



## **Jammu and Kashmir State Information Commission**

(Constituted under The Right to Information Act, 2009)

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

**Old Assembly Complex, Srinagar, 0194-2506660, 2506661**

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File No. SIC/J/A/92/2017.  
Decision No.SIC/J/A/92/2017/26

Appellant : Sh. Avinash Razdan.  
Respondent : FAA/PIO District Police Office, Jammu.  
Date of decision : **15-06-2017**  
Decision : Appeal disposed of.

### **I. Brief facts of the case.**

Briefly the facts of this case are that the appellant approached the Public Information Officer (PIO) District police Office (DPO), Jammu with RTI application dated 08-12-2016 seeking information on the following points:

- 1. Provide copies of the application presented before the Court of CJM for producing Prosecution Witness as per the orders dated 28-09-2016 and 26-10-2016 in the matter of State Vs Anil Kumar Dhar.**
- 2. Provide copies of the warrant issued, if any, by the court in relation to the orders issued in the matter as mentioned in the Point 1, above.**
- 3. Provide copies of the warrant issued to the effect of producing witness by the concerned court of CJM, Jammu, in the matter, as mentioned in the Point 1, above.**
- 4. Provide any document that records, the fact that the CPO Jammu had indeed abided by the orders of the court, as per the orders in relation to the matter, as mentioned in Point 1, above.**
- 5. Provide any document that records the fact that the orders of the court were violated by any sub ordinate official in the Prosecution Wing or in the Police over which the CPO, Jammu exercised its legal power for execution of same warrants or any summon issued by the court in relation to the matter, as mentioned in Point 1, above.**
- 6. Provide the opinion as to why the orders of the court, in relation to the matter, mentioned in Point 1, above, were not complied with by the office of CPO, Jammu.**

The PIO/Deputy Superintendent of Police, Hqrs, Jammu vide letter dated 03-01-2017 informed the appellant that matter was verified through Chief Prosecuting Officer (CPO) Saddar Court, Jammu and report is obtained vide letter dated 24-11-2016 for which he has to deposit Rs 8/- (Rupees eight only) for getting information consisting of (04) pages. The said CPO Saddar Court, Jammu has stated in the reply that the Public Authority is not bound to collate the information which does not exist in the records as the information sought by the appellant is based on inferences.

The reply of the PIO did not satisfy the appellant resulting in filing of 1<sup>st</sup> appeal with the First Appellate Authority (FAA) S.P Head Quarters, District Police Lines, Jammu on 27-01-2017. The FAA disposed of the 1<sup>st</sup> appeal on 06-02-2017. FAA enclosed the reply prepared by the CPO vide his letter dated 02-02-2017 and furnished the same to the appellant. However, the appellant filed 2<sup>nd</sup> appeal with the Commission against the respondents on 16-02-2017.

## **II. Proceedings before the Commission.**

The case was listed for hearing before the Commission for the first time on 31-03-2017. The hearing was attended by Sh. R. C. Kotwal, S.P HQRs (FAA), Ms. Sugandha Mahajan, DySP, HQRs (PIO) and the appellant. The PIO submitted that the information sought by the appellant is not available with her office. That it pertains to the Judicial Proceedings pending before the court and it is upto the court to determine as to whether the information can be given or not. After hearing the parties the case was adjourned with the directions to the PIO to re-examine the basic RTI application and to provide the copies of the documents from the records to the appellant if the same have not been expressly forbidden by the court. The copy of the reply of the PIO was given to the appellant who was also directed to file rejoinder to the reply filed by the respondents.

The case was again listed for hearing on 22-05-2017. The hearing was attended by FAA, PIO, Prosecuting Officer (PO) of the Department and the appellant. During the hearing the appellant reiterated his demand for the information sought by him in his RTI application. Respondents submitted that the appellant is seeking information which is either not available in records or is hypothetical in nature. After hearing the parties at length, the Commission passed the following interim order:

1. "The respondents will examine whether there are any documents on record with their respective offices pertaining to para (4) and (5) (copies of warrants) of the RTI application submitted by the appellant to the PIO at the first stage.
2. As regards the legal position with respect to para (1), the appellant argued that the application by the Police/prosecution to summon prosecution witness is a must and that the Police must have submitted such an such application to the CJM/Trial Court. The respondents however, denied to have submitted such an application on the ground that such an application was not necessary. It was directed to discuss it further and for respondents to check up the legal position and thereby put up a reply to para (6).
3. As regards the request for giving copies of warrants as at paras (2) and (3) and the police argument that the police is only the executing authority for warrants and not the custodian or issuing authority, the respondents were asked why then they did not take action in terms of section 6(3) for transfer of the RTI application to the concerned Public Authority i.e Trial Court and as to whether it can be done at this stage".

The case was adjourned with the above mentioned directions.

The case was listed for final hearing on 15-06-2017 which was attended by FAA, PIO, CPO, on behalf of the Police Department and the appellant Sh. Avinash Razdan. Sh. S.P Kotwal, SP/FAA filed reply in response to the Commission notice dated 29-05-2017. In his reply the FAA has dealt with all the points of information sought by the appellant. The reply of the FAA/PIO was analyzed viz-a-viz the specific information sought by the appellant. Oral as well as written submissions of the appellant were also considered by the Commission during various hearings of the case.

### III. **Decision:**

- a. *As regards (1), of "information required" in the original RTI application i.e copies of application submitted to the Trial Court/CJM for providing prosecution witnesses, the PIO's assertion that no application was made is taken on record and so the question of providing copy of such application/applications does not arise. However, as regards copies of warrants issued by the Trial Court/CJM (2) and (3) of information required in the original RTI application, the PIO (District Police) is directed to transfer the said part of the RTI application to the concerned PIO of the CJM Court in terms of section 6(3) of the J&K RTI Act, 2009 for providing information by the said PIO within fifteen (15) days from the date of receipt of this order.*
- b. *As regards (4), of the information required regarding action taken by the CPO on the Trial Court orders for production of prosecution witnesses, the PIO is directed to provide the copies of relevant Dockets from records as some of the Dockets mentioned in the FAA's reply dated 13-06-2017 do not seem to pertain to the orders of the CJM in the case State Vs Anil Kumar Dhar mentioned at para (1) by the appellant in his original RTI application. This information pertaining to action taken may be provided within fifteen (15) days from the date of receipt of this order.*
- c. *Regarding (5), of the original RTI application, it is for the PIO (District Police) to check from the records whether any document pertaining to non-action on the Trial*

***Court/CJM orders by Police officials is available. If so, then such a document / documents pertaining to the case State Vs Anil Kumar Dhar may be provided within fifteen (15) days from the date of receipt of this order.***

***d. Regarding (6), this information pertaining to "opinion" as to why Trial Court/CJM orders dated 28-09-2016 and 26-10-2016 issued for producing prosecution witnesses were not complied lies in the realm of conjecture/thinking and is therefore hypothetical unless reasons recorded and available on record which does not seem to be the case here. Information pertaining to hypothetical questions where record does not exist cannot be provided within the frame work of the J&K RTI Act, 2009. Therefore, no direction can be given to the PIO/FAA in this regard. The said PIO/FAA have also submitted in their reply that this information pertaining to para (6) cannot be provided as it is hypothetical and not part of the record.***

***With the above directions, the 2<sup>nd</sup> appeal is disposed of.***

**-sd/-**

(Khurshid A. Ganai) **IAS Retd.**,  
Chief Information Commissioner,  
J&K State Information Commission.  
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Copy to the:

1. First Appellate Authority (FAA), S.P Head Quarters DPL, Jammu for information & necessary action.
2. Public Information Officer (PIO), Dy SP Head Quarters DPL, for information & necessary action.
3. Public Information Officer (PIO), CJM Court, Jammu, for information & necessary action.
4. PS to CIC for information of HCIC.
5. Sh. Avinash Razdan R/o 783, Subash Nagar, Jammu for information.
6. Guard file.

(Shiekh Fayaz Ahmad)  
REGISTRAR,  
J&K State Information Commission.