



Jammu and Kashmir State Information Commission
(Constituted under Right to Information Act 2009)
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File No: SIC/J/A/262/2016
Decision SIC/J/A/262/2016/299

Sh. Parvez Shera

V/s

FAA/PIO, Rural Development Jammu.

.... (Appellant)

.... (Respondents)

Date of Institution : 23.02.2016
Date of Decision : 26.04.2016
Decision : Appeal disposed of.

1. Sh. M.L. Raina, Director, Rural Development, Jammu-cum-FAA, Sh. Mukhter Ahmed, BDO, Surankote-cum-PIO, Sh. R.K. Sharma, Executive Engineer, REW, Poonch-cum-PIO and appellant attended the Commission.

2. **Brief facts:** Appellant filed 2nd appeal on 23.02.2016, under section 16 of RTI Act, 2009 against the impugned order of FAA/Director, Rural Development, Jammu, PIO/Executive Engineer, REW, Poonch and BDO, Surankote.

3. Brief facts leading to appeal are that information seeker submitted an application u/s 6 of J&K RTI Act before PIO, REW, Department of Rural Development and Panchyati Raj, District: Poonch through speed post on 16.09.2015, and the same was received in the office of PIO on 18.09.2015 (copy enclosed), but PIO failed to respond/provide information within the stipulated time. That feeling aggrieved appellant filed First Appeal before FAA on 19.10.2015 (copy enclosed). That during pendency of First Appeal, appellant received a letter dated: 19.10.2015, from BDO, Surankote

requesting appellant to deposit an amount of Rs. 3,43,362/- as photostat charges. That above cited letter dated: 19.10.2015, was received by appellant on 31.10.2015, i.e. after 45 days as is evident from detailed track event of letter downloaded from the official website of Indian Posts (copy enclosed). That BDO, Surankote was informed that his request to appellant asking to deposit Rs. 3,43,362/- is totally misplaced as the same is being asked after 45 days i.e. after stipulated period prescribed in the Act (copy enclosed). That FAA/Director, Rural Development Jammu while disposing the appeal vide order dated: 03.12.2015, has refused to provide information u/s 7(6) of the Act. That FAA in his order has directed PIO/Executive Engineer, REW, Poonch and BDO, Surankote to call appellant in their respective offices and show appellant the record pertaining to RTI application and if some information is still required, same may be provided on charges. That appeal is decided on the basis of original application and request made therein u/s 6 of the Act and reply received thereto. That appellant in his application dated: 16.09.2015, has not requested for an access to record but has asked for providing of record and even the Act says that information shall be provided in the form in which it is sought. That the same gets corroborated by the letter of BDO, Surankote dated: 19.10.2015, wherein appellant was asked to deposit an amount of Rs. 3,43,362/-. That the FAA found that the information is voluminous when it is to be provided under section 7(6) of the Act, whereas PIO and APIO do not find the information voluminous when it is to be provided under section 7(1) of the Act. That the inspection of voluminous record of 114454 pages, as ordered by the FAA, has to be vetted thoroughly as the inputs received by appellant are that much of the work reflected on files, does not even exist on ground, therefore, it is possible only after the certified information is provided in the form of hard copies. That the FAA has completely ignored the essential import and purport to take a decision as per the RTI Act. That the approach of the

FAA in the present case has been one, when it has completely overlooked the mandate of section 7(6) of the RTI Act.

In view of the above, appellant has prayed that information requested be provided u/s 7(6) of the Act.

4. As per documents enclosed with the appeal, RTI application addressed to PIO, REW, Department of Rural Development and Panchayati Raj, District Poonch has been sent through Indian post on 16.09.2015 (delivered on 18.09.2015 as per tracking record), seeking following information:

- (i) Copy of the service book of Sh. Ghulam Rasool, AEE, REW, Surankote.
- (ii) Estimates of work executed under MGNREGA and allied sectors in Sub-Division, Surankote during the tenure of Sh. Ghulam Rasool as AEE, REW, Surankote.
- (iii) Number and details of bills test checked by the concerned AEE viz-a-viz the work technically sanctioned and approved and how much of the work so done is existing on ground.
- (iv) Details of MB's and their No's, including progress recorded.

5. This application was responded to by BDO, Surankote vide letter dated: 19.10.2015, requesting appellant to deposit an amount of Rs. 3,43,362/- @ three rupees per page for photostat charges, so that information may be provided as per RTI Rules.

6. The First Appeal was adjudicated by FAA/Director, Rural Development Department, Jammu vide order dated: 03.12.2015, after hearing both the parties. FAA in his order observed that information desired by appellant is voluminous & amount asked for is huge with no proper justification. Hence, the appeal was disposed of with directions to PIO, XEN Poonch/BDO, Surankote either to call appellant in their respective offices & show appellant the record pertaining to his RTI application and if some information is still required, the same be provided on charges as admissible in the RTI Act.

Proceedings:

7. In compliance to notice of the Commission, FAA/Sh. M.L. Raina, KAS, Director, Rural Development, Jammu has filed counter statement/reply to the appeal dated: 17.03.2016 (received on 22.03.2016) interalia, submitting that an appeal has been filed by appellant received in his office on 21.10.2015, against PIO, XEN Poonch/BDO, Surankote regarding non-furnishing of the requisite information under RTI Act. That during hearing on 23.11.2015, appellant submitted that he has not received any kind of information from (XEN Poonch/BDO, Surankote). The appeal was examined and it was observed that information desired by appellant is voluminous & amount asked for deposit is huge, with no proper justification. That the appeal was disposed of with direction to PIO (XEN Poonch/BDO Surankote) to call appellant in their respective offices & show him the record pertaining to his RTI and if some information is still required, same be provided on charges as admissible in RTI Act and RTI Rules, 2012.

8. PIO/Sh. Mukhter Ahmed, BDO, Surankote has filed reply to the appeal dated: 22.03.2016, interalia, submitting that RTI application of appellant dated: 16.09.2016, was received in the office of ACD, Poonch on 23.09.2015 (copy enclosed), which was forwarded vide letter dated: 28.09.2015, under sub section 3 of section 6 of J&K RTI Act, 2009 to his office (copy enclosed). That he requested Sh. Ghulam Rasool, AEE vide his letter dated: 02.10.2015, to provide the requisite information. That AEE submitted reply vide letter dated: 06.10.2015, submitting that as per records in Division Poonch, information sought amounts to 114454 pages and requested for depositing Rs. 343362/- (Rs. 3/- per page) in the official account of Executive Engineer, REW Poonch as photostat charges, so that the record could be provided to applicant in time (copy enclosed). That BDO vide letter dated: 19.10.2015, intimated applicant requesting him to submit an amount of Rs. 343362/- in the official account of Executive Engineer, REW Poonch (A/C No. & IFSC code given) so

that the information may be provided to applicant under RTI Act, 2009. That in reply to letter dated: 03.11.2015, submitted by applicant, BDO has stated that RTI application submitted by applicant was received in the office of ACD, Poonch on 23.09.2015, and not on 16.09.2015 (as per records, copy enclosed); further ACD through his letter dated: 28.09.2015, forwarded the same to his office. That his office intimated appellant vide letter dated: 19.10.2015 (within the prescribed time limit under rule), to deposit an amount of Rs. 343362/- in the official account of BDO, Surankote so that information is provided under rules (copy enclosed).

9. During proceedings today on 26.04.2016, appellant Sh. Parvez Shera submitted that the consignment under which RTI application dated: 16.09.2015, has been delivered on 18.09.2015, as per tracking record of Indian post. On the other hand Sh. R.K. Sharma, Executive Engineer, REW, Poonch and Sh. Mukhter Ahmed, BDO, Surankote submitted that the RTI application was received in ACD office on 23.09.2015, and in this regard respondents produced copy of letter dated: 28.09.2015, from PIO, office of Assistant Commissioner Development, Poonch to BDO, Surankote enclosing RTI application of the appellant, received on 23.09.2015. Executive Engineer, REW, Poonch produced copy of RTI application which has been marked as "received on 23.09.2015".

10. As per section 7 (1) of the RTI Act, 2009, "PIO on receipt of a request under section 6 shall,in any case within thirty days of the receipt of the request, either provide the information on payment of such fee as may be prescribed or reject the request." Therefore, as per provisions of the Act, the date of receipt by the PIO is reckoned as reference for calculation of period, which in this case is 23.09.2015.

11. Appellant has argued that letter dated: 19.10.2015, was booked at P.O. Surankote on 23.10.2015 and was received by him (appellant) on 31.10.2015,

thereby attributing delay in receipt of intimation by him. On this point the Commission drew attention of the appellant to section 7(3)(a) of the Act, relevant portion of this is reproduced as under:-

"..... the period intervening between the dispatch of the said intimation and payment of fees shall be excluded for the purpose of calculating the period of thirty days."

Therefore, date of dispatch of the intimation is taken into account for calculation of time period under the Act and not the date of receipt of the intimation by appellant. In this case, it is evident that intimation to appellant has been booked through post on 23.10.2015.

12. During proceedings the appellant argued that RTI application has not been forwarded under section 6(3) of the Act. However, perusal of documents submitted before the Commission reveals that Mr. Mir Hussain, PIO, ACD office, Poonch while forwarding the application to BDO, Surankote vide letter dated: 28.09.2015, has invoked section 6(3) of the Act with copy to the appellant which is reproduced as under:-

"An application of one Sh. Parvez Shera C-6 Channi Apartments Sec-7 Channi Himmat Jammu-180015 received today on 2309.2015 alongwith Postal Order No. 21F-742889 under RTI Act 2009 under Sub-Section 3 of section 6 of the J&K Right to Information Act, 2009."

During proceedings in the Commission, Director, Rural Development, Jammu submitted that BDOs are PIOs in their respective jurisdiction. This statement is corroborated from the Website of Rural Development Department, Jammu where BDOs have been declared as PIOs. Therefore, transfer of RTI application by PIO, O/o. ACD, Poonch to BDO, Surankote is in accordance with provisions of section 6(3) of the Act. It is, therefore, evident that BDO, Surankote has given intimation to the appellant within the period specified in the Act.

13. Appellant in his appeal has submitted that the FAA in his order dated: 03.12.2015, directed PIO/Executive Engineer, REW, Poonch and BDO,

Surankote to either call the appellant in their respective offices and show appellant the record pertaining to his RTI and if some information is still required the same may be provided on charges as admissible in RTI Act. This has been contested by appellant stating that he has not requested for any access to record but has asked for providing of record and even the Act states that the information shall be provided in the form in which it is sought. Apparently, appellant has referred to section 7(9) of the Act. However, he has not quoted concluding part of this provision that "unless it would disproportionately divert the resources of the public authority or would be detrimental to the safety or preservation of the record in question."

14. In the instant case, the information sought at point-(i) is specific. Executive Engineer, REW, Poonch has filed reply dated: 17.03.2016, interalia submitting that information at S.No. 1 i.e. photocopy of Service Book of Sh. Ghulam Rasool, AEE, REW, Surankote has been provided to the appellant vide letter dated: 04.12.2015, which the appellant admitted to have received. However, information sought at point (ii), (iii) & (iv) is related to works undertaken during tenure of a particular AEE, REW, Surankote block and not specific to any particular work, which information as per intimation of the PIO, comprises of more than one lakh pages. Obviously, compiling/photocopying such a voluminous information would disproportionately divert the resources of the public authority.

15. It is pertinent to refer here to the decision of Hon'ble Supreme Court of India in CBSE v/s Aditya Bandopadhyaya (2011), wherein Hon'ble Court has held that **"nation does not want a scenario where 75% of the staff of public authority spends 75% of their time in collecting and furnishing information to applicants instead of discharging their regular duties."**

16. In view of the above, order passed by FAA asking PIOs to allow appellant inspection of records and provide required information on charges as admissible under RTI Act is upheld. Appellant submitted that he is not a

resident of Poonch and, therefore, it would not be possible for him to conduct the inspection of records as per orders of FAA. He further submitted that he has prima-facie information of irregularities in some specific works and submitted that he would seek information related to those specific works only. Accordingly appellant shall specify the points of information related to those works to ACD, Poonch within 10 days who shall transfer/forward it to respective BDOs for providing the information as held by them on payment of prescribed fee.

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

Sd/-

(Er. Nazir Ahmed)

State Information Commissioner

Date: .04.2016

No: SIC/J/A/262/2016

Copy to:

1. FAA/Sh. M.L. Raina, Director, Rural Development, Jammu.
2. PIO/Assistant Commissioner Development, Poonch.
3. PIO/Sh. Mukhter Ahmed, BDO, Surankote.
4. PIO/Sh. R.K. Sharma, Executive Engineer, REW, Poonch.
5. Appellant/Sh. Parvez Shera, R/o. C-6, Channi Apartments, Sector-07, Channi Himmat, Jammu-180015.

(Renu Mahajan)

Joint Registrar

J&K State Information Commission

(P.A. Ajay)