



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/K/SA/42/2017
Decision No. SIC/K/SA/42/2017/**57**

FINAL ORDER

Appellant : Mr. Firdous Ahmad Shah
Respondent : First Appellate Authority (FAA)/Public Information Officer (PIO)/Secretary Srinagar Municipal Corporation (SMC)
Date of Registration : 17.07.2017
Date of Decision : 13.10.2017

Brief Facts:

The brief facts of this 2nd appeal are that the appellant Shri Firdous Ahmad Shah S/o Late Ab. Ahad Shah R/o 252 Gulberg Colony Sector-2, Baghat Barzulla Srinagar filed 2nd appeal with the State Information Commission (SIC) against FAA/PIO SMC on 31.05.2017 . The appellant has alleged that in response to his RTI application dated 02.07.2016, PIO SMC vide letter dated 07.01.2017 provided him half information after the stipulated period of 30 days as provided under the Act. That the FAA/Commissioner SMC has also failed to respond to his First Appeal. The appellant has requested the SIC to impose penalty on the PIO and take strong action against the FAA and direct the concerned

PIO to provide the information sought by him through his original RTI application.

As per the records enclosed with the 2nd appeal, the appellant vide RTI application dated 02.07.2016 sought information on the following three queries pertaining to Ward Officer namely Mohammad Yousuf Wani R/o Lal Bazar, Srinagar presently posted in Ward No.29, Magarmal Bagh Srinagar.

- 1. Copy of the Matriculation Certificate with Date of Birth entered into the service book of the said ward officer.*
- 2. Place of postings with designations with period of each posting from the date of the first appointment.*
- 3. Latest copy of property statement of the said Ward Officer submitted before Srinagar Municipal Corporation.*

The PIO, SMC vide letter dated 17.01.2017 responded to the RTI application. Not satisfied with the reply of the PIO, the appellant filed First appeal before the FAA (SMC)/Commissioner (SMC) through post on 01.04.2017. The FAA vide notice/Order dated 29.04.2017 has called an explanation from the PIO with directions to provide the relevant information to the applicant within the stipulated time. Thereafter, the appellant approached the State Information Commission (SIC) with the instant 2nd appeal.

On scrutiny of documents some deficiencies were found which the appellant completed on 17.07.2017 and the 2nd appeal was accordingly admitted.

Proceedings before the Commission:

The case was listed for hearing before the SIC on 17.08.2017. Mr Hilal Ahmad Deewani, Secretary/PIO Srinagar Municipal Corporation (SMC), Mr. Mudasir Hussain Banday, APIO SMC, Appellant Shri Firdous Ahmad Shah and Advocate Sheikh Rizwan, counsel for the appellant attended the hearing.

The counsel for the appellant submitted before the Commission that with respect to Point-1 and 2 of the RTI application, the PIO has provided information vide letter dated 17.01.2017 but after the stipulated period of 30 days. He further stated that information with respect to Point-3 of the RTI application i.e. the latest copy of property statement of Ward Officer viz Mohammad yousuf Wani had not been provided to the appellant till date.

The PIO SMC submitted during the hearing that pending information i.e., information not provided so far will be provided to the appellant as per records.

The hearing in the 2nd appeal was adjourned on 17.07.2017 with the following directions:-

"The FAA/PIO SMC is directed to collect the information sought at Point No. 3 of the RTI application from his subordinate/other offices of SMC and provide the same to the appellant before the next date of hearing."

The 2nd appeal came up for hearing again on 12.09.2017. Mr. Hilal Ahmad Deewani, Secretary/PIO SMC and appellant Shri Firdous Ahmad

Shah attended the hearing. The appellant stated that he has not received the information despite directions from the State Information Commission (SIC). The PIO submitted before the Commission that the information sought by the appellant i.e., latest copy of the property statement of the Ward Officer namely Mr. Mohammad Yousuf Wani is not available with the SMC. The hearing was adjourned with directions to the PIO to submit in writing that the information sought by the appellant is not available in the official records of the SMC within one week from the date of receipt of this order and also the reasons for non-availability of such vital record.

In compliance to the directions of the Commission, the PIO vide letter dated 06.10.2017 has intimated that the property statement of the ward officer is not available with the SMC and for ascertaining the reasons for non-submission of the property statement by the officer, the matter has been brought to the notice of Commissioner, SMC for appropriate orders.

The 2nd appeal finally came up hearing today on 13.10.2017. Mr Hilal Ahmad Deewani, Secretary/PIO Srinagar Municipal Corporation (SMC), Mr. Mudasir Hussain Banday, APIO SMC, Appellant Shri Firdous Ahmad Shah and Advocate Sheikh Rizwan, counsel for the appellant attended the hearing. The counsel for the appellant submitted that the pending information i.e., copy of the property statement of the Ward Officer has not been provided to him till date. The PIO submitted that all the available information as sought by the appellant except the property statement has been provided to the appellant. Further, he submitted that the Commissioner SMC vide order dated 11.10.2017 has initiated an

inquiry to ascertain the reasons for non-availability of property statement of the ward officer viz Mohammad Yousuf Wani.

Decision:

Most of the information sought by the appellant has been provided by the PIO except the property statement which is reportedly not available in the records. It has been repeatedly held by the higher courts in RTI related cases that the PIO can be expected to provide only that information that is available on record or which can be accessed from other available sources and that the information which is not available or which cannot be accessed, cannot be expected to be created in order to be provided.

In this particular case, the property statement which is not available should actually have been available as Government instructions on declaration of immoveable assets are clear and enjoin upon all Government servants to submit the annual property statements regularly. In case of many services like the IAS/IPS etc., the property statements are to be uploaded on websites for public scrutiny and information. The Commissioner, SMC as the Head of the Public Authority (SMC) has done well to order an inquiry into the matter of missing property statement but this should be a time bound inquiry so that the delinquent officers/officials incharge of receiving and maintaining property statements of employees/officials are acted against in terms of disciplinary rules of the SMC. The inquiry should not just be an eye wash or just for the sake of inquiry to pretend that action is being taken. Therefore, if the property statement is traced or located, it may be provided to the appellant. In

case it is not, the matter may be treated as closed needing no further action at the level of SIC.

A direction is again issued to the Commissioner, SMC as Head of the Public Authority (SMC) to take necessary steps for smooth and effective implementation of the J&K RTI Act, 2009 in the SMC.

With the above directions, the 2nd appeal filed before the SIC is disposed of.

Sd/-
(Khurshid A. Ganai) IAS Retd
Chief Information Commissioner

(S.Sajad Ahmad, PA CIC)

Copy to:

1. First Appellate Authority (FAA)/Commissioner Srinagar Municipal Corporation
2. Public information Officer (PIO)/Secretary Srinagar Municipal Corporation.
3. Appellant-Shri Firdous Ahmad Shah S/o Late Ab. Ahad Shah R/o 252 Bulberg Colony Sectio-2, Bahat Barzulla Srinagar
4. Office file

(M. S Bhat)
Dy. Registrar
J&K State Information Commission