



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/164/2017

Decision No. SIC/J/A/164/2017/**161**

Final Order:

Appellant : Sh. Atul Sudan,
R/o Opp. SBI Kabir Colony, Akhnoor, Jammu.

Respondent : FAA/PIO, Urban Local Bodies.

Date of Registration : 24.10.2017

Date of decision : **28-02-2018.**

Decision : Appeal disposed of.

Brief Facts:

Briefly, the facts of this case are that the appellant Sh. Atul Sudan, while exercising his right to information filed an RTI application with the Public Information Officer (PIO)/Accounts Officer, Municipal Committee, Akhnoor on 07-04-2017 seeking following information:

- a) Year wise details of various kinds of funds municipal committee got under various heads from year 2015 to 2017.
- b) The year wise detail of funds actually expended and activities undertaken during the aforesaid period.

- c) The year wise details of various kinds of repair, renovation works, white wash performed and amount spent on each (give information in complete break out).
- d) How many of above said works were done by tendering process and how many done by work orders with complete breakout of tendered and non-tendered works and who were the people to whom the works were allotted whether tendered or non-tendered.
- e) How much revenue was generated by the municipal committee Akhnoor from year 2015 to 2017?
- f) How much of the above said revenue has been utilized by the municipal committee till now.
- g) What kind of works has been done utilizing the above said fund with complete detail.
- h) Details of total number of daily wager or temporary employees engaged and on whose recommendation or order and their detail date of joining and qualification.

The applicant was not satisfied with the reply furnished by the PIO and hence he filed 1st appeal on 29-05-2017 with the First Appellate Authority (FAA). The FAA directed the PIO to provide complete information to the applicant. However, the PIO again furnished the same information.

Aggrieved with the said incomplete information the applicant filed this appeal before the State Information Commission (SIC).

Proceedings before the State Information Commission(SIC):

The case was listed for hearing on 09-01-2018. The hearing was attended by Ms. Manpreet Kaur Deputy Director/FAA, Urban Local Bodies, Mr. Gharu Ram, Executive Officer/PIO Municipal Corporation Akhnoor. The appellant did not appear. The PIO filed counter reply in the 2nd appeal and submitted that whatever information was available with his office has been provided to the appellant. The appeal was adjourned and the appellant was granted an opportunity to appear before the Commission on next date of hearing as it could not be ascertained whether the appellant is satisfied with the reply or not provided by the PIO.

The instant case again came up for hearing on 28-02-2017. The hearing was attended by the PIO, Urban Local Bodies Akhnoor. The appellant did not attend the hearing today also.

Decision:

The appellant did not present himself before the SIC on consecutive dates of hearings to put forth his case nor filed any written statement. His continued absence indicates that either he has got the information from the

PIO and is satisfied with the same or that he is not interested in pursuing his appeal any further before the SIC.

The appeal is accordingly disposed of without any further order or direction.

-sd-

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

No. SIC/J/A/164/2017

Dated: / /2018.

Copy to the:

- 1 Registrar, JKSIC for information.
- 2 First Appellate Authority (FAA) Director, Urban Local Bodies, Jammu for information.
- 3 Public Information Officer (PIO), Municipal Committee, Akhnoor for information.
- 4 PS to SIC for information of HSIC.
- 5 Sh. Atul Sudan, R/o Opp. SBI Kabir Colony, Akhnoor, Jammu.
- 6 Guard file.

(Baldev Raj)
Joint Registrar,
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File No. SIC/J/A/149/2017
Decision No. SIC/J/A/149/2017/

Final Order:

Appellant : Sh. Krishen Gopal Pandoh, S/o Sh. Amar Nath,
R/o H. No-109, Mast Garh, Jammu.

Respondent : FAA/PIO, Revenue Department.
Date of Registration : 07.11.2017
Date of decision : **02-03-2018.**
Decision : Appeal disposed of.

Brief Facts:

The present appeal has arisen out of RTI application filed by Sh.Krishen Gopal Pandoh with PIO (Tehsildar Marh), Jammu on 23-03-2017. Through the said RTI request, the applicant sought information on 27 points from the PIO. On failure of the PIO to provide the requisite information, the applicant filed 1st appeal on 11-05-2017 with Deputy Commissioner (DC), Jammu. The said appeal was transferred by DC, Jammu to SDM, Marh, being First Appellate Authority (FAA). However, the said appeal was not disposed of by the FAA within the statutory period. In the meantime the PIO furnished reply to the applicant on 13-06-2017. Feeling aggrieved for non disposal of appeal by FAA within statutory period and also incomplete information provided by the PIO, the applicant filed 2nd appeal before the State Information Commission (SIC) on 03-11-2017 which was received in the SIC on 07-11-2017.

Proceedings before the State Information Commission (SIC):

The appeal came up for hearing before the SIC on 10-01-2018. The FAA, PIO and the appellant were present during the hearing. After hearing the parties and going through the queries raised by the appellant in his RTI application, the SIC felt that various queries were in the nature of asking questions and seeking views of the PIO including legal opinion. The SIC accordingly pointed out to the appellant that under the RTI Act, he can only seek information that is available with the Public Authority and is held by it but he cannot seek answers to hypothetical questions, views, opinions or clarifications/justification from the Public Authority. The appellant fairly conceded that the information sought by him was voluminous and therefore, he is not now keen on seeking the whole information but only wants to know from the PIO the name and designation of the officers of Revenue Department who had changed the entries in the revenue records and included Ms. Anuradha D/o Hans Raj as a Co-Sharer in response to query No. xv, xvi and xvii of his RTI application. The SIC accordingly vide interim

direction dated 10-01-2018 directed the PIO to offer inspection of relevant records to the appellant and specifically provide information to him about names of officials who had allegedly included Ms. Anuradha as Co-Sharer.

The appeal again came up for hearing before the SIC on 15-02-2018. In pursuance of the directions of the SIC, the PIO submitted copies of information which was dispatched/sent to the appellant. A copy of said compiled information was handed over to the counsel of the appellant during the hearing. The counsel for the appellant requested that he be given some more time to go through the information so as to file his response on next date of hearing. Accordingly the hearing was adjourned.

The case again came up for hearing before the SIC today on 02-03-2018. FAA/SDM Marh, and PIO/Tehsildar Marh were present. Neither the appellant nor his counsel caused their appearance in-spite of notice issued to them. They have also not filed any rejoinder in response to the information handed over to counsel of the appellant during the last hearing. The respondents submitted that appellant did not choose to have inspection of records though the same was offered by the respondents in the light of the previous directions of the SIC.

Decision:

The failure to avail the opportunity of inspection and also the failure on the part of the appellant to file his rejoinder to the information furnished to him by the PIO coupled with his non appearance before the SIC during today's hearing indicates that the appellant is satisfied with the information handed over to him by the PIO during last hearing of the appeal and that he does not want to pursue the appeal any further.

The appeal is accordingly disposed of without any further order/directions.

-sd-

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

No. SIC/J/A/149/2017

Dated: / /2018.

Copy to the:

- 7 Registrar, JKSIC for information.
- 8 First Appellate Authority (FAA) Sub Divisional Magistrate, Marh for information.
- 9 Public Information Officer (PIO), Tehsildar, Marh for information.
- 10 PS to SIC for information of HSIC.
- 11 Sh. Krishen Gopal Pandoh, S/o Sh. Amar Nath R/o H.No-109, Mast Garh, Jammu.
- 12 Guard file.

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File No. SIC/J/A/141/2017
Decision No. SIC/J/A/141/2017/

Final Order:

Appellant : Sh. Bilal Ahmad, S/o Sh. Mohammad Rafiq,
R/o Samote, Tehsil Kotranka, District Rajouri.

Respondent : FAA/PIO, Rural Development Department.

Date of Registration : 06.11.2017

Date of decision : **05-03-2018.**

Decision : Appeal disposed of.

Brief Facts:

The applicant filed a RTI application on 10-07-2017 with Public Information Officer (PIO)/Assistant Commissioner Development (ACD), Rajouri requesting for information regarding list of Computer Assistants/GRS/Technical Assistants engaged in the District, the mode of selection for their selection, name

and designation of Appointing Authority, copies of Advertisement Notice, the copies of engagement orders and qualification of the candidates engaged, besides the list of non plan works approved in respect of Block Budhal and Kotranka for the year 2015-16 and 2016-17. Since no information was provided by the PIO within the specified period, the appellant filed 1st appeal with Director, Rural Development, Jammu on 08-09-2017. During the course of hearing of the 1st appeal, the PIO provided the information to the appellant and the appellant was not satisfied with the said information. The FAA/Director, RDD disposed of the 1st appeal on 23-09-2017 directing the PIO (ACD Rajouri) to provide complete information to the appellant within two days positively free of cost under proper receipt with a warning to the PIO to be careful in future while dealing the cases pertaining to J&K RTI Act, 2009. As no information was provided by the PIO to the appellant even after the direction from the FAA, the appellant filed this appeal before the State Information Commission (SIC).

Proceedings before the State Information Commission (SIC):

The appeal came up for hearing before the SIC on 16-01-2018. The appellant was not present on the date of hearing. The PIO submitted that complete information sought by the appellant has been provided to him on 28-09-2017, after the direction of FAA issued on 23-09-2017. The PIO also submitted that the appellant has acknowledged the receipt of the information. Since the appellant was not present, the case was adjourned with the directions to the appellant to file rejoinder in case he has received the information.

The case again came up for hearing before the SIC today on 05-03-2018. The appellant denied to have received any reply from the PIO after the direction of the FAA dated 23-09-2017. The appellant denied to have received any communication from the PIO dated 28-09-2017 and also informed the Commission that the signatures on the acknowledgement receipt provided by the PIO is not his signature. The PIO furnished a copy of the information to the appellant during the hearing.

Decision:

In terms of sub-section (2) of section 7 of the J&K RTI Act, if the information is not provided by the PIO to the appellant within the period specified in sub-section (1) of section 7, it has to be deemed that the PIO has refused the request for information. In the present case the PIO has not provided the information to the appellant within the period specified in section 7(1) of the J&K RTI Act and therefore, he is deemed to have denied the information in terms of section 7(2). For the said default, the PIO is liable to penalty under section 17 of the J&K RTI Act.

Since the statutory period of disposal of this appeal by the SIC is expiring on 05-03-2018, this appeal cannot be adjourned any further and has to be disposed of. Accordingly the appeal is disposed of with the direction to the Registry to initiate proceedings under section 17 of the J&K RTI Act against the PIO for not providing the information to the appellant within the specified period. The appellant shall go through the information furnished by the PIO today during the hearing of the appeal and in case he feels that the information so provided is incomplete, misleading or false, he shall be at liberty to file a complaint before the State Information commission under of section 15 of the J&K RTI Act, 2009.

-sd-

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

No. SIC/J/A/141/2017

Dated: / /2018.

Copy to the:

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- 2 First Appellate Authority (FAA) Joint Director, Rural Development Department, Jammu for information.
- 3 Public Information Officer (PIO), Assistant Commissioner Development, Rajouri for information.
- 4 PS to SIC for information of HSIC.
- 5 Sh. Bilal Ahmad, S/o Sh. Mohammad Rafiq R/o Samote Tehsil Kotranka, District Rajouri.
- 6 Guard file.

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File No. SIC/J/A/157/2017
Decision No. SIC/J/A/157/2017/

Final Order:

Appellant : Smt. Janko Devi, W/o Sh. Mohinder Lal,
R/o Shekhupur P.O Adkhar, Tehsil Bishnah,
District Jammu.
Respondent : FAA/PIO, Rural Development Department.
Date of Registration : 15.11.2017
Date of decision : **05-03-2018.**
Decision : Appeal disposed of.

Brief Facts:

The applicant vide his RTI application dated 10-06-2017 sought information from PIO, Directorate of Rural Development Department (RDD), Jammu with regard to 15 points relating to JKSRML. The Directorate of RDD, Jammu transferred this RTI application to Additional Mission Director, JKSRML in his capacity as PIO of the said organization. The Additional Mission director/PIO furnished the information to the appellant on 14-07-2017. Not satisfied with the information so provided by the PIO, the appellant filed 1st appeal with Director,

RDD, Jammu on 11-08-2017 on the ground that the public authority has failed to invoke the provisions of section 5(4) and 5(5) of the J&K RTI Act and also that the information furnished to the appellant was misleading. The Director, RDD, Jammu vide his communication dated 16-08-2017 informed the appellant to approach Mission Director, JKSRML, who is the First Appellate Authority in this matter as her RTI application was already transferred to Additional Mission Director (PIO). Feeling aggrieved by this communication from RDD, the appellant filed 2nd appeal before this Commission on the following grounds:-

1. That the PIO never sought the assistance from JKSRML to collect the requested information.
2. That JKSRML, Jammu was approached by the Director RDD, Jammu for furnishing requested information without any express law on the RTI.
3. That Additional Mission Director, JKSRML furnished information which does not bear the date.

Proceedings before the State Information Commission (SIC):

The appeal came up for hearing before the SIC on 10-01-2018. Since the FAA and PIO were not present during the hearing, the appeal was adjourned. The appeal again came up for hearing before the Commission on 15-02-2018. The parties were heard at length. The appellant submitted that the information provided by the PIO through his undated communication is incomplete in as such as the said reply does not inform about the amount provided by the Government to the JKSRML, though the amount spent has been indicated in response to query No. xiv of the RTI application. The registration number of JKSRML under the Societies Registration Act has also not been furnished. The case was

adjourned with the directions to the PIO of the O/O Director Rural Development Department, Jammu to be present on the next date of hearing. The PIO JKSRML was also directed to provide the information with regard to the amount given by Rural Development Department to the JKSRML and indicate the registration number of the Society to the appellant.

The case again came up for hearing before the Commission today on 05-03-2018. The appellant was not present during the hearing. However, the PIO (Additional Mission Director) of JKSRML and also the PIO of Directorate of Rural Development Department, Jammu were present. The respondents informed the Commission that JKSRML is a separate organization. Additional Mission Directors of Jammu and Srinagar are the PIOs of the organization in the respective Divisions, while as Mission Director, JKSRML is the First Appellate Authority. Therefore, the PIO of the Directorate of Rural Development Department had rightly transferred the RTI application of the appellant to the PIO of the JKSRML.

The assistance of any other officer is sought by the PIO under section 5(4) of the RTI Act only when public authority is the same and the information is available with an officer other than the PIO of the said authority. In case the public authority is different, section 6(3) of the RTI Act is applicable and the PIO is required to transfer the RTI application to the PIO of the concerned public authority. In the present case, JKSRML, being a separate organization, has its own PIO and the FAA and therefore the PIO of the Directorate of Rural Development Department was required to transfer the RTI application under

section 6(3) of the RTI Act to the PIO of JKSRML. The PIO of Directorate of RDD could not have invoked the provisions of section 5(4) and 5(5). Therefore, the contention of the appellant in the appeal that the PIO of Directorate of Rural Development Department should have sought assistance from JKSRML under section 5(4) in this case is misconceived and, therefore, rejected.

As regards the information provided by the PIO being un-dated, the said information is signed by the PIO with date as 12-07-2017. The PIO has also produced a photo copy of the postal receipt dated 14-07-2017 under which the said information was dispatched to the appellant. The PIO again sent a copy of the said information to the appellant on 01-09-2017. Hence the error on the part of the dispatch clerk in not mentioning the date on the communication is not material so long as the said communication bears the signature of the PIO with date. The challenge of the appellant on this ground to the information furnished by the PIO also does not sustain.

The appeal is accordingly disposed of with the observations made herein above. However, the PIO is directed to provide information to the appellant with respect to the amount of money provided to JKSRML by the Rural development Department/Government and also indicate the registration number under which JKSRML has been registered as a Society under the J&K Societies Registration

Act. The said information shall be provided to the appellant within a period of 15 days from the date of this order.

-sd-

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

No. SIC/J/A/157/2017

Dated: / /2018.

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- 2 First Appellate Authority (FAA) Director, Rural Development Department, Jammu for information.
- 3 Public Information Officer (PIO), O/o Director Rural Development Department, Jammu for information.
- 4 Public Information Officer (PIO)/Additional Mission Director, JKSRLM, Jammu for information and compliance.
- 5 PS to SIC for information of HSIC.
- 6 Smt. Janko Devi, W/o Sh. Mohinder Lal R/o Shekhupur, P.O Adlechar, Tehsil Bishnah, District Jammu..
- 7 Guard file.

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File No. SIC/J/A/15/2017
Decision No. SIC/J/A/15/2017/

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.

-sd-

(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, JKSIIC 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.



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/128/2017
Decision No. SIC/J/A/128/2017/

Final Order:

Appellant : Sh. Ram Lal, S/o Sh. Dev Raj,
R/o Chander Battan Dessa, District Doda.

Respondent : FAA/PIO, Rural Development Department (RDD).

Date of Registration : 01.11.2017

Date of decision : **28-02-2018.**

Decision : Appeal disposed of.

Brief Facts:

The applicant had filed RTI application with ACD, Doda for seeking details of works executed in Panchayat Gaie'B' from 2010 till date under MGNREGA, BRGF, CDF and other heads along with photocopies of job card holder. Photocopies of demand letters, bills and vouchers of material used was also sought by the applicant. Assistant Commissioner Development (ACD), Doda transferred the RTI application to PIO/BDO, Bhagwah on 02-06-2017. On 12-06-2017 the PIO asked the applicant to furnish proof of belonging to BPL category. On 14-07-2017 the PIO informed the applicant that the information sought by him was quite voluminous and as such, requested him to visit his office and inspect the same personally on 24-07-2017. The applicant filed 1st appeal before the First Appellate Authority (FAA), Director Rural Development Department, Jammu on 18-07-2017. The appeal was disposed of by the FAA with the directions to ACD, Doda to provide the requisite information to the applicant free of cost within one weeks time positively. The ACD, Doda vide his letter dated 28-08-2017 directed the PIO/BDO Bhagwah to provide the required information to the applicant within one weeks time. Finally, the applicant filed 2nd appeal before the State Information Commission (SIC).

Proceedings before the State Information Commission(SIC):

The case was listed for hearing on 17-01-2018. The PIO stated that he has provided part information containing list of works executed and list of job card holders to the applicant on 06-09-2017 and asked the applicant to attend his office for

inspection of the rest of the records. However, the applicant stated that he received the information on 11-11-2017 which is incomplete and is not satisfied with the information so provided to him by the PIO. The PIO failed to produce postal receipt of having sent the part information to the appellant on 06-09-2017 as claimed by him. The appeal was adjourned with the directions to the PIO to explain as to why he has not provided the requisite information to the appellant within specified time and was accordingly directed to show cause as to why penalty proceedings should not be initiated against him under section 17 of the Act and also allow the appellant to inspect the records so that he is in a position to access the rest of the information sought by him.

The instant case came up for hearing on 20-02-2018. The hearing was attended by Mr. Narayan Singh, AAO of the O/o PIO/BDO Bhagwah through video conferencing from NIC Doda on behalf of the PIO/BDO Bhagwah. The respondent stated that as per the directions of the Commission dated 17-01-2018, the appellant was informed by the PIO/BDO Bhagwah, vide communication dated 19-01-2018 to attend the office of PIO on 25-01-2018 to collect/inspect the requisite records as sought by him. The respondent further stated that the appellant did not attend the office. The appeal was adjourned and appellant was provided final/last opportunity to attend the Commission for hearing failing which it will be presumed that the appellant is not interested in pursuing appeal any further.

The appeal came up for final hearing on 28-02-2018. The hearing was attended by PIO/BDO Bhagwah. The appellant did not cause his appearance despite due notice. Therefore it is quite apparent that he is not interested to pursue the matter any further.

The PIO/BDO, Bhagwah filed his reply to the show cause notice issued by the Commission for not having provided the information to the appellant within the specified time. In his reply, the PIO submitted that the appellant had misdirected his RTI request dated 12-05-2017 to the O/o ACD, Doda. The ACD, Doda forwarded the RTI application of the applicant to the PIO on 02-06-2017 which was actually received by the PIO on 10-06-2017. Since the applicant had claimed to belong to BPL category, but had not attached any proof of being BPL with his RTI application, he was therefore asked by the PIO vide his communication dated 12-06-2017 to furnish the proof of being BPL so that information is provided to him free of cost. As the appellant failed to produce any document in support of his claim of belonging to BPL category, the PIO vide his communication dated 14-07-2017 asked the appellant to attend his office and inspect the record as the information sought pertain to six years and was thus voluminous. However, instead of attending the office of PIO for inspection of records, the appellant filed 1st appeal on 25-08-2017. The First Appellate Authority (FAA) disposed of the appeal on 28-08-2017 directing the PIO to provide information to the applicant. The said communication was received by the PIO on 02-09-2017. After receipt of such communication, part of the information sought by the applicant was provided to him on 06-09-2017 through registered post and with respect to the rest of the information sought by him, he was asked to clarify the period for which the information is required as his RTI application was salient about the period for which information in respect of point 2 and point 3 was sought by him. No response was received from the appellant in this regard.

Decision:

In pursuance of the direction of the State Information Commission dated 17-01-2018, the appellant was asked to attend the O/o PIO for verifying the records so that the information required by him after such inspection could be provided. However, the appellant did not attend his office for such inspection. Therefore, there was no willful or deliberate attempt by the PIO to withhold the information to the appellant.

The explanation given by the PIO/BDO Bhagwah, has been accepted by the Commission and the Commission is satisfied that the delay in furnishing information to the appellant has occurred as a result of misdirecting of the RTI application of the appellant and the delay in providing information on part of the PIO was not deliberate or intentional. However, keeping in view the purpose for which the Right to Information Act has been enacted by the State Legislature particularly the objective of ensuring transparency in administration, the PIO shall remain cautious in future and dispose of the RTI requests as expeditiously as possible but within 30 days in any case as specified in sub-section (1) of section 7 of the J&K RTI Act, 2009.

Since the appellant seems to be not interested in pursuing the appeal and has also failed to clarify the period for which the information was required by him with regard to point 2 and 3 of his RTI application in-spite of communication in that regard from the PIO, the appeal is disposed of without any further order or direction.

-sd-

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

No. SIC/J/A/128/2017

Dated: / /2018.

Copy to the:

- 1 Registrar, JKSIIC for information.
- 2 First Appellate Authority (FAA) Assistant Commissioner Development, RDD, Doda for information.
- 3 Public Information Officer (PIO), Block Development Officer, Bhagwah, Doda for information.
- 4 PS to SIC for information of HSIC.
- 5 Sh. Ram Lal, S/o Sh. Dev Raj, R/o Chander Bathon Dessa, Tehsil Bhagwah, District Doda.
- 6 Guard file.

(Baldev Raj)
Joint Registrar,

