



Jammu and Kashmir State Information Commission
(Constituted under the Right to Information Act, 2009)
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Old Assembly Complex, Srinagar, 0194-2506660, 2506661
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File No. SIC/K/SA/78/2017
Decision No. SIC/K/SA/78/2017/**88**

Final Order

Appellant : Sh. Ab. Shameem Bhat

Respondent : First Appellate Authority (FAA), / Public Information Public Information Officer (PIO), O/o Dy. Commissioner, Kupwara

Date of Registration : 05.10.2017

Date of Decision : 15.01.2018

Brief Facts:

The brief facts of this 2nd appeal are that the Appellant Sh. Ab. Shahmeem Bhat filed the 2nd appeal before the Commission on 12.09.2017 stating that on 07.06.2017 he submitted an application under the J&K RTI Act, 2009 to the PIO of the Revenue Department O/o Divisional Commissioner Kashmir on 17.06.2017, who forwarded the same to the PIO O/o Dy. Commissioner, Kupwara vide letter dated 12.06.2017 but the PIO/Addl. Dy. Commissioner failed to furnish the said information within

specified time limit. That on 17.07.2017, he submitted the First Appeal dated 17.07.2017 to the FAA in the O/o Divisional Commissioner, Kashmir and copy of the same before the FAA O/o Dy. Commissioner, Kupwara on 20.07.2017. The appellant further stated that the FAA did not provide him the requisite information within 45 days which is in complete violation of Sub-Section (1) & Sub-Section (2) of Section 16 of the J&K Right to Information Act, 2009. That on 08.09.2016 (after first appeal), an official in the Revenue Department provided part information without any proper procedure/order out of the information which pertains to Tehsildar Keran. That he (appellant) strongly believes that the PIO and FAA of Revenue Department O/o Dy. Commissioner, Kupwara have malafidely denied the information. This is completely against the spirit of the J&K RTI, Act. The appellant has requested the Commission to direct the PIO and the FAA to furnish him the information immediately free of cost, direct the Public Authority to increase the training for its officials on the Right to Information Act, impose penalty on respondents under Section-17 and recommend disciplinary action against respondents as per J&K RTI Act, 2009.

As per records the applicant has filed the RTI application before the PIO O/o Divisional Commissioner, Kashmir on 07.06.2017. The PIO/Dy. Director Planning with Divisional Commissioner, Kashmir vide letter dated 12.06.2017 has transferred the RTI application to the PIO O/o Dy. Commissioner, Kupwara under Section 6(3) of the J&K RTI Act, 2009 for providing information to the information seeker. Seeing no response from the PIO, the appellant filed the First Appeal before the FAA in the O/o Divisional Commissioner, Kashmir on 17.07.2017. The FAA/Addl.

Commissioner, Kashmir transferred the same to the FAA O/o Dy. Commissioner, Kupwara.

In view of non-response from the PIO and the FAA to his RTI and the First Appeal, the appellant filed the 2nd appeal before the SIC on 12.09.2017. But owing to some deficiencies, the 2nd appeal was admitted only on 05.10.2017 after completion of deficiencies by the appellant.

The 2nd appeal came up for hearing first time on 18.12.2017 at Srinagar. The appellant Sh. Abdul Shameem Bhat was present. None from the O/o Dy. Commissioner, Kupwara was present although notice was sent to the FAA/PIO of the O/o dy. Commissioner, Kupwara and Tehsildar keran kupwara vide letter No SIC/K/SA/78/2132-35 dated 11.12.2017. Response from D.C Kupwara/FAA was received vide letter dated 23.11.2017 along with 40 leaves seeking to provide factual position before this Commission.

During the hearing, the appellant submitted that he has received incomplete information despite having submitted the RTI application to the PIO of Divisional Commissioner Kashmir on 07.06.2017 who transferred the RTI application to the PIO of D.C Office, Kupwara and later First Appeal before the FAA O/o Divisional Commissioner, Kashmir was also transferred to the FAA/D.C Kupwara.

However, no progress could be made in the hearing vis-a-vs disposal of the 2nd appeal as the PIO of the O/o D.C Kupwara and the Teshildar Keran did not attend despite notice sent to them. There was no communication from these two officers regarding their non-attendance/inability to attend the hearing. The Commission in its order dated 18.12.2017 observed as under:

"Providing of incomplete information to the RTI applicant and absence of the respondents during the hearing on 18.12.2017 before the Commission in 2nd appeal amounts to refusal to provide the requisite information without any reasonable cause and therefore, calls for imposition of penalty under Section 17 of the J&K RTI Act, 2009. Section 17 of the Act also states that the PIO shall be given reasonable opportunity of being heard before any penalty is imposed on him/her. Accordingly, the PIO of the O/o D.C Kupwara and Tehsildar Keran who is hereby declared as deemed PIO under Section 5(5) of the J&K RTI Act are called upon to explain as to why penalty should not be imposed on them for refusing to provide the information under the RTI Act without any reasonable cause and for violation of Section 7(1) read with section 6(3) of the Act which stipulates fixed time period for providing information after the RTI application is submitted to the PIO. The reply of the PIO O/o D.C. Kupwara and the deemed PIO/Tehsildar Keran should reach this Commission within a period of ten days from the date of receipt of this order. The registry is directed to issue show cause notice to the said offices in terms of the orders above. A copy of the letter from the FAA alongwith its enclosures is being provided to the appellant for his rejoinder. In the meantime, the PIO O/o D.C. Kupwara is directed to provide the requisite/balance information not provided to the appellant so far or through D. C letter dated 11.12.2017 along with 40 leaves, handed over to the appellant today during the hearing on 18.12.2017."

The hearing in the 2nd appeal was adjourned. The Time period for disposal was also extended by another 60 days w.e.f 04.12.2017 in terms of Section 16(11) of the J&K RTI Act to enable more hearings for a fair and judicious disposal of the 2nd appeal.

The 2nd appeal again came up for hearing today on 15.01.2018. Mr Khalid Jehangir, Deputy Commissioner, Kupwara attended the hearing through video conferencing from Srinagar office of the SIC. The appellant did not attend. During the proceedings, the D.C Kupwara informed the Commission that the balance information as ordered by the SIC in its interim order dated 18.12.2017 has been provided/sent to the appellant. Further, the D.C Kupwara apologized for non-appearance of the PIO O/o D.C Kupwara, during previous hearings in view of non-posting of such officer in the district for pretty long time. The SIC accepted the request of the D C Kupwara for dropping of penalty proceedings initiated against the PIO in view of non-posting of such officer/PIO in District Kupwara. The D.C, Kupwara, however, reported to have taken up the matter of posting of officers with the higher authorities in the Government.

Since the balance information, as reported by D C Kupwara during the hearing today has been provided/sent to the appellant, no further proceedings are required in the instant 2nd appeal. As such, the 2nd appeal filed before the SIC is disposed of.

Sd/-
(Khurshid A. Ganai) IAS Retd
Chief Information Commissioner

Copy to:

1. FAA/Additional commissioner, with Divisional commissioner, Kashmir
2. FAA/Deputy Commissioner, Kupwara
3. PIO/Dy. Director Planning O/o Dy. Commissioner, Kashmir
4. PIO/Tehsildar Keran Kupwara (deemed PIO)
5. Appellant-Sh. Ab. Shameem Bhat R/o Bore (migrant) Keran, Kupwara,
6. Office file

(M. S Bhat)
Dy. Registrar
J&K State Information Commission