

Jammu and Kashmir State Information Commission
(Constituted under The Right to Information Act, 2009)
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Old Assembly Complex, Srinagar, 0194-2506660, 2506661
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File No. SIC/CO/SA/462/2017.
Decision No.SIC/CO/SA/462/2017/989

Final Order:

Appellant : Sh. Avinash Razdan.
Respondent : FAA/PIO J&K High Court.
Date of decision : **04-10-2017**
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) J&K High Court with RTI application dated 18-03-2017 under section 6 of the J&K RTI Act, 2009, seeking information on the following points:

1. Provide the copy of the record of interim order dated 13-12-2016, in the matter of State Vs Avinash Razdan S/O Mohan Lal Dhar, with the recording therein, by the court of CJM Jammu, of its satisfaction of the execution of the warrant, issued by the court, in respect to the appearance of the intended accused, by the court, which was brought handcuffed and chained by the police on 13-12-2016.
2. Provide the copy of the record of the Bond by Avinash Razdan S/O Late Shri Mohan Lal Razdan, dated 13-12-2016 filed in the matter of the State Vs Avinash Razdaran S/O Mohan Lal Dhar.
3. Provide the reasons, if any, for not recording the reasons of satisfaction in respect to the execution of the warrant, by the court of CJM, Jammu, in the matter of State Vs Avnash Razdaran s/o Mohan Lal Dhar on 13-12-2016.

4. Provide the reason for accepting the Medical Examination Report of Sh. Avinash Razdan s/o Lt. Shri Mohan Lal Razdan by the court of CJM, Jammu, with satisfaction, from the Police on 13-12-2016, in the matter of State vs Avnash Razdaran s/o Mohan lal Dhar.
5. Provide the reasons of satisfaction of the court of CJM, Jammu for his receiving and admitting the Bond by Avinash Razdan s/o Late Shri Mohan Lal Razdan, dated 13-12-2016 filed in the matter of the State vs Avinash Razdaran s/o Mohan Lal Dhar.
6. Provide the reasons for admitting the fact of presence of the accused, in the matter of state vs Avinash Razdaran s/o Mohan Lal Dhar, without ordering the state to produce the Arrest Memo Inspection Memo, Seizure Memo and the Medical Examination Report of Avinash Razdarn s/o Mohan Lal Dhar, on 13-12-2016, in the court of CJM Jammu, as per the Hon'ble Supreme Court Guidelines.
7. Whether the Trial Court has changed the particulars of the House No. in the final report made by the police under section 173 of C.r.P.c to make it appear as 783, and recorded the function of causing and effecting the change to later use the same as the part of notified substance in respect to the address of accused thereof the warrant bearing No. 970/CJM, bearing date 17-11-2016.
8. Provide the reason for ignoring the tempering in respect to the particulars of the House Number, while issuing the warrant, in writing, by signing and by sealing of the CJM Court Jammu bearing No. 970/CJM dated 17-11-2016; if the information to the above point 7 is a NOT.
9. Provide reasons as to why the court of CJM, Jammu did not make a record of his knowledge of the injured and wounded condition of Avinash Razdan

s/o Lt. Sh. Mohan Lal Razdan, present in the court on 13-12-2016 due to illegal arrest and murderous beating by the police.

10. Provide reasons as to why the court of CJM, Jammu did not make a record of his suspicion of an offence in spite of the injured and wounded condition of Avinash Razdan s/o Lt. Sh. Mohan Lal Razdan, present in the court on 13-12-2016 due to illegal arrest and murderous beating by the police.

The said RTI application was transferred by the Assistant Public Information Officer (APIO), J&K High Court to Principal District & Session Judge/PIO, District Court Complex, Jammu on 22-03-2017 under section 6(3) of the Act for dealing with the same. The appellant had mentioned in his RTI application that information sought pertains to life liberty as such information should be provided within 48 hours.

Thereafter, the appellant filed 1st appeal with Registrar General/FAA J&K High Court dated 03-04-2017 which was despatched on 07-04-2017 on the grounds that PIO has failed to provide him the requisite information.

At last the appellant filed 2nd appeal with the State Information Commission (SIC) which was received in the Commission on 06-06-2017. In the 2nd appeal appellant alleged that neither PIO nor FAA provided to him the requisite information sought through his basic RTI application. The applicant inter alia requested the SIC to get him the information provided from the respondents, to impose penalty upon the PIO and to direct the concerned public authority to compensate him.

II. Proceedings before the Commission.

The 2nd appeal came up for hearing for the first time before the Commission on 03-07-2017. The hearing was attended by Sh. Sufi Manzoor on behalf of the FAA, J&K High Court and Sh. Avinash Razdan, appellant Sh. Diwakar Sharma

counsel for J&K High Court, Jammu Wing was heard through video conferencing/voice calling from Jammu Office of the Commission.

Sh. Sufi Manzoor informed that FAA has passed the order in 1st appeal. On perusal, it was noticed that said order has been issued after the stipulated period prescribed under section 16(7) of the J&K RTI Act, 2009. The 1st appeal was despatched on 07-04-2017, as such th 1st appeal should have been disposed by or before 22-05-2017 as per section 16(7) which however was done on 30-05-2017.

The Commission sought response of the respondents in this regard. In reply the respondents submitted that they may be given more time to enable them to file a written statement in the matter. The respondents were given 10 days time to file a written statement in the case.

The case was again listed for hearing before the State Information Commission on 08-08-2017. Sh. N.A Beig Advocate/Counsel appeared on behalf of the respondents. The appellant Sh. Avinash Razdan was heard through video conferencing from Jammu office of the Commission. The appellant informed the Commission that the direction of the Commission vide interim order dated 03-07-2017 have not been complied with by the PIO, J&K High Court. The counsel of the J&K High Court sought some more time to enable him to go through records and file written statement in the matter. In view of this, the hearing was adjourned with the directions to the PIO to file written statement/reply within 10 days with a copy to appellant.

The 2nd appeal once again came up for hearing once again before the Commission on 12-09-2017. Hearing was attended by Sh. N.A Beig Advocate/counsel for the respondents. The appellant also attended. The counsel for respondents again sought more time to file counter statement/reply which was reluctantly allowed and case was adjourned with directions to the respondents to file reply within weeks time with a copy to the appellant for filing rejoinder if any.

The instant 2nd appeal was finally heard in the Commission on 04-10-2017. The hearing was attended by Sh. Sufi Manzoor on behalf of respondents. The appellant reiterated his plea that the requisite information has not been provided to him. The respondents again failed to file the reply in the 2nd appeal.

The Commission heard the parties and also perused the record during the different hearings.

III. Decision:

The appellant has sought varied information on 10 points in his basic RTI application. The information sought contains the questions pertaining to the case titled State Vs Avinash Razdan pending disposal in the Court of Chief Judicial Magistrate Jammu. In order to dispose of the 2nd appeal, the SIC, apart from taking cognizance of the facts of the case, would like to first focus on the order of the FAA dated 30-05-2017 as the 2nd appeal as per the provision of the J&K RTI Act, 2009 originates from the decision of the FAA and also because the FAA in the said order has given point wise response to the RTI application of the appellant which therefore will be analyzed point wise by the Commission as well.

As per the said order of the FAA, information in respect of point No 1 cannot be given on the ground that the copy of the said information can be obtained by moving an appropriate application under rules framed by the J&K High Court. The FAA has held that these rules are self contained and provide in built check and balance which ensure that certified copies of all judicial records/proceedings are furnished to the appellant and the appellant need not to apply under RTI for getting this type of information. FAA has corroborated his arguments by judgment of Hon'ble High Court of Madras in Registrar General Vs Kanagraj &ors (AIR 2013 Madras 186). As against this assertion of the FAA, appellant has put forth the arguments relying on section 19 of the

J&K RTI Act, 2009 which states that provisions of the Act shall have an overriding effect on any other law.

The Commission would like to deliberate on section 19 of the J&K RTI Act, 2009. The provision of section 19 are reproduced as under:

Section 19:- **Act to have overriding effect:** *The provisions of the Act shall have effect notwithstanding anything inconsistent therewith contained in the State Official Secrets Act, Samvat 1977, and any other law for the time being in force in any instrument having effect by virtue of any law other than the Act.*

However, on the analysis of the provision of section 19 mentioned above it is clear that RTI Act has supremacy viz-a-viz other statutes only in case if there is inconsistency between the two, i.e if a statute is repugnant to the RTI Act, only in such case, RTI Act has overriding effect to the extent of inconsistency and shall prevail over the other.

The Commission finds no inconsistency between the scheme provided under the J&K RTI Rules and the High Court Rules invoked by the FAA under which certified copies can be provided. Merely because some other method is provided for collecting information than the one provided under the RTI Act does not lead to an inconsistency in the provisions of these two. The Commission would like to refer to ***the Hon'ble Supreme Court in the Institute of Chartered Accounts of India Vs Shank H. Satya & ors (2011)*** has observed as under:

"It is necessary to make a distinction in respect to information intended to bring transparency, to improve accountability and to reduce corruption, falling under section 4(1)(b) and (c) and other information which may not have bearing on accountability or reducing corruption. The Competent Authorities under RTI Act will have to maintain a proper balance so that while achieving transparency the demand for information does not reach unimaginable proportions affecting other public interests, which include efficient working of

public authorities and government, preservation of confidentiality of sensitive information and optimistic use of limited fiscal resources”.

Therefore, if another statutory provision created under any other law vests the right to seek information and provides the mechanism for invoking the said right, that mechanism should be preserved and operated first.

The Supreme Court of India in a similar related case in Ashoka Marketing Limited and Another Vs Punjab National Bank and others (1990) applied and explained the legal maximum leges posterioris priores centeraires abrogant i.e the later law abrogates earlier contrary law. This principal is subject to the exception embodied in the maximum generalia specialibus non-derogant i.e a general provision does not derogate from a special one. This means that where the literal meaning of the general enactment covers a situation for which specific provision is made by another enactment contained in an earlier Act, it is presumed that the situation was intended to continue to be dealt with by the specific provision rather than the later general one.

In the similar line, Hon'ble Apex Court in R.S Rangunath Vs State of Karnataka & Anr. (1992) has held **"A general later law does not abrogate an earlier special one by mere implication. Generalia specialibus non derogant or in other words where there are general words in later Act capable of reasonable and sensible application without extending them to subjects especially dealt with by earlier legislation you are not to hold that earlier and special legislation is indirectly repealed, altered or derogated from merely by force of such general words without any indication of a particular intention to do so. In such cases it is presumed to have only general cases in view and not particular cases which have been already otherwise provided for by the special Act."**

Therefore, in view of the above case law section 19 of the J&K RTI act, 2009 in any event does not come in way of application of High Court Rules, which

provide a set of procedure for getting certified copies of orders or documents sought by the appellant.

The Hon'ble High Court of Delhi in Registrar of Companies & ors Vs Dharmadra Kumar Garg & Anr (2012) has also held that if there is a prescribed set of procedure provided for provision of information under certain statute that should be followed while parting with any question for information under the Act.

However, without prejudice to anything stated above, the SIC observes that since the PIO has not responded to the appellants RTI application within time in accordance with the provision of the Act, this non-response has affected the interests of the appellant. Further respondents have not placed any evidence before the Commission that they have uploaded the information in term of section 4 of the Act which obliges every public authority inter alia to publish its own information described in clause (1)(b) of the said section. Sub clause (xv) of clause (b) of said section (4) obliges the public authority to publish "the particulars of facilities available to citizens for obtaining information". In the instant case such a facility has not been brought to the notice of the Commission by the respondents.

Again it is appropriate to mention about the goal set up by the legislature under the preamble of the Act which among other things prescribes "whereas, it is expedient to provide for furnishing certain information to citizens who desire to have it." It has been rightly held by the Hon'ble Supreme Court in Keshavanda Bharti case (1973) that preamble is the part of the statute and is key to open the mind of the legislature.

In view of the above, the State Information Commission (SIC) finds it appropriate to direct the PIO to provide the information to the appellant within 21 days on the point No 1 of the RTI application, as per the provision of the RTI Act itself as

same would now be more convenient to the appellant. The information be given free of cost in terms of section 7(6) of the J&K RTI Act, 2009.

On the point No 2 CJM/FAA has responded, that appellant has never executed any bond as such no information is available. The Commission observes that under J&K RTI Act, PIO is obliged to give only such information which is existing and held by the public authority. PIO is not supposed to collate the non existing information. This has been held by Hon'ble Supreme Court in plethora of cases including Aditya Bandhopadhyaya case (2011), Khanapuram Gandhia Vs Administrative Officer (2010) etc. therefore, Commission upholds the version of FAA to that extent.

For the rest of the points of information FAA has denied information stating therein that these relate to the reasons behind the different orders made by the court of Chief Judicial Magistrate while passing such orders in the case titled **State Vs Avinash Razdan**. FAA has stated that an applicant cannot seek information as to whether a particular decision or order of a court is legally tenable or not. FAA has relied upon the decision of Hon'ble Supreme Court in **Khanapuram Gandiah Vs Administrative Officer & ors (2010)**.

The SIC in this regard observes that under section 3 read with section 6 of the J&K RTI Act, 2009 every resident of State has right to get information held by the public authority. Section 2(i) of the Act, speaks of the right to information accessible under this Act which is held by or under the control of any public authority. The use of words "accessible under the Act" "held by" and "under the control of" are crucial in this regard. The inference from the text of this sub-section and especially the three expressions quoted above is that an information to which a citizen will have a right should be shown to be;

- a) an information which is accessible under the Act; and

b) that it is held or is under the control of a certain public authority.

This would mean that unless an information is exclusively held and controlled by a public authority that information cannot be said to be an information accessible under the RTI Act.

Under J&K RTI Act information is defined under section 2(d) which provides:

2(d):- *"information" means any material in any form including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force;*

In Khanapuram Gandiah Vs Administrative Officer (2010) Hon'ble Apex Court has held *"an applicant under section 6 of the RTI Act, can get any information which is already in existence and accessible to the public authority under law "of course" under the RTI Act, an applicant is entitled to get a copy of the opinions, advices, circulars, orders etc. but he cannot ask for any information as why such opinions advices, circulars, orders etc. have been passed especially in matter pertaining to judicial functions. A judge speaks through his judgments or orders passed by him. If any party feels aggrieved by the order/judgment passed by a judge the remedy available to such a party is either to challenge the same by way of appeal or by revision or any other legally permissible mode. No litigant can be allowed to seek information as to why and for what reasons the judge had come to a particular decision or conclusion. A judge is not bound to explain later for what reasons he had come to such a conclusion".*

In the back drop of this decision the SIC observes that information on points 2, 5, 6, 8 and 10 is not givable. However, the information sought on points 4, 7 and 9 is not hit by the said verdict of the court because what is exempted from disclosure is the "reason for the reason" because the same may not be on the records. However, if a judge has recorded reasons for reaching any conclusion, then that falls under the ambit of word "information" as defined under section 2(d) of the J&K RTI Act, 2009, hence is disclosable under the Act. Therefore, PIO is directed to see if the information on the said points is part of record and if yes, same should be provided to the appellant within 21 days from receipt of this order.

The 2nd appeal is disposed of accordingly subject to above directions and observations.

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

-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), J&K, High Court, Srinagar for information.
2. Public Information Officer (PIO), J&K, High Court, Jammu for information.
3. PS to CIC for information of HCIC.
4. Sh. Avinash Razdan, S/O Sh. Late Mohan Lal Razdan R/o H.No. 783 Subash Nagar, Jammu.
5. Guard file.

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