



J&K State Information Commission
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File No. SIC/CO/SA/263/2015
Decision No. SIC/ CO/SA/263/2015/801

Appellant : Shri Khurram Parvez
Respondent: PIO Home Department
Date of hearing : 28-09-2015
Date of Decision: 28-09-2015
Chief Information Commissioner: G.R. Sufi
Referred Sections: Section 6,7,8 of the J&K RTI Act, 2009.
Result: Appeal disposed of.

FACTS:

1. Mr. Khurram Parvez, a resident of the State has approached this Commission with his 2nd appeal under Section 16 of the J&K, RTI, Act, 2009 with a prayer for issuing direction to the PIO to provide him information.
2. Brief facts of the case are that the appellant filed an RTI application before PIO, J&K Police Headquarters on 24.11.2014. The PIO informed the appellant on 17.12.2014 that first limb of information i.e copies of requested orders and documents on the creation of the Special Task Force/Special Operations Group were not available with this headquarter and information with regard to point No 3 did fall under Section 8(f) of the J&K State RTI Act, 2009. Hence not shared. The appellant being aggrieved with this order preferred first appeal on 29.1.2015 before FAA of Police Headquarters. The FAA in a cryptic order dated: 11.4.2015 confirmed the PIO(s) order.
3. The appellant again being aggrieved filed second appeal before this Commission on 27.5.2015 has assailed the findings of above authorities on number of grounds. With

regard to denial of information on point No 1 of RTI application, the appellant has submitted that if the information was not available with the PIO, the same could have been transferred to any other authority under section 6(3) of the J&K State RTI Act, 2009. The Commission has considered the submissions of the appellant and heard the PIO. The submissions made by the appellant are strictly in accordance with the spirit of the Act. There are two sections of the J&K State RTI Act i.e Section 5 and 6 which have duly taken care of such situations. Section 5 takes care of a situation where information sought from a particular PIO is not available with him but is available with other authorities coming under the administrative control of Director General of Police J&K. Section 6 deals with a situation where an application has been made before a particular PIO for an information which does not fall under the administrative control of the same public authority. The J&K State RTI Act, 2009 being basically a people's friendly act places a responsibility of identifying the source of information and transferring the same to other public authorities who initially receive RTI applications. However, in this case, the information asked does fall under the administrative control of Director General of Police, J&K. Therefore, the PIO should have sought the assistance of the concerned PIO and forwarded the information to the appellant. The PIO is directed to do this exercise and collect the information from the PIO who holds this information and forward the same to the appellant within 15 days from the receipt of this order.

4. The PIO(s) rejection of request for information sought at point NO 3 of the RTI application i.e names, duration of service and position of Superintendent of Police of the STF/SOG on the plea that it falls under section 8(f) has seriously been contested by the appellant on the plea that no reasoning has been given by the PIO and FAA why the request on such information is rejected. Section 7(8) of the J&K RTI Act, 2009 mandates the PIO to communicate the reasons for the rejection of the request for information. It is contended that keeping in view the constitutional importance of Right to Information which has been equated by the Supreme Court of India with fundamental right of a citizen. Section 7(8) ensures that rejection of information must be reasonable and not arbitrary. The PIO(s) and FAA(s) orders do not satisfy the requirement under Section 7(8) (a). It is further stated that no explanations are provided how the security of SP/SSP(s) would be endangered if the information would be provided. It is the responsibility of the PIO and FAA to place on record such explanation. The appellant has brought the attention of the Commission to the provisions of Section 8(2) which reads as under:-

“ Notwithstanding anything in the State Official Secrets Act, Samvat 1977 or any of the exemptions permissible in accordance with sub-section (1), a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests”.

Elaborating his submissions, the appellant has further argued that it is the right of a civilian to know the names and other basic details of police personnel “who are on the posts of responsibility”. The authorities about whom information is sought are holding a responsible post and within his jurisdiction he is an extremely important contact for civilians in the area. In the appellant’s view, there is no apparent harm caused by the disclosure of this information. No such evidence was brought on record while denying the information. It is further submitted that the appellant had sought similar type of information vide RTI application dated: 24.11.2014 from the PIO, Police Headquarters and the same was disclosed. Thus it is averted that the authorities have to be consistent under the similar facts and circumstances and the denial of information should not be arbitrary and unreasonable.

5. The Commission has considered above submissions. The Commission has no hesitation to observe that both the authorities i.e the PIO and the FAA have passed orders in mechanical, per functionary and non speaking manner. The PIO under the J&K State RTI Act, 2009 is a quasi judicial authority. Similarly, duties of FAA are nothing but a quasi judicial functions which are distinguished from performing a purely executive or administrative job. Adjudicating and deciding an issue which has arisen on account of a dispute between more than one party i.e appellant/appellants and the PIO has to do in a judicious manner. Adjudication means that the adjudicating authority has to hear both the parties and after evaluating the evidences brought before him, he has to take a decision which will be based on law and evidence. He is not bound to be supportive of his subordinate officer – in this case the PIO. Even if the appellant does not avail the opportunity of being heard, that will not entail the FAA to reject the appeal summarily. He is bound to evaluate the evidence on record and take a decision on the basis of material available before him.

4. Now, coming to the arguments of the appellant, this is a fact that provisions of section 8(2) make it obligatory on the public authorities to disclose an information which otherwise is prohibited under section 8 provided if public interests in disclosure outweighs harm to the protected interests. However, the onus for showing that the information so sought outweighs

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the protected interests and is overwhelmingly in public interests, is on the appellant. Appellant has not discharged such onus. However, this is also a fact that the names, duration of services and posting of police SP of STF/SOG across Jammu and Kashmir from 1989 to-date are generally in public knowledge. These police officers generally do wear badges which indicate their names and designation. Similarly, there are also sign boards in the offices. It is the PIO who has to prove that their names and designations were always kept confidential and they were never in public domain. The Commission, therefore, directs the PIO to pass a fresh speaking order and if the names and duration of services of posting of the Superintendent of Police of STF/SOG across Jammu & Kashmir from 1989 to-date were somehow disclosed either in the shape of government orders which were not made confidential or in the shape of badges, sign boards etc; then there will be no harm to disclose them again. Similarly, the PIO has to verify the evidence brought on record by the appellant that in a similar case as referred elsewhere in this order and in similar circumstances and facts such information was already disclosed then there is no harm to disclose such information.

5. However, the Commission cannot appreciate the submissions of the appellant that information has to be in any case disclosed. If the PIO makes a case for non-disclosure of such information which falls under section 8(f) or section 8(1) he will be at liberty to make such case and deal with the request of the appellant accordingly. Therefore, under the facts & circumstances of the case, the PIO will comply with the directions of this order within 15 days from the date of receipt of this order.

Sd/-

(G.R. Sufi)

J&K State Chief Information Commissioner

No: SIC/CO/SA/263/2015

Dt:

Copy to :-

1. First Appellate Authority, Police Headquarters, J&K Srinagar.
2. Public Information Officer, J&K Police Headquarters, Srinagar
3. Shri Khurram Parvez, R/O House No-1, Gupkar Road, Srinagar.
4. PS to Chief Information Commissioner
5. Guard file.

(G.Q. Bhat)

Registrar

J&K State Information Commission