

**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](http://www.jksic.nic.in)

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File No. SIC/CO/SA/468/2017.  
Decision No.SIC/ CO/SA/468/2017/990

**FINAL ORDER**

Appellant : Sh. Ajay Kumar.  
Respondent : FAA/PIO J&K High Court.  
Date of decision : **27-09-2017**  
Decision : Appeal disposed of.

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

Briefly the facts of this case are that the appellant filed an RTI application before the Public Information Officer (PIO), J&K High Court main wing, Jammu on 01-02-2017 seeking the following information, regarding his complaint cum representation dated 06-12-2016 filed with the Hon'ble Chief Justice of J&K High Court:

- I. Status of the above said complaint?
- II. What action has been initiated on said complaint?
- III. Whether request for constitution of Special Bench of J&K High Court / considering First Appeal **CIA No. 25/2016** in specially ordered cases for deciding it in statutory period of three months under HMA, is considered or Not (Yes / No).

The appellant filed 1<sup>st</sup> appeal with the First Appellate Authority (FAA), J&K High Court on 14-03-2017 stating that he did not receive the reply from the PIO, J&K High Court within the prescribed time of thirty days. Subsequently, on 18-03-2017, the appellant submitted supplementary grounds/reasons for first appeal already filed on 14-03-2017 under Right to Information Act stating that on 17-03-2017 he received a reply from the PIO dated 08-03-2017 which was however, vague and irrelevant, whereas, his queries were specific and point wise.

The appellant submitted the second appeal under the J&K Right to Information Act, 2009 with the State Information Commission (SIC) on 30-05-2017 stating that the PIO, J&K High Court has not furnished the requisite information despite orders of the First Appellate Authority (FAA) in first appeal. Subsequently, the appellant

filed supplementary grounds with the Commission dated 11-07-2017 stating therein that he has received on 12-06-2017 a communication dated 06-06-2017 from the PIO which is incorrect as the receipt of the complaint addressed to the Chief Justice of J&K High Court is being denied.

The FAA disposed of the 1<sup>st</sup> appeal well within the prescribed time provided under the Act, on 12-04-2017, with directions to the PIO, J&K High Court, main wing, Jammu to furnish the information sought by the appellant/applicant with regard to his complaint dated 06-12-2016 addressed to Hon'ble Chief Justice, J&K High Court, after obtaining the requisite information from Hon'ble Chief Justice's Secretariat.

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

The 2<sup>nd</sup> appeal came up for hearing for the first time 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.

The appellant submitted that he has not been provided the requisite information despite FAA's order dated 12-04-2017. The counsel for respondents submitted that after the order of the FAA, the PIO had responded to the appellant vide No. 6578/RTI dated 06-06-2017 stating that as per the record available in the Secretariat of Hon'ble Chief Justice, the said complaint dated 06-12-2016 addressed to Hon'ble Chief Justice has not been received by the Hon'ble Chief Justice's Secretariat.

Appellant in response submitted that he was informed by postal authorities that his said complaint had actually been delivered in the office of Hon'ble Chief Justice.

The counsel for the respondents sought some more time to file counter statement to the 2<sup>nd</sup> appeal. His plea was accepted and the hearing was adjourned with the directions to the respondents to file counter statement within 10 days with advance copy to the appellant for filing rejoinder.

The case was again listed for hearing on 16-08-2017. The hearing was attended by Sh. N.A Beig, counsel for the respondents. However, the appellant did not attend inspite of having been issued the notice. Counsel for the respondents was heard. The case was adjourned for listing on the next hearing date. On the date of next hearing i.e on 11-09-2017 none of the parties appeared. The Commission felt that the

presence of the appellant was desirable for final decision in the appeal as such the case was adjourned. Respondents were directed to file the written statement within 07 days from the receipt of the order.

The case was listed for final hearing on 27-09-2017. The hearing was attended by Sh. Sofi Manzoor, Advocate on behalf of the respondents. The appellant was not present for hearing through video conferencing from Jammu office of the Commission despite due notice. The respondents filed the counter statement stating inter-alia that appellant filed RTI application along with copy of complaint before the PIO, High Court, wing Jammu. That, the complaint was filed against Sh. Subash C. Gupta, Additional District Judge Matrimonial Court, Jammu for having failed to decide a pending matrimonial matter. That when the Secretariat of the Hon'ble Chief Justice enquired about the said complaint, it was found that no such complaint was ever received by the Secretariat. That, the Dy. Registrar, Gazetted section, High Court main wing Jammu has informed that the complaint does not pertain to their section. That Under Secretary to Government of India, Ministry of Law and Justice Department had forwarded a similar representation dated 21-02-2016 filed by the appellant which has been closed by this registry after calling report from the concerned quarters and same was conveyed to the appellant. That no such complaint as has been alleged by the appellant has ever been received by the Secretariat of the Hon'ble Chief Justice and therefore, no information could be furnished to the appellant.

The respondents filed another two documents, one the reply of the PIO dated 06-06-2017 addressed to the appellant stating inter-alia that in response to the FAA's order dated 12-04-2017 their registry requested the Principal Secretary to Hon'ble Chief Justice vide letter No. 1687/RTI dated 12-04-2017 for provision of the requisite information. That Joint registrar, office of the Chief Justice Secretariat vide letter No. 667/PSJ dated 05-06-2017 has informed that as per the record available in the Secretariat, the said complaint dated 06-12-2016 addressed to Hon'ble Chief Justice has not been received by the Chief Justice's Secretariat. The other one is the aforementioned communication No. 667/PSJ dated 05-06-2017 whereby the Joint Registrar has informed the Registrar General J&K High Court about the non-receipt of the said complaint dated 06-12-2016.

As per the records, order of the FAA passed on 12-04-2017 mentions about the response of the PIO, High Court main wing bearing No. 32618/RTI dated 09-03-2017 informing the appellant as under:

Please refer your application I D No. 196/RTI/2017 dated 01-02-2017 received by this office on 03-02-2017 regarding the subject cited above, you are hereby informed that the requisite information pertained to the Gazetted Section, High Court Main Wing, Jammu. Therefore this office had forwarded your matter to the concerned, who in turn has forwarded a communication No. 32487-GS dated 08-03-2017 along with requisite information which is enclosed herewith for your information.

The contents of the communication No. 3248-G.S dated 08-03-2017 referred above read as under:

On the subject cited above. I am directed to inform you that the complaint in question has been addressed to Hon'ble The Chief Justice High Court of J&K, so the requisite information pertains to the said quarter.

However, Under Secretary to the Government of India, Ministry of Law & Justice, Department of Justice had forwarded a similar representation dated 21-02-2017 filed by the said person which has been closed by this Registry after calling reports from the concerned quarters and the outcome of the said representation had already been conveyed to the applicant.

The appellant has also mentioned about these communications in his 2<sup>nd</sup> appeal. The FAA has passed order well within the prescribed time provided under section 16(7) of the J&K RTI Act, 2009.

The Commission has gone through the record. The appellant did not appear before the Commission during the hearings except once. The Commission therefore, has to decide the case on merits.

### III. **Decision:**

**The Commission observes that all residents of the State have a right to access information under section 3 r/w section 6 of the J&K RTI Act, 2009 and the PIO has a corresponding duty to provide the information subject to the provisions of the Act e.g the exempted information under section 8 & 9 of the Act. The "information" has been defined under section 2(d) of the Act as under:**

**Section 2(d):**"information" means any material in any form including records, documents, memos, emails, 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;

**However, the PIO is under obligation to provide only such information which is held by the Public Authority. Where the information sought is not part of the record of a public authority, the Act does not cast an obligation upon the public authority to collect or collate such non-available information and then furnish it to an applicant. This has also been held by the Apex Court in its various judgments including CBSE Vs Aditiya Bandopadya (2011). In Khanapuram Gandaih Vs Administrative Officer SC (2010), Hon'ble Supreme Court has held that applicant under section 6 of the J&K RTI Act, 2009 can get any information which is already in existence and accessible to the public authority under law..**

**The information asked for must be part of the record held by the public authority. The appellant's request extends only to seeking information, which is existing. RTI Act does not expect the PIO to provide answer to the query, which is not on the record. The information can be supplied only if the same is available in the records and if it is not, the same cannot be provided.**

**The Commission therefore, observes that since the information sought by appellant regarding his complaint dated 06-12-2016 is not existing in the records of the Hon'ble Chief Justice Secretariat as the respondents have stated clearly that the said complaint has not been received in the said Secretariat, it, therefore, cannot be provided.**

**For the stated reasons and circumstances, the 2<sup>nd</sup> appeal is disposed of as without merit.**

**Copy of order be provided 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 Srinagar for information.
3. Public Information Officer (PIO), J&K, High Court Jammu for information.
4. PS to CIC for information of HCIC.
5. Sh. Ajay Kumar S/o Gopal Dass, R/o 38/3 Greater Kailash Jammu.
6. Guard file.

(Shiekh Fayaz Ahmad)

