



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

File No. SIC/J/A/287/2016
Decision No. SIC/J/A/287/2016/357

Appellant : Mr. Nazam Akhtar

Respondent: FAA/PIO, O/o Deputy Commissioner,
Jammu.

Date of Institution: 31-03-2016

Date of Decision: 29-06-2016/

Decision: Appeal disposed of.

1. Brief facts of the case are that appellant namely Mr. Nazam Akhtar s/o Mr. Mushtaq Ahmad r/o Janipur, Jammu filed 2nd appeal under Section 16 of the J&K RTI Act, 2009 before the Commission on 30-03-2016, stating that he filed an RTI application before PIO/ADDC, Jammu on 29-10-2015, seeking certain information. That PIO vide letter dated: 31-10-2015 forwarded RTI application to ADC (Adm)/PIO under Section 5 of the Act. That no information was received from ADC (Adm) within 30 days and accordingly first appeal was filed before FAA, O/o Deputy Commissioner, Jammu, which was decided by Deputy Commissioner/FAA, Jammu vide order dated: 24-02-2016, thereby directing PIO to provide information sought within 30 days, but no information was provided upto 24-03-2016. Appellant has accordingly prayed that requisite information be provided to him and action as warranted under law be taken against the respondents for not providing information.

2. As per records, RTI application filed before PIO/ADDC, Jammu dated: 29-10-2015 has been transferred to ADC (Adm), Jammu on 31-10-2015 under Section 5(4) of the J&K RTI Act, 2009. Ms. Rifat Kohli, ADC (Adm), Jammu has filed reply/counter statement, interalia submitting that the RTI application transferred to ADC (Adm), Jammu on 31-10-2015 was returned back to PIO,

O/o Deputy Commissioner, Jammu with remarks that the matter pertains to District Magistrate, Jammu, who is competent Authority to issue Gun License. Similarly, Mr. Deep Raj, Assistant Commissioner, Nazool, Jammu has filed reply, interalia submitting that the RTI application was not received in his office and does not pertain to him. Shri Simrandeep Singh, Deputy Commissioner, Jammu/FAA has passed an order on first appeal on 24-02-2016, interalia stating that he is satisfied by the reply given by the ADC (Adm), Jammu, as the information indeed does not pertain to her and lies with the issuing authority, i.e., District Magistrate, Jammu. Hence, District Magistrate, Jammu shall provide reply in 30 days. Accordingly, first appeal has been disposed of. Thereafter, RTI application has been disposed of on 23-04-2016 by District Magistrate, Jammu, giving para-wise reply as under;

- (a) No such information exists.
- (b) No such information exists.
- (c) Section 11(1) as third party information and hence can't be shared.
- (d) Same as above.

3. The case was heard in the commission on 23-05-2016 and following directions were issued by the Commission;

" 10 days time is granted to appellant to file objections with copy to the District Magistrate, Jammu/PIO, O/o D.C. Jammu. Registry shall issue notice to District Magistrate, Jammu (Deemed PIO) and designated PIO to file reply/counter statement and also rejoinder to the objections, if any before next date of hearing. "

In compliance to the above directions of the Commission conveyed vide notice dated: 25-05-2016, appellant has filed objections dated: 30-05-2016 with copy to the respondents, interalia contesting the refusal to provide information by PIO on two grounds, i.e., "no such information exist" and invoking section 11(1) on the ground that the respondents have already provided information regarding non issuance of the license to the applicant citing the reason that "the appellant has no specific threat from any angle." That appellant was already informed by the police department with regard to verification report of the appellant and the 3rd party. That the appellant never

asked for 3rd party information but information sought was, as to how the license was issued to one person having similar verification report and denied to the appellant. In this regard, appellant has enclosed copies of verification reports of appellant and one Sunil Kumar Ghai provided by the police department under RTI. He has further submitted that section 11(1) does not provide any cover to the corrupt practices or discrimination on religious ground. That the Act of respondents is not only violation of RTI Act but also violation of fundamental rights of the appellant and in the present case, respondents are using section 11 only to veil their illegal practices prevalent in their day to day working. That appellant has not asked information about 3rd party and assuming that even if the information sought pertains to 3rd party, the respondents have to issue notice to the 3rd party and if the 3rd party deny for providing information to the appellant, then application of the appellant can be rejected. Appellant has reproduced section 11(1) of the Act in support of his arguments above. That in the present case, no notice was issued to the 3rd party and respondents have rejected application of the appellant unilaterally without following the due procedure of law. Therefore, respondents are liable to be directed to provide information sought by the appellant, besides imposing penalty upon them for delaying and subsequently not providing the information on false and flimsy grounds. Commission do not agree with the plea of the appellant that consent of the 3rd party has not been obtained by the PIO. As per Section 11, PIO has to seek consent of 3rd party only when PIO intends to disclose the information. In the instant case, PIO does not have intension to disclose information, therefore, he was not required to seek consent of the 3rd party.

Similarly, District Magistrate, Jammu has filed reply/counter dated: 08-06-2016, interalia submitting that under provisions of the RTI Act, reasons cannot be asked and if appellant has any grievance regarding non issuance of gun license, he can avail appropriate remedy before competent forum. That the appellant cannot abuse the provisions of the RTI Act to get gun license. Moreover, information sought by appellant contained 3rd party information, which could not be provided. That the appellant cannot ask reasons for granting gun license to the private individuals, as reasons opinions cannot be

asked under RTI Act. That disclosure of reasons for granting gun license to other private individuals would have amounted to unwarranted invasion in the privacy of 3rd party. That notice is required to be served to the 3rd party only if PIO is of the opinion that the information should be disclosed in larger public interest, but in the present case no public interest of any sort is involved in the matter. Accordingly, District Magistrate has requested to reject the objections of the appellant.

4. During proceedings on 09-06-2016, PIO drew attention of the Commission to Section 13(3)(b) of Arms Act 1959 and submitted that license are issued only when issuing authority is satisfied that applicant has cogent reasons to acquire arms license. Thereafter, Commission passed following directions;

- (I) PIO is directed to provide copy of relevant extract of Arms Act 1959 to the appellant.
- (II) Appellant to file written arguments within one week with copy to the PIO.

5. During proceedings on 29-06-2016, PIO submitted that in compliance to the directions of the Commission dated 09-06-2016; copy of relevant extracts of Arms Act 1959 has been given to the appellant. PIO further submitted that District Magistrate has powers to issue gun license under Arms Act 1959. As regards procedure for issuance of gun license, PIO submitted that on receipt of application for gun license, District Magistrate seeks report from police and other agencies. However, decision regarding issue of Arms License or otherwise is taken in terms of Section 13(3)(b) of the Arms Act, 1959.

6. In the instant case, information sought at point c & d has been denied by the DM Jammu/PIO, stating it as 3rd party information. It is, therefore, evident that this information exists on record. Subsequently, FAA in his counter statement submitted that appellant cannot ask for reasons for granting gun license to the private individuals, as reasons, opinions cannot be asked under the provisions of RTI Act.

7. It is pertinent to refer to the relevant provisions of the J&K RTI Act 2009 as under:

(I) Section 2(d) of the J&K RTI Act, 2009, which provides "*information means any material in any form including records, documents,.....opinions, advices, press releases,....reports, models,...which can be accessed by a public authority under any other law for time being force..*"

(II) Section 4(1)(d) of the J&K RTI Act, 2009 requires public authorities to provide reasons for its administrative or quasi judicial decisions to affected Persons.

8. Further, Section 13(3)(b) of the Arms Act, 1959 provides "***The licensing Authority shall grant a license under section 3 in any other case or a license under section 4, section 5, section 6, section 10 or section 12, if the licensing authority is satisfied that the person by whom the license is required has a good reason for obtaining the same.***"

The reasoning and satisfaction should be judicious and not arbitrary. Therefore in terms of Arms Act the reasoning for issuance of gun license is a pre-requisite and it must be on record. Hence such reasoning borne on record falls within the definition of information under section 2(d) of J&K RTI Act, 2009.

Further, information sought at point c & d is not 3rd party information, because the information sought is with regard to an order passed by public authority/District Magistrate for grant of license. Even, if for arguments sake it is presumed that, this information relates to third party, yet larger public interest shall be served if the information related to issuance of gun license against a particular I.D. number and the reasons recorded for issuance of the same are disclosed.

Further, information sought at (c) and (d) also fall under Section 4(1)(d) of the J&K RTI Act, 2009 and PIO/District Magistrate is bound to disclose this information to the appellant, so as to know the reasons for

issuance of the license to a person, who has same police report as that of appellant. Moreover, denial of information to appellant would amount to infringement of his right to know as enshrined in the preamble of RTI Act.

For the reasons stated herein above, the response of DM Jammu/deemed PIO in declining information at points C & D of RTI application is not in accordance with the provisions of the Act. The Commission therefore directs District Magistrate Jammu cum Deemed PIO to disclose the information at Points (c) & (d) as per records, within two weeks.

9. As per the records placed before the Commission, this RTI application has been returned back by ADC, Jammu on 31-10-2015 to PIO, O/o D.C. Jammu, stating that the matter was pertaining to District Magistrate, Jammu. However, PIO, O/o D.C., Jammu has not taken any action on the application within stipulated time prescribed under the Act. Further, District Magistrate/deemed PIO who is also FAA, has taken more than two months to give a four-line response, even though the Deputy Commissioner Jammu in his capacity has FAA directed District Magistrate Jammu to provide information within 30 days.

10. In view of the above, both District Magistrate, Jammu (Deemed PIO) and PIO, O/o Deputy Commissioner, Jammu are liable for initiating penalty proceedings as provided under Section 17 of the Act for delay in disposing of the RTI application. Therefore, District Magistrate, Jammu (deemed PIO) and PIO, O/o D.C. Jammu are given an opportunity to explain as to why penalty as per provisions of the Section 17 of the Act shall not be imposed on them. Their explanations, if any shall reach the Commission within two weeks of the receipt of this order.

11. In view of the above, the appeal filed before the Commission is disposed of.

Sd/-
(Er. Nazir Ahmad)
State Information Commissioner

No. SIC/J/A/287/2016

Dated: -06-2016

Copy to the:-

1. First Appellate Authority, O/o Deputy Commissioner, Jammu.
2. Public Information Officer, O/o Deputy Commissioner, Jammu.
3. Pvt. Secretary to HSIC.
4. Mr. Nazam Akhtar S/o Mushtaq Ahmad R/o H.No. 74, Ambedkar Nagar, High Court Road, Old Janipur, Jammu. (Appellant).
5. Guard file.

(M.S.Bhat)
Deputy Registrar,
J&K, State Information Commission