



Jammu and Kashmir State Information Commission
(Constituted under Right to Information Act 2009)
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File No. SIC/CO/SA/535/2017
Decision No. SIC/CO/SA/535/2017/**1058**

Final Order
(Second Appeal)

Appellant : Sh. Varun Sawhney S/o Sudesh Sawhney R/o H.No. 40 D/C
Gandhi Nagar, Jammu.

Respondents : First Appellate Authority (FAA)/Public Information
Officer (PIO), O/o Director, Horticulture (P&M).

Dated of Registration: 23.10.2017

Date of Decision : 12.02.2018

Brief Facts:

The appellant Sh. Varun Sawhney S/o Sudesh Sawhney R/o H.No. 40 D/C Gandhi Nagar, Jammu. while exercising his right to information filed an RTI application dated: 12.07.2016 under section 6 of the J&K Right to Information Act, 2009 (hereinafter Act for short) with the PIO, O/O Director, Horticulture (P&M), Srinagar seeking the following information:-

“kindly furnish in details the certified copy of advertisement alongwith all the modifications which was advertised by the Government against which the 26 applicants which is in your list for allotment of shop sites in Fruit & Vegetable market Narwal, Jammu has applied for.”

The PIO responded to his application vide communication dated 28.09.2017. Aggrieved by the response of the PIO, the appellant filed first appeal before the First Appellate Authority on 21.08.2017. At last, the

appellant approached the State Information Commission (SIC) by filing 2nd appeal which was admitted on 23.10.2017.

Proceedings:-

The instant 2nd appeal came up for hearing for the first time before the State Information Commission (SIC) on 11.12.2017. The hearing was attended by Sh. Varun Sawhney appellant, however respondents did not appear despite due notice.

During the hearing the appellant stated that since the Jammu Development Authority (JDA) has transferred the market (Fruits & Vegetable Market) to the Director, Horticulture (P&M) Jammu/Srinagar, all the information should now be available with the Directorate of Horticulture (P&M) and therefore it is they who have to provide the information.

Because the respondents FAA/PIO O/O Directorate of Horticulture were not present and also had not filed written statement/reply to the 2nd appeal, hearing was adjourned on 11.12.2017 with the directions to the respondents to submit counter reply to the appeal and also to intimate as to why part of the information sought for has not been provided to the appellant. They were also directed to consider the transfer of the application to the JDA under section 6(3) of the J&K RTI Act 2009 if the information sought for is not held by them or is not under their control.

Meanwhile Commission received a copy of counter statement from Deputy Director, Central/First Appellate Authority (FAA), Horticulture Planning & Marketing interallia stating that as far as the first part of the information sought for by the appellant is concerned, same has been provided to the appellant which is also admitted by him. That for the 2nd part of the information i.e. advertisement issued for allotment of shop sites, the same was issued by the JDA in the year 1987 and the applications were received by them. That JDA remained custodian of the Fruit & Vegetable market Narwal, jammu till the year 2009 when it was transferred to the Department of Horticulture (P&M) by a cabinet decision. That while the files pertaining to the allotment (excepting few) were transferred by the JDA to the Department of Horticulture (P&M) but the files regarding correspondence and the advertisement etc were not provided to this department by the JDA. That the answering respondents after the order dated: 11.12.2017 of the SIC asked the JDA vide their communication dated: 23.12.2017 to provide the copy of the advertisement to this department,

however JDA has not supplied the said information to the answering respondent so far.

The said written statement was taken on record. The case was again listed for hearing before the SIC on 15.01.2018. Shri J.P. Sharma, Deputy Director, Directorate of Horticulture (P&M) Jammu and appellant attended the hearing. The FAA reiterated that the requisite information/advertisement issued is not available with the Directorate of Horticulture (P&M) nor has been transferred to them by the JDA. FAA stated that the said advertisement pertains to the year 1987.

During the hearing the appellant stated that if the information sought for by him is with the JDA, the same may be accessed from them. Both the parties were heard. The hearing was adjourned keeping in view the written statement filed by the FAA/Deputy Director, Horticulture (P&M) Govt. of J&K, that the information sought for pertains to JDA. Therefore the Vice Chairman, JDA was arrayed as party respondent with the directions to provide a copy of the said advertisement to the Department of Horticulture (P&M) for onward transmission to the appellant. Vice Chairman, JDA, as a Public Authority was also directed in terms of section 16(9)(a) of the Act to provide access to this information to the PIO/FAA of the Department of Horticulture (P&M) within a period of 15 days. The VC, JDA was also directed to appear before the Commission personally or through authorized representative during next hearing of the case.

The 2nd appeal was taken up for final hearing before the SIC today on 12.02.2018. The hearing was attended by Sh. Rakesh Gupta, Secretary, JDA and appellant Sh. Varun Sawhney. However, Horticulture Department was not represented by any one.

During the hearing, the appellant reiterated his demand for information regarding the advertisement notice of the year 1987 issued by JDA. When enquired, Secretary, JDA submitted that the record pertaining to said information is not available with them and traceable and therefore cannot be provided.

He was asked to submit in writing that the record pertaining to the said part of information is not available with them and he agreed. The appellant also submitted that if JDA is submitting in writing about the non availability of the record, he has no fresh demand in the instant matter.

Both the parties were heard and record was also perused.

Decision:

It is the settled law under RTI Act which has also been upheld by the Hon'ble Apex Court in number of judgments including in CBSE V/s Adityanath Bandepandaya SC(2011) that RTI Act provides access to all information that is available and existing. This is clear from a combined reading of section 3 and the definition of 'information' and 'right to information' under clauses (d) and (i) of section 2 of the J&K RTI Act 2009 respectively. The Hon'ble Supreme Court in the above cited case has held "where the information sought is not part of the record of a public authority and where such information is not required to be maintained under any law or the rules or regulation of the public authority, the Act does not cast an obligations upon the public authority, to collect or collate such non-available information and then furnish it to an appellant."

From the submission made by the respondents and in view of the Hon'ble Apex Court's aforementioned judgment, Commission finds no reason to give any further direction to the respondents to provide such information to the appellant which is "non existing" and "non-available" from the records. Therefore the 2nd appeal is disposed of accordingly.

Copy of the order be provided free of the cost to the parties.

-sd/-

(Khurshid A. Ganai)

Chief Information Commissioner

No. SIC/CO/SA/535/2017/

Dated. -02-2018

Copy to the:

01. First Appellate Authority (FAA), O/O Director, Horticulture (P&M) for information.
02. Public Information Officer (PIO), O/O Director, Horticulture (P&M) for information.
03. PS to HCIC for information of the HCIC.
04. Appellant/Sh. Varun Sawhney S/o Sudesh Sawhney R/o H.No. 40 D/C Gandhi Nagar, Jammu.
05. Office file.

(Sheikh Fayaz Ahmed)

Registrar

State Information Commission