



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/09/2018

Decision No. SIC/K/SA/09/2018/24

Appellant: Mr. Sami-Ullah S/O Mohd Ashraf
Shah R/O Largam, Shopian.

Respondents: 1. Asstt. Commissioner Development,
Shopian.
(First Appellate Authority)
2. Block Development Officer,
Shopian.
(Public Information Officer)

Date of Registration: 12-01-2018

Date of Decision : 11-05-2018

FINAL ORDER

This appeal has arisen out of RTI application dated 28-09-2017 filed by the appellant Mr. Sami-Ullah with Public Information Officer/ BDO, Shopian seeking the following information in respect of up gradation / blacktopping of road from the house of Manzoor Ahmad Bhat to the house of Ali Mohd Malik at Largam under DPC/NRE/7688-93 dated 29-12-2015 and ACDS/7688-93 dated 2-1-2016:-

1. Plan/Scheme under which the present work was executed;
2. Estimated amount of work;
3. Nomenclature of the work under which it was proposed;
4. Advertisement, if any and criteria of allotment; and
5. Name of the contractor, if any associated with the work.

As the PIO failed to provide the desired information to the appellant within the specified period of 30 days, the appellant filed a first appeal with First Appellate Authority/ACD, Shopian on 02-11-2017. Since the FAA did not dispose of the said appeal within the prescribed period, the appellant filed a second appeal before the State Information Commission on 11-12-2017, which was admitted by the Commission on 12-01-2018 after making the appellant to remove the procedural deficiencies.

Proceedings before the Commission:

The appeal came up for hearing before the Commission on 21-02-2018. The appellant Mr. Sami-Ullah was present during the hearing, while nobody appeared on behalf of the PIO and the FAA, despite notice. The appellant submitted that no information has been provided to him by the PO. The appellant submitted that the original proposal for construction of road as per approved plan was from the house of Manzoor Ahmad Bhat to the house of Ali Mohd Malik at Largam. However, the BDO executed the work/ construction of Road in the year 2016 from the house of Khurshid Ahmad Peer to the house of Sh Manzoor Ahmad Bhat. The appellant submitted that during the year 2017, the BDO again shown execution of the same work under a different nomenclature namely, construction of road at Largam, Pachayat Halqa Arhama Scheme under 14th Finance Commission for the financial year 2017-2018. The

work/road shown to have been executed in 2017 in the 14th FC is the same road constructed in 2016 under the nomenclature 'road from the house of Sh. Manzoor Ahmad Bhat to the house of Sh Ali Mohd Malik'. This way, the BDO has drawn government funds twice for construction of the same stretch of road.

Since, the PIO was not present to reply the queries of the appellant during the hearing, the hearing of the appeal was adjourned with a direction to the PIO to be present during the next hearing and also to explain why he did not provide the information to the appellant within the specified period.

The appeal again came up for hearing before the Commission on 26-03-2018. The appellant as well as the PIO/BDO, Shopian Mr. Riyaz Ahmad Shah was present during the hearing. The PIO submitted that he has recently joined as BDO, Shopian and, therefore, has no knowledge about the execution of this road twice. He, however, submitted that he would go through the records and thereafter respond to the allegation of execution of the same stretch of road twice, by the next date of hearing. The hearing of the appeal was accordingly adjourned and the PIO was directed to produce the records of the case by the next date of hearing and explain how the same road was shown to have been executed in 2016 as well as in 2017 under two different nomenclatures/schemes.

The appeal again came up for hearing on 08-05-2018. The appellant was present. However, the PIO was not present. On being contacted telephonically, the PIO informed that he had not received the notice of hearing. The hearing was accordingly adjourned and the PIO was informed on phone that the appeal would now be heard on 11-05-

2018 and he should ensure his presence on that date. The PIO assured that he would be present for hearing on 11-05-2018.

The appeal accordingly came up for hearing before the Commission on 11-05-2018. The appellant was present but the PIO again chose not to be present before the Commission for hearing. The appellant submitted that the PIO was deliberately avoiding to provide the information and to be present before the Commission for answering the queries as he has no answer to offer for showing one and the same stretch of road to have been executed twice under two different names/schemes. He further submitted that initially the then BDO wrongly executed the road in 2016 from the house of Khurshid Ahmad Peer instead of the house of Manzoor Ahmad Bhat as per approved plan and then again in 2017, he executed the same stretch of road under a different nomenclature under 14th FC. This way, the then BDO has drawn government funds twice for execution of the same road. Since, the PIO chose not to be present despite having been communicated the date of hearing on phone and despite his assurance of being present, the allegations of the appellant go rebutted and unchallenged. The only presumption that can be drawn by the Commission is that the allegations seem to be true and the PIO has no answer to such allegations.

The attitude of the then PIO/BDO, Shopian and the present PIO Mr. Riyaz Ahmad Shah in the present matter has been very incompatible and hostile. They are perhaps averse to transparency and accountability. They have not only denied the information to the appellant as sought by him but have also avoided to appear before the State Information Commission inspite of advance notice of hearings by the Commission. The PIO has also failed to submit any written statement rebutting the

allegations of wrong doing on their part in connection with the construction of road, the information about which was sought by the appellant. The failure of the PIO to deny the allegations leveled by the appellant only raise a presumption of such allegations being true. It is a serious matter that one and the same stretch of road is shown to have been executed twice under two different schemes by the BDO. By doing so, the concerned have swindled the government money and cheated the State exchequer. A thorough investigation is required to be conducted in this matter by the Directorate of Rural Development so that the wrong doers are made accountable and wrong done, if any, is rectified.

The Director, Rural Development, Kashmir, who is the public authority of the PIO at the Division level, is accordingly directed to get the matter enquired into through a fairly senior level officer as to what was the original approved plan about construction of road at Largam, how it was executed from the house of Khurshid Ahmad Peer instead of the house of Manzoor Ahmad Bhat in 2016 and how the same stretch of road was again shown to have been executed in 2017 under a different nomenclature 'construction of road at Largam, Pachayat Halqa Arhama Scheme 14th Finance Commission for the financial year 2017-18' and fix the responsibility of the officers involved. The Director, Rural Development shall file a report about the findings of such enquiry and the action taken before the State Information Commission within a period of 60 days from the date of receipt of this order.

Since the PIO has failed to provide information to the appellant within the specified period, a prima facie case of denial of information is made out against the then PIO and also the present PIO Mr. Riyaz Ahmad Shah, BDO Shopian. By denying the information to the appellant, the

then PIO and the present PIO have become subject to penalties under section 17 of the J&K RTI Act, 2009. The Commission accordingly initiates penalty proceedings against both the then PIO and the present PIO. The Registry of the Commission is directed to issue a notice to the then PIO/BDO Shopian, after ascertaining his name and present posting as well as the present PIO/BDO, Shopian Mr. Riyaz Ahmad Shah to show cause as to why penalties as prescribed under section 17 of the RTI Act shall not be imposed upon them for having denied the information to the appellant. Their written statement of defense, if any, should reach the Commission within a period of 20 days from the date of receipt of this order, failing which it shall be presumed by the Commission that they have nothing to say in their defense.

A copy of this order should be sent to the Director, Rural Development, Kashmir for information and necessary action.

Sd/-
(Mohammad Ashraf Mir)
State Information Commissioner

Copy to the:

1. FAA/Asst. Commissioner, Development, Shopian
2. PIO/BDO Shopian
3. Appellant—Sh. Sami-Ullah S/o M. Ashraf Shah R/o Largam Shopian

(Sheikh Fayaz Ahmad)
Registrar
J&K State Information Commission,
Srinagar