



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/155/2017

Decision No. SIC/J/A/155/2017/**177**

**Land Mark
Decision**

Final Order:

Appellant : Sh. Mohammad Sharief, S/o Sh. Abdul Subhan,
R/o Chamoti, Drtabshalla, Kishtwar.

Respondent : FAA/PIO, Rural Development Department.

Date of Registration : 20-11-2017.

Date of decision : **16-03-2018.**

Decision : Appeal disposed of.

Brief Facts:

The present appeal has arisen out of RTI request filed by Mr. Mohammad Sharief on 29-06-2017 with Assistant Commissioner Development, Kishtwar seeking following information:

1. Furnish the name of work executed during year 2015-16, 2016-17 in Panchayat Chamoti along with names of material suppliers and photo copies of invoices, cheques issued; and
2. Names of job card holders, who are working in Panchayat Chamoti, Drabshalla.

The Assistant Commissioner Development (ACD), Kishtwar vide his order dated 28-06-2017 transferred the RTI application to the PIO/BDO, Drabshalla directing him to provide requisite information to the applicant directly. On failure of the PIO to furnish the information, the applicant filed 1st appeal before the First Appellate Authority (FAA) on 31-07-2017. The FAA disposed of the appeal vide order dated 05-08-2017 directing the PIO to provide the information to the appellant within a week's time, free of cost. However, the information was not provided to the appellant and he filed a 2nd appeal before the State Information Commission (SIC) on 19-08-2017 which was received on 22-08-2017. After making the appellant to remove the procedure deficiencies, the appeal was registered on 20-11-2017.

Proceeding/Decision:

The appeal came up for hearing before the State Information Commission (SIC) on 15-01-2018. The appellant was present in person while as nobody appeared for hearing on behalf of respondents. The PIO not only failed to provide the information to the appellant but also did not file any counter statement in the 2nd appeal resulting in the averments made by the appellant in his appeal having received unrebutted and unrefuted. The SIC accordingly, passed the following order on 15-01-2018:

"The State Information Commission is pained to note that the PIOs of Rural Development Department at District Level, particularly PIOs of the Kishtwar District do not take the RTI requests seriously and not only avoid providing the replies to the RTI applicants within the period specified in the RTI Act, but also not attending the hearings before the SIC when

appeals are filed. In a number of cases, it has also been observed by the Commission that the BDOs do not respond to FAAs or the Director, RDD when 1st appeals are filed by the RTI applicants. This attitude of the PIOs of RDD reflects the un-comfortability of these officers in sharing the information with the information seekers. It is not only unbecoming of a Public servant but also a failure on their part to deliver the statutory duties and responsibilities under the J&K RTI Act. A PIO represents the Public Authority. A Public Authority is equally under statutory duty to ensure that dissemination of information is facilitated so as to enable the information seekers to get access to the required information. Failure on the part of the PIO to provide information within the prescribed period is also a failure of the Public Authority to discharge its statutory duty. Therefore, the Directorate of Rural Development Department, Jammu would be better advised to train and sensitize its PIOs about their role and responsibilities under J&K RTI Act, 2009.

In the present case also, the appellant has sought information with regard to works executed during the year 2015-16 and 2016-17 in Panchayat Chomoti, Block Drabshalla vide his RTI dated 29-06-2017. On failure of the PIO (BDO, Drabshalla) to provide the requisite information, the appellant filed 1st appeal with ACD, Kishtwar. The order of FAA dated 05-08-2017 indicates that the PIO did not even bother to attend the hearing before the FAA, forcing the FAA to warn the PIO. In-spite of the directions of the FAA, no information was provided to the appellant by the PIO resulting in filing of 2nd appeal before the Commission by the appellant. The case was listed for hearing before the SIC on 15-01-2018. The PIO neither filed any counter statement to the 2nd appeal nor appeared before the Commission despite due notice. This attitude on the part of the PIO is highly undesirable, disagreeable and unacceptable”.

The copy of the order was directed by the SIC to be served on Director, Rural Development Department, Jammu, Deputy Commissioner, Kishtwar and Assistant Commissioner Development, Kishtwar with the sole aim of ensuring compliance of the orders of the SIC and provisions of the J&K RTI Act, by the PIOs of Rural Development Department as the SIC had a very bad experience with PIOs of the Public Authority.

The appeal again came up for hearing before the SIC on 16-03-2018. The appellant was present in person. True to his incongruity and trait, the PIO choose not to attend the hearing again and also not to file any counter statement before the SIC in response to the notice issued in the 2nd appeal. The disdain with which the PIO has treated the RTI request of the appellant and also the order of the SIC and the conduct which has been exhibited by the PIO in this case is not only a violation of the statutory provisions of the J&KRTI Act but also unbecoming of a Government servant much less of a PIO. It appears that the concerned PIO has either no regard for the directions of his superior officers or it could be a case where the public authority did not pay any heed to the advisory issued by the SIC for sensitizing his PIOs and making the present PIO comply with the provisions of the Act and the directions issued by the SIC. If such a behavior on the part of the PIOs continue and persists in the public authority, the public in general would lose the faith in the RTI law which was enacted with a sole aim of bringing transparency and accountability in governance. It is said that sunlight is the best disinfectant but the conduct of the PIOs of Rural Development Department particularly from Doda-Kishtwar Region, it appears that the PIOs of the public authority are allergic to sunlight and the sunshine law, as the RTI Act is often referred to. When a PIO denies information sought by the appellant, it raises a presumption and on interference that the said PIO has something to hide. This makes the mockery of transparency and accountability and indicates that the public authority is not at all comfortable with openness. The information sought by the appellant in

the present case should otherwise had been disclosed suo-motto by the public authority on its web-site in terms of section 4(1)(b) of the J&K RTI Act.

For denying the information to the appellant and also for not complying, the directions of SIC, the PIO is liable to penalties under section 17 of the J&K RTI Act. This is a fit case for invoking the provisions of section 17 of the Act and proceedings against the PIO by way of imposing penalty under Act for denying the information to the appellant and also for not complying with the directions of the SIC. Sub-section (2) of section 7 of the RTI Act provides that if the PIO fails to provide information to an applicant within a period specified in sub-section (1) of that that section, the PIO shall be deemed to have refused the request of the applicant. In the present case the PIO is deemed to have refused the request and denied the information to the applicant. The SIC accordingly decides to proceed against the PIO for imposition of penalty proceedings under section 17 of the J&K RTI Act.

The appellant in the present case was coming all the way from Drabshalla, Kishtwar to Jammu for attending the hearings of his appeal before the SIC. However, every time he had to return disappointed for want of presence of the PIO during the hearing. Therefore, he had to remain contended with adjournments only. He has invested lot of his time and energy and also incurred expenditure on account of his travel from Drabshalla to Jammu. In spite of ordeal and trauma, he has still not got the information he had sought from the PIO. Therefore, this is a fit case for according compensation in favour of the appellant in terms of clause (b) of sub-section (9) of section 16 of the J&K RTI Act, 2009.

Keeping in view the circumstances obtaining in the case, the SIC directs the public authority i.e Directorate of Rural Development Department, Jammu to pay sum of Rs 3000/- in favour of the appellant namely Sh. Mohammad

Shrief S/o Abdul Subhan R/o Chamoti Drabshalla, Kishtwar by way of compensation to compensate him for monetary loss suffered by him by way of expenditure on his travel to Jammu and boarding and lodging at Jammu in order to pursue his appeal and also for the trauma suffered by him at the hands of the PIO. The amount of compensation should be paid by the public authority (Directorate of Rural Development Authority) to the appellant within a period of one month from the date of receipt of this order and a compliance report in this regard shall be furnished by the public authority immediately after the expiry of one month.

The PIO/BDO, Drabshalla is directed to provide the requisite information to the appellant within a period of 15 days from today under an intimation to the SIC. Should the PIO fails to provide the information to the appellant within 15 days the appellant shall be at liberty to file complaint against the PIO under section 15 of the J&K RTI Act.

The Registry is also directed to initiate proceedings for imposition of penalty on PIO/BDO Drabshalla for refusing and denying the information to the appellant. A notice be accordingly issued to the PIO to show cause as to why the penalty shall not be imposed on him and he should be given an opportunity of personal hearing, if he so desires.

The appeal is disposed of with the above directions to the public authority, the PIO and to the Registry.

-sd-

(Mohammad Ashraf Mir),

No. SIC/J/A/160/2017

Dated: / /2018.

Copy to the:

- 1 First Appellate Authority (FAA) Director Rural Development Department, Jammu, for information and compliance.
- 2 Public Information Officer (PIO), Block Development Officer, Drabshalla for information and compliance.
- 3 Joint Director, Information Department, J&K Civil Secretariat, Jammu for its publication on all leading News Papers of J&K State.
- 4 PS to SIC for information of HSIC.
- 5 Extension Officer, J&K SIC, for putting the judgment as Land Mark Judgment on the official web-site of J&K State Information Commission.
- 6 Sh. Mohammad Sharief, S/o Sh. Abdul Subhan, R/o Chamoti, Drabshalla, Kishtwar for information.
- 7 Guard file.

(Sheikh Fayaz Ahamd)
Registrar,
J&K State Information Commission.