



Jammu and Kashmir State Information Commission

(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/15/2017

Decision No. SIC/J/A/15/2017/**159**

Final Order:

Appellant : Sh. Avinash Razdan,
R/o 783- Subash Nagar, Jammu.

Respondent : FAA/PIO, Police Department.

Date of Registration : 20.10.2017

Date of decision : **15-02-2018.**

Decision : Appeal disposed of.

Brief Facts:

The appellant has filed RTI application dated 15-11-2016 before the Public Information Officer (PIO)/Dy. SP, Head Quarters, Jammu, seeking information on 37 points, in respect of various courts in Jammu District including courts of CJM, City Judge, Sub Judge, 3rd Additional Munsif, Sub-Registrar, Jammu and Court of Munsif Akhnoor. The information sought about these courts included the number of summons cases fixed for hearing in these cases in each month from January 2015 to September 2016, total number of Prosecution witnesses called, number of witnesses appeared for examination, number of witnesses re-examined, copies of all

the applications filed by Prosecution in such cases, Prayer made in these applications, copies of applications filed by Prosecution for re-examination of witnesses, copies of applications not allowed by the courts, number of appeals and revision petitions filed by the prosecution to challenge the order of such courts in respect of not allowing applications, number of summons issued to witnesses for recording statements, number of summon cases in which process was issued by the courts, total number of warrant cases fixed for hearing from January 2015 to 30th September 2016, total number of witnesses summoned and witnesses examined, re-examined of further examined, copies of applications made by the application allowed by courts and those not allowed, number of appeals and revision petitions filed for not allowing applications in warrant cases, record of summons and number of warrant cases where process was issued by the courts etc.

The PIO vide his reply dated 14-12-2016 responded to the appellant by providing information obtained from the Chief Prosecuting Officer, Saddar Court Jammu. On being not satisfied with the reply of the PIO, the appellant filed 1st appeal on 28-12-2016 before the First Appellate Authority (FAA)/Superintendent of Police, Head Quarters, Jammu. The FAA disposed of the 1st appeal on 27-01-2017 by upholding the decision of the PIO. Aggrieved with the disposal by the FAA, the appellant came before the State Information Commission in 2nd appeal.

Proceedings before the State Information Commission(SIC):

The 2nd appeal came up for hearing for first time on 04-01-2018 The hearing was attended by Sh. Avinash Razdan (Appellant) whereas, and the PIO sought exemption from personal appearance in view of his pre-occupation with law and order duty. The hearing was accordingly adjourned.

The appeal was listed again for hearing on 17-01-2018 which was attended by Sh. Raj Paul Singh, PIO/Dy. SP Hqrs, Jammu, Sh. Arvind Manhas (PO) for CPO, Jammu and the appellant. The PIO informed the Commission that the information sought by the appellant is vague and the department does not maintain the information in the manner as sought by the appellant. The PIO further submitted that Prosecuting Officers/Sr. Prosecuting Officers submit monthly statements to PHQ, Home Department and other higher authorities giving details, court wise, of cases instituted and disposed of during the month, witnesses summoned, witnesses examined and warrants executed during the month etc. The PIO would have no objection in providing the said information to the appellant, if he be satisfied with the said information. The PIO also submitted that under the RTI Act, the PIO is supposed to provide information in the form and manner records are maintained in the office of the Public Authority. The applicant cannot seek information in the form or manner as he wants it as the PIO cannot re-build or re-construct the records in a particular form. However, the appellant stated that he has received the information from other Districts in the manner as sought by him through his RTI applications. The Commission accordingly directed the appellant to share the information he has received in respect of other district with the

PIO so that he can see if he could provide the information to the appellant in the same manner.

The 2nd appeal was again taken up for hearing on 15-02-2018. The hearing was attended by the appellant. The respondent did not attend. However, the PIO submitted communication No. 869-70 dated 15-02-2018 stating therein that the appellant was requested vide letter No. RTI/211/2017/808-09 dated 10-02-2018 to share the information received from other districts. But neither he furnished the same nor attended his office. The appellant on the other side submitted that he was arrested by the Police immediately after attending the last hearing and also did not receive any communication from the PIO.

Decision:

The applicant through his RTI application dated 15-11-2016 actually seeks information regarding the number of Summons and Warrant cases filed each month from January, 2015 to September 2016 in various subordinate courts of Jammu District, number of such cases disposed of, number of prosecution witnesses summoned and the number of such witnesses examined. However, he has spread his request for information in 37 points, most of which are repetitive and clothed in ambiguity and vagueness. The information provided to the appellant by the PIO gives detailed information about the cases instituted in these courts during the relevant period, the number of cases disposed of/ decided by the courts, number of prosecution witnesses summoned and the number of such witnesses examined by the courts. The said information substantively satisfies the request of the applicant. The only part of information which has not been provided in the reply of the PIO is the total number of

applications made by the prosecution in all these cases for summoning of witnesses for re-examination and further examination, number of such applications allowed and rejected by the courts and number of appeals/revision petitions filed against the court orders rejecting such applications. The PIO explained that the public authority maintains information about the number of cases instituted each month, number of cases disposed of by the courts, witnesses summoned, witnesses examined by the courts and the decisions challenged by the prosecution by way of filing appeals/revision petitions. A statement containing these details is being compiled and submitted to higher authorities every month. This information for the relevant period has already been furnished to the appellant. However, the information about applications made by the prosecution in criminal cases under trial in different courts for summoning of witnesses for re-examination, number of such applications allowed by the courts, applications rejected and appeals/ revisions filed against such rejection is not being maintained by the public authority and as such cannot be provided by the PIO. The PIO also contended that collecting of such information would require a huge exercise of examination and perusal of all criminal cases heard, disposed of or pending in various subordinate courts and doing so would disproportionately divert the resources of the public authority.

Insofar as the question of disclosing information that is not available with the public authority is concerned, the law is now well settled that the Right to Information Act does not enjoin a public authority to create, collect or collate information that is not available with it. There is no obligation on a public authority to process any information in order to create further information as is sought by an applicant. The **Supreme Court in case CBSE Vs. Aditya Bandhopadhyay** held as under:-

"At this juncture, it is necessary to clear some misconceptions about the RTI Act. The RTI Act provides access to all information that is available

and existing. This is clear from a combined reading of section 3 and the definitions of "information" and "right to information" under clauses (f) and (j) of Section 2 of the Act. If a public authority has any information in the form of data or analysed data, or abstracts, or statistics, an applicant may access such information, subject to the exemptions in Section 8 of the Act. But where the information sought is not a 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 regulations of the public authority, the Act does not cast an obligation upon the public authority, to collect or collate such non-available information and then furnish it to an applicant."

In aforementioned case, the **Apex Court** also made the following observations:-

"The nation does not want a scenario where 75% of the staff of public authorities spends 75% of their time in collecting and furnishing information to applicants instead of discharging their regular duties. The threat of penalties under the RTI Act and the pressure of the authorities under the RTI Act should not lead to employees of public authorities prioritizing information furnishing, at the cost of their normal and regular duties".

The matter has been further clarified by the **Division Bench of Hon'ble High Court of Delhi** in its decision dated 07/01/2016 in case **Registrar of Supreme Court of India vs Commodore Lokesh K Batra & Ors**. In the said case, the applicant had sought information from the Registrar of Hon'ble Supreme Court about the number of cases pending for judgments where arguments have been heard and judgments have been reserved with case number, case type, date when the case was first admitted and the date when Judgment was reserved. The CPIO rejected the application and informed respondent no.1 that the data is not maintained by the registry in the manner as sought for by him. The appeal filed by the applicant was allowed by the CIC which prompted the CPIO to challenge the decision of CIC before the Hon'ble High Court of Delhi. Though the learned Single Judge by judgment dated 03-08-2011 accepted the plea of

the writ petitioner/CPIO that the information cannot be collated and analyzed in the manner as sought by the respondent No.1 and that the Act does not enjoin a public authority to create, collect or collate information that is not available with it, however, it was observed that the said principle of law cannot be used to deny information that is available with a public authority but not in the form as is sought. The said conclusion of the learned Single Judge was assailed by the petitioner/ CPIO in appeal before the Division Bench of Delhi High Court contending inter alia that having found that the information is not maintained by CPIO in the manner sought for, the learned Single Judge was not justified in upholding the direction of CIC for compiling such information for disclosure to public in future. The **Division Bench** set aside the judgment of the single Judge and held as under:-

"On a combined reading of section 4(1)(a) and section 2(i), it appears to us that the requirement is only to maintain the records in a manner which facilitates the right to information under the Act. As already noticed above, "right to information" under section 2(j) means only the right to information which is held by any public authority. We do not find any other provision under the Act under which a direction can be issued to the public authority to collate the information in the manner in which it is sought by the applicant."

Following the Judgment of Hon'ble Supreme Court in Aditya Bandopadhyay case and also the Judgment of Division Bench of Delhi High Court, the **Central Information Commission** in its decision dated August 10, 2017 in Appeal No. CIC/RK/A/2016/000911/MP titled **Shri H. Tiwari v/s Airport Authority of India** held that that the CPIO, under the RTI Act, is required to furnish information/documents as available on record and is not supposed to collect and collate information in the manner in which it was sought by the appellant.

Applying the principal of law articulated and expressed by the Apex Court as well as the High Court and the CIC in above referred cases, this Commission cannot direct the public authority in the present appeal to collect or collate information which is not available to it in the manner as sought by the appellant and then furnish it to the appellant. The information as maintained by the public authority has been provided to the appellant by the PIO. That answers the substantial and essential part of information sought by the appellant. The information regarding the number of applications filed by the prosecution during the hearing of criminal cases and the number of such applications allowed by courts for summoning of witnesses for re-examination, further examination and making statements and the number of such application allowed by the courts is not being maintained by the public authority as it is not required to maintain such information in that manner. The appellant can deduce, infer and gather such details from the information already provided to him by the PIO by way details regarding prosecution witnesses summoned and witnesses examined by these courts. Allowing the request of the appellant for providing these details in the manner he has sought would require the public authority to undertake an enormous and expansive exercise of running through all the case files disposed of by, or pending in, different subordinate courts of Jammu District and collecting the information in the manner sought by the appellant. Such huge exercise would undoubtedly divert the resources of the public authority disproportionately and would thereby adversely affect the normal functioning of the public authority. Hence it would run counter to the objectives of the RTI Act to strike a fine balance between the right of an individual to get information and the larger public interest of efficient operations of public authorities and optimum use of limited fiscal resources. The contention of the appellant for information in the form and manner as sought by him cannot be accepted and the appeal filed by the appellant cannot, therefore, be allowed.

In the light of what has been observed above, the appeal is disposed of.

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(Mohammad Ashraf Mir),
State Information Commissioner,
J&K State Information Commission.
/imi/

No. SIC/J/A/15/2017

Dated: / /2018.

Copy to the:

- 1 Registrar, JKSIC for information.
- 2 First Appellate Authority (FAA) Sr. Superintendent of Police, Hqtrs, Jammu for information.
- 3 Public Information Officer (PIO), Dy. Superintendent of Police, Hqtrs, Jammu for information.
- 4 PS to SIC for information of HSIC.
- 5 Sh. Avinash Razdan, S/o Lt. Sh. Mohan Lal Razdan R/o 783-Subash Nagar, Jammu-180005.
- 6 Guard file.

(Baldev Raj)
Joint Registrar,
J&K State Information Commission.