



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/J/A/53/2017
Decision No. SIC/J/A/53/2017/76

Final Order:

Appellant : Sh. Mohammad Aleem Wani, (Advocate),
J&K High Court, Jammu.
Respondent : FAA/PIO, University of Jammu (Bhaderwah Campus).
Date of decision : **27-11-2017**
Decision : Appeal rejected.

Brief Facts:

This 2nd Appeal has been filed by Mohammad Aleem wani, Advocate J&K High Court, Jammu, though the Memo of appeal indicates the title of appeal as Firdous Ahmad V/s Rector Bhaderwah Campus but it has been filed and signed by Mohammad Aleem Wani as appellant on his own behalf and not on behalf of Firdous Ahmad. In his appeal, the appellant has stated that the applicant filed an application seeking some information under Right to Information Act before respondent No. 1. Public Information Officer in the Office of Rector Bhaderwah Campus, University of Jammu on 14.03.2017. The information sought by the appellant was not provided by the Respondent No. 1 and thereafter, the appellant filed First Appeal before respondent No. 2/First Appellant Authority in the office of Rector Bhaderwah Campus, University of Jammu, on 29-04-2017. Since the first appellate authority did not furnish the information sought by the appellant, hence this 2nd Appeal.

After going through the submissions made by the appellant in the memo of appeal and also the documents attached with the appeal, the Commission observed that while the basic application for seeking information under Right to Information Act was filed by one Firdous Latief S/O Ab. Latief R/o Mohalla Quilla, Bhaderwah, the first appeal as well as the 2nd appeal has been filed by Mohammad Aleem Wani, Advocate on his own behalf as appellant. He has not filed it on behalf of the RTI applicant Ab. Latief. Both these appeals have been signed and filed by Mohammad Aleem Wani indicating himself as the appellant.

Proceedings before the State Information Commission(SIC):

The appeal came for hearing before the State Information Commission, on 20.10.2017. The appellant Mohammad Aleem Wani, Advocate J&K High Court Jammu was heard through vide conference from NIC, Doda. The respondent Rector Bhaderwah Campus, University of Jammu was represented by Shri Irshad Ahmad, Advocate J&K High Court, Srinagar during the hearing at the Srinagar Office of the Commission.

During the hearing, the appellant was asked to clarify how he could file the appeal when he had not filed any application for seeking information under Section 6(1) of the Right to Information Act, 2009. The case was accordingly adjourned and the appellant was asked to establish his locus standi for filing the present appeal on the next date of hearing which was fixed to be on 17th of November, 2017 at Jammu office of the Commission. The respondent, Rector Bhaderwah Campus was also asked to file his counter to the appeal.

On 17th November, 2017, the appellant Mohammad Aleem did not attend the hearing despite notice. The respondent Rector Bhaderwah Campus attended the hearing and filed his counter statement, which was taken on record. In his counter, the

respondent questioned the locus of the appellant in filing this appeal as he cannot claim denial of information under the Act. The respondent submitted that the present appeal has been filed by the appellant Mohammad Aleem Wani only with the intention to cause un-necessary harassment and mental stress to the respondent. The respondent further alleged that one Mr. Firdous Latief had applied for the post of orderly on need basis in the University Campus Bhaderwah. For seeking his appointment on the said post, Mr. Firdous applied various kinds of pressures and tried to blackmail the office of the respondent. Observing the mischief of Mr. Firdous, the respondent lodged a complaint with Additional Superintendent of Police Bhaderwah, against him for appropriate action under law for resorting to underhand tactics of blackmail including sending threatening SMS messages to him. A copy of the complaint made to Additional Superintendent of Police and one SMS message has been enclosed by the respondent with his counter statement. The respondent further alleged that annoyed by the complaint made by the respondent, Mr. Firdous hatched a conspiracy and started filing RTI applications seeking irrelevant information/details, which have been provided to him from time to time. As part of this conspiracy, the present appellant has filed this appeal, even though he has no cause or reason to be aggrieved being not an applicant.

In order to provide one more opportunity to the appellant to show his cause for filing the present appeal, the case was adjourned and the appellant was asked to establish his locus standi on the next date of hearing.

The case was listed on 27th November. The respondent attended the hearing through video conference from NIC Doda. The appellant again did not attend the hearing despite notice.

Decision:

So far as the allegations of blackmail leveled by the respondent, Rector Bhaderwah Campus against Mr. Firdous Latief are concerned, no cognizance can be taken by the Commission as Mr. Firdous is not a Party in this Appeal and the allegations are extraneous and un-related to the disposal of this appeal. The respondent has filed a complaint with Additional Superintendent of Police, Bhaderwah in this matter and the law will take its own course. Suffice it to say that the basic object of the RTI Act, is to empower the citizens, promote transparency and accountability in governance, contain corruption and make democracy work for the people in real sense. Therefore, nobody can be permitted to misuse this law to settle his personal score.

Therefore, the main issue and the only issue to be adjudicated in this appeal is whether the appellant has the locus standi to file this appeal. The right to file the 2nd appeal before the State Information Commission, has been granted by Sub-Section (4) of section 16 of the RTI Act, 2009, which reads as under:-

"A 2nd appeal against the decision under sub-section (1) shall lie within ninety days from the date on which the decision shall have been made or was actually received, with the State Information Commission."

Even a cursory reading of sub-section (4) quoted above would make it clear that a 2nd appeal would lie only and only against a decision of the First Appellate Authority which has been made or should have been made in terms of sub-section(1) of section 16 of the Act. In other words, a person can file a Second Appeal with the Commission only if he has filed First Appeal with the First Appellate Authority (FAA) under sub-section (1) of section 16 and is aggrieved by such decision of the FAA.

This gives rise to another legal issue as to who can file the First Appeal under sub-section (1) of section 16. The said sub-section (1) reads as under:-

"Any person who, does not receive a decision within the time specified in sub-section(1) or clause (a) of sub-section (3) of section 7, or is aggrieved by a decision of the Public Information Officer, may within

thirty days from the expiry of such period or from the receipt of such a decision prefer an appeal to such officer who is senior in rank to the Public Information Officer in each public authority.”

Sub-section (1) of section 16 quoted herein above, gives the right to file first appeal to a person who does not receive a decision within the time specified in sub-section (1) or sub-section (3) (a) of section 7, or is aggrieved by the decision of the Public Information Officer. Only a person who has made a request under section (6) of the Act for obtaining any information is expected to and entitled to receive a decision of the Public Information Officer either granting the request made or rejecting it and non-receipt of such a decision gives him the cause to agitate in appeal. Similarly, only a person making a request for obtaining information under section (6) can be aggrieved by any decision of the PIO. A person who has not made any request for information cannot be aggrieved by non-receipt of information or rejection of the request. Moreover, sub-section (1) referred to above also provides that such appeal can be filed within 30 days from the expiry of such period or from the receipt of such a decision. Now, who will know when the stipulated 30 days expire or when the decision was expected to be received. Obviously only a person who has made a request under section (6) can know when the stipulated period of 30 days has expired or when the decision was expected to be received. Therefore, the provisions of sub-section (1) of section (16) can only be interpreted to mean that the first appeal can be filed under the said sub-section by a person who has made a request under section (6) of the Act, for obtaining any information to the public information officer and has not received such information or is aggrieved by any decision of the public information officer. Conversely, a person who has not made a request under section (6) for obtaining information cannot file an appeal under section 16(1) of the Act.

The Jammu & Kashmir Right to Information Rules, 2012 provide the procedure for filing appeal to the State Information Commission. Rule 10 provides that the appellant or the complainant may at his discretion at the time of hearing of the appeal or complaint be present in person or through his duly authorized representative or may not opt to be present. Such principle will apply mutatis mutandis to the first appeal before the FAA. Thus, the applicant can only seek help from his representative during the hearing of his appeal and not for filing the appeal on his behalf. The appeal has to be filed by the applicant under section 6 himself and no representative or advocate can file such appeal on his behalf. A representative or Advocate can only help him in projecting his case during the hearing of the appeal.

Admittedly, the appellant in the present appeal Mr. Mohammad Aleem Wani had filed the first appeal before the FAA on 28.04.2017. The said appeal has been signed by the appellant himself and indicates the name of the appellant as Mohammad Aleem Wani. The memo of first appeal does not mention the name of Firdous Latief as the applicant nor does it indicate that the appellant is filing the appeal on behalf of Firdous Latief, which even if indicated was not permissible under the Right to Information Act.

Keeping in view the provisions of section 16 of the Right to Information Act, 2009, the second appeal can be filed under section 16(4) only by a person who has filed the first appeal under section 16(1) and is aggrieved by the decision of First Appellate Authority or by his in-action. Similarly, the First Appeal can be filed under section 16(1) only by a person who has made a request under section 6 for obtaining any information and has not received such information from the Public Information Officer or is aggrieved by his decision. Since the appellant Mr. Mohammad Aleem Wani had not made any request under section 6 for obtaining information, he was not eligible or entitled for filing the first appeal under section 16(1) of the Act. In the present case, the basic application for obtaining information was filed by Mr. Firdous Latief. He only could have filed the first appeal against the Public Information Officer. Such appeal could have been filed by him personally. Nobody else, not even his representative could file an appeal on his behalf. The first appeal filed by Mohammad Aleem Wani with the First Appellate Authority was, therefore, not maintainable as he had no right to file the appeal being not an applicant under section 6 of the Act. As such, the first appeal filed by the appellant is non-est in the eyes of law. Consequently, the 2nd appeal filed by the appellant before the Commission is also not maintainable on the ground of his

ineligibility to have filed the first appeal. The appellant has no locus standi to file the present appeal. The appeal is therefore, rejected for the reasons elaborated above. The file be consigned to records.

-sd-

(Mohammad Ashraf Mir),
State Information Commissioner,
J&K State Information Commission.
/imi/

No. SIC/J/A/53/2017

Dated: / /2017.

Copy to the:

- 1 First Appellate Authority (FAA) O/o Rector Bhaderwah Campus, University of Jammu for information.
- 2 Public Information Officer (PIO), O/o Rector Bhaderwah Campus, University of Jammu for information.
- 3 PS to SIC for information of HSIC.
- 4 Sh. Mohammad Aleem Wani, (Advocate), High Court at jammu, Office Sadar Court Complex, Janipur, Jammu.
- 5 Guard file.

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