



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
www.jksic.nic.in

File No. SIC/CO/SA/463/2017.

Decision No.SIC/ CO/SA/463/2017/**987**

Appellant : Sh. Avinash Razdan.
Respondent : FAA/PIO J&K High Court.
Date of decision : **16-08-2017**
Decision : Appeal disposed of.

I. Brief facts of the case.

Briefly the facts of this case are that the appellant Shri Avinash Razdan while exercising his Right to Information under the J&K RTI Act, 2009 filed an RTI application dated 27-01-2017 before the PIO, J&K High Court, Jammu seeking the following information:

"provide the information of all the title of cases along with FIR and challan Number treated under Cr.P.C and disposed of in the year 2015 from January to December, month respectively."

The PIO in exercise of provision of section 6(3) of the Act transferred the RTI application to the Principal District & Session Judge, Jammu/PIO District Court, Jammu on 31-01-2017 which was within prescribed time under the said section.

The PIO, District Court, Jammu responded to the RTI application vide his letter No. 9022 dated 13-02-2017. He furnished the reply furnished by

the CJM, Jammu denying the information by invoking Rule 5 of the J&K High Court (Right to Information) Rules, 2014 which is reproduced as under:

Rule : 5 the information specified under section-8 of the Act shall not be disclosed and made available in particular the following information shall not be disclosed.

- a) *"such information which relates to Judicial Functions and duties of the court and matters incidental and provided the question as to which information relates to judicial functions and duties of the Court and matters incidental and ancillary thereto, shall be decided by the competent authority or by his delegate which decision shall be final"*
- b) *Information which has been expressly forbidden to be published by the Court or the disclosure whereof may constitute Contempt of Court; or information which includes commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that large public interest warrants the disclosure of such information; or information which would impede the process of investigation or apprehension of prosecution of offenders; or information which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information;*
- c) *Any information affecting the confidentiality of any examination conducted by High Court. The question of confidentiality shall be decided by the competent authority whose decision shall be final;*
- d) *Any information supplied by third party which has been treated as confidential by that party, unless third party who has supplied the information, is given an opportunity of making his/her submissions."*

Aggrieved by the decision of the PIO, the appellant filed 1st appeal with Registrar General/First Appellate Authority (FAA) J&K High Court, Jammu on 06-03-2017 against the order of the PIO.

At last when the FAA also did not pass any order within the stipulated time, he filed 2nd appeal before the Commission.

II. Proceedings before the Commission.

The time limit for deciding the 2nd appeal had to be extended by another sixty days in terms of section 16(11) of the Act in order to further hear the parties and consider the various issues raised by them on the touch stone of the RTI Law.

The case was listed for hearing before the Commission on 12-07-2017. The hearing was attended by Sh. N.A Beig, Counsel for the respondents. Appellant was heard through video conferencing from Jammu Office of the Commission. During the hearing the appellant submitted that he has not been provided the information sought through his basic RTI application. When enquired from the respondents the reason for the same, the counsel for the respondents submitted that information sought cannot be disclosed as it is exempted under Rule 5(a) of the J&K High Court (Right to Information) Rules, 2014 as the information sought pertains to Judicial functions and duties of the Court and matters incidental and ancillary thereto. The respondents filed copy of counter statement to that effect before the Commission.

After hearing both the parties at length, hearing was adjourned with the directions to the PIO to provide any superior Court judgments or Central Information Commission Ruling in support of his claim that information similar to the information sought for by the appellant is

exempted from disclosure in terms of Rule 5(a) of the J&K High Court (Right to Information) Rules, 2014 or under the J&K RTI Act or the Central RTI Act.

The case came up for final hearing before the Commission on 16-08-2017. The hearing was attended by counsel of the respondents Shri N.A Beig, whereas, the appellant appeared through video conferencing from Jammu office of the Commission. The appellant once again stressed for provision of information, which according to him is entirely givable. He submitted that the argument of the respondent that the requisite information is related to judicial functions has to be tested on the touchstone of section 8(1) of the RTI Act, 2009. He further stated that the PIO has failed to produce any order of the Court expressly prohibiting the disclosure of information sought by him or that the disclosure of such information will amount to contempt of Court or invasion of privacy of any third party.

The counsel for the respondents once again relied upon Rule 5(a) of the J&K High Court (Right to Information) Rules, 2014 framed by the Competent Authority of the J&K High Court in terms of section 25(1) read with section 2(b)(ii) of the J&K RTI Act, 2009 to press his point that the requisitioned information pertains to judicial functions and duties of the Court and matters incidental and ancillary thereto and therefore, cannot be disclosed. He further submitted that information sought by the appellant also relates to the privacy of the third parties.

The Commission heard both the parties at length and also perused the records. The rival contentions were considered.

III. Question for consideration before the Commission:

The precise question before the Commission for consideration is **whether denial of information by the PIO, invoking Rule 5(a) of the J&K High Court (Right to Information) Rules, 2014 is correct.**

The J&K RTI Act, 2009 provides for setting out the regime of right to information for the people of the J&K State to secure access to information under the control of public authorities in order to promote transparency and accountability in the working of every public authority. The J&K RTI Act, 2009 is a self contained code which prescribes both the substance and procedure for provision of the givable information held by the public authorities to the seekers of information.

However, the "Right to Information" like any other right is not absolute and is subject to certain restrictions. In CBSE Vs. Aditya Bandopodya (2011) Hon'ble Supreme Court while quoting the earlier decision namely, People's Union for Civil Liberties Vs Union Of India (2004) held that "Right to Information" is a facet of "freedom of Speech and Expression" as contained in Article 19(1)(a) of the Constitution of India as such the right is subject to reasonable restrictions in the interest of the security of the State and is subject to exemptions and exceptions. It is also observed that certain safe guards have been built into the RTI Act, so that provision of information will not conflict with other public interests.

In Bihar PSC Vs Sayed Hussian Rizvi (2012 sec 61), Hon'ble Supreme Court has held that wherever in response to an application for disclosure of information, the public authority takes shelter under the provisions relating to exemptions, non-applicability or infringement of Article 21 of the Constitutions, the State Information Commission has to apply its mind and

form an opinion objectively if the exemption claimed for was sustainable on the facts of the case.

The Legislature has incorporated certain exemptions in sections 8 & 9 of the Act given in detailed manner in respect of which information need not be disclosed. The exemptions other than those provided under section 8 & 9 of the Act by the Legislature can neither be claimed nor be provided for in subordinate legislations.

Now coming to the question whether Rule 5(a) of the J&K High Court (Right to Information) Rule, 2014 is in accordance with the exemptions provided under the Act.

Section 24 of the Act gives powers to the Government to make rules to carry out the provisions of the Act.

Section 25 of the J&K RTI Act, 2009 gives power to the competent authority to make Rules to carry out the provisions of the Act. The relevant portion of the said section is reproduced as under:

**Section – 25 Power to make rules by competent authority (1)-
(1) Subject to the provisions of Section24, the competent authority may, by notification in the Government Gazette, make rules to carry out the provisions of the Act.**

The competent authority has been defined under section 2(b) as under:

Section 2(b): “competent authority” means-

- i) **the Speaker in the case of the Legislative Assembly of the State and the Chairman in the case of the Legislative Council of the State:**
- ii) **the Chief Justice of the High Court in the case of the High Court:**
- iii) **the Governor in the case of other authorities established or constituted by or under the Constitution of India or the Constitution of Jammu and Kashmir;**

The competent authority i.e Hon'ble Chief justice of Hon'ble J&K High Court has framed rules, namely **J&K High Court (Right to Information) Rules 2014** in exercise of power conferred by sub-section (1) of section 25 read with section 2(b)(ii) of the J&K Right to Information Act, 2009, notified vide Notification No. 42 of 2015, dated 24-04-2015. These Rules contain 11 clause in total dealing with general provision of the J&K RTI Act and with respect to fee.

Rule 5(a) is once more reproduced as under:

Rule-5 Exemption from disclosure of information.

The information specified under Section 8 of the Act shall not be disclosed and made available in particular the following information shall not be disclosed:

- a) such information which relates to judicial functions and duties of the Court and matters incidental and ancillary thereto:***

provided that the question as to which information relates to judicial functions and duties of the Court and matters incidental and ancillary thereto, shall be decided by the competent authority or by his delegate which decision shall be final;

On the cursory look of the said Rule, it is clear that the words "matters incidental and ancillary thereto" have not been defined which gives them a very wide meaning as such the said Rule seems to retain exceptions not provided under the Act. In the existing form it seems to suggest that everything relating to courts could be out of the ambit of the Act, which obviously is not the intention of the legislature. In the instant case there is no evidence to show that the PIO has tried to seek guidance of the Competent Authority or his delegate to determine the question as to whether the information sought for relates to judicial functions and duties of the Court and matters incidental and ancillary thereto.

It is the established principle of Law that rules cannot go beyond the boundaries of the statute under which they have been framed. There is a battery of Supreme Court cases on this few of which are given as under:

- **In Hukam Chand Vs Union of India AIR 1972 SC 2427 the Apex Court has held "the underlying Principle is that unlike sovereign Legislature which has power to enact laws with retrospective operation, authority vested with the power of making subordinate legislation has to act within the limits of its power and cannot transgress the same. The initial difference between subordinate legislation and the state**

laws is in the fact that a subordinate law making body is bound by the terms of its delegated or derived authority”.

- **In Kunj Behari lal Butail and others Vs State of H.P & ors SC (2003) Hon’ble Supreme Court has ruled that “it is very common for the Legislature to provide for a general rule making power to carry out the purpose of the Act. When such a power is given, it may be permissible to find out the object of the enactment and then see if the rules framed satisfy the test of having been so framed as to fall within the scope of such general power confirmed. If the rule making power is not expressed in such a usual general form then it shall have to be seen if the rules made are protected by the limits prescribed by the parent Act”.**
- **In St. John’s Teachers Training Institute Vs Regional Director, National Council for Teacher Education SC (2003) Hon’ble Supreme Court has held that the power to make subordinate legislation is derived from the enabling Act and it is the fundamental that the delegation on whom such a power is conferred has to act within the limits of authority conferred by the Act. Rules cannot be made to supplant the provisions of the enabling Act but to supplement it.**
- **Similarly in State of Tamil Nadu and another Vs P. Krishnamurthy and ors SC (2006), Hon’ble Supreme Court has held “The court considering the validity of a subordinate legislation, will have to consider the nature, object and scheme of the enabling Act and also the area over which power has been delegated under the Act and then decide**

whether the subordinate legislation conforms to the parent statute.

- **In Pratap Chandra Mehta Vs State Bar Council of Madhya Pradesh & ors SC (2011), Hon'ble Supreme Court has held that while discussing about the conferment of extensive meaning it has been opined that the court would be justified in giving the provision a purposive construction to perpetuate the object of the Act while ensuring that such rules framed are within the field circumscribed by the parent Act. It is also clear that it may not always be absolutely necessary to spell out guidelines for delegated legislation when discretion is vested in such delegated bodies. In such cases, the language of the rule framed as well as the purpose sought to be achieved would be the relevant factors to be considered by the Court.**

Keeping in view the aforesaid enunciation of Law, it is appropriate to consider the nature, object and scheme of the enabling Act, and the powers conferred under the rules. The object of the J&K RTI Act, 2009 as set out in the preamble is to bring transparency and accountability in the working of the public authorities and to ensure corruption free governance. The Right to Information has been given the status of implicit fundamental right as a facet of "Right to Freedom of Speech and Expression" under Article 19(1)(a) of the Constitution of India and this has also been upheld by the Apex Court. Under the scheme of the Act

information cannot be denied except under the exemptions given under section 8 and 9 of the Act . Section 11 of the Act also empowers the PIO to take a decision on the disclosure of information in certain circumstances (Third Party) i.e whether to disclose or not to disclose. Any extra exemptions can neither be claimed under this Act nor be provided for in subordinate legislation. Rule making power by the government or by the competent authority under the Act cannot be used to extend the scope of the exemptions other than those which have already been provided under the Act itself. Rules have to run in conformity with the provision of the Act.

The information sought by the information seeker is as under:

"provide the information of all the title of cases along with FIR and challan Number treated under Cr.P.C and disposed of in the year 2015 from January to December, month respectively."

This information is of a statistical nature and does not appear to in any way relate to 'Judicial functions and duties of the Court and matters incidental and ancillary thereto' to merit refusal in terms of Rule 5(a) of the J&K High Court (Right to Information) Rules, 2014.

Information sought for could be refused in terms of this Rule if the disclosure of such information tends to fall under any of the 'exemptions' mentioned in the Act or that the disclosure would interfere with the smooth

conduct of the judicial process underway in any court of Law. None of the two conditions mentioned above appear to apply in this particular case. The counsel for the respondents could not clarify as to how 'giving information of a statistical nature like list of cases month-wise with FIR No. and challan no. treated under CRPC and disposal thereof during the year 2015' can be considered to fall under any of the exemptions under the Act or will interfere with the due process of law. If the type of information as has been sought by the information seeker is to be held back in terms of Rule 5(a), then there would hardly be any scope for seeking information from the courts. Therefore, such interpretation will only constrain the rights of the information seekers, a situation not intended in the main Act.

In view of the above, the PIO is directed to provide the requisite information to the appellant subject to prior clearance by the Competent Authority or his delegate in terms of Rule 5(a) of the J&K High Court (RTI) Rules, 2014 within a period of thirty days from the date of receipt of this order.

Before concluding, the Commission would invite the attention of the Public Authority i.e J&K High Court through its Registrar General to section 22(5) of the J&K RTI Act, 2009 which provides:

"if it appears to the State Information Commission that the practice of a public authority in relation to the exercise of its functions

under the act does not conform with the provision or spirit of the Act, it may give to the authority a recommendation specifying the steps which ought in its opinion to be taken for promoting such conformity.”

In exercise of the powers under section 22(5) quoted above, the State Information Commission recommends to the High Court of J&K to reconsider the formulation of Rule 5(a) of the J&K High Court (Right to Information) Rule, 2014 to clarify its scope in more detail.

With the above directions and observations, the instant 2nd appeal is disposed of.

The copy of order be provided to the parties free of cost.

-sd-

(Khurshid A. Ganai) IAS Retd.,
Chief Information Commissioner.
JK State Information Commission.
/imi/

Copy to the:

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

(Sheikh Fayaz Ahmad)
Registrar,
JK State Information Commission