



Jammu and Kashmir State Information Commission
(Constituted under Right to Information Act 2009)
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File No: SIC/J/A/213/2015
Decision SIC/J/A/213/2015/285

Sh. S. Kumar

V/s

FAA/PIO, Horticulture (P&M) Division, Jammu.

.... (Appellant)

.... (Respondents)

Date of Institution : 03.12.2015
Date of Decision : 01.04.2016
Decision : Appeal disposed of.

The appeal was fixed for hearing at Srinagar office of the Commission and parties were to be heard through Video Conferencing. Due to some technical fault Video Conferencing could not be completed. However, the parties were heard on phone.

1. **Brief facts:** Appellant filed 2nd appeal on 03.12.2015, under sub section 4 of section 16 of RTI Act, 2009 against FAA/Executive Engineer, Horticulture (P&M) Division Jammu and PIO/Assistant Executive Engineer, Horticulture P&M) Division Jammu.

2. Brief facts leading to the appeal are that information seeker submitted an application to PIO concerned in Form-1, seeking required information, but PIO has not responded to the request, thus PIO has denied information to appellant. Aggrieved with PIO for not providing information within prescribed time of 30 days, appellant preferred First Appeal before FAA, which too has not been responded to. That during pendency of appeal, PIO informed him to provide extra charges after the expiry of 30 days, whereas, PIO is bound to provide information, free of cost.

In view of the above, appellant has prayed that required information be provided to him and also appellant is entitled to relief by way of relevant section of RTI Act.

Proceedings:

3. PIO/Assistant Executive Engineer, Horticulture (P&M) Division Jammu has filed reply/counter statement to the appeal dated: 20.01.2016 (received in the Commission on 21.01.2016) interalia, submitting that the contents of para- 5 are completely denied, as the applications dated: 07.09.2015 and 08.09.2015, have been received by his office on 15.09.2015 (photostat copy of the receipt is enclosed); and as per RTI Act-2009, the reply is to be furnished within a period of one month from the date of receipt of application. That after sorting out the requisite information for providing the same to the information seeker, two No. letters were issued from this office for depositing the incidental charges amounts to Rs. 84/- and Rs. 160/- vide letters dated: 13.10.2015. But, instead of depositing incidental charges, appellant preferred to appeal before First Appellate Authority, which was disposed off as the appellant didn't attend the hearing on the scheduled date and time. PIO has concluded that the record demanded by appellant is ready in his office, so as and when the incidental charges are received information will be provided.

4. Appellant Sh. S. Kumar has filed written arguments/objections before the Commission on 12.03.2016, received in the Commission on 15.03.2016. Appellant has stated that he has already filed his objections vide letter dated: 15.02.2016, in which the information seeker has categorically mentioned and a certificate issued by Sr. Superintendent of Post Offices, Jammu that these letters have been delivered in the office of PIO on 09.09.2015. Therefore, the version of the FAA and PIO in their counter statement that the RTI application dated: 08.09.2015 and 07.09.2015 were received by them on 15.09.2015 is totally wrong. In view of the above, he has requested to list the 2nd appeal for hearing and required information be provided to appellant.

5. In his written submissions filed before the Commission dated: 25.01.2016, appellant has made same submissions as has been made in his communication dated: 15.02.2016 (received on 17.02.2016). In addition, he has pointed out that letter of PIO dated: 13.10.2015, was received through ordinary post on 09.11.2015, on which the stamp of Post Office was 08.11.2015, copy of the envelope was also enclosed with the 2nd appeal, which indicates that PIO has not dispatched the letter on 13.10.2015, and the date on the letter is back dated, which in fact was dispatched on 08.11.2015. That this was done to escape responsibility and misguide the Commission. That in the said letter, PIO directed the information seeker to deposit an amount of Rs.

160/- through ordinary post. Accordingly, a letter dated: 10.11.2015 was sent through speed post with copy to FAA and others, in which it was apprised by information seeker that more than 30 days have elapsed and information seeker is entitled to receive the information free of cost.

Conclusion:

6. Commission has gone through the issues raised by appellant in the 2nd appeal, subsequent submissions made by him and counter reply of FAA/PIO as referred to hereinabove. The issue for consideration before the Commission is whether PIO has made response for depositing of fee within the prescribed period as per the relevant provisions of the J&K RTI Act. PIO has stated in his counter statement dated: 20.01.2016, that application dated: 07.09.2015 and 08.09.2015, was received in his office on 15.09.2015. In support thereof, he has enclosed copy of RTI application dated: 07.09.2015 which has been marked and shown to be "received on 15.09.2015". Therefore, as per provisions of section 7(1) of the Act, the date of receipt of RTI application by PIO is reckoned as 15.09.2015. As regards dispatch of letter dated: 13.10.2015, PIO produced documentary proof i.e. copy of dispatch register, wherein the letter addressed to Mr. S. Kumar on the subject 'Request for providing information under J&K RTI Act, 2009' has been entered in the Dispatch Register at S.No. 202 dated: 13.10.2015. Appellant has contested the date of dispatch (13.10.2015) stating that stamp of the post office on envelope was 08.11.2015, as per envelope enclosed with 2nd appeal. However, on scrutiny of documents enclosed with the appeal, appellant's appeal comprises of 16 (sixteen) pages which are duly page marked by him, but no such envelope is on file as part of these 16 pages or separately. Therefore, the plea of the appellant that this letter is backdated does not get corroborated, more so, when appellant has not produced any evidence to substantiate that the letter dated: 13.10.2015 was back dated.

The Commission has further observed that in his reply dated: 25.01.2016, appellant has referred to a letter asking him to deposit an amount of Rs. 160/-, whereas as per the reply of the PIO enclosed with the appeal, he has asked to deposit an amount of Rs. 84/-. Therefore, the statement of appellant is contradictory to the facts on record.

8. For the aforesaid reasons, the plea of appellant requesting for information, free of cost, is not maintainable. Therefore, Commission upholds

the response of PIO made vide No. AEEHPM/II/2015-16/202 dated: 13.10.2015.

10. Accordingly, appeal filed before the Commission is disposed of.

Sd/-

(Er. Nazir Ahmed)

State Information Commissioner

No: SIC/J/A/213/2015

Date: .04.2016

Copy to:

1. FAA/Sh. Kabir Shah, Executive Engineer, Horticulture (P&M) Division Jammu.
2. PIO/Sh. Arun Gupta, Assistant Executive Engineer, Horticulture (P&M) Division Jammu.
3. Appellant/Sh. S. Kumar, C/o. M/s. Kashmir Typewriters, Mubarak Mandi, Old Secretariat Road, Jammu.

(Renu Mahajan)

Joint Registrar

J&K State Information Commission