



Jammu and Kashmir State Information Commission

شہن یشن کمہ انفارم ٹہ ر اسٹہ نڈ کشمہ جموں ا

(Constituted under the Right to Information Act, 2009)

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www.jksic.nic.in

File No. SIC/J/A/59/2017/

Decision No: SIC/J/A/59/2017/85.

Appellant : Sh. Vilakshana Singh S/o Sh. Jagdish Singh
Dogra, R/o Sidhra Bye-pass, Jammu.

Respondents : 1. First Appellate Authority, CEO SMVDSB.
2. PIO, Shri Mata Vaishno Devi Shrine Board,
Katra.

Date of Registration : 21.08.2017

Date of Decision : 15.12.2017

Final Order

15.12.2017

Appellant present

Respondents present

The 2nd appeal filed before the State Information Commission on 21.08.2017 has arisen out of the RTI application filed by the appellant Mr. Vilakshana Singh, Advocate on 15.04.2017 with the Public Information Officer of Shri Mata Vaishano Devi shrine Board (SMVDSB), Katra and the order of the 1st Appellate Authority dated 05.08.2017.

Briefly, summarizing the facts of this case, the applicant, now appellant before this Commission, sought information from the PIO through his RTI application on twelve points which included information regarding criteria adopted by Shrine Board for providing financial aid to poor, details of the persons who, and the institutions which, have been provided such aid, amount earmarked, terms and conditions subject to which such aid has been provided, details of loan provided and also the details of persons who, and the institutions which, have not paid back the loans and interests payable by them on account of failure to clear the loan amount. The PIO, SMVDSB vide his letter dated 27.05.2017 furnished the information to the appellant. Not satisfied with the information furnished, the appellant filed 1st appeal on 28.06.2017 with the FAA stating therein that the information supplied by the PIO was incomplete and some of the information has been concealed. In his appeal, the appellant pointed out the deficiencies in the information supplied and sought a direction to the PIO to furnish complete information to the appellant. The FAA disposed off the 1st appeal on 05.08.2017 with the following observations:-

"Therefore, in the light of the aforesaid position, after due examination of all the relevant record available with the Shrine Board, I am convinced that the PIO, SMVDSB has not concealed any information and has provided the response as per available data. However, there seems to be certain gap in the information sought and actual information provided due to misunderstanding.

As such, it is hereby ordered that PIO SMVDSB shall go through the queries raised by the appellant in his appeal dated 28.06.2017 and provide the additional/supplementary information if any, available with the PIO, SMVDSB by or before 14th August, 2017."

Aggrieved by the order of FAA, the appellant preferred the 2nd appeal mainly on the following grounds, namely:-

- a) That the FAA has passed the impugned order mechanically and without any application of mind;
- b) That the impugned order has been passed without any opportunity of being heard to the appellant;
- c) That the order passed by FAA is self contradicting as on the one hand FAA was convinced that PIO has provided the complete information but on the other hand, he goes on to say that there seem to be certain gap in information sought and actual information provided;
- d) That the FAA left it to the discretion of the PIO to decide whether some information was still to be provided or not; and
- e) That FAA has not disposed of the appeal by passing a speaking order.

Proceedings before the Commission:-

The 2nd appeal came up for hearing before the Commission 4.10.2017. The PIO, SMVDSB attended the hearing but the appellant chose not to attend the hearing. During the hearing, the PIO submitted that in pursuance to the order of the FAA dated

05.08.2017, a revised set of information containing the deficient information has been sent to the appellant on 14.08.2017. The response of the appellant could not be ascertained due to his absence during the hearing. The case was adjourned with the following directions;-

'The PIO will handover an extra set of information to the Jammu Registry of the State Information Commission after conclusion of the hearing.

1. Since the appellant is not present during the hearing today, appellant be asked to be present on the next date of hearing to give his reply and response to the information already provided to him by the PIO of the SMVDSB, Katra".

The respondents, FAA and the PIO, SMVDSB filed a detailed counter statement on 07.11.2017 before the Commission giving parawise reply to the averments made by the appellant in his 2nd appeal and stated that complete information has been provided to the appellant and nothing has been concealed. It was also submitted that financial aid is being given not only to the poor and needy patients under Arogya Yojana of the Shrine Board but also to other needy persons as per the approval of the higher authorities on case to case basis. The respondents also submitted in the counterstatement that after the order passed by the FAA in the 1st appeal, supplementary information was furnished to the appellant and every query has been replied. The respondents further submitted that all the information has been supplied to the appellant free of cost.

The case again came up for hearing before the Commission 12.12.2017. Both the appellant as well as the PIO were present during the hearing. The appellant submitted that he was not satisfied with the information furnished to him by the PIO including the revised information. Explaining his dis-satisfaction, the appellant pointed out that the PIO is still silent about the criteria adopted by the Board for selecting persons for providing financial aid. He also pointed out that there were glaring contradictions in the figures of financial assistance indicated by the PIO in his reply. As an example, the appellant pointed out that in the Statement supplied to him by PIO showing financial aid provided during 2016-17, the amount has been indicated as Rs.38.57 lakh, while in the details, the figure shown for 2016-17 is Rs.67.65 lakh. Similarly, the appellant pointed out that the expenditure shown by the PIO in his information does not match the figures shown in the audit report of the Board. The appellant also pointed out that the PIO has not explained or provided information about the expenditure incurred by the Board on the development of water facilities on property not owned by the Board amounting to Rs.7.02 crore during 2012-13 and expenditure of Rs.15.75 lakh during 2012-13 and Rs.69.62 lakh during 2011-12 incurred on development of buildings not owned by the Board as pointed out in the Audit Report. The appellant also submitted that the PIO has not indicated the terms and conditions subject to which the financial assistance or loan has been provided/advanced by the Board. The appellant also sought clarification as to how an amount of Rs.50.74 lakh has been released in favour of Shri Gian Chand, Tehsildar Katra as shown in the

statement indicating marriage/festival/house/salary advance to the employees of the Board when Shri Gian Chand was not an employee of the Board.

The PIO submitted that he will go through the entire records of the Board and come up with the clarifications on the issues raised by the appellant during the next hearing. The case was accordingly adjourned and the PIO was directed to file his response to the contradictions and inadequacies pointed out by the appellant by or before the next date of hearing.

The appeal was listed for hearing yet again on 15.12.2017. The appellant was present in person. The PIO was also present. The PIO submitted a written statement pursuant to the directions of the Commission clarifying the points raised by the appellant during the last hearing. With regard to the criteria adopted by the Board for grant of financial assistance to the poor and needy people and to the institutions, NGOs, and Organizations, the PIO submitted that there is no specific laid down criteria for grant of financial aid to the poor and needy. The aid/assistance is being provided on case to case basis as per requirement after scrutiny of facts and after seeking approval of the prescribed authorities with the stipulation of furnishing of utilization certificate by the recipients. Regarding the release of Rs.50.74 lakh in favour of Shri Gian Chand, Tehsildar, Katra, the PIO clarified that Shri Gian Chand was working as Tehsildar, SMVDSB in the year 2014 and the amount of Rs.50.74 lakh shown to have been released in his favour infact the amount released vide Order No.322/SB/ of 2014 dated 5.2.2014 as scholarship to 1134 students belonging to erstwhile Baridar families who were found eligible to such scholarship for academic year 2013-014 to be disbursed

through Tehsildar, SMVDSB. A copy of the said order was also placed on record. As regards the contradictions in the figures of expenditure shown in the statements submitted by the PIO and the audit report, the PIO submitted that the Board has indicated the figures under different heads of expenditure and different schemes while as the audit reports are based on different factors as per the standards of audit. The Board has reflected the expenditure incurred on development of water augmentation facilities as financial assistance as the end user of the facilities are the people in the shrine area, which is actually a contribution from the shrine Board in the interests of yatris. However, for clarification, the PIO submitted a complete break-up of the assistance released as annexure-C to this statement, which has been shared with the appellant as well.

The appellant acknowledged the receipt of the clarificatory statement furnished by the PIO and also sought certain additional clarifications from the PIO during hearing. However, he stated that at this stage he cannot express his total satisfaction or otherwise with the additional information provided to him during the hearing without cross checking the figures in detail. The Commission pointed out to the appellant that this appeal cannot be adjourned any more and it has to be decided as the maximum period prescribed for disposal of 2nd appeal in terms of sub-section (11) of Section-16 was expiring on 19.12.2017. The appellant fairly conceded and agreed that this appeal be finally disposed off today by the Commission with a liberty to the appellant to file a complaint under Section-15 in case he feels dis-satisfied with the additional information given today and the clarificatory statement furnished by the PIO.

Decision:-

After hearing the appellant and the PIO and after going through the clarifactory statement submitted by the PIO and his oral replies in response to the questions asked by the Commission and the appellant during the hearing, the Commission is satisfied with the information provided by the PIO to the applicant/appellant and is of the opinion that all the queries made by the appellant have been sufficiently replied by the PIO.

However, before parting with the appeal, the Commission is inclined to show indulgence in two important grounds taken by the appellant in his 2nd appeal in relation to the order passed by FAA in 1st appeal viz that the FAA has passed the impugned order mechanically without specifying the reasons while disposing of the appeal and that the said order has been passed without affording an opportunity of being heard to the appellant. Though, the findings of the Commission on these two aspects may not be any relevant in this appeal after the appeal having been finally disposed off in the manner as it has been but such findings would act as a guide to the 1st Appellate Authorities in disposal of 1st appeals in future.

The 1st Appellate Authority is a Quasi-Judicial body. When an appellant comes with his appeal before the appellate authority, the authority has to examine and consider the averments made in the memo of appeal, the grounds taken by the appellant for filing such appeal, the facts and circumstances leading to the filing of such appeal and of course the arguments made and plea taken during the hearing of the

appeal and thereafter return/record its findings on each ground taken or plea raised while disposing off the appeal. This supposes passing of a speaking and reasoned order by the Appellate Authority. Reason in the heartbeat of every conclusion. It introduces clarity in an order, be it judicial, quasi-judicial or even administrative. The absence of reason renders an order lifeless, indefensible and unsustainable particularly when such order is subject to further challenge before a higher forum. The recording of reasons is also a necessary ingredient of the principles of natural justice as the person who is adversely affected by such order must know why his application/appeal has been rejected. Besides, recording of reason in the order ensures transparency and fairness in decision making as it substitutes subjectivity with objectivity. The Apex Court of the Country in case Ravi Yashwant Bhoir v/s District Collector, Raigarh (2012)4- SCC-407 held as under:-

“ It is a settled proposition of law that even in administrative matters, the reasons should be recorded as it is incumbent upon the authorities to pass a speaking and reasoned order.”

In another decision in the case of Shrilekha Vidyarthi v/s State of U.P. (1991) 1- SCC -212, the Supreme Court observed as under;-

“Every state action may be informed by reason and it follows that an act uninformed by reason, is arbitrary. The rule of law contemplates governance by laws and not by humour, whims

***or caprices of the men to whom the governance is entrusted
for the time being.....”***

If passing of a speaking order is incumbent upon even the administrative authorities, as held by the Hon'ble Supreme Court, it is all the more incumbent upon the quasi-judicial authorities to support their orders with reasons and justification. The orders of the 1st Appellate Authorities are subject to further challenge in 2nd appeal before the State Information Commission. The Commission, being the 2nd Appellate Authority, should have the advantage of examining and knowing the reasons that prevailed with the FAA in making the impugned order. Therefore, passing of a speaking and reasoned order by the FAA becomes important and necessary from this angle as well. Conversely, absence of reasons in an appealable Order of the FAA deprives the SIC of the advantage of examining the reasons of disposal of 1st appeal by FAA in a particular manner and casts an onerous responsibility upon the Commission to determine the question on its own. As giving of reasons is an essential element of administration of justice, all the 1st Appellate Authorities should, while disposing off 1st Appeals keep in view the following observations of Hon'ble High Court of Himachal Pradesh in case of M/s Swaran Kumar and Company v/s State of Himachal Pradesh, decided on 23rd August, 2017:-

“Summarizing the above discussions, this court holds:-

a) In India, the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

- b) A quasi-judicial authority must record reasons in support of its conclusions.***
- c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done, it must also appear to be done as well.***
- d) Recording of reasons also operate as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.***
- e) Reasons reassures that discretion has been exercised by the decision maker on relevant grounds.***
- f) Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.***
- g) Reasons facilitate the process of judicial review by superior Courts.....”***

As far as the issue of affording opportunity of being heard to the appellant during the hearing of appeal by the FAA is concerned, Chapter-III of the Jammu and Kashmir Right to Information Rules, 2012 provides the procedure for appeals before the SIC. Rule 10 of these rules provide that the appellant or the complainant, as the case may be, shall in every case be informed of the date of hearing and be given an opportunity of being present at his discretion at the time of hearing of the appeal. The same procedure shall apply mutatis-mutandis to appeals filed before the FAA. The FAA has to inform the appellant about the date fixed for hearing of his appeal and also

provide him an opportunity, at his discretion, of being heard in person or through his authorized representative at the time of hearing of the appeal. The appellant may opt not to be present but an opportunity has to be granted to him by FAA. Not affording such opportunity by the FAA to the appellant would amount to violation of the principles of natural justice and hence bad in law.

In case of Ms Rajani Devi v/s CPIO, Central Information Commission decided on 31.08.2017, the Central Information Commission counselled the FAA, CIC to provide the appellants an opportunity of hearing before deciding the appeals observing that the CIC vide order No. CIC/BS/A/2013/002675/6267 dated 30.10.2014 has held as under:-

"As regards the appellant's submission that his 1st appeal was not decided by the FAA and he was also denied an opportunity of hearing, it is needless to say that deciding an appeal after rendering an opportunity of hearing to the parties is a fundamental principle of jurisprudence. The FAA should invariably decide an appeal and as far as possible, also give the appellant including the 3^d party, if any, an opportunity of hearing specifically if he so requests, without forgetting that the essence of RTI Act is to provide complete, correct, and timely information to the appellant".

With these observations, the 2nd appeal is finally disposed off with the liberty to the appellant to file a complaint under Section-15 (1) (e) if, after going through the information provided to him and the clarificatory statement furnished by the PIO,

SMVDSB, he believes that he has been given incomplete, misleading or false information.

It would be unfair if the Commission fails to appreciate here the efforts of the appellant, who is by profession an advocate, is raising some substantial questions of law in this appeal particularly the need to pass speaking and reasoned orders by the Appellate Authorities prompting the Commission to record its observations which ultimately help in evolution of the law and understanding of the provisions of the RTI Act.

The Registry is directed to publish this Order for future reference and also hoist it on the website for the benefit of FAAs.

Sd/-

(Mohammad Ashraf Mir)
State Information Commissioner

No:

Dated:

Copy to:-

1. Sh. Vilakshana Singh S/o Sh. Jagdish Singh Dogra, R/o Sidhra Bye-pass, Jammu.
2. Respondents : 1. First Appellate Authority, CEO SMVDSB.
PIO, Shri Mata Vaishno Devi Shrine Board, Katra.
3. Office File.

(Rita Koul)
Deputy Registrar
J&K State, Information Commission