”. Also,

enclosed is copy of letter dated 16.08.2014, under which information comprising of 44 leaves has been provided to the appellant in response to the RTI application dated 8.8.2014.

On the basis of facts stated herein above supported with documents, it is evident that information sought by the appellant from PIO Islamia College vide RTI application dated 28.6.2014 regarding letter No. ICS/701/R-16 dated 22.05.2014 alongwith enclosures was also sought by the appellant from PIO/DySP DPO Srinagar vide RTI application dated 8.8.2014, which information has been provided to him by the DySP HQ DPO Srinagar on 16.08.2014.

The appellant has filed Second Appeal before the Commission on 01.09.2014 with prayer for directions to provide information/documents to the appellant forthwith, when the information was already provided to him by DySP DPO on 16.8.2014 i.e. before date of filing of Appeal. It is therefore obvious that appellant concealed material facts in the present appeal. He also mis-represented by seeking directions to provide information/documents to the appellant forthwith, when the information sought was already in his possession.

That in his oral arguments before the Commission on 9.7.2015, the appellant pleaded that information, if given to him, would facilitate investigation rather than impeding the investigation and would help

apprehending the offender. The fact is that information sought from the PIO Islamia College was already provided to him by DySP DPO Srinagar on 16.8.2014 and thus concealed facts from the Commission. Therefore, one wonders as to what prevented him from facilitating investigation on the basis of information already provided to him.

The appellant, in his reply dated 18.8.2015, at para 8 has questioned the jurisdiction of the Commission in seeking response from SP/SHO concerned in adjudicating of the appeal and also used uncivilized language against Police official.

This plea of the appellant is devoid of merit, because as per RTI Rule 8(i) of J&K RTI Rules 2012, in deciding the appeal the Commission may – **‘hear oral or written evidence on oath or an affidavit from concerned or interest person’**. In the instant case, the information pertains to a complaint lodged in the Police Station Nowhatta and thus SHO Police Station Nowhatta is a person concerned with this case. Therefore, the procedure adopted by Commission in seeking response from SP/SHO concerned is in accordance with RTI Rules.

The appellant has used demeaning and contemptuous language against police, which is entrusted with the duty of maintaining law & order, protecting lives and honour of its citizens and investigating cases like the one filed by the

appellant. Therefore, these words are totally uncalled for to say the least and not expected of a learned person. The appellant is therefore advised that he should restrain himself from using uncivilized language.

That information was already available with the appellant came to fore only when the Commission followed proper procedure, which otherwise the appellant had concealed and misled the Commission into adjudicating an appeal, in respect of which information is already available with him.

The applicant is reminded that in the case of appellant versus PIO J&K Public Service Commission, the Hon'ble Chief Information Commissioner in its decision No. SIC/CO/SA/204/2014-722 dated 31.12.2014 has made following observations:

“.....The Commission is a quasi judicial authority and while hearing an appeal or complaint, it is competent to direct production of records or production of any person for determining an issue and brining evidence on record.....”

The Commission is empowered to ‘enforce attendance of persons and compel them to give oral or written evidence and to produce the documents or things.....”

..... the Commission would also remind the appellant that in case the Commission comes to a conclusion that time of the Commission and a Public authority is being wasted by not pursuing his litigation in connection with enforcement of his right, the Commission may order for imposing costs on him.....”

These observations are relevant to this case also. The Commission had hoped that the Commission's advice would be acted upon by the appellant with seriousness that it deserved. However, the Commission is pained to observe that learned senior citizen has not adhered to.

As stated and clarified herein above, the information asked for from PIO ICS&C is already in possession of appellant, having been provided to the applicant by the Police Department, and therefore it is already in public domain in so far as appellant is concerned. The applicant being direct possessor of such information, has violated the spirit and purpose of transparency law, as enshrined in the Preamble of the RTI Act and has wasted the precious time of the Commission and the Public Authority. Accordingly, the Commission does not find any cause for the appellant to approach the Commission with this appeal. Accordingly, no action is warranted on this appeal and is filed with above observation.

Sd/-
(Nazir Ahmed)
State Information Commissioner

Copy to the: -

1. Principal, Islamia College of Science & Commerce, Srinagar.
2. Public Information Officer, Islamia College of Science & Commerce, Srinagar.
3. Deputy Suptt. of Police Hqrs., District Police Office, Srinagar.
4. Private Secretary to HSIC (K).
5. Prof. Ab. Gani Bhat /so Mohammad Ramzan Bhat r/o H. No. 08 Pamposh Lane, Natipora Srinagar.

(G.Q. Bhat)
Registrar,
State Information Commission