



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/479/2017

Decision No. SIC/CO/SA/479/2017/**1015**

Final Order:

Appellant : Sh. Sushil Kumar Dubey, S/o Rameshwar Nath,
R/o W.No-03 H.No-70, Panthal Road, Katra, Reasi.

Respondent : FAA/PIO, J&K Housing & Urban Development Deptt.

Date of decision : **07-11-201700**

Decision : Appeal disposed of.

Brief Facts:

Briefly the facts of this appeal are that the appellant while exercising his right to information filed RTI application dated 30-01-2017 with the Public Information Officer, (PIO) Director Local Bodies, Jammu seeking following information:

1. Provide a certified copy of map of Hotel Shanti Palace, Ward No.3 Katra sanctioned by the respective Municipal Committee, Katra in the year 2003. And a copy of the terms & Conditions under which the map of the premise of hotel was passed by the Municipal Committee, Katra.
2. Please provide a true judgments copy given by the J&K Special Tribunal, Jammu in the case of Dy. Director Urban Local Bodies/M.C Katra Petitioner

Vs.

Raj Kumar Dubey s/o Baij Nath Dubey Respondent
Ward No. 3 Katra
With OWP no. 561/2012 & CMA no. 807/2012.

3. The information seeker also wants to know about the present position in the above mentioned case.

This RTI application was transferred by Dy. Director, Urban Local Bodies to Chief Executive Officer, Municipal Committee, Poonch on 17-02-2017 under section 6 (3) of the J&K RTI Act, 2009. As the appellant did not get the requisite information he filed 1st appeal on 10-03-2017 with the Additional Secretary, Housing & Urban Development Department, Civil Secretariat, Jammu.

At last the appellant approached the State Information Commission (SIC) with 2nd appeal when his 1st appeal was also not disposed of by the FAA. In the 2nd appeal the appellant requested the SIC for provision of information sought by him through his basic RTI application.

Proceedings before the State Information Commission(SIC):

The 2nd appeal came up for hearing before the SIC on 31-08-2017. The hearing was attended by Sh. Pardeep Kumar, Deputy Secretary/First Appellate Authority (FAA), Housing & Urban Development Department, Civil Secretariat, Srinagar. The PIO was heard through video conferencing from Jammu office of the SIC. The appellant remained absent despite due notice.

The PIO informed that substantial information had already been provided to the appellant by him in three parts and the last part has also been despatched to him through registered post. The representative of the FAA submitted that FAA/Director Local Bodies, Jammu has not received the 1st appeal filed by the appellant. The hearing was adjourned with the directions to the PIO, Urban Local Bodies, Jammu to ensure that counter statement to the 2nd appeal should reach within a week's time. The appellant was also given another opportunity to put forth his views/case before the SIC regarding receipt of information as claimed by the PIO and also regarding filing of 1st appeal before the FAA.

The 2nd appeal again came up for hearing before the SIC on 23-10-2017. The hearing was attended by Sh. Javed Rehman Under Secretary/PIO Housing & Urban Development Department, J&K, Civil Secretariat. Deputy Director Urban Local Bodies, Jammu

and representative of the appellant were heard through video conferencing from Jammu office of the SIC. The appellant submitted that he has not received the full information as yet. Deputy Director Urban Local Bodies, Jammu stated that Chief Executive Officer (CEO) Municipal Committee, Katra has responded to the RTI application vide his letter dated 15-03-2017 stating therein that copy of the sanctioned building map of the Hotel Shanti Palace Ward No 3, Katra and the terms & Conditions of the plan as well as judgment of the Hon'ble Tribunal Court, Jammu were not available in their office records.

After hearing the parties, the SIC in pursuance to section 16(9)(a)(iv) of the J&K RTI Act, 2009 directed the Director, Urban Local Bodies, Jammu as head of the Public Authority to upload the information pertaining to his/her office and subordinate offices on their official website in terms of section 4(1)(b) of the Act. She was further directed to inquire into the matter as to why the record pertaining to the information sought by the appellant is not available in the office of the Municipal Committee, Katra and submit a receipt to the SIC within 10 days.

The appeal was finally heard in the SIC on 07-11-2017. The hearing was attended by Ms. Manpreet Kour, Deputy Director/PIO, Local Bodies, Jammu, Sh. K.K Chalotra, PIO, Katra Municipal Council and Sh. Anil Kumar Dubey authorized representative of the appellant.

During the hearing, CEO Katra Municipal Council submitted that record pertaining to information on site plan is not with them which is the only pending information sought for by the appellant. He further submitted that the said record pertains to year 2003. Over this, representative of the appellant submitted that said record has been produced in the court case some 4 or 5 years back therefore, it is not too old to be traced out. Upon enquiring as to who was the person previously dealing with the matter, SIC was informed that it is the khalaf-warzi Officer of Municipal Council, Katra who is presently in charge of the said section/records.

Deputy Director Local Bodies, Jammu informed the SIC that Director Local Bodies, Jammu has constituted a committee in compliance to SIC's last interim order to enquire

as to why the record pertaining to this case is not unavailable and report of enquiry committee shall be shared with the SIC as soon as it is submitted.

Both the parties were heard at length and record was also perused.

Decision:

After hearing the parties and taking over all view of the matter, the SIC is of the view that respondents have chosen the easy path of denial of availability of Public record which should have been there in the office of Municipal Council (MC), Katra. This plea of non-availability of record goes against the very grain of the RTI Act.

It was learnt during the previous and this hearing that khilaf-warzi officer of MC, Katra is in charge of the record and the said record should have been in his safe custody. Accordingly the Khalaf-warzi officer is declared as deemed PIO under section 5(5) of the J&K RTI Act, 2009 and he/she is directed to furnish reply as to why penalty proceedings under section 17 of the Act are not initiated against him/her for not furnishing the information to the appellant. The needful shall be done within 21 days from the date of receipt of this order.

The 2nd appeal is disposed of subject to the above directions.

Copy of the order be provided free of cost to the parties.

-sd/-

(Khurshid A. Ganai) **IAS Retd.**,
Chief Information Commissioner,
J&K State Information Commission.
/imi/

No. SIC/CO/SA/479/2017

Dated: / /2017.

Copy to the:

1. Director, Urban Local Bodies, Jammu for information.
2. First Appellate Authority (FAA) Directorate of Urban Local Bodies, J&K for information and compliance.
3. Public Information Officer (PIO), Dy. Director, Urban Local Bodies, Jammu for information and compliance.
4. PS to CIC for information of HCIC.

5. Sh. Sushil Kumar, S/o Rameshwar Nath R/o W.No. 3 H. No.70, Panthal Road, Katra, Reasi.
6. Guard file.

(Dr. Ghulam Mohi-ud-din)
Joint Registrar,
J&K State Information Commission.