

**Before the Chief Information Commissioner, J&K State Information
Commission (J&KSIC), Srinagar**

File No.SIC/CO/Comp/150/2017

Dated: 22/09/2017

Interim Order

**Subject: Complaint U/S 15 under J&K RTI Act,2009 tilted Dr.Shaikh
Gh.Rasool VS PIO,GAD,Civil Secretariat ,Srinagar.**

Proceedings before the Commission on 22.9.2017 .

The complaint came up for hearing today on 22.09.2017. Shri Imteeaz Kacho, PIO, GAD and Dr. Gh.Shaikh Gh.Rasool (Chairperson, J&K RTI Movement) complainant attended the hearing.

In this complaint the complainant has sought to highlight the urgent need for implementation of the provisions under Section 4 of the J&K RTI Act,2009 pertaining to mandatory and suo-moto disclosure of information by the Public Authorities through digital platforms and also non-digital medium i.e, through catalogues, manuals etc.

1. It is important to give here in this interim order the gist of the complaint which is as under
 - i) That the complainant is the Chairperson of the J&K RTI Movement, registered as a Trust under the J&K Trusts Act,1920 and is one of the seven co-Convenors of the National Campaign for people's Right to Information (NCRPI), a nation-wide movement comprising of activists and advocators of the fundamental right to information deemed to be guaranteed under Article 19(1)(a) of the Constitution of India, by a Catena of judgments of the Hon'ble Supreme Court of India, since 1975.
 - ii) That the complainant in collaboration with the Commonwealth Human Rights Initiative (CHRI) commissioned a study of the 230 official websites namely, those of the two Divisional Commissioners in J&K, the administration in the 22 districts and 209 departments, line agencies, autonomous organisations, universities, banks and cooperative societies owned

controlled or substantially financed by the J&K Government for assessing the state of compliance with the requirement of proactive disclosure of information under Section 4(1)(b) of the J&K RTI Act

- iii) That the said rapid study has revealed the poor state of compliance by the said public authorities with their mandatory obligation of proactive information disclosure, under Section 4(1)(b) of the J&K RTI Act.
 - iv) That the compliance with Section 4(1)(b) of the Act continues to be in poor state even after the completion of eight years of implementation of the said Act.
 - v) That despite repeated efforts of the State Information Commission to ensure compliance of all public authorities with the proactive information disclosure requirements under Section 4(1)(b) of the J&K RTI Act, the Respondent Public Authority has not issued adequate guidelines to public authorities in this regard.
2. The complainant has requested that the SIC may seek a report from the respondent Public Authority regarding action taken to ensure compliance with the provisions of the Section (4)(1) of the J&K RTI Act and also to direct the respondent Public Authority to issue guidelines for improving the quality and quantity of pro-active disclosure of information across all public authorities covered by the J&K RTI Act on the pattern of the guidelines issued by the DoPT, GoI for the Central Right to Information Act, 2005.

The complainant has also requested that the respondent Public Authority may be directed to put in place an institutional mechanism comprising of representatives of key public authorities and key civil society organisations and advocates of RTI in J&K, to monitor the effective implementation of Section 4(1) of the J&K RTI Act.

3. About the grounds for this complaint the complainant has referred to Section 15(1) and 15(2) stating that the SIC has to enquire into the matter in terms of duties cast upon it under Section 15(2) of the J&K RTI Act. The complainant also quoted from the Hon'ble Supreme Court judgment in CBSE Vs Aditya Bandpadhyay & Ors [(2011)

8 SCC 497] the Hon'ble Supreme Court was pleased to declare as under:

"The right to information is a cherished right. Information and right to information are intended to be formidable tools in the hands of responsible citizens to fight corruption and to bring in transparency and accountability. The provisions of RTI Act should be enforced strictly and all efforts should be made to bring to light the necessary information under clause(b) of Section 4(1)of the Act which relates to securing transparency and accountability in the working of public authorities and in discouraging corruption."

The Complainant has also quoted the judgment of the Division Bench of the High Court of Kolkata in respect of proactive disclosure of information under Section 4 (1) . In the matter of Tara Shankar Ghosh Vs State of West Bengal & Ors, a Division Bench of the Hon'ble Court was pleased to direct as follows:

" to the extent of section 4(1)(b) there is an obligation on the respondent authorities to put it on the website the details contained in sub-section (b) of section(4). It is also pertinent to mention that if such website is not available, it is open to the applicant to make an application seeking specific details and not general application. If such information which is required to be maintained in registers and official records is asked, the authorities are bound to furnish such information. If information is not furnished then an appeal can also be filed under the enactment in accordance with the

we also make it clear that respondent authorities are under an obligation so far as the Section 4(1)(b) to create a website and furnish the details as envisaged under Section 4(1)(b) of the Act within the stipulated time frame."

5. The complainant has also quoted DoPT's office Memorandum issued on 15th April,2013 on the subject "implementation of suo moto disclosure under section 4 of the RTI act,2005-Issue of guidelines regarding" and another Memorandum dated 30th June,2016 on the subject " Report of the Committee set up under the chairmanship of Dr.Devesh Chaturvedi, Joint Secretary, DoPT to examine the recommendations of the Committee of Experts on suo moto disclosure under Section 4 of the RTI Act,2005."

Through the DoPT,GoI, memorandum dated 15th April,2013 guidelines on suo moto disclosure under section 4 of the RTI Act were issued as follows a) suo moto disclosure of more items under section 4, b) Guidelines for digital publication of proactive disclosure under Section 4, c) Guidelines for certain clauses of Section 4(1)(b) to make disclosure more effective and d) compliance with provisions of suo moto disclosure.

Through another memo dated 30th June,2016, DoPT has referred to its earlier memo on the subject dated 29th June,2015 and instructions issued to all the Public Authorities vide OM No. 1/1/2013-IR dated 19th July,2015 and conveyed the instructions of the competent authority as under:

- (i) The Public Authorities shall constitute Consultative Committees consisting of office bearers of key stakeholder, association on rotational basis to have a systematic and regular interaction between the officials of the Public Authorities to advice what information to be uploaded as suo moto;
- (ii) 'Information and Facilitation Centres(IFCs)' may be set up in each public authority, where public dealing is involved to educate the citizens about the information /documents available on the website of the department concerned and to provide printed publications to the citizens the categories of information that are frequently being sought under the RTI Act and provide copies of information as per RTI Rules,2012;
- (iii) In each public authority, a committee of PIOs and FAAs with rich experience of dealing with RTI applications and appeals is set up to identify the categories of information that are frequently asked by applicants. Such information must be disclosed in the public domain to make it more user friendly and should also be reviewed at regular intervals;
- (iv) Information that is proactively disclosed must be properly categorized and organised in such a manner that it facilitated easy retrieval. Information on the website must be organised in a searchable and retrievable database to enable people to access the records. The Nodal Officer of each Public Authority be made responsible for this;
- (v) Website, and other medium and publication of each public authority, relating to Section 4 compliance must carry the

date (where appropriate for each bit of information) on which the information was uploaded/printed; and

- (vi) The task of undertaking transparency audits may be given to the respective Training Institutes under each Ministry/ Departments/Public Authority and across the States and Union Territories.

The PIO, GAD, Govt. of J&K attended the hearing and stated that the GAD has taken a number of steps to impress upon the Administrative Departments from time to time to adhere to the instructions /guidelines of the J&K State Information Commission for the smooth and effective implementation of the J&K RTI Act,2009 particularly with reference to the mandatory disclosure of information under Section 4 of the Act. 'In respect of the GAD, the website is updated regularly and additional information uploaded at frequent intervals.' The PIO also submitted the GAD's counter statement to the complaint under consideration vide their letter No. GAD(Adm)188/2017-V dated 21.09.2017 alongwith Annexures showing circulars issued by GAD impressing upon the Govt. Deptts. for implementation of Section 4 viz Circulars dated 21.04.2017 and 22.03.2016. The GAD also brought to the notice of the SIC various other circulars issued from time to time containing instructions for ensuring smooth implementation of the J&K RTI Act,2009.

Through its counter statement the GAD has also brought to the notice of the SIC that the Annexures containing report of the Research Team commissioned by Dr.Shaikh Gh. Rasool and CHRI, New Delhi and the DOPT Memorandum were not attached with the copy of the complaint sent to it by SIC vide No. SIC/CO/Comp/147/2017-4408-09 dated 13.09.2017. The SIC took note of this reported omission.

After going through the contents of the complaint, counter statement filed by the GAD and after considering the submissions made orally by the complainant and the PIO during the hearing today on 22.09.2017, following directions are issued:

1. The complaint is admitted for inquiry under Section 15(2) of the J&K RTI Act in terms of Section 15(1) (f) which reveals that it shall be the duty of SIC to receive and inquire into a complaint from any persons in respect of any other matter relating to requesting or obtaining access to records under the Act.

2. Annexures not attached with SIC notice dated 13.09.2017 containing the report of the Rapid Study commissioned by J&K RTI Movement and School for Rural Development and Environment (Dr.Shaikh Gh.Rasool) and CHRI and also DOPT Memo dated 30th June,2016 be provided/sent to the GAD.
3. The GAD will submit a statement of compliance in respect of all the provisions of Section 4 by all the Public Authorities in the Government. In the first phase statement of compliance by all the Admn.Deptts, all subordinate State/ Divisional level Deptts. under each Admn.Deptt., Divisional Commissioners and Dy.Commissioners be submitted. The proforma in which the statement is to prepared is enclosed with this order as Annexure-I
4. The GAD as the Nodal Department in the State Government for implementation of the RTI Act shall issue instructions to all the Dy.Commissioners to ensure that all the major district level departments dealing with important developmental and socially relevant programmes and schemes have good quality websites which are not only maintained and updated on a continuous basis but also enable online submission of applications for benefits and services under various schemes /programmes and online delivery of services, as far as possible.
5. As highlighted by the complainant, the GAD will need to impress upon all the Administrative Departments, State and Divisional Level offices under each Administrative Department the Divisional Commissioners & Dy. Commissioners to also ensure implementation of the provisions of the Section 4 through the non-digital method by way publication of records ,catalogues, Public notice boards and such like non-digital means.
6. Since the IT related and digital work in the State Government is looked after by the Information Technology Department , Govt. of J&K and NIC,J&K, it is appropriate to seek the views and advice of the Administrative Secretary, IT Department and State Coordinator, NIC and for that the Registry is directed to send both the officers appropriate communication requesting them to assist in the inquiry under the instant complaint.
7. The Commr/Secretary, GAD will bring to the notice of the Chief Secretary, J&K the contents of this interim order to facilitate timely and across the board follow up action on the above directions. Compliance with these directions will go some way in full filling the objectives of the J&K RTI Act given in the preamble

of the Act to secure transparent, accountable and corruption free governance for the citizens who are otherwise subjected to lot of problems and delay while accessing information and services from governmental agencies.

8. Another complaint dealing with the same subject i.e, implementation of Section 4 of the J&K RTI Act,2009 filed by Shri Balvinder Singh, (RTI Activist & Convenor, Sangarsh RTI Movement) has been dealt with separately and another order issued. The respondents being same i.e, GAD/Govt. of J&K may take note while responding to each of the two complaints, by Shri Balvinder Singh and Dr.Shaikh Gh.Rasool respectively.

Case adjourned with the above directions.

The Registry is directed to fix the hearing on the next available date and inform the parties accordingly.

(Khurshid A. Ganai) *IAS (Retd)*,
Chief Information Commissioner,