

**Jammu and Kashmir State Information Commission**  
(Constituted under The Right to Information Act, 2009)  
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File No. SIC/CO/SA/406/2016.  
SIC/CO/SA/434/2017. }  
SIC/ CO/SA/435/2017. }  
Decision Number -**979**

Appellant : Sh. Avinash Razdan.  
Respondent : FAA/PIO J&K High Court.  
Date of decision : 12-05-2017  
Decision : 2<sup>nd</sup> Appeals disposed of.

“The appellant filed three separate 2<sup>nd</sup> appeals against the order of the First Appellate Authority, J&K High Court; as such all the three appeals namely Sh. Avinash Razdan Vs FAA/PIO J&K High Court, were clubbed together and heard on the same dates. Hence the said appeals are disposed of in this single order.”

**I. Brief facts of the cases.**

Brief facts of the cases are that in three RTI applications dated 12-07-2016, 24-09-2016 and 01-10-2016 the appellant sought various types of information from the same PIO, i.e Principal Session Judge, Saddar Court, Jammu. The PIO has responded to all the three applications vide orders dated 02-08-2016, 19-10-2016 respectively (two orders with on the date). Against these decisions of the PIO the appellant preferred appeals before the First Appellate Authority (FAA), Registrar General of the J&K High Court. The FAA disposed of the appeals vide his orders dated 02-01-2017, 28-01-2017 and 01-02-2017 respectively endorsing the decision of the PIO.

**II. Proceeding before the Commission.**

All the three clubbed files were listed together and were heard on various dates of hearing. Respondents and the Appellant caused their appearance before the Commission. During the hearing, parties were heard at length and rival contentions were considered by the Commission.

The three RTI applications are analyzed as under:

In his RTI application dated 12-07-2016 (1<sup>st</sup>), the appellant has sought the following information:

1. Provide the copies of all the documents/letters received and filed in the matter of State vs Anil Kumar Dhar vide File Challan Number 176/113, in the year 2016, and where such documents/letters were written by the office of the Registrar Vigilance, Jammu and Kashmir High Court.
2. Provide the copies of all the documents/letters written by the Chief Judicial Magistrate, Jammu which are filed in the matter of State vs Anil Kumar Dhar vide File Challan 176/113, in the year 2016, and where such documents/letters were addressed to the office of the Registrar Vigilance, Jammu & Kashmir High Court.
3. Provide copy of the application, dated 10-06-2016, filed by the applicant with the request to issuance of certified copies in the matter of State vs Anil Kumar Dhar vide file challan number 176/113.
4. Provide copies of the FIR depicting the date of occurrence as 23-08-2007 along with challan/final report, statements, and the charge sheet as filed by the Talab Tillo Police Post, through Police Station Nawabad, Jammu in the matter of State vs Anil Kumar Dhar, under section 337, 324 of RPC.
5. Provide copy of the direction of Senior Superintendent of Police to the Investigating Officer of the case State vs Anil Kumar Dhar which is attached with the challan filed by Nawabad Police Station through Police Post Talab Tillo, Jammu.
6. Provide File Challan Number with reference to the aforementioned point (4) and point (5) against which the relevant details of the case Titled

State vs Anil Kumar Dhar were instituted in the institution register of the CJM Court, Jammu.

In the RTI application dated 24-09-2016 (2<sup>nd</sup>), the applicant sought the following information:

1. Provide the information of such provision of C.r.P.c under which the application, caused on dated 19-09-2012 and addressed to the Ld. City Court, Jammu has been received and retained by the Ld. Chief Judicial Magistrate, Jammu on 19-12-2012 with request of Re-Investigation by Mr. Anil Kumar Dhar, in the case titled State v/s Avinash.
2. Provide reasons as to why the application caused on dated 19-09-2012 and addressed to the Ld. City Court, Jammu by the applicant Anil Kumar Dhar, in the case titled State V/s Avinash, was received by the Ld. Chief Judicial Magistrate Court, Jammu on 19-12-2012.
3. Provide information whether the Ld. City Court, Jammu has been informed that a document/letter/application caused on dated 19-09-2012 which is addressed to it by the applicant, Mr. Anil Kumar Dhar, in the case titled State V/s Avinash and has been received and retained by the Ld. Chief Judicial Magistrate, Jammu.
4. Provide the information of such Provision of C.r.P.c that mandates the Ld. Chief Judicial Magistrate, Jammu to cause hearing in the case titled State vs Anil Kumar Dhar and in the case titled State vs Avinash on 28-09-2016.
5. Provide the information of such Provision of C.r.P.c which has mandated the Ld. Chief Judicial magistrate, Jammu to cause hearing in the case titled State vs Anil Kumar Dhar and in the case titled State vs Avinash from 19-09-2012 and onwards.

In his RTI application dated 01-10-2016 (3<sup>rd</sup>), the applicant has sought the following information:

1. Provide the copies of the available documents sought in the application dated 08-07-2016 filed on 09-07-2016 in the matter of State vs Anil Kumar Dhar before the Ld. CJM, Jammu, and upon which application the Ld. Court passed orders to issue the copies on the date of filing; and

where such application is recorded against the number at 2331 with the office of the copyist of the Ld. CJM, Jammu, in its record register.

2. Provide reasons as to why the office of the copyist failed to issue the available copies previously, under the prescribed rules, inspite of judicial orders to issue the copies on the date of filing of the application dated 08-07-2016, filed on 09-07-2016 in the matter of State vs Anil Kumar Dhar before the Ld. CJM, Jammu; and where such application is recorded against the number at 2331 with the office of the copyist of the Ld. CJM, Jammu, in its record register.
3. Provide the copy of the application dated 10-06-2016 in the matter of State vs Anil Kumar Dhar submitted before the Ld. CJM Court, Jammu, by the applicant, Avinash Razdan; and where such application is recorded against the number 2305 with the office of the copyist of the CJM Court, Jammu in its record register.

From the perusal of the three RTI applications and having noticed the nature of information sought, it appears that the appellant is seeking such information about the legal processes and procedure which may not be expressly covered by the exemption under section 8 of the J&K RTI Act, 2009 but disclosure of which may be construed as undue interference by the Public Authorities and therefore, not in the interest of unbiased and un-influenced delivery of Justice.

Here it is relevant to quote Hon'ble Supreme Court in CBSE Vs Aditya Bandopadhyay case (2012) where in the Hon'ble Supreme Court observed:

"Right to seek information cannot be construed or claimed as an unfettered right to seek any information and on the other hand, such right being a facet of the freedom of "speech and expression" as contained in Article 19(1)(a) of the Constitution of India, is always subject to reasonable restriction. No doubt, Section 3 of the RTI Act contemplates that all citizens shall have the "right to information". At the same time, when such "right to information" is not an unfettered right and on the other hand, is subject to reasonable restriction, it has to be held that such right cannot be sought to be enforced as a matter of routine or as a matter of course, without disclosing as to whether such right is being exercised to get an information to achieve a

legally enforceable or achievable object. In other words, prima-facie, an applicant must disclose the object for which such an information is sought for and also satisfy that such object has a legal backing. If informations are to be furnished to a person, who does not have any reason or object behind seeking such informations, in our considered view, the intention of the Legislature is not to the effect that such informations are to be given like pamphlets to any person unmindful of the object behind seeking such information. We should not be mistaken as if we are saying something against the intention of the Legislature. What we want to emphasis is that a Legislation, more particularly, the one on hand, must achieve the object, viz., concrete and effective functioning of the public authority with transparency and accountability by providing the information which are under the control of such public authorities. If the "right" provided under the RTI Act is misused, either as an intimidation or as a threat against the effective functioning of the public authorities, or such conduct would deviate the administration from its effective functioning, the Courts will always weigh the balance and lift the veil to find out as to whether the applicant has sought the information with bona-fide intention and as to whether such information has any relevance for his request. It is needless to say that while the "use" is to be encouraged, the "misuse" has to be curtailed and nibbed at the bud."

It is against this background, that the three applications have been considered for an informed and appropriate disposal keeping all aspects in mind.

In response to the RTI application (1<sup>st</sup>) dated 12-07-2016, the PIO, Principal District & Session Judge, Jammu (PDSJ) furnished point wise reply on the basis of inputs from the Ld. CJM vide No. 835/PDSJ.J dated 02-08-2016, which is as under:

- a) In reference to the information No. 1 & 2 sought by the applicant, it is hereby, submitted that the applicant has not specified the information in his letter. The applicant is asking for the copies of all the documents/letters received and filed in the matter i.e the case titled State Vs Anil Kumar Dhar. The said communication is between the undersigned and the Ld. Registrar Vigilance, J&K High Court which is the personal information of the undersigned which has no relationship to any public activity or interest and as such, it falls within the purview of exemption under section 8 (1) (I) of RTI Act, 2009. More so, the said

documents/letter are not the part of the afore titled file but the same are lying in the personal file of the undersigned.

- b) So far as the information No-3 is concerned I am hereby submitting the photocopy of the said application dated 10-06-2016 of its supply to the applicant.
- c) So far as the information No-4 is concerned it is submitted that the FIR which is annexed with the file is not depicting the date of occurrence as 23-08-2007 as referred by the applicant in his application. As such, the said information can also not be supplied.
- d) So far as the information No-5 is concerned the applicant is seeking the copy of the directions of SSP to the investigating officer of the cases entitled State Vs Anil Kumar Dhar. From the perusal of the file I do not find any such copy i.e the directions of the SSP to the I.O.
- e) In reference to the information No-6 it is submitted that the challan No- of the case file entitled State Vs Anil Kumar Dhar in this court is entered as 176/Ch dated 19-09-2012.

On analysis of the first RTI application, reply of PIO, counter statement of the respondents/FAA and rejoinder of the appellant, it is evident that all the available information except point I & II has been furnished to the appellant.

"Commission observes that the plea taken by the PIO viz-a-viz point I & II of the RTI application is not justified as the the official correspondence between two Public functionaries cannot be deemed to be personal, except under exceptional circumstances e.g under section 124 of Evidence Act, Svt 1977 which reads as "No Public Officer shall be compelled to disclose communication made to him in official confidence, when he considers that the public interest would suffer by the disclosure" or "That the said official correspondence does not pertain to the case titled State Vs Anil Kumar Dhar which is the subject matter from which the information has been sought by the appellant through his RTI application" or "The said correspondence has always been treated as confidential by either of the parties or both in which the reference to section 11 (third party information) of the J&K RTI Act, 2009 will necessarily have to be made."

In its decision reported in 2013(5)MLJ 513 (Registrar General High Court of Madras Vs R.M Subramaniam), the Division Bench of High Court of Madras has held that to uphold the dignity and Majesty of the Hon'ble High Court, being an independent Authority under the constitution of India, some self restrictions are to be imposed as regards the supply of internal/domestic functioning of the Hon'ble High Court and its office information in respect of matters which are highly confidential in nature as much as it concerns with the intricate,

internal discussion and deliberation notings, jottings and administrative decisions taken at different levels and as such they are exempted from disclosure under section (8). Even otherwise, they are not open to litigants/public without restrictions. No wonder, it can be fittingly observed that if impartiality is the soul of judiciary then independence is the life blood of judiciary. Also that without independence, impartially cannot thrive/survive.

In this case the PIO has not taken any such plea. Instead he has invoked section 8(1)(i) of the J&K RTI Act, 2009, relating to personal information, which will not apply in this case. The documents in this case are clearly disclose-able under the J&K RTI Act unless the PIO records any of the reasons/objection mentioned above that information would impede investigation, apprehension, or prosecution of offenders or would fall under section 124 of Evidence Act, 1977 or under any of the objections mentioned above though not raised by the PIO so far.

In view of this the PIO is directed to furnish the copies of documents demanded in point I & II of the RTI application dated 12-07-2016. However, copies may not be provided in the event of applicability of any of the objections/conditions mentioned above, if the information sought relates to intricate internal discussions/deliberations etc of the High Court, which may not fall under the definition of information under section 2(d) of the J&K RTI Act, 2009 and furnishing of which information may impede and hinder the regular and proper functioning of the institution of the Court. The question as to whether the information sought by the appellant falls or does not fall under any of the above preconditions has to be decided by the PIO himself before the information is disclosed.

The information shall be provided within **15 days** from receipt of this order.

Regarding the appellant's demand at point-v for providing copies of direction of SSP to the Investigating Officer, it transpires that the PIO has correctly responded denying any such record. The mention of directions of SSP to the Investigating Officer has actually originated from the statement made by the appellant before the Court and which was reflected in the order of the Court. The PIO has rightly responded to this point as the records do not exist.

In response to the RTI application (2<sup>nd</sup>) dated 24-09-2016, the PIO, furnished reply on 19-10-2016 on the basis of the information furnished by the Ld. Chief Judicial Magistrate (CJM), Jammu dated 13-10-2016 as under:

- a) In reference to the aforesaid, subject captioned above, it is hereby submitted that the information sought by the applicant in paras No: 1 and 2 is not in fact a information covered within the purview of the provisions of Right to Information Act. The applicant in these paras has in fact sought the explanation from the undersigned that under what circumstances the predecessor of the undersigned had retained the challan file entitled State Vs Avinash with this Court which was referred by the court of Ld. City Judge, Jammu which is not permissible under Law.
- b) The information sought by the applicant in para No.3 is quite ambiguous in nature and it is not understandable that what kind of information is required by the applicant in this para.
- c) The information sought by the applicant in para No-4 is again a kind of explanation sought by the applicant from the undersigned which the undersigned is not supposed to tender to the applicant. Somehow, I would like to refer the provisions of section 528(2) Cr.P.C which confers powers to this Court to withdraw any case from any Magistrate Subordinate to him and may inquire into or try such case himself.
- d) The information sought by the applicant in para No5 is the repetition of para No-4 which does not require any further information.

On perusal of records, pertaining to the 2<sup>nd</sup> RTI application, it is noticed, that appellant was himself in know of the reasons of transfer of the file by Ld. City Judge to the Court of Ld. CJM, Jammu pertaining to the instant case i.e State v/s Avinash Razdan to which he is one of the parties. The Ld. City Judge had remitted the case to the court of Ld. CJM on the basis of the recorded reasons that one of the parties to the case was known to him and efforts are being made to influence his mind. The said reasons are based on the principal of "Rule against bias" which is one of the two major ingredients of principal of Natural Justice, an implicit Rule which runs throughout the criminal jurisprudence as a golden thread. The said rule emphasises that justice should not only be done but should be seen to be done.

This observation made by the Ld. City Judge on 19-09-2012 is part of the proceedings made in the open court, which the appellant is surely in know of. Surprisingly, first three points of his instant RTI application pertain to this point.

The copy of the said observations made by the Ld. City Judge has been furnished by the appellant himself. Not with standing this, if the Ld. CJM has recorded any more reasons, thereafter, those have to be disclosed to the appellant as that will fall within the definition of word "information" as defined under section 2(d) of the J&K RTI Act, 2009.

The information about rest of the two points has been furnished by the PIO.

In response to the RTI application (3<sup>rd</sup>) dated 01-10-2016, the PIO vide order dated 19-10-2016 has stated that information sought under part-I can be provided only under provision of section 76 of the Evidence Act and not under J&K RTI Act, 2009.

In response to part-II the PIO has informed that certified copies of those documents have been provided to him, which could have been provided, however, certified photocopies could not be provided under section 76 of the Evidence Act. The information pertaining to part-III has been provided.

After perusal of contents of the third RTI application and reply of the PIO, the Commission observes that section 76 of the Evidence Act provides a statutory mechanism, which obliges the Public Officer in custody of a Public document, which any person has right to inspect and give on demand a copy of it on the payment of fee. Hon'ble High Court of Delhi in case titled Registrar of Companies & ors v/s Dharmindra Kumar Garg & Aur WP (C) 11271/2009 has held that "information in respect of which there is a statutory mechanism evolved independent of the RTI Act which obliges the Public Authority to share the same with the citizenry by following the prescribed procedure has to be provided and upon fulfillment of prescribed conditions; this is so because in respect of such information, which the public authority is statutorily obliged to disseminate it cannot be said that public authority "holds" or "controls" the same.

It would not be out of place to mention that the purpose of Right to Information is to provide information which are kept in the form of document or otherwise by any Public Authority. This provision does not over ride the provision of

Evidence Act. This has been held by Hon'ble High Court of Madhya Pradesh in case titled Avtar Singh Darliamr Vs Shri Kailash Vijay Vargiya (Feb 2016) dated 02-02-2016.

On analysis of RTI applications made by the appellant in these cases, it is noticed that the applicant has also sought copies of applications submitted by himself. It is strange as to why the appellant is seeking photocopies of the documents which otherwise he himself has submitted. These are his own documents and if he does not have copies of the same, he has to blame himself and he cannot seek those details as a matter of right assuming that the Hon'ble Court will preserve his applications as treasures/valuable assets. Further these documents cannot be brought under section 2(d) of the J&K RTI Act, 2009. This point has been observed by the Hon'ble High Court of judicature at Madras in the case titled *PIO, High Court Madras Vs CIC Mr. B. Bharathi (2014)*.

*Appellant is therefore, advised to get the information as per the provision of section 76 of the Evidence Act. The PIO shall consider giving the balance information in the light of directions given above within a period of one month from the date of receipt of this order. Regarding the rest of the parts of this application information stands provided.*

***The said three 2<sup>nd</sup> Appeals are hence disposed of subject to the above mentioned directions/observations.***

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(Khurshid A. Ganai) IAS Retd.,  
Chief Information Commissioner.  
JK State Information Commission.  
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Copy to the:

1. First Appellate Authority (FAA), J&K High Court, Srinagar for information.
2. Public Information Officer (PIO), O/o Principal Session Judge, District Court, Jammu, for information.
3. PS to CIC for information of HCIC.
4. Sh. Avinash Razdan R/o 783, Subash Nagar, Jammu for information.
5. Guard file.

(Sheikh Fayaz Ahmad)  
Registrar,  
JK State Information Commission.