



Jammu and Kashmir State Information Commission

شنیشن کمیٹی انفارمیری اسٹیٹ کاشمیر جموں ا

(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/94/2017

Decision No. SIC/J/A/94/2017/131

Final Order

(Second Appeal)

- Appellant : Sh. Avinash Razdan.
- Respondents : First Appellate Authority (FAA)/
Additional Deputy Commissioner (Adm),
Jammu and Public Information Officer (PIO)/
Tehsildar, Jammu.
- Date of Registration : 17.08.2017
- Date of Decision : 15.12.2017

Brief Facts:

This 2nd appeal was admitted in the State Information Commission (SIC) on 17.08.2017 and has arisen from the RTI application dated: 09.03.2017 filed by the appellant before the PIO, O/O Deputy Commissioner (DC), Jammu seeking information pertaining to the arrest of the appellant on 12.12.2016 and available in the records of Tehsildar, Jammu/DC, Jammu on the grounds that Bakshi Nagar Police Station had sought presence of Executive Magistrate from DC, Jammu to effect the arrest of the appellant on 12.12.2016. Apart from seeking details about

the name of the employee and his designation, who visited the area of Subash Nagar, Jammu on 12.12.2016, timing of first information received from Police and the 'record of the report prepared by the employee who had been deputed by Tehsildar/Deputy Commissioner, Jammu to Subash Nagar (place of residence of the appellant)', 'record of documents of Arrest Memo, Seizure Memo, Inspection Memo and Medical Report attached to the report submitted to DC, Jammu'. The appellant (the then RTI applicant) had also desired this information to be furnished within 48 hours of receipt of application as it was 'directly related to the liberty and freedom of a person'.

The appellant then filed First Appeal on 16.03.2017 before the First Appellate Authority (FAA), O/O DC, Jammu on the grounds that the PIO had failed to provide the information within 48 hours 'without any reason'. And that, 'the appeal may be allowed immediately after receipt of the appeal as the information sought is directly related to the circumstances of arrest by police curtailing the liberty and freedom of the arrestee and affecting his life in all dimensions'.

Subsequently, the appellant filed another application before the FAA to correct the dates mentioned inadvertently in his RTI application and First Appeal.

In the second appeal filed before the SIC, the appellant has asked the Commission to inquire into the matter, enforce attendance of persons and compel them 'to give oral or written evidence on oath to give reason

why requested information could not be provided', initiate contempt proceedings, require the discovery and inspection of documents, requisition any public record, impose penalty, compensate the appellant and take exemplary steps to invoke the hope of the people in the RTI Act.

Apart from the above, the appellant has in his second appeal invoked before the Commission Article 22 (1) of the Constitution of India, which reads as under:

"No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice."

Article 21 which reads as under:

'No person shall be deprived of his life or personal liberty except according to a procedure established by law'

And the guidelines laid down by the Hon'ble Supreme Court in the case titled D.K. Basu v/s State of West Bengal.

Proceedings before the SIC:

The 2nd appeal was first heard in the Commission on 10.10.2017. It was brought to the notice of the Commission through the counter statement filed by FAA/ADC, Jammu that 'the RTI application filed by the applicant before the PIO O/O DC, Jammu was transferred to the Tehsildar, Jammu as the matter pertained to the said Tehsildar. The PIO, Tehsildar, Jammu in his reply to the RTI applicant has enclosed the report of the Naib

Tehsildar, Jammu, who in turn has enclosed the report of Patwari (Top Sherkhani). The PIO has informed the applicant that SHO, Police Station, Bakshi Nagar has refused to provide the information as the investigation in the case is going on and that the information cannot be given without the orders of the court.'

The hearing on 10.10.2017 was adjourned with the following directions:

"Registry to list the appeal again on an appropriate date at Jammu. Respondents as well as SDPO/SHO, Police Station, Bakshi Nagar be asked to attend alongwith the records. A copy of the RTI application be sent by the PIO/Tehsildar, Jammu to SDPO I/C Police Station, Bakshi Nagar and SHO, Police Station, Bakshi Nagar for their assistance and response in terms of section 5(4) and section 5(5) of the J&K RTI Act, 2009. Accordingly, the presence of SDPO I/C Bakshi Nagar Police Station and SHO, Police Station, Bakshi Nagar is sought to enable the 2nd Appellate Authority i.e. SIC to take a judicious view in terms of section 16 of the J&K RTI Act, 2009.

The time period for disposal was also extended by another sixty days w.e.f. 17.10.2017 in terms of powers vested in the SIC under section 16 (11) of the J&K RTI Act, 2009.

The appeal came for hearing second time on 28.11.2017. PIO/Sh. Shabir Ahmed, Tehsildar, Jammu, Sh. Khalid A. Shah, Public Law Officer, O/O Deputy Commissioner, Jammu (on behalf of FAA/ADC (A), Jammu) and SHO, Police Station, Bakshi Nagar, Jammu attended the hearing. The

appellant informed the SIC office telephonically to adjourn the hearing as he was not able to reach on the scheduled time. The hearing on 23.11.2017 was adjourned with the following directions:

"In view of the above, it is deemed proper to adjourn the hearing with direction to the Registry to send a copy of the counter reply, prepared by the SHO, to the appellant. The appellant is also directed to file his rejoinder, if any, before the next date of hearing.

Considering that the stipulated time limit of 120 days as per section 16 (11) of the J&K RTI Act, 2009 for this appeal will expire on 17.12.2017, Registry is directed to fix the hearing at Srinagar office for further proceedings through Video Conferencing on 15.12.2017 afternoon in view of CIC's scheduled hearing at Srinagar w.e.f. 11.12.2017.

Finally, the appeal was heard on 15.12.2017. The appellant and the respondents were heard through Video Conferencing on 15.12.2017 from Jammu office of the Commission. The appellant submitted a written rejoinder to the SIC communication dated: 28.11.2017 as under:

1. That there is involvement of a 1st Class Executive Magistrate in the arrest.
2. That there was involvement of two police stations, Police Station Nowabad, Jammu and the Police Station, Bakshi Nagar, in the arrest.
3. That the SHO, Bakshi Nagar has not revealed the name of the 1st Class Executive Magistrate involved in the arrest.
4. The SHO, Bakshi Nagar has no where given any information, exactly that was requested by the appellant.

Decision/Directions of the SIC under section 16 of the J&K RTI Act, 2009:

This 2nd appeal is similar to another 2nd appeal filed by the appellant Sh. Avinash Razdan against PIO/FAA, District Police, Jammu pertaining to his alleged arrest by Police Station, Bakshi Nagar/PP Sarwal Police on 12.12.2016 which is also the subject matter of the instant 2nd appeal. In that appeal the SIC has held that the demand for providing the information within 48 hours was not adequately justified because no good reasons had been given for the same and because the information sought pertained to a previous event of arrest of the appellant on 12.12.2016 and that the same had taken place in pursuance of a non-bailable warrant issued by the Court of Chief Judicial Magistrate, Jammu and that as per the police report, the appellant after his arrest on the night of 12.12.2016 had been produced before the court of Chief Judicial Magistrate on 13.12.2016. The Central Information Commission observations in Sh. Pratap Kumar Jena v/s PIO, Central Institute of Psychiatry, Ranchi Jharkhand have also been quoted as under:

"Proviso of Section 7(1) states that where the information sought concerns the life or liberty of a person, the same shall be provided within forty-eight hours of the receipt of the request. This provision has to be applied only in exceptional cases and the norm is that information should be provided within thirty days from the receiving date. Whether the information sought concerns the life or liberty of a person has to be carefully scrutinized and only in a very limited number of cases this ground can be relied upon. The government machinery is not designed in a way that

responses to all RTI Applications can be given within forty-eight hours. A broad interpretation of 'life or liberty' would result in a substantial diversion of manpower and resources towards replying to RTI Applications which would be unjustified. Parliament has made a very special exception for cases involving 'life or liberty' so that it would be used only when an imminent threat to life or liberty is involved.

The life or liberty provision can be applied only in cases where there is an imminent danger to the life or liberty of a person and the non-supply of the information may either lead to death or grievous injury to the concerned person. Liberty of a person is threatened if she or he is going to be incarcerated or has already been incarcerated and the disclosure of the information may change that situation. If the disclosure of the information would obviate the danger then it may be considered under the proviso of Section 7(1). The imminent danger has to be demonstrably proven. The Commission is well aware of the fact that when a citizen exercises his or her fundamental right to information, the information disclosed may assist him or her to lead a better life. But in all such cases, the proviso of Section 7(1) cannot be invoked unless imminent danger to life or liberty can be proven."

However, as regards the response of the FAA/PIO that information cannot be disclosed because SHO, Bakshi Nagar had refused to share information in terms of exemption under section 8 (g) 'information which would impede the process of investigation or apprehension or prosecution of offenders', this response is not tenable viz-a-viz the type of information sought from the PIO, O/O DC, Jammu.

The information sought by the appellant like when was the information received from the police, which official/Magistrate accompanied the Police, what record was prepared of the event etc. cannot be said to have to do anything with the investigation of the case. Arrest is an executive action which is resorted to facilitate investigation but when the event has taken place i.e. arrest has been made and if questions about the procedure adopted for arrest and about relevant records that are necessarily to be prepared about the arrest, how will such questions invoke section 8 (g) of the RTI Act. Appellant has not asked questions or made queries about the Interrogation Report, which could be denied. Information about seizures may also invoke section 8 (g) but the procedural and factual type of information about the event i.e. Arrest will not invoke section 8 (g). The appellant is right in quoting Article 21 (1), Article 22 of the Constitution of India and has sought information about his arrest and not about the investigation of the case which has prompted his arrest. The why of the arrest is the non-bailable warrant issued by the CJM. But how the arrest was conducted, the appellant who himself was the person arrested, has a right to ask whether laid down procedure for effecting the arrest was followed. It is, therefore, directed that PIO, O/O DC, Jammu will collect information from the Tehsildar, Jammu and Executive Magistrate who was deployed on duty on that day and also from SHO, PS Bakshi Nagar to reply to the queries made in the RTI application dated:

09.03.2017, by the appellant (the then applicant). From the RTI application, it appears that part of the information like Seizure Memo may not be disclosable in terms of section 8 (g). But that is a call to be taken by the PIO. Rest of the information is disclosable and may be provided within a period of 30 days from the date of receipt of this order.

With these observations/directions the second appeal is disposed of.

Copy of this decision be given free of cost to the parties.

Sd/-

(Khurshid A. Ganai)

Chief Information Commissioner
J&K State Information Commission

(P.A. Ajay)

No: SIC/J/A/94/2017_____

Dated:

Copy to:

1. FAA/Additional Deputy Commissioner (Adm), Jammu for information.
2. PIO, O/O Deputy Commissioner, Jammu for information and necessary action.
3. Tehsildar, Jammu for information and necessary action.
4. Private Secretary to CIC for information of the HCIC.
5. Appellant/Sh. Avinash Razdan, S/o. Late Mohan Lal Razdan, R/o. 783, Subash Nagar, Jammu.
6. Office file.

(Sheikh Fayaz Ahmed)

Registrar

J&K State Information Commission