



Jammu and Kashmir State Information Commission

شنیشن کمیٹی انفارمیری اسٹیٹسٹ کشمیری جموں ا

(Constituted under the Right to Information Act, 2009)

Wazarat Road, near DC Office Jammu, 0191-2520947, 2520937

Old Assembly Complex, Srinagar, 0194-2506660, 2506661

www.jksic.nic.in

File No. SIC/J/A/99/2017

Decision No. SIC/J/A/99/2017/23

Final Order

(Second Appeal)

Appellants : Sh. Ilyas Ahmed and Sh. Aijaz Hussain

Respondents : First Appellate Authority (FAA) and Public Information Officer (PIO)/ O/o. Assistant Commissioner (Development), Kishtwar.

Date of Registration : 20.03.2017

Date of Decision : 10.07.2017

Brief Facts:

This is a second appeal filed under section 16 (4) of the J&K Right to Information Act, 2009 (hereinafter Act for short) in the J&K State Information Commission by Sh. Ilyas Ahmed, S/o. Sh. Bahadur Wani and Sh. Aijaz Hussain, S/o. Gh. Mohd residents of R/o. Nowgam Marwah, Tehsil Marwah, District Kishtwar on 19.08.2016 (admitted after completing deficiencies on 20.03.2017). The appellants interalia submitted that they had filed an RTI application with the PIO, O/o. Assistant Commissioner (Development), Kishtwar through registered post on 18.08.2016 which was

not responded even after the lapse of one month. That aggrieved by the lackadaisical approach of the AC (D), Kishtwar, the appellants moved their First Appeal before the Directorate of Rural Development Department, Jammu on 26.05.2016 which was disposed of by the Director, Rural Development, Jammu vide his order dated: 23.06.2016 with the directions to AC (D), Kishtwar and BDO, Marwah to provide the requisite information to the appellants within ten days, free of cost, through registered post. That till the date of filing of second appeal, the respondents had not provided the requisite information. In view of the above, the appellants have prayed before the Commission to allow the present appeal and direct the respondents to provide the requisite information to the appellants sought for in the original RTI application.

Proceedings:

The case came up for hearing before the Commission for the first time on 14.06.2017. Hearing was attended by Ms. Champa Devi Thakur, Joint Director, Rural Development, Jammu and the appellants. The AC (D), Kishtwar Sh. Garbi Rashid Dar and BDO, Marwah were heard through Video Conferencing from NIC office Kishtwar. After hearing both the parties, the case was adjourned with the following directions:

“With a view to clear the air about the genuineness or otherwise of the affidavit submitted to the Commission, the PIO/AC (D), Kishtwar and BDO, Marwah are directed to appear in person before the SIC/CIC on 10th July, 2017 at SIC office Srinagar with a counter statement and relevant record pertaining to the points/items in the RTI application.”

The appeal was again listed for hearing today on 10.07.2017 at Srinagar office of the Commission in pursuance of the interim order issued by the Commission on 14.06.2017. Mr. Garbi Rashid Dar, AC (D), Kishtwar/FAA at the district level attended the hearing whereas the PIO/BDO, Marwah absented himself. PIO/BDO, Marwah didn't even submit an application for exemption from personal appearance.

The main bone of contention in this appeal now is whether the affidavit purportedly signed by the applicants (now appellants) bearing No. BF 271065 dated: 1st March, 2017 is genuine or not. In this affidavit the appellants have stated that they have received full information. However, the appellants (previously applicants) have stated before the Commission personally on 14.06.2017 and through two different affidavits that the affidavit bearing No. BF 271065 dated: 1st March, 2017 which had been sent to the Commission by the FAA and PIO is fake, bearing forged signatures and that they have still not been provided the requisite information they have asked for. In view of the contrary stand taken by the appellants on 14.06.2017 and through their individual affidavits No. BH 277505 dated: 24th April, 2017 and No. BH 277504 dated: 24th April, 2017 the AC (D), Kishtwar has written to the BDO, Marwah vide his No. ACDK/2884-87 dated: 17.06.2017 with the following instructions:

"In inviting a reference to your letter No. MB/RTI/2nd Appeal/225-228 dated: 13.06.2017, wherein you have requested to kindly get the signatures of the appellant verified/authenticated from FSL, Jammu and also crave to take disciplinary action against them including the registration of a FIR, as appellant has made fallacious

disputation of facts both before the Hon'ble High Court and State Information Commission.

In the light of above backdrop, you are directed to register a FIR in the forge/fictitious matter in order this department will acknowledge with factual facts appertain (should be ascertain) forge/fictitious signatures on the affidavits at concerned police station under intimation to this office."

During the hearing of the appeal today on 10.07.2017, the FAA/AC (D), Kishtwar submitted that it would be best to have the matter thoroughly inquired through FSL or any other specialized agency as he is not sure whether the signatures on the joint affidavit dated: 01st March, 2017 are those of the appellants or not although, the signatures bear some similarity to the signatures attested on the individual affidavits both dated: 24.04.2017 wherein the appellants have distanced themselves from the original affidavit. He also stated that while the inquiry can go on to verify the signatures and the intentions of the appellants (earlier applicants), the department is ready to provide full information as per the RTI application.

Decision:

After careful consideration of the whole matter, it is observed that the issue of alleged forged signatures is really a serious matter which cannot be ignored keeping in view the interest of the Rural Development Department and future implications of motivated RTI applications by vested interests and anti-social elements. It is, therefore, best that the matter be referred to the J&K Crime Branch by the Director, Rural

Development, Jammu for a thorough investigation. Simultaneously, the Director, Rural Development, Jammu is also advised to have a thorough inquiry conducted by an officer not below the the rank of Joint Director to ascertain how and to what extent administrative and procedural norms have been violated, if any.

The PIO is once again directed to provide the information which has not been provided so far in terms of the original RTI application and which is available on record. In case this information is voluminous and likely to divert the resources of the Government and result in disproportionate effort on the part of Government Officials adversely affecting efficiency and which has no substantial public interest objectives to secure, inspection of records may only be allowed in terms of section 7(9) of the Act.

As regards the absence of the BDO, Marwah, today without information to the Commission, there is no option but to take a serious view of his absence and initiate proceedings under section 17 of the J&K RTI Act for the reason that the information sought by the appellants had not been provided and has been unduly delayed beyond the mandatory period of 30 days provided under section 7(1) of the Act. A show cause notice may be issued by the Registrar, J&KSIC to the PIO/BDO, Marwah asking him to submit any defence on his behalf and to explain as to why penalty under section 17(1) of the Act may not be imposed upon him for not

providing the information after the expiry of thirty days from the date of submission of the RTI application on 18.04.2016. He may also be asked to explain as to why disciplinary proceedings may not be recommended against him in pursuance to section 17 (2) of the Act.

The second appeal is accordingly disposed of.

Copy of this decision be given free of cost to the parties.

Sd/-

(Khurshid A. Ganai) IAS Retd.

Chief Information Commissioner

J&K State Information Commission

No: SIC/J/A/99/2017 _____

Dated: . . .2017

Copy to:

1. Registrar, J&KSIC for information and necessary action.
2. Director, Rural Development, Jammu for information and necessary action.
3. Assistant Commissioner (Development), Kishtwar/FAA for information and necessary action.
4. PIO/BDO, Marwah for information and compliance.
5. Private Secretary to HCIC for information of the HCIC.
6. Appellants/Sh. Ilyas Ahmed, S/o. Sh. Bahadur Wani and Sh. Aijaz Hussain, S/o. Gh. Mohd. Residents of R/o. Nowgam Marwah, Tehsil Marwah, District Kishtwar for information.
7. Office file.

(Rita Koul)

Deputy Registrar

J&K State Information Commission