



Jammu and Kashmir State Information Commission

جموں اینڈ کشمیر اسٹیٹ انفارمیشن کمیشن

(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/K/SA/20/2018

Decision No. SIC/K/SA/20/2018/25

Final Order **(2nd Appeal)**

- Appellant : Sh. Mushtaq Ahmad Shah.
- Respondents : First Appellate Authority (FAA)/Public Information Officer (PIO), Directorate of School Education, Kashmir, Srinagar.
- Date of Registration : 07.02.2018.
- Date of Decision : 22.05.2018.

Brief facts:

The appellant Sh. Mushtaq Ahmad Shah, S/o. Late Gh. Hassan Shah, R/o. Sonigam, Kulgam while exercising his right to information filed RTI application dated: 29.07.2017 (received on 04.08.2017) with the PIO, Directorate of School Education, Kashmir seeking the following information:

“SSRB order No. 409 DSEK of 1999 dated: 17.03.1999 (waiting list of same order No. is required) name/parentage/residence.”

Aggrieved by the non-response of the PIO, the applicant (now appellant) filed First Appeal dated: 16.12.2017 with the FAA,

Directorate of School Education, Kashmir. Reportedly, the FAA too did not provide him the requisite information. As a result the appellant approached the State Information Commission (SIC) by filing 2nd Appeal which was admitted on 07.02.2018.

Proceedings:

The statutory time period of sixty days in this 2nd appeal has expired on 08.04.2018 and accordingly the time period for disposal was further extended by another sixty days in terms of section 16 (11) of J&K RTI Act, 2009 to enable the SIC to conduct more hearings for judicious and appropriate disposal in the interest of the objectives of the J&K RTI Act, 2009.

This second appeal came up for hearing on 09.04.2018 at Srinagar. The hearing was attended by the appellant whereas the respondent PIO sought adjournment. The hearing was adjourned with the following directions:

“The information sought by the appellant/the then RTI applicant Sh. Mushtaq Ahmad Shah pertains to Order No. 409-DSEK of 1999 dated: 17.03.1999 purportedly issued on the basis of SSRB recommendations. Be that as it may, the PIO is directed to trace the requisitioned order copy from the available records in the Directorate of School Education, Kashmir and in other subordinate offices including the CEO’s office, Anantnag which was the original district for Kulgam/Sonigam and provide the same to the appellant within 21 days from the date of receipt of this order.”

The appeal again came up for hearing on 08.05.2018. Sh. Z.A. Banday, PIO, Directorate of School Education, Kashmir attended the

hearing, whereas the appellant was absent. In view of the disturbed situation in the valley the hearing was adjourned in order to provide the appellant an opportunity of being heard.

The appeal came up again for hearing today on 22.05.2018. Sh. Z.A. Bandy, PIO, Directorate of School Education, Kashmir and the appellant attended the hearing. The PIO stated that the information sought for is not available in the Directorate and a report from the Chief Education Officer, Anantnag has also been received which states *'that all records of establishment 1st and 2nd, accounts section, personal section, IMW, CEW, private school section, SSA and litigation section has sustained danger due to the floods of 2014 as all the sections as mentioned above were functional in the ground floor of the CEO office located in the DC Office complex buildings. A report to this effect stands diarised vide this P/S DDR No. 12 dated: 09.09.2014.'*

From the averments made by the PIO, it is clear that the record is neither available with the Public Authority i.e. Director, School Education, Kashmir nor with the Public Authorities under its jurisdiction and, therefore, the requisite information cannot be made available. The Hon'ble Supreme Court order in CBSE & Anr. v/s Aditya Bandopadhyay & ors (Civil Appeal No. 6454 of 2011) has held as under:

"...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 nonavailable information and then furnish it to an applicant....”

Decision/Directions:

Since the requisite record pertaining to the information sought for is not available and is reportedly damaged due to floods of September, 2014, no direction can be given to the public authority for provision of the said information on the grounds of non-availability of record. However, the appellant is free to file a fresh RTI application with the J&K SSRB who may be holding the relevant record and information thereof.

With these observations/directions the second appeal is disposed of.

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

Sd/-

(Khurshid A. Ganai)

Chief Information Commissioner

(P.A. Ajay)

No: SIC/K/SA/20/2018_____

Dated:

Copy to:

1. FAA, Directorate of School Education, Kashmir, Srinagar for information.
2. PIO/Sh. Z.A. Banday, Directorate of School Education, Kashmir, Srinagar for information.
3. Private Secretary to CIC for information of the HCIC.
4. Appellant/Sh. Mushtaq Ahmad Shah, S/o. Late Gh. Hassan Shah, R/o. Sonigam, Kulgam for information.
5. Office file.

(Sheikh Fayaz Ahmed)

Registrar

J&K State Information Commission