



**Jammu and Kashmir State Information Commission**

جموں اینڈ کشمیر اسٹیٹ انفارمیشن کمیشن

(Constituted under the Right to Information Act, 2009)

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File No. SIC/J/A/144/2017

Decision No. SIC/J/A/144/2017/158

Appellant: Shri Sanjay Gupta,  
S/O Sh. Sudesh Gupta,  
R/O: Quarter No. 146, Sarwal Colony,  
Jammu

Respondents: 1. Superintending Engineer, Hydraulic Circle,  
Jammu.  
(First Appellate Authority)  
2. Executive Engineer, PHE Rural Division,  
Jammu.  
(Public Information Officer)

Date of Registration : 28-10-2017

Date of Decision : 28-02-2018

**FINAL ORDER**

The applicant, appellant before the Commission, filed an RTI application with Chief Engineer, PHE Jammu on 15-03-2017 seeking copies of the property statement of JE Suresh Sethi (referred to as 'third party' hereinafter) with effect from his date of initial appointment till the date of RTI application and also information relating to departmental action initiated/taken against the said JE for not submitting his property returns in time. The said RTI request was forwarded by the Chief Engineer to the Executive Engineer PHE Rural Division, Jammu being the Public Information Officer (referred to as

'PIO' hereinafter) concerned. The PIO vide his order No. PHER/338-42 dated 17-04-2017 rejected the request of the appellant on the ground that the information sought for relates to personal information of the third party and is, therefore, exempted from disclosure under clause (i) of section 8(1) of the J&K Right to Information Act, 2009. The PIO also informed the appellant that the third party, Mr. Suresh Sethi has refused to have his personal information disclosed to the appellant as the appellant was related to him and has some personal animosity with the third part and is seeking such information only to harass and victimize the third party. The appellant challenged the order of PIO in an appeal filed before Superintending Engineer Hydraulic Circle, Jammu in his capacity as First Appellate Authority (referred to as FAA hereinafter). The FAA vide its order dated 26-07-2017 disposed of the appeal by upholding the order of PIO on the ground that the information sought for by the appellant pertained to service matters and personal information of the third party and the appellant has failed to establish that larger public interest would be served by disclosure of such information. Aggrieved by the order of FAA, the appellant filed this appeal before the State Information Commission.

### **Proceedings before the Commission:**

The appeal was heard by the Commission on 22-12-2017 and 12-02-2018. The appellant as well as his counsel contended that the FAA has erred in rejecting the first appeal of the appellant and holding that the copies of property statements of the third party are exempted from disclosure under RTI Act. He submitted that every public servant is required under service rules to file his property statement annually to the public authority and failure on the part of a public servant to file such statements in time make him subject to disciplinary action. The appellant also contended that on filing of such statements with the public authority, it no longer remains the personal information but comes under the public domain and thus a public document. The public authority should

have no objection in disclosing such property statements in order to ensure transparency and accountability of its employees. In case a public servant has not filed the property statements as required, the public authority is duty bound to take action as warranted under rules and the public authority should have no objection in disclosing the action taken by it or initiated by it. In support of his submission, the appellant cited the Judgment of Hon'ble Supreme Court dated 4<sup>th</sup> February, 2016 in case titled Kerala Public Service Commission V/S State Information Commission (in civil appeal no. 823-854 of 2016 arising out of SLP No. 15919-15950 of 2011) and the judgment of Madras High Court dated 12-07-2011 in case titled V. Madav V/S Tamil Nadu Information Commission.

The respondents filed a written statement on 12-02-2018 contending therein that the PIO has rightly denied the information to the appellant as the appellant was seeking information relating to personal matters of the third party pertaining to his service matters and his property details. The said information is exempted from disclosure under clause (i) of section 8(1) of the RTI Act. The respondents also submitted that the appellant could not establish that a larger public interest would be served by disclosure of such information. The respondents also submitted that the appellant nurses some personal grudge with Mr. Suresh Sethi, JE, who happens to be related to him, and is using the RTI mechanism to settle personal scores with him by filing repeated RTI applications asking for property details of the third party. The respondents informed the Commission that prior to the present request dated 15-03-2017, the appellant had filed six RTI requests asking for the same information which were replied by the PIO through communication Nos PHER/691-94 dated 03-05-2016, PHER/ 2165-68 dated 11-07-2016, PHER/ 2377-81 dated 20-07-2016, PHER/ 3733-36 dated 30-08-2016, PHER/ 4760-63 dated 06-10-2016 and PHER/ 9451-54 dated 02-03-2017. Copies of the replies sent to the appellant were also submitted to the Commission for perusal. The respondents

also submitted that on receipt of the 7<sup>th</sup> RTI request of the appellant, the PIO sought the views of the third party in terms of section 11(1) of the RTI Act and the third party through the medium of a duly sworn affidavit informed the PIO that the appellant has some personal animosity with him and is harassing and humiliating him on one pretext or the other. The third party accordingly requested that the information related to his property details and service matters may not be disclosed to the appellant. The respondents further contended that the information sought by the appellant qualified as personal information and is therefore protected from disclosure unless larger public interest warrants such disclosure, which the appellant has failed to establish despite having been given enough opportunity to do so. The respondents cited the judgment of Hon'ble Supreme Court in Girish Ramchandra Deshpande VS Central Information Commission in support of their contention that property statements of a public servant constitutes his personal information and, therefore, exempted from disclosure.

Having heard the appellant as well as the respondent, the Commission felt that the third party, whose property details are sought by the appellant, should also be given an opportunity of being heard in terms of sub-section (5) of section 16 of the J&K RTI Act, 2009. Accordingly, a notice was served upon Mr Suresh Sethi, the third party, to appear before the Commission to explain his point of view. The third party appeared before the Commission today on 28-02-2018 and also filed his objections before the Commission. In his statement of objections, the third party submitted that his sister-in-law (Bhabi) was married to the appellant Mr. Sanjay Gupta in 1994. However, the marriage broke down and resulted in divorce in the year 1999. Ever since the break down of that marriage, the appellant started victimizing and harassing the family members of his sister-in-law including the third party. A complaint was made by the family of the third party to IGP, Jammu on 16-04-2016 regarding

the threats executed by the appellant which was got enquired by the police and the Staff Officer to IGP, Jammu forwarded the inquiry report to SSP, Jammu vide communication No. Clt/142/J/Civ/16/13619 dated 01-06-2016 with the observations that the report so provided reveals that the allegations are established against Sh Sanjay Gupta and requested the SSP to take legal action against him. A case was subsequently registered against Sh. Sanjay Gupta. Copies of the complaint and the report have been enclosed by the third party with his statement. The third party also submitted a copy of the communication from Addl. District Magistrate, Jammu addressed to Sr. Suptd. of police, Jammu requesting for seizure of the weapon in possession of the appellant as he is threatening the father of his ex-wife. The third party also submitted that the appellant has filed many complaints against him in vigilance organization, police and elsewhere. A complaint was filed by the appellant against the third party in the State Vigilance Commission alleging that the third party has not filed his annual property statements and that the Executive Engineer, PHE Rural has not provided the copies of such property statements despite requests made by the appellant. In the said complaint, the appellant has requested for thorough investigation and registration of FIR against the third party. The State Vigilance Commission vide its communication No. SVC/Misc/719/2017 dated 08-02-2018 directed the SE, PHE to submit report after conducting enquiry into the allegations leveled by the complainant against the respondent. The third party further submitted that prior to this RTI application, the appellant filed six applications. The appellant is filing all these complaints and RTI applications only to harass the third party and settle his personal dispute with him by using the RTI Act. He accordingly requested the Commission not to allow disclosure of his personal information to the appellant, as the same would invade his privacy and help the appellant to further harass him.

**Decision:**

The issue relevant in the present case is whether information relating to service matters and property details of a public servant can be disclosed and provided to a person seeking such details under RTI Act. Clause (i) of section 8 (1) of the Jammu and Kashmir Right to Information Act, 2009 provides as under:-

*“(1) Notwithstanding anything contained in the Act, there shall be no obligation to give any citizen,-*

*(i) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information.”*

As regards the question of disclosing service details like number of disciplinary enquiries held by a public authority against an employee under its control, result of such enquiries and action taken by the public authority against such employee, the law is no more res judicata. It is now settled by a catena of judgments of the Hon’ble Supreme Court and different High Courts as also the Central Information Commission that service matters are between employer and employees and constitute personal information thereby exempted from disclosure to a third person unless larger public interest warrants such disclosure. However, the law regarding disclosure of property details of a public servant submitted by him to a public authority during the course of his employment is far from being finally settled. There are cases where property returns filed a public servant have been held to be the personal information of the concerned official and hence exempted from disclosure under section 8(1)(j) of the Central RTI Act

(corresponding to section 8(1)(i) of the J&K Act) and there also are cases where it has been held that since the RTI Act is a sunshine law, such details can not be withheld in order to ensure transparency and contain corruption in public life. Even otherwise, the exemption of information from disclosure under section 8 of the RTI Act is not absolute. Information falling under section 8 can be disclosed if the competent authority or public authority or the Public Information Officer or appellate authority, as the case may be, is satisfied that larger public interest justifies the disclosure of such information or the public interest in disclosure outweighs the harm to the protected interests. Therefore, even if information relating to property returns of an employee is treated as personal information for purposes of section 8(1)(i) of the J&K RTI Act, 2009, such information can be disclosed if there exist larger public interest warranting such disclosure and provided that such information is available with the public authority.

The appellant referred the decision of Hon'ble Supreme Court dated 4<sup>th</sup> February, 2016 in case titled **Kerala Public Service Commission Vs State Information Commission** in support of his contention for disclosure of property statements of the third party. The said judgment is not relevant in the present case. In the said appeal, the issue before the Hon'ble Supreme Court was whether the scanned copies of answer sheets, tabulation sheets containing interview marks and names of examiners who have evaluated the answer sheets can be disclosed under section 8(e) of the RTI Act in view of fiduciary relationship claimed by the Public Service Commission. The Apex Court held as under:-

*“In the present case the request of the information seeker about the information of his answer sheets and details of the interview marks can be and should be provided to him. It is not something which a*

*public authority keeps it under a fiduciary capacity. Even disclosing the marks and the answer sheets to the candidates will ensure that the candidates have been given marks according to their performance in the exam. This practice will ensure a fair play in this competitive environment, where candidate puts his time in preparing for the competitive exams, but, the request of the information seeker about the details of the person who had examined/checked the paper cannot and shall not be provided to the information seeker as the relationship between the public authority i.e. Service Commission and the Examiners is totally within fiduciary relationship. The Commission has reposed trust on the examiners that they will check the exam papers with utmost care, honesty and impartially and, similarly, the Examiners have faith that they will not be facing any unfortunate consequences for doing their job properly. If we allow disclosing name of the examiners in every exam, the unsuccessful candidates may try to take revenge from the examiners for doing their job properly. This may, further, create a situation where the potential candidates in the next similar exam, especially in the same state or in the same level will try to contact the disclosed examiners for any potential gain by illegal means in the potential exam.”*

As can be seen, the above referred judgment is related to clause (e) of section 8(1) and not to clause (i) thereto and hence not applicable in present case. The appellant also cited the judgment of Madras High Court dated 12-07-2011 in case **V. Madav VS Tamil Nadu Information Commission**. In the said case, the appellant had sought information regarding property statements submitted by ten IAS officers. The request was rejected by PIO on the ground that the information sought was exempted under section 8(1)(j) of the Central RTI Act. In appeal, the State Information Commission held that the asset

details of public servants are personal information and since there was no public interest cause established, the information need not be disclosed. The petitioner challenged the decision of SIC before the Hon'ble High Court of Madras which in its judgment dated 12-07-2011 rejected the contention that the assets details are held by the Government and cannot be made available to the appellant as untenable and directed that the relief sought for in the writ appeal must be considered.

However, the judgment of Madras High Court in **V. Madav** case dated 12-07-2011 referred to above was disregarded by the **Tamil Nadu State Information Commission** in case No. 9738/ SCIC/2013 decided on 19-07-2013 titled **Thiru C. Jayaaseelan VS. PIO Directorate of Sericulture, Anaimedu Salem**. In the said case, the appellant had sought for details of an individual working in the Department of Sericulture including property statement, show cause notices, if any issued, enquiry, if any, etc. The public authority declined to furnish information relating to the assets details, enquiries pending. The appellant insisted that this information shall be ordered to be given. He cited the case decided by Hon'ble High Court of Madras in **V. Madav VS The Tamil Nadu Information Commission (W.A. No.551/2010 dt.12-07-2011)**. The State Information Commission held as under:-

*“The Public Authority is right in having taken a decision under Section 11 (1) of the R.T.I. Act, 2005, and having stated that since the third party had objected to parting with such personal information appears to have weighed the pros and cons of furnishing of such information to the appellant in the context of such a reply. As per Section 8 (1) (j) personal information could be furnished only when the public interest is overwhelming and the Public Authority could in that case take a decision to part with the personal information. It is not as though it is a matter of right for any individual to seek the*

*personal details of any and every public servant. This has been clearly laid down by the Hon'ble Supreme Court in **Girish Ramachandra case** (SLP (Civil) No.27734/2012) cited supra. The Supreme Court also, in **R.K. Jain VS. Union of India & Anr.** (Civil Appeal No. of 2013 arising out of SLP (C) No.22609 of 2012 dt. APRIL 16, 2013) has held that disciplinary action details are a matter between the employer and employee and normally those aspects are governed by the service rules which fall under the expression 'personal information', the disclosure of which has no relationship to any public activity or public interest and hence would not fall within the ambit of information in public domain and therefore such information need not be furnished as a matter of right."*

The Tamil Nadu State Information Commission accordingly upheld the stand taken by the public authority in not disclosing the information and dismissed the appeal.

The Hon'ble Supreme Court of India in case **Girish Ramchandra Deshpande Vs Central Information Commissioner and others** (Special Leave Petition Civil No. 27734 of 2012) was confronted with the question whether the Central Information Commission was right in denying information regarding the third respondent's personal matters pertaining to his service career and also denying the details of his assets and liabilities, movable and immovable properties on the ground that the information sought for was qualified to be personal information as defined in clause (j) of Section 8(1) of the RTI Act. The petitioner therein had sought various details relating to third respondent, who was employed as an Enforcement Officer in Sub-Regional Office, Akola. The Regional Provident Fund Commissioner, Nagpur furnished some information but denied the information to queries relating to enquiries pending/ initiated against the third respondent and his property details on the

ground that the same is personal information of the third party and has no relation to the public interest, hence exempted under section 8(1)(j) of the RTI Act. Aggrieved by the said order, the petitioner approached the Central Information Commission. The CIC passed the order on 18.6.2009, the operative portion of the order reads as under:

*“The question for consideration is whether the aforesaid information sought by the Appellant can be treated as ‘personal information’ as defined in clause (j) of Section 8(1) of the RTI Act. It may be pertinent to mention that this issue came up before the Full Bench of the Commission in Appeal No.CIC/AT/A/2008/000628 (Milap Choraria v. Central Board of Direct Taxes) and the Commission vide its decision dated 15.6.2009 held that the Income Tax return have been rightly held to be personal information exempted from disclosure under clause (j) of Section 8(1) of the RTI Act by the CPIO and the Appellate Authority, and the appellant herein has not been able to establish that a larger public interest would be served by disclosure of this information. This logic would hold good as far as the ITRs of Shri Lute are concerned. I would like to further observe that the information which has been denied to the appellant essentially falls in two parts – (i) relating to the personal matters pertaining to his services career; and (ii) Shri Lute’s assets & liabilities, movable and immovable properties and other financial aspects. I have no hesitation in holding that this information also qualifies to be the ‘personal information’ as defined in clause (j) of Section 8(1) of the RTI Act and the appellant has not been able to convince the Commission that disclosure thereof is in larger public interest.”*

The CIC, after holding so directed the second respondent to disclose the information regarding posting details only and furnish only copies of the posting orders to the appellant. Further, it was held that the information sought for with regard to the other queries did not qualify for disclosure as the petitioner has not made a bona fide public interest in seeking information, the disclosure of such information would cause unwarranted invasion of privacy of the individual under Section 8(1)(j) of the RTI Act. The challenge to this order of CIC landed in the **Hon'ble Supreme Court**, which vide its judgment dated October 3, 2012 dismissed the appeal while upholding the order of CIC on the ground that the petitioner has not succeeded in establishing that the information sought for is for the larger public interest.

That being so, the appellant in the present case was specifically asked to demonstrate how it would be in the public interest to disclose the information relating to property returns filed by the third party in this case and information relating to action taken by the public authority against him for not submitting the property statements in time. He has failed to show any public interest, much less a larger public interest, in disclosure of such information. His only contention was that the third party has violated service rules and the law relating to declaration of assets by public servants by not submitting annual property details and is thus liable to action as warranted under law/rules. As held by the Hon'ble Supreme Court in **R.K. Jain VS Union of India**, cited above, and other cases as well that service matters and disciplinary action details are a matter between the employer and employee and normally those aspects are governed by the service rules which fall under the expression 'personal information', the disclosure of which has no relationship to any public activity or public interest and hence would not fall within the ambit of information in public domain and therefore such information need not be furnished as a matter of right. In the reply to earlier RTI applications made by

the appellant on the same subject, the PIO has informed the appellant that the property statements of the third party are not available in the office of public authority. Why are such details not available in the office or to be precise, why the third party has not filed the annual property statements as required under law/rules and also what action has been taken or why action has not been taken by the public authority for not filing such returns is something between the public authority and the third party, being its employee. Those aspects are governed by service rules and do not fall within the ambit of RTI Act. The appellant can seek remedies under appropriate law from appropriate forum. In fact, the appellant has already filed a complaint before the State Vigilance Commission alleging that the third party has not filed property statements right from his joining the Government service and that no action has been taken against him by the Department for violating rules in that regard. The Commission has taken cognizance of the same and directed the Superintending Engineer, PHE Division, Jammu to conduct enquiry into the allegations leveled by the appellant and submit a report to the Commission by or before 15-03-2018. On the one hand the appellant alleges in the complaint before the SVC that the third party has not filed his property details ever since his initial appointment but on the other he seeks copies of the same from the PIO.

The RTI application, which culminated in this appeal, is the seventh such application made by the appellant seeking the same information from the PIO. The reply to the earlier six RTI applications was given by the PIO. The repeated RTI applications by the appellant seeking same information about the third party only gives credence to the assertion of the third party that the appellant nurses a grudge against him and misuses the RTI mechanism to settle his personal problems with the third party. The documents and copies of police complaints lodged by the third party and his family against the alleged harassment and threats executed by the appellant also point out to personal

animosity between the appellant and the third party.

The Central Information Commission in case **Rmesh Chand Jain VS Delhi Transport Corporation GNCTD, Delhi** (File No. CIC/AD/A/2013/001326-SA) decided on 23-06-2014 held as under:-

*“Though RTI Act, did not specifically provide for filing of multiple RTI applications as a ground of refusing the information, it is implied from the various provisions of RTI Act, that any citizen has right to information only once and not repeatedly. The Commission also held that once information is given, applicant shall not seek the same once again. If the applicant seeks information again and again, the PIO, the First Appellate Authority and the Commission would be forced to spend their time on this repeated application, and in the process the authorities would lose that much time to address the other RTI applications or performing their general duties in their public office. Repeated RTI applications amount to clogging the office of public authority and CPIO would be right in refusing the same with intimation. Because the repeated RTI application has an effect of clogging the public offices, it would amount to obstructing the free flow of information to deserving and genuine RTI applicants, besides preventing the officers from performing their general duties attached to their office. The CIC accordingly held that such repetition shall be considered as ground of refusal under the RTI Act”.*

Again, the **Central Information Commission** while dealing with a case of repeated RTI applications in case titled **Shweta Saini v. PIO, Dayalbadh Educational Institute**, decided on 28-11-2016, held as under:-

*“The Commission observes that such deliberate misuse of RTI Act*

*should not be allowed and such situation need to be suitably dealt with to secure the faith of the public in the RTI Act and remove obstruction in functioning of public authority. If this kind of misuse is not checked, officers will be susceptible and prevented from performing their normal duty. Such a situation will lead to chaos in government administration.”*

Viewing the present appeal in the light of Court judgments and orders of Central Information Commission and State Commissions referred herein before, and the arguments made, and documents submitted by the parties including the third party who was given an opportunity of being heard by the Commission, the appellant has failed to demonstrate what larger public interest would be served by disclosing the personal information related to third party by the public authority, if at all the said information is available with the public authority. In fact the appellant has himself disputed the availability of property details of the third party with the PIO by alleging in the complaint filed before State Vigilance Commission that the third party has not filed the same since his initial appointment. The issue of taking action by the public authority against the third party for not filing the property statements is a service matter between the public authority and the third party and out of ambit of the RTI Act. On the other hand, the attempt on the part of the appellant of using, rather abusing, the RTI mechanism by filing repeated applications seeking same information to settle his personal dispute with the third party is quite apparent and obvious.

It is the duty of the State Information Commission to ensure that the provisions of the Right to Information Act are not misused or abused by elements who file multiple RTI applications with the sole aim to harass the public authorities or with the intention to settle personal scores with people whose information is sought. The Commission is also under a duty to discourage and prevent persons from abusing the legal process under the Act if

it is convinced that multiple applications seeking information have not been filed for a public purpose and in the larger public interest. The Commission would not like itself to be activated at the instance of such information seekers and would do well to reject an appeal or complaint at the very threshold if it feels that such appeal or complaint aims at personal vendetta or has been filed with some oblique consideration other than public interest. For the reasons stated above, the appeal cannot be allowed and is accordingly rejected.

-Sd-

(Mohammad Ashraf Mir)  
State Information Commissioner.