



**Jammu and Kashmir State Information Commission**  
(Constituted under Right to Information Act 2009)  
Old Assembly Complex, Srinagar, Fax No. 0194-2506661, 2506662  
Wazarat Road Near DC Office, Jammu, Fax No. 0191-2520947, 2520937  
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File No. SIC/J/A/188/2017

Decision No. SIC/J/A/188/2017/150

**Final Order**

Appellant : Syed Shabir Ahmed Shah S/o Syed Mohd  
Abdullah Shah R/o 256 Mohalla  
Dalpatian, Jammu

Respondent : First Appellate Authority (FAA)/Public  
Information Officer (PIO) O/o DC,  
Jammu.

Date of Registration : 18.12.2017

Date of Decision : 12.02.2018

**Brief History:-**

This 2<sup>nd</sup> appeal has arisen from the RTI application of the appellant Sh. Syed Shabir Ahmed Shah filed before the PIO O/o DC, Jammu on 30.03.2017 seeking the following information: -

1. Please provide information & action report in the complaint No. MDF/JK/J 204-227 dated 15.12.2015 submitted by the applicant in person along with a deputation of more than (70) seventy prominent citizens of Jammu including Sarpanches, Panches Advocates, Retd. SSP, SP and Retd. Officer of Civil Administration and religious leaders and members of cross section of society headed by Mohatram Imam-o-Khateeb of Jama Masjid Hazarat Molana Mufti Anaytullah Qasmi & entered in your office computer vide no. 50371/15-CRU pending disposal for more than 480 days.
2. Please provide information action taken reports & certified copies of registry/land papers thereof regarding Kaka Ji Ki Rasoi & other encroachment made by Ab. Majeed Patoie in Bathindi & others are regarding which complaint already has been made to vigilance organization & ATR in the complaints vide your office computer No. (1) 93314 (2) 93129 (3)91581 (4) 89490 (5) 60403/16/cru dated 24.03.2016 (6) 51849/cru dated 31.12.2016 and (7) 92465 (8) 68120 (9) 7132.

3. Please provide ATR & certified copies in the complaint regarding encroachment on the Govt. Land situated at Peer Khoh complaint made by the applicant alongwith the members of civil society of Jammu addressed to Commissioner/Secretary, Rev. & Hon'ble Rev. Minister who forwarded the same to DC, Jammu.
4. Please provide information and certified copies of the PSA cases during the period from 01.01.2016, till date
5. Please provide number certified copy of PSA impose & number of cases revoked certified copy of the same be provided.
6. Please provide certified copies of the correspondence made between SSP/SP, Jammu and DC, Jammu during the year 2014 to 2016 ending December regarding imposition of PSA on the applicant (Syed Shabir) in which Police recommended case for imposition of PSA on the applicant and the DC rejected the same for want of jurisdiction.

As per the records, the PIO O/o DC, Jammu failed to provide the reply to the RTI application within the stipulated time. Accordingly, the appellant filed first appeal before the First Appellate Authority (FAA) O/o DC, Jammu on 30.04.2017 'with the request to issue direction to the concerned PIO O/o DC, Jammu to provide requisite information as requested/sough under RTI application dated 31.03.2017 at the earliest.' The appellant also alleged in the first appeal that the 'information sought for has been denied deliberately to shelter the interested party. Neither any reason was given for the denial of information nor the applicant was intimated in this regard.'

Consequent upon the filing of first appeal, the FAA O/o DC, Jammu has disposed of the first appeal vide his order dated 13.05.2017 as under: -

'Whereas, Public Information Officer ADC (L&O) has submitted that the RTI application of the information seeker was transferred vide No. 1195-97/DMJ/LO/2017-18 dated 01.05.2017 to Public Information Officer, Home Department for disposal with regard to point no. 4 and for point No. 5 RTI application of the information seeker was forwarded to Public Information officer Senior Superintendent of Police Jammu for its disposal.

Whereas, in reply to Ist Appellate Authority notices, PIO Assistant Commissioner, Revenue submitted that the information sought by the information seeker has been submitted to Deputy Registrar State Vigilance Commissioner J&K, Jammu vide No. DCJ/SQ/RTI/2017-18/3534 dated: 15.02.2017.

Whereas, Public Information Officer, Additional Deputy Commissioner (L&O) Jammu has submitted a copy of information

with regard to point No. 2 in which he has submitted that the information will be provided to the appellant.

I have perused the replies submitted by PIOs i.e. ACR and ADC (L&O). Public Information Officer, ACR is directed to provide the copy of the letter submitted to Deputy Registrar State Vigilance Commissioner, J&K Jammu vide No. DCJ/SQ/RTI/2017-18/3534 dated 15.02.2017 to the information seeker.

Both PIOs are directed to provide the available information to the information seeker within two weeks through registered post.

Filed be consigned to records.

Copy of the order be given free of cost to both the parties.'

In the 2<sup>nd</sup> appeal filed before the State Information Commission (SIC) on 06.10.2018 and finally admitted on 18.12.2017 after completion of deficiencies, the appellant has stated as under: -

'That after delaying information to the appellant & wasting his considerable time the 1<sup>st</sup> appellate authority disposed of the case with directions to PIO to provide the requisite information to the appellant (information seeker) within two weeks vide his No. DCJ/FAA/RTI/2017-18/88-89 dated 13.05.2017.

That it is pertinent to mention that the disposal order was delivered by hand to the appellant from DC Office today on 05.10.2017 without providing any information sought by the applicant/information seeker. Thus PIO making fun of RTI Act 2009 by engaging the appellant with assurance of supplying information which was not provided even after waiting for such a long period and was finally denied. Surprisingly the disposal order passed on 13.05.2017 was kept secret and was delivered only on 05.10.2017 in DC Office Jammu after the appellant made hue and cry. Photostat copy of disposal order of FAA dated 13.05.2017 is enclosed and marked as **Annexure-"C"**.

Hence this 2<sup>nd</sup> appeal before your good self with humble submission to issue orders to the concerned PIO to provide requisite information to the appellant as sought by him vide his RTI application dated 30.03.2017 at an earliest.'

The second appeal came up for hearing before the SIC first time on 10.01.2018. The hearing was attended by DC, Jammu/FAA, Addl. DC, Jammu, ADC(L&O) and PIO AC(R) Jammu. During the hearing, the PIO/AC(R) Jammu submitted that 'his office has provided reply to the appellant on 15.05.2017 in respect of the action taken report on the complaint of encroachment of Government Land. The FAA in his counter statement stated that the information sought regarding

encroachment etc. has been sent to Deputy Registrar, State Vigilance Organization by the PIO/AC(R), Jammu on 15.02.2017.

The PIO/ADC (L&O), Jammu submitted that he has transferred the RTI application on 01.05.2017 in respect of points No. 4 & 5 regarding PSA cases and correspondence between SSP/SP, Jammu and DC, Jammu to the PIO of the Home Department and SSP, Jammu respectively. That the PIO of the Home Department has replied to the appellant but it is not known whether the PIO of the SSP Office, Jammu has replied in respect of point No. 5.'

In the counter statement dated 09.01.2018 submitted by FAA/DC, Jammu, the FAA has repeated that both the PIOs have taken action as well as provided certain information and that

“PIO, Addl. DC (L&O), Jammu has submitted the RTI application of the information seeker was transferred vide No. 1195-97/DMJ/LO/2017-18 dated 01.05.2017 to Public Information Officer, Home Department for disposal with regard to point No. 4 and for Point No. 5, the RTI application of the information seeker was forwarded to Public Information Officer Senior Superintendent of Police, Jammu for its disposal.

PIO, Assistant Commissioner, Revenue submitted that the information sought by the information seeker has been submitted to Deputy Registrar, State Vigilance Commissioner, J&K, Jammu vide No. DCJ/SQ/RTI/2017-18/353 dated 15.02.2017.

PIO, Additional Deputy Commissioner (L&O) Jammu has submitted a copy of information with regard to point no. 2 in which he has submitted that the information will be provided to the appellant.

Accordingly, directions were given to both the PIOs to provide the available information to the information seeker within two weeks through registered post and first appeal disposed of.'

The hearing on 10.01.2018 was adjourned with the following directions:

‘Since the appellant was not present during the hearing and with a view to provide another opportunity of being heard to him, the hearing of this appeal is adjourned. Meanwhile, the PIO/ADC (L&O), Jammu is directed to prepare detailed information regarding the PSA warrants issued by DC, Jammu from 01.01.2016 till 30.03.2017. The two PIOs, O/o DC, Jammu must also ensure to provide to the appellant/the then RTI applicant whatever givable information has not been provided so far, but strictly in terms of the RTI application and the provisions of J&K RTI Act, 2009.’

This appeal came up for second hearing on 12.02.2018 which was attended by the appellant Sh. Syed Shabir Ahmed Shah and Sr. Law Officer/Sh. Khalid Ahmed Shah on behalf of the respondents. The appellant repeated the request for information sought by him through his RTI application and submitted that he had not received the requisite information. The Sr. Law Officer stated that the PIOs were ready to provide whatever information was to be provided. He had brought certain information with him about points no. 1 and 2 a copy of which was then got handed over to the appellant as he denied to have received the said information earlier.

**Decision: -**

The appellant has sought information about action taken on a 'complaint dated 15.12.2015 submitted to DC, Jammu by the applicant in person along with a deputation of more than 70 persons' about encroachment of Government land at Peer Khoh, Bathindi etc, about PSA cases during the period 01.01.2016 till 30.03.2017 and about correspondence made between SSP/SP, Jammu and DC, Jammu during 2014 to 2016 ending December, regarding imposition of PSA on the appellant Sh. Syed Shabir Ahmed Shah.'

The information sought is of varied nature, specifying encroachments on land and issue of PSA warrants. This RTI should have been handled by one PIO only and in this case by the senior of the two i.e. Addl. DC, L&O. He could seek assistance from PIO/AC(R) in terms of sections 5(4) and 5(5) of the J&K RTI Act, 2009.

Part of the information pertaining to PSA and correspondence between DC and SSP, Jammu appears to fall under exemption sections 8(1) (a), 8(1) (f), 8(1) (g) either under all of these or only under some. That will have to be decided by the PIO/Addl. DC (L&O).

As regards information about action taken report on the complaint submitted to DC by the appellant and a deputation, the same can be given by the PIO on the basis of record available with DC, Jammu/Public Authority in whose control this information is supposed to be available.

Regarding encroachments etc. the PIO/ADC(L&O) should seek the action taken reports and requisite revenue documents from AC(R), Jammu who has also been directed to do the needful by FAA/DC, Jammu. In this context, before giving copies of documents of land belonging to other persons, other than the RTI applicant, third party proceedings may be considered and conducted by the PIO. Such third party proceedings however need not be conducted in respect of encroachments on Government land and public lands before handing over copies of records to the RTI applicants. The land Revenue Rules of 1969 and Government instruction issued vide Rev/LB/19/2012 dated 14.09.2012 have laid down procedure for obtaining copies of land records

which are to be followed as a matter of existing and available procedure. J&K Public Services Guarantee Act, 2011 (PSGA) offers a time bound remedy to the applicants for obtaining information. Information about encroachments, illegal occupation of land etc. is often sought by interested parties through RTI. While the PIOs should readily part with such information for ushering in transparency and accountability in governance, RTI cannot be allowed to be used for purposes other than these. That is why third party proceedings are to be considered by the PIO in complaint cases hitherto not enquired or not on record as otherwise the incidence of misuse of RTI cannot be ruled .

In the light of above and in exercise of powers vested in the State Information Commission under section 16(9)(a) of the J&K RTI Act, the Head of the Public Authority/DC, Jammu is directed to appoint Addl. DC, L&O, Jammu as the PIO to deal with this RTI who then can seek assistance under section 5(4) & 5(5) to provide the remaining information strictly in term of the RTI application, J&K RTI Act, 2009 and in terms of observations made above. This may be done within 30 days from the date of receipt of this order.

**-sd/-**

(Khurshid A. Ganai)

Chief Information Commissioner

No. SIC/J/A/188/2017/

Dated. -02-2018

Copy to the:

01. First Appellate Authority (FAA), O/O DC, Jammu for information and necessary action.
02. Public Information Officer (PIO), O/O DC, Jammu for information and necessary action.
03. PS to HCIC for information of the HCIC.
04. Appellant/Syed Shabir Ahmed Shah S/o Syed Mohd Abdullah Shah R/o H. No. 256 Mohalla Dalpatian, Jammu
05. Office file.

**(Sheikh Fayaz Ahmed)**

Registrar

State Information Commission