



Jammu and Kashmir State Information Commission

شہن یشن کمیت انفارمیر اسٹیٹنڈ کشمیر جموں ا
(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/C/10/2017

Decision No. SIC/J/C/10/2017/225

Final Order
(Complaint)

Complainant : Sh. Sudershan Singh.
Respondent : Public Information Officer (PIO)/Tehsildar,
Nagrota.
Date of Receipt : 20.10.2017.
Date of Decision : 12.04.2018.

Brief Facts:

This is a complaint filed under section 15 of the J&K RTI Act, 2009 (Act for short) by Sh. Sudershan Singh, S/o. Lt. Krishan Singh, R/o. House No. 1, Lane No. 1, Indira Colony, Jammu on 20.10.2017 interalia alleging that the PIO/Tehsildar, Nagrota did not provide any information within the statutory period of 30 days in response to his RTI application dated: 01.07.2017. He further alleged that inspite of the clear directions passed vide order dated: 15.09.2017 by the First Appellate Authority (FAA), the PIO has not provided the requisite information. That the PIO has unreasonably delayed the requisite information and is as such liable to be penalized also.

Proceedings:

In compliance to the notice of the Commission dated: 02.01.2018, the hearing on 08.01.2018 was attended by Sh. Yousuf Ali, Girdawar (O.Q), Nagrota representative of PIO/Tehsildar, Nagrota. Complainant didn't attend. The hearing was adjourned with the following directions:

***“The inquiry in this complaint is required to be conducted under section 15 (2) of the J&K RI Act, 2009 and since the complainant did not attend the hearing, it could not be ascertained whether the information reportedly despatched to the complainant is as per his RTI application. In case of complaint under the RTI Act, the onus on the SIC is not to provide information, but to take action against the delinquent PIO under Section 17, if it is proved that the Public Information Officer has, without any reasonable cause refused to receive an application for information or has not furnished information within the time specified under sub-section(1) of the Section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information.*”**

The inquiry under Section 15(2) could not proceed further due to absence of both the PIO and the complainant. The SIC has taken serious view of the absence/non-attendance of Revenue officials of the Jammu district. There has been no intimation about the reason for absence and non-attendance. The Girdawar who attended intimated that the PIO had gone to Dansal in connection with a Minister's visit. The conduct of the Tehsildar/PIO appears prima-facie contemptuous of the State Information Commission as laid down under the J&K RTI Act, 2009.

Therefore, the Registrar, SIC shall send a separate communication to the Divisional Commissioner, Jammu and Deputy Commissioner, Jammu bringing the matter to their notice and also to ensure the presence of FAAs and PIOs of the Revenue Department in future hearings of 2nd appeals and complaints in the State Information Commission.”

The complaint was again listed for hearing on 01.02.2018. The hearing was attended by PIO/Tehsildar, Nagrota and the counsel for the complainant.

The counsel for the complainant submitted that the PIO has not complied with the directions of the FAA issued on 15.09.2017 and therefore he should be penalized under section 17. The PIO/Tehsildar, Nagrota stated that available information had been provided to the complainant on 18.07.2017 and another set provided on 04.09.2017. He also stated that he could not attend the last hearing in the SIC as he had been deployed on Magistrate Duty by Deputy Commissioner, Jammu. The hearing was adjourned with the following directions:

“In terms of Section 15 (2), the Commission has to conduct enquiry as to why the information was not provided and whether the PIO or any other official has violated the provisions of the J&K RTI Act and the Rules and whether these acts of commission and omission of the PIO fall under the purview of Section 17 of J&K RTI Act, 2009.

The PIO shall therefore submit a written reply as to why the order of the First Appellate Authority/Additional DDC, Jammu issued on 15.09.2017 had not been

complied, as alleged by the complainant and if not complied, shall explain with reasons. The PIO agreed to submit a written reply/explanation and also assured to provide the requisite information before the next date of hearing since the appellant has denied to have received the information already sent.”

The complaint was again listed for hearing on 12.03.2018. The hearing was attended by the counsel for the complainant Sh. Vilakshana Singh, whereas, the PIO/Tehsildar, Nagrota failed to cause his presence before the Commission. The hearing was adjourned with the following directions:

“The absence of the PIO was viewed seriously. In the last order of this Commission dated: 01-02-2018, the PIO was directed to submit a written reply as to why the order of the Additional DC, Jammu/FAA dated: 15-09-2017 has not been complied with. Since the PIO has absented himself and also not provided any written statement, it is decided to go ahead with the inquiry under section 15 (2) of the J&K RTI ACT, 2009 and seek the presence of FAA/ Additional DC, Jammu, Tehsildar Nagrota, Naib Tehsildar of the area and Patwari concerned along with written statements by each of them as to why information sought for was not provided as alleged by the complainant/counsel for the complainant.”

Finally, the complaint came up for hearing today on 12.04.2018 at Srinagar office of the Commission. PIO/Sh. Amit Upadhyaya, Tehsildar, Nagrota, Sh. Farooq Anwar, Naib-Tehsildar, Nagrota, Sh. Mohd. Yousaf, Girdawar office Quango and Sh. Raiz Ahmed, Patwari were heard through

Video Conferencing from Jammu office of the Commission. Neither the complainant nor his counsel attended the hearing.

Decision:

The present PIO/Tehsildar, Nagrota filed reply dated: 12.04.2018 intimating that information has been provided to the complainant (the then RTI applicant). However, there is no mention of reasons for having not provided the information since the date of the order of the FAA i.e. 15.09.2017 which query or which explanation had been sought by the Commission in its interim order dated: 01.02.2018 and also in its order dated: 12.03.2018. The operative part of the Interim Order dated: 01.02.2018 reads as under:

"In terms of Section 15 (2), the Commission has to conduct enquiry as to why the information was not provided and whether the PIO or any other official has violated the provisions of the J&K RTI Act and the Rules and whether these acts of commission and omission of the PIO fall under the purview of Section 17 of J&K RTI Act, 2009.

In the interim order dated: 12.03.2018, following directions were issued:

"The absence of the PIO was viewed seriously. In the last order of this Commission dated: 01-02-2018, the PIO was directed to submit a written reply as to why the order of the Additional DC, Jammu/FAA dated: 15-09-2017 has not been complied with. Since the PIO has absented himself and also not provided any written statement, it is decided to go ahead with the inquiry under section 15 (2) of the J&K RTI ACT, 2009 and seek the presence of FAA/ Additional DC, Jammu, Tehsildar Nagrota, Naib Tehsildar

of the area and Patwari concerned along with written statements by each of them as to why information sought for was not provided as alleged by the complainant/counsel for the complainant."

Now in the reply submitted today, no reasons have been given for non-provision of information since 15.09.2017. Although there is one page information dated: 04.09.2017 signed by the Naib Tehsildar, Nagrota which, however, does not constitute a reply by the PIO in terms of directions of the FAA dated: 15.09.2017. There is also no proof in the file that this information dated: 04.09.2017 was actually sent and delivered to the complainant. The then PIO/Tehsildar, Nagrota is liable for imposition of penalty under section 17 on the grounds of non-furnishing of information within the time specified under sub-section 1 of section 7 and for providing incomplete information.

The then PIO/Tehsildar, Nagrota Sh. Rajesh Kumar Thakur at present Tehsildar, Thakrakot, in terms of proviso to section 17, shall now give reasons as to why penalty may not be imposed upon him for the reasons stated above.

Registry will fix the date of hearing in the penalty proceedings in the month of May, 2018 and also inform the then PIO on his present place of posting which is Tehsil Thakrakot, District Reasi.

With these directions the complaint is disposed of.

Copy of this decision be given free of cost to the parties.

Sd/-

(Khurshid A. Ganai)

Chief Information Commissioner
J&K State Information Commission

(P.A. Ajay)

No: SIC/J/C/10/2017_____

Copy to:

Dated:

1. PIO/Tehsildar, Nagrota for information.
2. The then PIO Sh. Rajesh Kumar Thakur at present Tehsildar, Thakrakot for compliance.
3. Private Secretary to CIC for information of the HCIC.
4. Complainant/Sh. Sudershan Singh, S/o. Lt. Krishan Singh, R/o. House No. 1, Lane No. 1, Indira Colony, Jammu for information.
5. Office file.

(Sheikh Fayaz Ahmed)
Registrar
J&K State Information Commission