



**Jammu and Kashmir State Information Commission**

شہن ۛم شہن ۛٹ انفارم ۛر اسٹ ۛنڈ کشم ۛ جموں ا

(Constituted under The Right to Information Act, 2009)

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File No. SIC/J/A/63/2016

Decision No. SIC/J/A/63/2016/376

Appellant : Sh. Ram Saran Dogra

Respondent : FAA/Superintending Engineer,  
PWD (R&B) Jammu-Kathua Circle, Jammu  
PIO/Executive Engineer,  
PWD (R&B) Div. Kathua.

Date of Registration : 05.07.2016

Date of Decision : 31.08.2016

**Brief Facts:**

The appellant Sh. Ram Saran Dogra has made a request for information under RTI Act, 2009 to PIO/Executive Engineer, PWD (R&B) Division Kathua on 18.02.2016 seeking following information:

- Total no. of works executed by Sh. Dheeraj Gupta S/o. Sh. Ravi Kiran Gupta & Sh. Sumit Gupta S/o. Sh. Shashi Kiran Gupta both R/o. Hira Nagar through allotted contracts during the years 2008-2015.
- Total no. of works executed departmentally during the above mentioned years by the said contractors, the information sought include the name of

work, amount of allotment, rates allotted and payments made. The appellant has also sought information on rates adopted for execution of works departmentally.

This RTI application has been responded to by Er. Purshotam Kumar, Executive Engineer, PWD (R&B) Division, Kathua vide letter dated: 22.03.2016 in reference to RTI application dated: 24.02.2016 stating as under:

***“As per RTI Act, 2009 clause 11, in reply to this office letter No. 11822/G dated; 21.02.2016 Sh. Dheeraj Gupta S/o. Sh. Ravi Kiran Gupta R/o. Hiranagar as third party has requested this office vide his no. Nil dated: 08.03.2016 not to disclose the information pertaining to him to you.***

***However, there is no such contractor namely Sh. Sumit Gupta, S/o. Sh. Shashi Kiran Gupta, R/o. Hiranagar had executed any work in this division as per record available.”***

Aggrieved by the response of the PIO, the appellant has filed First Appeal dated: 24.03.2016 before the First Appellate Authority/Superintending Engineer, PWD (R&B) Jammu-Kathua Circle, Rail Head Complex, Jammu. This First Appeal has been decided by Er. Sudheer Shah, FAA/Superintending Engineer, PWD (R&B) Jammu-Kathua Circle, Jammu vide order dated: 12.04.2016 concluding as under:-

- (i) Whereas the applicant/representative did not present himself before the First Appellate Authority.***
- (ii) Whereas no communication has been received from the applicant about cause of his absence.***
- (iii) Whereas the PIO has already provided the information to the information seeker under the provision of RTI Act.***
- (iv) Whereas the FAA is satisfied that applicant is not adhering to the provisions of the J&K RTI Act, 2009.***

***As such the First Appeal filed by the applicant is hereby rejected.***

Thereafter the appellant has filed 2<sup>nd</sup> appeal in the Commission submitting that it is incorrect that PIO/Executive Engineer, PWD (R&B) Division Kathua claims to have already provided the required information, but there is no such documentary evidence. The appellant has also questioned the conclusion of the FAA at S.No.3 of his order that PIO has tactfully denied the required information under RTI taking pretext of this being information pertaining to third party as is clear from his reply dated: 22.03.2016. The appellant has argued that conclusions arrived in the decision of FAA having no merit unless basic desired information is supplied to him. He has accordingly filed appeal requesting information sought in his RTI application dated: 18.02.2016 may be made available to him.

Executive Engineer, PWD (R&B) Division Kathua has filed reply dated: 23.07.2016 submitting that reply to application under RTI Act 2009 of Sh. Ram Saran Dogra stands already submitted vide his office letter dated: 22.03.2016 and 23.04.2016. Executive Engineer has enclosed relevant annexures for ready reference.

Thereafter, the appellant Sh. Ram Saran Dogra has filed objections on 31.08.2016, interalia, submitting that records sought under RTI Act were with the Executive Engineer (R&B) Division Kathua and unless the PIO is not ready to pass the information an ordinary citizen cannot get requested information. That the plea of the contractor-Dheeraj Gupta in his reply dated: 08.03.2016 addressed to Executive Engineer that required information being his personal matter, be not passed to RTI applicant, has been endorsed by the PIO in his decision dated: 22.03.2016. Therefore, information requested under the RTI Application dated: 18.02.2016 was available with the Executive Engineer only but declined on the pretext of third party. This act of PIO discourages the spirit of RTI facility.

The appellant has also filed objections with regard to decision of FAA dated: 12.04.2016, interalia, questioning as to who is Kushi Ram described in para -2 of the decision and how he is concerned with the case is best known to the FAA. That FAA has not given a 2<sup>nd</sup> date to the applicant and chose to close the matter.

Heard parties and perused records.

From the contents of the information sought, it is evident that it relates to works executed by certain contractors in R&B Division Kathua for period 2008-15. The Executive Engineer/PIO, while disposing of the RTI application has taken a view that the information sought is a third party information and has approached one of the contractors Sh. Dheeraj Gupta (Govt. Contractor) S/o. Sh. Ravi Kiran Gupta, R/o. Hiranagar vide communication dated: 27.02.2016 informing him that some information related to execution of works by him have been sought by the applicant. Therefore, as per clause 11 of the Act, the PIO while intending to disclose the information, has asked the contractor to intimate his office whether the information will be disclosed to Sh. Ram Saran Dogra under RTI Act or not within 10 days as otherwise the information will be provided to the information seeker.

The third party Sh. Dheeraj Gupta has informed the Executive Engineer in reference to his letter dated: 27.02.2016 that the information should not be disclosed because it is a personal matter. Thereafter the Executive Engineer vide letter dated: 22.03.2016 has informed the appellant Sh. Ram Saran Dogra that Sh. Dheeraj Gupta has requested his office vide letter dated: 08.03.2016 not to disclose the information pertaining to him. It is further informed that there is no such contractor namely Sh. Sumit Gupta, S/o. Sh. Shashi Kiran Gupta, R/o. Hiranagar who has executed any work in his division so far.

From the reply of the Executive Engineer it is evident that he has only intimated the objections of the third party Sh. Dheeraj Gupta to the appellant, but he has not taken a decision whether disclosure may be allowed if the public interest outweighs in importance any possible harm or injury to the interests of such third party as is required under proviso to section 11 (1) of the Act.

In the instant case the information sought is related to the developmental works undertaken by a particular contractor. Therefore, this by no means can be treated as information supplied by third party. On the other hand, it is a public document related to developmental works undertaken at the cost of State Exchequer by a certain contractor. Merely because the appellant has sought information related to works executed by one contractor would not classify this information as third party information, because any work executed by the department is carried out by a contractor, whose particulars figures in the allotment orders/copies of payments made.

Executive Engineer submitted that records related to developmental works are maintained work wise/project wise and not contractor wise. He further submitted that he followed provisions of section 11 in good faith & there is no malafide involved in the matter as alleged by appellant.

The appellant has laid emphasis on transparency and accountability in his objections and also submitted during proceedings that the information sought is related to exposing alleged irregularities. Therefore, prima facie the appellant should have a broad idea of particulars/locations of works undertaken by said contractor where such irregularities are likely to have taken place. The appellant submitted that they shall provide list of such works to the Executive Engineer within 02 weeks.

Accordingly, Executive Engineer (R&B) Division Kathua is directed to provide information sought by the appellant in respect of such works as identified by appellant as per records within 02 weeks thereafter.

The Commission has taken a serious view of the casual approach adopted by the Superintending Engineer, PWD (R&B) Jammu-Kathua Circle, Jammu-cum-FAA in disposing of the First Appeal without referring to the relevant provisions of the Act. The allegation of the appellant that the FAA has acted very casually is also evident from the fact that he has referred to one Sh. Kushi Ram in his order, which person is not related to the RTI application/appeal under consideration.

The Commission, therefore, directs the FAA/Superintending Engineer, PWD (R&B) Jammu-Kathua Circle, Jammu to be careful in future while disposing of the RTI applications and ensure that even if the appellants do not appear before him, his decisions should be based on the provisions of the J&K RTI Act, 2009 upholding the spirit of transparency and accountability.

The appeal is accordingly disposed of with above directions.

**Sd/-**  
**(Er. Nazir Ahmed)**  
**State Information Commissioner**

No: SIC/J/A/63/2016

Date: .2016

Copy to:

1. FAA/Er. Sudheer Shah, Superintending Engineer, PWD (R&B) Jammu-Kathua Circle, Jammu for compliance.
2. PIO/Er. Purshotam Kumar, Executive Engineer, PWD (R&B) Div. Kathua for compliance.
3. Appellant/Sh. Ram Saran Dogra, R/o. Ward No. 8, Hira Nagar, District: Kathua.

**(Sheikh Fayaz Ahmad)**  
Registrar  
J&K State Information Commission

