



Jammu and Kashmir State Information Commission

شہنیشن کمیٹی انفارمیری اسٹیٹ انڈ کشمیر جموں ا

(Constituted under the Right to Information Act, 2009)

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File No. SIC/CO/Comp/147/2017

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

Interim Order

Subject: 1. Complaint U/S 15 under J&K RTI Act,2009 tilted Dr.Shaikh Gh.Rasool

VS

J&K General Administration Department

Subject: 2. Complaint U/S 15 of the J&K RTI Act,2009 titled Balvinder Singh

VS

PIO,J&K General Administration Department

Date of hearing : 16.11.2017

Dr. Shaikh Ghulam Rasool ,(Chairperson, J&K RTI Movement) through his complaint submitted in the SIC on 03.04.2017 under Section 15 (1)(f) of the J&K RTI Act,2009 against the J&K General Administration Department 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 in J&K State 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 advocates 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 in Feb. 2017, the complainant in collaboration with the Commonwealth Human Rights Initiative (CHRI) headquartered in New Delhi commissioned a study of 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 to the best of this complainant's knowledge, the Respondent Public Authority, is itself not fully compliant with the requirement of proactive disclosure under Section 4(1)(b) of the J&K RTI Act as evidenced by the finds of the rapid study.
 - vi) That despite repeated efforts of the State Information Commission(SIC) 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 from time to time.

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 his complaint the complainant has referred to Sections 15(1)(f) and 15(2) of the J&K RTI Act, 2009 stating that the SIC has to inquire into the matter in terms of duties cast upon it under Section 15(2) of the J&K RTI Act. The complainant has also quoted from the Hon'ble Supreme Court judgment in CBSE Vs Aditya Bandopadhyay & Ors [(2011) 8 SCC 497] where 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."

4. Sh. Balvinder Singh (RTI Activist) & Convenor Sangarsh RTI Movement filed his complaint on 19.04.2017 under Section 15 (1)(f) of the J&K RTI Act, 2009 in the Commission. The complainant in his complaint has stated as under:

- a. That the system of receipt of RTI applications in most offices in the State is manual and that the record is not maintained digitally. And that this practice of making entries in physical registers against digital is not allowing proper tracking and monitoring of the RTI applications filed by the citizens. The complainant has suggested and enclosed a format to enter data and 'a simple software could automatically update the data in real time basis and would be available to citizens and all officers ensuring transparency'.
- b. That manual record keeping does not facilitate the Public Authorities to provide information to the SIC under Section 22(2) to enable the SIC to prepare the Annual Reports mandated under Sections 22(1) and in terms of Section 22(3).
- c. That most of the Public Authorities in the State are in violation of obligations under Section 4(1)(a)(b) and Section 4(2) pertaining to suo-moto and mandatory disclosure of information.
- d. That DoPT vide OM No.1/6/2011-IR dated 15.04.2013 has also directed that " All Public Authorities shall proactively disclose RTI applications and appeals received and their responses, on the

websites maintained by Public Authorities with search facility based on key words. RTI applications and appeals received and their responses relating to the personal information of any individual may not be disclosed, as they do not serve any public interest.

- e. He has accordingly requested that the SIC may direct the Chief Secretary, Government of J&K to take effective follow up action to ensure compliance with the various provisions of the Act as outlined above. He has also requested that the Chief Secretary, J&K be issued instructions on the same-lines as have been issued by the CIC Maharashtra on the complaint filed by Shri Shailesh Gandhi to SIC, Maharashtra under Section 18 (1)(f) of the Central Right to Information Act,2005.

5. **Proceedings before the Commission**

Previously both complaints came up for hearing on 22.09.2017 and the Commission issued directions to the PIO/GAD through two separate interim orders dated 22.09.2017. In the complaint filed by Dr. Gh.Shaikh Gh.Rasool, following orders were issued:

- ***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.***
- ***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.***
- ***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***
- ***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.

- ***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.***
- ***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.***
- ***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.***

6. In another interim order dated 22.09.2017 titled Balvinder Singh VS PIO,GAD, Civil Secretariat, the following directions were issued to the PIO/GAD:

Directions.

"PIO is directed to seek the guidance of the Chief Secretary and Commr/Secretary, GAD for preparing reply /report. A copy of the complaint alongwith all the Annexures be again sent to the PIO,GAD for preparation of the said reply/report. Another complaint under Section 15 of the RTI Act pertaining to the same subject of mandatory/suo-moto disclosure of information under Section 4 filed by Dr.Shaikh Gh.Rasool. Chairperson, RTI Movement, J&K has been dealt with separately. The respondents may take note of the directions issued in that complaint also".

7. Both the complaints came up again for hearing today on 16.11.2017 at Srinagar. The PIO GAD attended the hearing through Video Conferencing from Jammu Office. Shri Balvinder Singh was also heard through Video Conferencing from SIC's Jammu office. The complainant Dr. Gh.Shaikh Gh.Rasool did not attend despite notice.

8. The PIO/GAD submitted that the Govt. of J&K is fully seized of the matter and the Chief Secretary has issued instructions to the Administrative Secretaries on a number of occasions to take necessary action for strict implementation of the provisions of Section 4 by their own Deptt. and the Public Authority within their jurisdiction. And that the GAD has also issued circular instructions from time to time in this regard. He assured that the GAD will continue its efforts to ensure implementation of Section 4 in digital electronic form by all the Public Authorities in the State Government.

9. A counter statement to the same effect was also filed by the PIO GAD vide No.GAD(Adm)188/2017-V dated 16.11.2017 in response to interim order dated 22.09.2017 issued on the complaint filed by Dr. Gh.Shaikh Gh.Rasool. Additionally, the counter statement informs that the GAD, the two Divisional Commissioners, all Heads of Departments and the Dy. Commissioners have been asked to submit the statement of compliance of the provisions of Section 4 as per the proforma sent by the SIC.

10. After considering the contents of both the complaints which are self speaking and the two interim orders of this Commission issued on 22.9.2017 as also the counter statement filed by the GAD on 16.11.2017 which makes a mention of the various directions issued by it to the Administrative Departments and the Public Authorities in general, it will be appropriate to again emphasise on the State Government at the highest level in the administration i.e, at the level of the Chief Secretary, to ensure compliance of the provision of Section 4 of the J&K RTI Act,2009 by all the Public Authorities under the administrative jurisdiction of the State Government and especially of Section 4(1)(b) which mandated compliance within 120 days from the commencement of the Act. The Chief Secretary is also advised to take note of the instructions issued by the DoPT,GoI in 2013 and 2016 to all the Central Public Authorities about suo-moto and mandatory disclosure of the information under Section 4 of the Central Information Act,2005 which shows the importance being accorded to suo-moto disclosure of information in electronic form by GoI. This aspect of disclosure through electronic format has been highlighted in J&K RTI Act,2009 under Sections 4(1)(a),4(2) and 4(4) which shows clear intent of the legislature about the need to provide as much information suo-moto to the public `at regular intervals through various means of communications,

including internet, so that the public have minimum resort to the use of the Act to obtain information.'

11. The SIC would like to further emphasise on the need to devise and install a system in all Govt. offices and with all the Public Information Officers to enable receipt of RTI applications electronically and for giving electronically/ digitally generated receipts for all the RTI applications received physically so as to track the movement of such applications at regular intervals.

With the above observations, the hearing in these two complaints is adjourned. These will be taken up again for hearing on 22.01.2018 which affords over two months time to the respondent Deptt. to ensure compliance by the Public Authorities in the State Government with the provisions of Section 4 of the J&K RTI Act,2009 and the connected steps to be taken to achieve such compliance as observed above, namely receipt of RTI applications electronically by the PIO, issue of digital/electronic receipt in case of RTI applications received/submitted physically/personally by the applicants or by Post and devising of an RTI application/First Appeal tracking system. Commr/Secretary to Government, General Administration Department is directed to pursue the matter with the concerned to ensure implementation of the above directions. He shall also attend the next hearing in the SIC to present the report.

The respondents/GAD shall submit an action taken in respect of directions issued in the interim order dated 22.09.2017 in the complaint of Dr. Gh.Shaikh Gh.Rasool, at S.No.03 in respect of which an Annexure was also enclosed with the said order. Information on the ATR may be submitted as per the Annexure.

The above observations and directions apply ipso-facto to all the Public Authorities resident in the State of J&K as fall under the definition of Public Authority under Section 2(f) and therefore it is incumbent on all such Public Authorities to achieve compliance in terms of Section 4(1)(b) and other provisions of Section 4 of the J&K RTI Act,2009. Accordingly, the Registrar, SIC shall issue a notification for information of all the Public Authorities in the State within and outside the Government to take requisite steps for achieving conformity with the provisions of Section 4 of the J&K RTI Act,2009 as expeditiously as possible.

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