



## **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](http://www.jksic.nic.in)

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File No. SIC/K/SA/32/2018

Decision No. SIC/K/SA/32/2018/27

### **Final Order** **(2<sup>nd</sup> Appeal)**

- Appellants : Dr. Sheikh Gulam Rasool and ors.
- Respondents : First Appellate Authority (FAA)/  
Public Information Officer (PIO), District  
Jail, Baramulla.
- Date of Registration : 09.03.2018.
- Date of Decision : 23.05.2018.

### **Brief Facts:**

The appellants Dr. Sheikh Gulam Rasool and ors., C/o. J&K RTI Movement, Head Office Malik House Hyderpora Near Al-Amin Hospital, Airport Road Srinagar-190014 while exercising their right to information filed RTI application dated: 07.09.2017 with the PIO/Superintendent, District Jail, Baramulla. Subsequently, a First Appeal was also filed on 12.11.2017 and finally, a second appeal to the Commission was filed on 09.03.2018, in which the appellants had stated that they had not been provided the requisite information and that the respondents (FAA/PIO) may be directed to provide the certified copies of complete information. They had also prayed for taking appropriate action against the

respondents and imposition of penalty on the PIO under the provisions of the J&K RTI Act, 2009.

**Proceedings:**

The statutory time period of sixty days in this 2<sup>nd</sup> appeal has expired on 08.05.2018 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 before the State Information Commission (SIC) for the first time on 12.04.2018. The hearing was attended by the PIO/Sh. Harish Kotwal, Superintendent District Jail, Baramulla and the appellants/Dr. Sheikh Ghulam Rasool and Ms. Adeela Shah. The PIO stated that information had already been provided to the appellants vide his reference dated: 01.12.2017 and that he did it promptly after his joining as Jail Superintendent, Baramulla in late November, 2017 and before that the then PIO/Superintendent Jail, Baramulla had sent a reply dated: 23.09.2017. The appellant conceded to have received the information from the PIO. The PIO also submitted the counter reply in the Registry of this Commission on 11.04.2018, copy of which was provided to the appellants during the hearing who sought time to go through the same and file the rejoinder accordingly. Time as prayed for was granted. The hearing was accordingly adjourned.

The appeal came up again for final hearing today on 23.05.2018. However, neither the appellant nor the respondents were present. It was conceded by the appellant during the last hearing that he had received the full information. But the critical issue that came up during

the last hearing was the inaction by the FAA which resulted in second appeal and his non attendance in the hearings before the Commission. The said FAA has consistently absented himself from the hearings and has, therefore, violated the provisions of the J&K RTI Act, 2009 pertaining to second appeal under section 16. In addition the FAA who has been identified as DIG, Jails in the O/O DG, Prisons J&K has also been found to be in default for non performance of the functions of the FAA under section 16 of the Act, thereby violation of the J&K RTI Act, 2009.

**Decision:**

- 1. The J&K RTI Act, 2009 does not provide for imposition of penalty on the First Appellate Authority (FAA) unlike in respect of PIO who can be penalized under section 17 of the Act. Therefore, there is no alternative with the Commission but to make a reference to the Head of the Public Authority and Head of the Administrative Department in respect of the non-performing FAA. Accordingly, it is directed that the Registrar, J&KSIC shall send a reference to the DG, Prisons, J&K and Principal Secretary, Home Department, J&K in this regard with a copy to the Chief Secretary, J&K for information.**
- 2. Section 16 (9)(b) provides for payment of compensation to the appellant if it is found that there is a case for payment of such compensation.**

**It states as under:**

***“In its decision, the State Information Commission has the power to require the public authority to compensate for any loss or other detriment suffered.”***

**Non-disposal of First Appeal by the First Appellate Authority has compelled the appellant to file 2<sup>nd</sup> appeal before the State Information Commission. This has also been stated by the appellant in his second appeal. Filing of second appeal and the cost incurred thereof and of subsequent incurring of expenditure on transportation etc. in attending the hearings in the Commission plus loss of income due to time spent in pursuing the second appeal, the Commission is of the view that the appellants deserve to be compensated and accordingly in terms of powers vested in the SIC under section 16(9)(b), a lump sum amount of Rs. 3000/- (Rs. Three Thousand only) is awarded as compensation in favour of the appellants to be paid to them by the Public Authority i.e. O/O DG, Prisons, J&K.**

*With these observations and directions the 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/32/2018\_\_\_\_\_

Dated:

Copy to:

1. Chief Secretary, J&K State for information.
2. Principal Secretary, Home Department, J&K Civil Secretariat for information.
3. DG, Prisons, J&K for information and necessary action.
4. FAA/DIG, Jails for information and necessary action.

5. Public Information Officer/Superintendent District Jail, Baramulla for information.
6. Private Secretary to CIC for information of the HCIC.
7. Appellants/Dr. Sheikh Gulam Rasool and ors., C/o. J&K RTI Movement, Head Office Malik House Hyderpora Near Al-Amin Hospital, Airport Road Srinagar-190014 for information.
8. Office file.

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