



Jammu and Kashmir State Information Commission

شنیشن کمیٹ انفارمیری اسٹیٹسٹ کشمیری 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**

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File No. SIC.CO.SA.551-2018

Decision No. SIC.CO.SA.551-2018/1116

Final Order

(Second Appeal)

- Appellant** : Lt. Col. Bhaskar Chander (Retd.)
- Respondents** : First Appellate Authority (FAA) /Public Information Officer (PIO) O/O, Registrar Cooperatives Societies, J&K, Jammu
- Date of registration** : 18-12-2017
- Date of decision** : 17-04-2018

Brief Facts:

Briefly the facts of this case are that the appellant filed RTI application with Additional Registrar Cooperatives Societies J&K, Jammu received on 21-11-2016 seeking the following information:

- (i) *A senior B J P Leader has used his influence and has illegally got House No. 115, Sector B allotted for himself. What action has been taken in cancellation of this illegal transfer (Photo copy of news paper report of Early Times Jammu dated 30th Jan, 2016 is attached for ready reference).*
- (ii) *As per Section 5(a)(ii) of the bye laws of the Sainik Co-Operative house building society Ltd Jammu only legal heir of a deceased members, as certified by the competent authority, and are residing in*

the house / plot allotted to the deceased member can be admitted as a member of Sainik Cooperative House Building Society Ltd Jammu. How many persons have been admitted as member by society, contrary to the above provision?

- (iii) *Intimate No. of plots illegally transferred to non-entitled persons (Contrary to section 5(a) of bye laws of the society) from 01-11-2015 till date.*

Deputy Registrar, Cooperative Society J&K vide his communication dated 16-01-2017 responded to the RTI application interalia stating that the Deputy Registrar Cooperative Society who was requested to furnish the information has stated that the concerned Cooperative Society is not a Public Authority within the ambit of the J&K RTI Act, 2009. However as per said communication information regarding action taken by the supervisory staff of the department was provided to the appellant.

Aggrieved by the said reply the appellant filed the 1st Appeal on 23-01-2017 which was disposed of by the FAA / Additional Registrar Cooperative Societies Jammu on 13-03-2017. Interalia holding as under:

“Considering the above facts and the reply furnished by the (PIO) Deputy Registrar (Agri) Jammu, the Appeal is as such disposed of under the ambit of J&K RTI Act, 2009 as the authority is liable to provide only that information which a department is ought to maintain owing to his working parameters in pursuance of J&K RTI Act Secton(3).”

The disposal by the FAA did not satisfy the appellant as such he filed 2nd Appeal with the Commission which was finally admitted on 18-12-2017, interalia submitting that the reply of the FAA is not in accordance with the J&K Cooperative Societies Act which lays down that the Registrar Cooperative Societies is duty bound to comply with the obligations under the RTI Act and furnish information to the citizens as asked for.

Proceedings before the Commission:

This 2nd Appeal came up for hearing before the Commission on 29-01-2018. The hearing was attended by Sh. Tanveer Iqbal, Additional Registrar, Cooperative Societies, Jammu, Gh. Mohi ud-din Kulay, APIO in Registrar Cooperative Office and the appellant Retd. Lt. Col. Bhasker Chander. The appellant stated that the information provided by the PIO, Cooperative Societies Jammu to him is completely *irrelevant and* that the order of the FAA was also not in accordance with the *J&K Cooperative Societies Act*. He further stated that a plot of land referred to in his RTI application had been allegedly allotted in violation of Section 5(a)(ii) of the bye laws of the Sainik Cooperative Housing Building Society Ltd. Jammu. Respondents on the other hand submitted that Sainik Cooperative Society is not a Public Authority under the Act, however givable information has been provided to the appellant.

After hearing the parties, the case was *adjourned* with the directions to the PIO to clarify on the point regarding violation of Section 5(a)(ii) of the bye laws of the Sainik Cooperative Housing Building Society Ltd. Jammu and also Para/point (III) of the basic RTI application which relates to number of plots illegally transferred to the non-entitled persons. The appellant was also directed to file rejoinder to the counterstatement filed by the respondent.

The case again came up for hearing on 10-04-2018. The parties were heard through tele-conferencing from Jammu Office of SIC. The appellant stated that he has filed the rejoinder with copy to the respondents. However the hearing was adjourned due to the fact that video conferencing did not operate.

The 2nd Appeal was taken up for final hearing before the Commission on 17-04-2018 at SIC's Jammu Office. The hearing was attended by Sh. Tanveer Iqbal Additional Registrar cum FAA, Sh. Gh. Mohi ud-din Kulay, Asstt Registrar /PIO (Hqrs) and Mr. Naresh Kumar Sharma, Deputy Registrar / PIO, cooperative Societies J&K Jammu. The appellant was represented by Retd. Col. V.S. Mangotra. During the hearing, the representative of the appellant stated that the appellant has not been provided the complete information as sought for by

him through his basic RTI application. He submitted that Registrar, Cooperative Society is a Public Authority under the RTI Act, as such he is duty bound to furnish the information sought by the appellant through his basic RTI application.

Respondents on the other hand contended that available information stands provided to the appellant. Further they took the same stand that Sainik Cooperative Housing Building Ltd. Jammu is not a Public Authority under the Act.

Both the parties were heard and record was also perused.

Decision:

After having heard the parties and in the light of the facts of the case, the Commission observes that though the Sainik Cooperative House Building Ltd Society has not been conclusively proved to be a "Public Authority" in terms of Section 2(f) of the J&K RTI Act, 2009, as nothing has been put on record by the appellant showing that the said society is either substantially financed by the Government or is under its deep and pervasive control or is a creation of law to bring it within the connotation of word "Public Authority" under the J&K RTI Act, however it is still amenable to the RTI Act through the Registrar, J&K Cooperative Societies, who under the provisions of the J&K Cooperative Societies Act, 1989 has ample powers to obtain the information from the society. The Hon'ble Apex Court has in *Thallappalam Ser. Coop. Bank v/s State of Kerala & ors* (2013) held that Registrar of the Cooperative Societies functioning under the Cooperative Societies Act is a "Public Authority" within the meaning of Section 2(f) of the Act. As a Public Authority, Registrar Societies has been conferred with lot of statutory powers under the Cooperative Act. Therefore he is duty bound to comply with the obligations under the RTI Act and provide information which he is entitled to access and obtain as Registrar, to the seekers of information. Registrar can to that extent, seek and collect information from the society on which he has supervisory or administrative control under the J&K Cooperative Societies Act. The Commission has followed

the same principle of law in similarly situated cases in the past as well by directing the Registrar Cooperative Societies to furnish the information to the information seeker which he can seek and collect from the Cooperative Societies under law as per Section 2(d) of the J&K RTI Act, 2009. The word "information" under section 2(d) of the J&K RTI Act, 2009 includes the information relating to any private party which can be accessed by a Public Authority under any law for the time being in force. The Registrar Cooperative Societies J&K is therefore deemed to be holding such information in terms of Section 2(i) of the Act as he has access to such information under the J&K Cooperative Societies Act, 1989.

In view of the above, Registrar, J&K Cooperative Society is directed to consider the instant RTI Application for providing the balance information to the appellant which he is authorized to collect from the concerned Cooperative Society in terms of the J&K Cooperative Societies Act, 1989 within a period of 21 days from the date of receipt of this order under an intimation to the Commission. The Registrar Cooperative Societies is also advised to exercise effective and continued supervision over the society in terms of the powers vested in the Registrar under the J&K Cooperative Societies Act, 1989 to ensure prompt provision of information sought by the RTI applicants through future RTIs.

Appellant is free to approach the Commission in complaint in case of non implementation of the Commission directions.

With the above observations / directions this 2nd appeal is disposed of.
Copy of the order be given free of cost to the parties.

Sd/-
(Khurshid A. Ganai)
Chief Information Commissioner
J&K State Information Commission

File No: SIC.CO.SA.551-2017_____

Dated: - -2018

Copy to:

01. First Appellate Authority (FAA), O/O, Registrar J&K Cooperative Societies, Srinagar for information and necessary action.

02. Private Secretary to HCIC for information of the HCIC.
03. Appellant Lt Col Bhaskar Chander (retd.), House No. E-601 Sector E, Sainik Colony, Jammu, 180011 for information.
04. Office File.

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

Zahoor A. Bhat