



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/513/2017

Decision No. SIC/CO/SA/513/2017/**1023**

Final Order:

Appellant : Ms. Sania Manzoor,
R/o 39-Chinar Colony, Baghat Barzulla, Srinagar.

Respondent : FAA/PIO, J&K, Small Scale Inds. Dev. Corp, (SICOP).

Date of decision: : **29-11-2017**

Decision : Appeal disposed of.

Brief Facts:

Briefly the facts of this appeal are that the appellant while exercising her right to information filed RTI application dated 21-04-2017 with the Public Information Officer, (PIO) Deputy General Manager (HQ), Nodal Officer, J&K SICOP seeking following information:

1. Details of Industrial land allotted by J&K SICOP in favour of M/s Kashmir Oil Company Zakura, Srinagar along with copy of allotment letter of land.
2. Details of closure of the said unit as per records available with the J&K SICOP.
3. Details of land if any auctioned by J&K SICOP in Industrial Estate (Kashmir) under their control from 2006 till date or is under process to auction the dead/non-functional units.
4. Copy of correspondences/details made with J&K State Financial Corporation for stopping the auction of M/S Kashmir Oil Company Zakura, which was published in Daily Greater Kashmir on 28th May 2016 (Saturday) being the land of J&K SICOP Property.
5. Copy of reply made to J&K State Financial Corporation (SFC) letter No JKSFHC/HO/2016-155 Dated 18-05-2016 (Copy enclosed as per Annexure A) wherein the Corporation has communicated that the J&K SICOP is in contravention of the laid down rules/norms.

6. Copy/details of policy of J&K SICOP wherein it is stated that the industrial land of SICOP shall not be auctioned by any loan sanctioned authority, if the borrower of the land becomes defaulter.

Proceedings before the State Information Commission(SIC):

The 2nd appeal came up for hearing before the SIC on 29-11-2017. The hearing was attended by Sh. R.L Tickoo Managing Director/First Appellate Authority(FAA), J&K SICOP and Sh. Bilal Ahmad, Public Information Officer (PIO) J&K SICOP. However, the appellant did not attend as she had already conveyed about the same.

Respondents submitted that all the information except on point No. 5 of the basic RTI application has been furnished to the appellant vide their communication dated 10-11-2017, which has also been confirmed by the appellant. When enquired about non furnishing of information on point No.5 i.e copy of reply made to J&K State Financial Corporation letter No. JKSF/HC/2016-155 dated 18-05-2016, wherein the Corporation has communicated that the J&K SICOP is in contravention of the laid down rules/norms, the PIO submitted that the said information is not forthcoming from records as it is not available. The FAA and the PIO also stated that in fact J&K SICOP had not replied to the said communication of the SFC. FAA submitted copy of the reply to 2nd appeal dated 29-11-2017 which was taken on record.

Respondents were heard and record was also perused.

Decision:

The SIC observed that all the information except in respect of point No. 5 of the basic RTI application has been furnished by the respondents to the appellant. As far as the information pertaining to point No. 5 is concerned it appears from the statement of the respondents that the same is not available on records as such the PIO is not under any obligation to provide the same. The PIO under the J&K RTI Act, 2009 is supposed to furnish only that information which is available on records; he has not to create information. This has also been upheld by the Hon'ble Supreme Court in landmark judgment titled CBSE Vs Aditya Bandhopadya (2011). Further under section 2(i) "Right to Information" means the right to information accessible under the Act which is held or under control of any Public Authority. In this particular 2nd appeal the FAA and the PIO of the J&K SICOP categorically denied the existence of any such reply as no reply has been sent by the J&K SICOP to the SFC.

However, the SIC observes that as the onus to prove that denial of information was justified in appeal proceedings is on the PIO in terms of section 16(6),

the PIO shall file an affidavit stating therein that the information sought for on point 5 is not available in the records as contended by him and the FAA.

The 2nd appeal is disposed off with 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/513/2017

Dated: / /2017.

Copy to the:

- 6 First Appellate Authority (FAA) J&K SICOP for information.
- 7 Public Information Officer (PIO), J&K SICOP for information and compliance.
- 8 PS to CIC for information of HCIC.
- 9 Ms. Sania Manzoor, R/o 39-Chinar Colony, Baghat Barzulla, Srinagar.
- 10 Guard file.

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