

Before the Chief Information Commissioner, J&K Jammu

File No.SIC/CO/150/2017
File No.SIC/CO/Comp/147/17
Dated: 15/02/2018

Interim Order

- Subject: 1. Complaint U/S 15 of the J&K RTI Act,2009 titled Dr.Shaikh Gh.Rasool Vs General Administration Department, J&K
2. Complaint U/S 15 of the J&K RTI Act,2009 titled Balvinder Singh Vs General Administration Department, J&K

The above mentioned clubbed complaints came up for hearing again today on 15.02.2018. The GAD/respondents were represented by Sh.Riyaz Ahmad Wani, PIO (Monitoring) and Shri R.A.Shah, Director, Finance. Shri Balvinder Singh, Complainant attended the hearing whereas Dr.Shaikh Gh. Rasool, another complainant, did not attend as he was reportedly out of station.

The representatives of the respondents who were attending first time and were new to the subject were briefed about the background of these complaints filed before the State Information Commission(SIC) and the provisions under Section 4 of the J&K RTI Act regarding suo-moto and mandatory disclosure of information. They were informed that the RTI activists have been agitating for a long time about non-compliance by Government Departments of Section 4(1)(b) and that implementation of section 4 in J&K was weaker in comparison to GoI and even many other States. Orders of the State Information Commission(SIC) issued on 22.09.2017 and 16.11.2017 were read out to them. The same are reproduced for reference:

Order on 22.09.2017 (Dr.Shaikh Gh. Rasool Vs. GAD)

"After going through the contents of the complaint, counter statement filed by the GAD and after considering the submissions made orally by the complainant and the PIO during the hearing today on 22.09.2017, following directions are issued:

- 1. The complaint is admitted for inquiry under Section 15(2) of the J&K RTI Act in terms of Section 15(1) (f) which reveals that it shall be the duty of SIC to receive and inquire into a complaint from any persons in respect of any other matter relating to requesting or obtaining access to records under the Act.*
- 2. Annexures not attached with SIC notice dated 13.09.2017 containing the report of the Rapid Study commissioned by J&K RTI Movement and School for Rural Development and Environment (Dr.Shaikh Gh.Rasool) and CHRI and also DOPT Memo dated 30th June,2016 be provided/sent to the GAD.*
- 3. The GAD will submit a statement of compliance in respect of all the provisions of Section 4 by all the Public Authorities in the Government. In the first phase statement of compliance by all the Admn.Deptts, all subordinate State/ Divisional level Deptts. under each Admn.Deptt., Divisional Commissioners and Dy.Commissioners be submitted. The proforma in which the statement is to prepared is enclosed with this order as Annexure-I*
- 4. The GAD as the Nodal Department in the State Government for implementation of the RTI Act shall issue instructions to all the Dy.Commissioners to ensure that all the major district level departments dealing with important developmental and socially relevant programmes and schemes have good quality websites which are not only maintained and updated on a continuous basis but also enable online submission of applications for benefits and services under various schemes /programmes and online delivery of services, as far as possible.*

5. *As highlighted by the complainant, the GAD will need to impress upon all the Administrative Departments, State and Divisional Level offices under each Administrative Department the Divisional Commissioners & Dy. Commissioners to also ensure implementation of the provisions of the Section 4 through the non-digital method by way publication of records, catalogues, Public notice boards and such like non-digital means.*

6. *Since the IT related and digital work in the State Government is looked after by the Information Technology Department , Govt. of J&K and NIC,J&K, it is appropriate to seek the views and advice of the Administrative Secretary, IT Department and State Coordinator, NIC and for that the Registry is directed to send both the officers appropriate communication requesting them to assist in the inquiry under the instant complaint.*

7. *The Commr/Secretary, GAD will bring to the notice of the Chief Secretary, J&K the contents of this interim order to facilitate timely and across the board follow up action on the above directions. Compliance with these directions will go some way in full filling the objectives of the J&K RTI Act given in the preamble of the Act to secure transparent, accountable and corruption free governance for the citizens who are otherwise subjected to lot of problems and delay while accessing information and services from governmental agencies.*

8. *Another complaint dealing with the same subject i.e, implementation of Section 4 of the J&K RTI Act,2009 filed by Shri Balvinder Singh, (RTI Activist & Convenor, Sangarsh RTI Movement) has been dealt with separately and another order issued. The respondents being same i.e, GAD/Govt. of J&K may take note while responding to each of the two complaints, by Shri Balvinder Singh and Dr.Shaikh Gh.Rasool respectively.*

Case adjourned with the above directions."

Order on 22.09.2017(Balvinder Singh Vs GAD)

PIO is directed to seek the guidance of the Chief Secretary and Commr./Secretary, GAD for preparing reply/report. A copy of the complaint alongwith all the Annexures be again sent to the PIO,GAD for preparation of the said reply/report. Another complaint under Section 15 of the RTI Act pertaining to the same subject of mandatory/suo-moto disclosure of information under Section 4 filed by Dr.Shaikh Gh.Rasool, Chairperson, RTI Movement, J&K has been dealt with separately. The respondents may take note of the directions issued in that complaint also.

Case adjourned with the above directions.

Order on 16.11.2017

After considering the contents of both the complaints which are self speaking and the two interim orders of this Commission issued on 22.9.2017 as also the counter statement filed by the GAD on 16.11.2017 which makes a mention of the various directions issued by it to the Administrative Departments and the Public Authorities in general, it will be appropriate to again emphasise on the State Government at the highest level in the administration i.e, at the level of the Chief Secretary, to ensure compliance of the provision of Section 4 of the J&K RTI Act,2009 by all the Public Authorities under the administrative jurisdiction of the State Government and especially of Section 4(1)(b) which mandated compliance within 120 days from the commencement of the Act. The Chief Secretary is also advised to take note of the instructions issued by the DOPT, GoI in 2013 and 2016 to all the Central Public Authorities about suo-moto and mandatory disclosure of the information under Section 4 of the Central Information Act,2005 which shows the importance being accorded to suo-moto disclosure of information in electronic form by GoI. This aspect of disclosure through electronic format has been highlighted in J&K

RTI Act,2009 under Sections 4(1)(a),4(2) and 4(4) which shows clear intent of the legislature about the need to provide as much information suo-moto to the public 'at regular intervals through various means of communications, including internet, so that the public have minimum resort to the use of the Act to obtain information.'

The SIC would like to further emphasise on the need to devise and install a system in all Govt. offices and with all the Public Information Officers to enable receipt of RTI applications electronically and for giving electronically/ digitally generated receipts for all the RTI applications received physically so as to track the movement of such applications at regular intervals.

With the above observations, the hearing in these two complaints is adjourned. These will be taken up again for hearing on 22.01.2018 which affords over two months time to the respondent Deptt. to ensure compliance by the Public Authorities in the State Government with the provisions of Section 4 of the J&K RTI Act,2009 and the connected steps to be taken to achieve such compliance as observed above, namely receipt of RTI applications electronically by the PIO, issue of digital/electronic receipt in case of RTI applications received/submitted physically/personally by the applicants or by Post and devising of an RTI application/First Appeal tracking system. Commr/Secretary to Government, General Administration Department is directed to pursue the matter with the concerned to ensure implementation of the above directions. He shall also attend the next hearing in the SIC to present the report.

The respondents/GAD shall submit an action taken in respect of directions issued in the interim order dated 22.09.2017 in the complaint of Dr. Gh.Shaikh Gh.Rasool, at S.No.03 in respect of which an Annexure was also enclosed with the said order. Information on the ATR may be submitted as per the Annexure.

The above observations and directions apply ipso-facto to all the Public Authorities resident in the State of J&K as fall under the definition of Public Authority under Section 2(f) and therefore it is incumbent on all such Public Authorities to achieve compliance in terms of Section 4(1)(b) and other provisions of Section 4 of the J&K RTI Act,2009. Accordingly, the Registrar, SIC shall issue a notification for information of all the Public Authorities in the State within and outside the Government to take requisite steps for achieving conformity with the provisions of Section 4 of the J&K RTI Act,2009 as expeditiously as possible. "

Proceedings on 15.02.2018

The complainant Sh.Balvinder Singh who attended the hearing stated that no progress had been intimated since the last order of the Commission dated 16.11.2017 and that the public is still facing problems on account of un-uploaded or obsolete information on the departmental websites.

The respondents briefed the CIC about the steps taken by the GAD recently and about the proposed meeting on 26th February with all the Administrative Secretaries of the Departments in the Government under the chairmanship of the Chief Secretary. They also informed that for implementation of section 4 of the J&K RTI Act, the IT Department has been asked to operationalise the RTI portal and that a meeting or two had already been convened in this regard.

After hearing both the parties, following directions are hereby issued for compliance:

- 1. The State Government through GAD shall continue its efforts in ensuring implementation of Sections 4(1)(b),4(1)(c) and 4(1)(d) by all the Public Authorities in the Government, electronically / through internet.**
- 2. The GAD shall issue circular instructions and prescribe date deadlines for the Public Authorities to report compliance for implementation of the provisions of Section 4 in letter and spirit.**

3. An RTI portal may be set up by the GAD on the pattern of RTI portal of DOPT, GoI with similar features and facilities and online facility for uploading RTI applications may be provided by all the Public Authorities in the Government.
4. In the next hearing before the Commission, the GAD should clearly spell out the progress made in writing in the following format.

- a. *List of Public Authorities under each Administrative Department who have set up functional websites under Section 4.*
- b. *List of Public Authorities under each Administrative Department who have not so far set up functional websites under Section 4.*
- c. *List of Public Authorities under each Administrative Department who have set up websites under Section 4 but the websites have not been found to be 'Section 4 compliant' (This will be a subset of (a) above).*
- d. *Steps taken for setting up the RTI portal on the pattern of RTI portal of DOPT, GoI.*
- e. *List of Public Authorities under each Administrative Department who have provided the facility of online receipt of RTI applications.*

With these directions, the hearing is adjourned. The respondents are directed that the next hearing be attended by the Administrative Secretary, GAD or his authorised representative who is a fairly senior officer of the Department alongwith FAA/PIO, who are dealing with the work in the GAD and are well versed with the steps being taken by the Administrative Departments for implementation of the provisions of Section 4 in the Public Authorities under their control and jurisdiction.

Sd/-

(Khurshid A. Ganai)

Chief Information Commissioner

Copy to the :-

1. *Commr/Secretary to Government, General Administration Department for information and n/a.*
2. *First Appellate Authority (FAA), General Administration Department for information and n/a.*
3. *Public Information Officer (PIO) General Administration Department for information and n/a.*
4. *Pvt.Secy. to CIC for information of the HCIC.*
5. *Dr. Shaikh Ghulam Rasool, Chairperson, J&K RTI Movement, Near Al-Ameen Hospital Indira Gandhi Road, Hyderabad, Srinagar for information.*
6. *Sh. Balvinder Singh, RTI Activist & Convenor, Sangarsh RTI Activist Movement, Nanak Nagar Jammu for information.*
7. *Office Order file.*

(Sheikh Fayaz Ahmed)

Registrar

J&K State Information Commission