



## **Jammu and Kashmir State Information Commission**

(Constituted under the Right to Information Act, 2009)

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File No. SIC/J/A/232/2018

SIC/J/A/235/2018

Decision No. SIC/J/A/**232&235**/2018/196

### **Final Order:**

Appellant : Sh. Beer Singh, RTI Activist,  
R/O Ghantiwal District Udhampur.

Respondent : FAA/PIO, Education Department.

Registration : 20.02.2018

Date of decision : **12-04-2018.**

Decision : Appeal disposed of.

### **Brief Facts:**

(1) This Order disposes of two 2<sup>nd</sup> Appeals, Appeal No. 232 of 2017 and Appeal No. 235 of 2017, filed by Shri Beer Singh R/O Ghantwal, Chenani (Udhampur) against PIO/ Chief Education Officer, Udhampur and FAA/ Jt. Director SSA, Jammu. Appeal No. 232/2017 relates to RTI application by Shri Beer Singh on 17-04-2017 with PIO/ Chief Education Officer, Udhampur seeking the following information:-

1. component-wise and month-wise statement of receipts and expenditure of SSA funds of ZEO, Chenani w.e.f April 2003 to March 2007 as per enclosed format;

2. school-wise and month-wise statement of expenditure incurred on Mid-Day Meal Scheme of schools falling in Chenani Zone w.e.f April 2014 to March 2017 as per enclosed format;
3. list of Teachers/Masters of Zone Chenani who availed leave other than casual leave w.e.f April 2014 to March 2017 as per enclosed format;
4. statement of detailed expenditure of School Improvement Fund, Games Fund, M.B Fund, Red Cross Fund, Printing Fund in the office of ZEO Chenani w.e.f April 2014 to March 2017 as per enclosed format; and
5. School wise expenditure statements for preparing CDs of student data capture formats in 2016 in Chenani Zone as per enclosed format.

(2) On the failure of the PIO to provide information within the specified period, the applicant filed first appeal with FAA/Jt. Director, SSA, Jammu on 17-08-2017. The said appeal was disposed of by FAA on 09-09-2017 by directing the PIO to provide complete information to the appellant within a week's time. The appellant thereafter filed 2<sup>nd</sup> Appeal before the State Information Commissioner on the ground that the PIO has not provided any information to him even after the order of FAA.

(3) Appeal No. 235/2017 relates to RTI application filed by the appellant on 03-11-2017 seeking information from PIO/CEO, Udhampur with respect to name, parentage, designation, residence, date of birth, date of 1<sup>st</sup> appointment of ZEO, Udhampur (now ZEO, Chenani), date of his qualification, year of passing, roll number, dates of examination, the month-wise and year-wise leave account of ZEO since his appointment till 2017, nature of leave availed, no. of days he attended school, salary drawn by him, his ACRs, year-wise, his posting as ZEO, Chenani, tours/inspection conducted by him, name of the schools he visited, purpose of visit, name and

designation of officials accompanying him, list of duty slips issued by him to teachers, copy of arrival and departure registers during his period, etc.

(4) The PIO furnished the reply to the applicant on 23-11-2017 informing him that the information sought was not covered by RTI Act. However, feeling that the said reply of PIO amounted to denial of information, the applicant filed 1<sup>st</sup> appeal on 13-12-2017. The FAA disposed of the 1<sup>st</sup> appeal by order dated 06-01-2018 directing the PIO to provide remaining information to the appellant within a week's time. The appellant thereafter filed 2<sup>nd</sup> appeal before the SIC claiming that the PIO did not provide him the information.

### **Proceedings before the SIC and Decision:**

(5) Both these appeals came up for hearing before the State Information Commission on 15<sup>th</sup> March, 2018. In appeal No. 232/2017, the ZEO, Chenani submitted that he joined on 17-08-2017. As soon as he came to know about the RTI request being pending, he immediately started collecting information from different branches as the information sought by the appellant was huge and voluminous. The PIO submitted that the information sought by the appellant would be provided to him within a week's time. As regards Appeal No. 235/2017, the PIO submitted that the information sought by the appellant through RTI application dated 03-11-2017 about date of birth of ZEO, Udampur (now Chenani), his qualification, date of appointment, date of qualifying examination, roll number, year of passing, month-wise leave account, salary details, APRs etc. etc. was personal information and cannot be provided under RTI Act. After hearing both the parties, the Commission directed the PIO to provide the part of information to the appellant, which is givable and not exempted from disclosure under any of the clauses of section 8 of the RTI Act.

(6) These appeals again came up for hearing before the Commission on 12<sup>th</sup> April, 2018. The PIO produced the reply before the Commission in respect of RTI application dated 17-04-2017 consisting of more than 3000 pages for being handed over to the appellant. The Commission was pained to see such huge and voluminous

information having been sought by the appellant and provided by the Zonal Education Officer, free of cost. The District and Zonal Education Offices are the least funded organization in the State. Majority of Schools in the State, especially rural Schools are without basic amenities like drinking water facilities, electricity, toilets, electronic gadgets like computers, photocopiers etc. These Schools meet out routine expenditures from tuition, games and other fee collected from students. Likewise, the offices of ZEOs are also badly ill equipped with such facilities particularly computers and photocopiers. If such offices were asked to copy thousands of pages of information just to satisfy the demand of an RTI applicant, it would be too much of an asking. An applicant claiming to be an RTI activist cannot be allowed to play havoc with the meager and limited fiscal resources of educational institutions and education offices at Zone level. Since such offices have to take their entire record to a private photocopy shop for copying the documents for want of a photocopier in such offices, it also is highly detrimental to the safety and preservation of school records of such offices/institutions. The appellant in this case is a contractor by profession. See the information sought by way of RTI application dated 17-04-2017 ?. Month-wise and year-wise expenditure of SSA funds, School Improvement Fund, Games Fund, Red Cross Fund, Printing Fund of ZEO office, Chenani from 2014 to 2017. By another RTI application dated 03-11-2017, the appellant has sought personal details like educational qualification, date and year of passing of qualifying examination, leave details, APRs, posting details, tours conducted, arrival and departure registers etc. of ZEO, Udhampur (new Chenani). Though unfortunately there is no provision in the RTI Act to require an applicant to disclose the purpose of such information but the Commission could very well gather from the facts and circumstances of these two appeals that the sole objective of the appellant was to harass and intimidate the officers of Education Department particularly ZEO, Chenani. The appellant has not stopped at these two RTI applications only. The PIO informed the Commission during the hearing that the present appellant has filed many such applications in the recent past and has also filed two more RTI applications recently, which were shown by the

PIO to the Commission. In the new applications, the appellant has sought similar information which was sought through the present requests with the only difference that he has sought the information for ten years instead of four years in the present appeals. This is definitely abuse of RTI law by the appellant to settle his personal scores and vendetta with ZEO, Chenani.

(7) The Commission has been reminding the First Appellate Authorities consistently about their role and responsibilities under the Act. Appeal after appeal, the Commission has found that the FAAs pass a stereotype orders in 1<sup>st</sup> appeals simply directing the PIO to provide information to the appellant free of cost. They don't examine the contents of RTI requests, the information provided or not provided and the stand taken by PIOs and thereafter apply their mind in the given facts and circumstances of each appeal. They simply shrug off their responsibility by mechanically directing PIOs to provide information without returning a finding whether such information is givable or is exempted from disclosure. Had the FAA applied his mind while disposing of the 1<sup>st</sup> appeals in these cases, the fund-starved Zonal Education Office, Chenani would not have been made to copy more than three thousand pages of information for providing the same to the appellant free of cost. Instead of providing copies, the appellant could have at best been allowed to inspect the records in the office itself and thus preventing damage to school records as a result of taking such huge records outside office for copying besides huge expenditure on copying from open market.

(8) No right, be that a statutory right or a fundamental right, is absolute. There are reasonable restrictions attached to every statutory or fundamental right. Every right comes along with duties and responsibilities. A citizen cannot claim a right without caring about his duties and responsibilities towards the society or the State. Right to Information is also not absolute. That is why provisions like section 8, 9, 11 and 21 find place in the RTI Act. The preamble of the Act itself makes it clear that there is a necessity of harmonizing conflicting interests between the right of an individual to

seek access to information and the public interests including efficient operations of the public authorities, optimum use of limited fiscal resources and preservation of confidentiality of sensitive information. Sub-section (9) of section 7 of the Act also allows the public authorities to refuse information by way of providing records and documents and instead allow inspection of records to the applicants if they are satisfied that providing of records and documents would disproportionately divert the resources of the public authority or would be detrimental to the safety and preservation of records in question. In terms of section 2(i) of the RTI Act, the right to information includes the right to inspection of documents or records.

(9) In the landmark judgment in Central Board of Secondary Education Vs. Aditya Bandopadhyay, the Supreme Court of India held as under:-

***"The right to information is a cherished right. Information and right to information are intended to be formidable tools in the hands of responsible citizens to fight corruption and to bring in transparency and accountability. The provisions of RTI Act should be enforced strictly and all efforts should be made to bring to light the necessary information under clause (b) of section 4(1) of the Act which relates to securing transparency and accountability in the working of public authorities and in discouraging corruption. But in regard to other information, (that is information other than those enumerated in section 4(1)(b) and (c) of the Act), equal importance and emphasis are given to other public interests (like confidentiality of sensitive information, fidelity and fiduciary relationships, efficient operation of governments, etc.). Indiscriminate and impractical demands or directions under RTI Act for disclosure of all and sundry information (unrelated to transparency and accountability in the functioning of public authorities and eradication of***

***corruption) would be counter-productive as it will adversely affect the efficiency of the administration and result in the executive getting bogged down with the non-productive work of collecting and furnishing information. The Act should not be allowed to be misused or abused, to become a tool to obstruct the national development and integration, or to destroy the peace, tranquility and harmony among its citizens. Nor should it be converted into a tool of oppression or intimidation of honest officials striving to do their duty. The nation does not want a scenario where 75% of the staff of public authorities spends 75% of their time in collecting and furnishing information to applicants instead of discharging their regular duties. The threat of penalties under the RTI Act and the pressure of the authorities under the RTI Act should not lead to employees of a public authorities prioritizing 'information furnishing', at the cost of their normal and regular duties."***

(10) Since information has been given to the appellant in response to his RTI application dated 17-04-2017 comprising of more than 3000 pages, the Commission can only advise the PIO and the FAA to examine each RTI request on the touchstone of RTI Act and the law laid down by the Apex Court referred to in above in future particularly when lengthy and voluminous information is sought and take into account the limited fiscal resources especially of a Department like Education and also the safety and preservation of records.

(11) As far as RTI application dated 03-11-2017 is concerned, most of the information sought by the appellant related to personal information of ZEO or matters which were administrative in nature. The PIO had to satisfy himself that larger public interest justified the disclosure of the same. The PIO has furnished the information which was held by the public authority in respect of the concerned ZEO to the appellant which

included his name, designation, parentage, residence, date of birth, date of first appointment, qualification, date promotions as Master, I/C Headmaster and I/C ZEO. The disclosure of the rest of information pertaining to leave account, APRs, details of examinations passed, tour diaries etc. has not been agreed to by the concerned officer after the PIO sought his views. The PIO has not found the said disclosure to be in larger public interest particularly when the appellant has filed multiple RTI applications targeting the said ZEO. The appellant also failed to explain before the Commission as to what public interest would be served if the personal information of the concerned officer is disclosed.

(12) The issue of disclosure of the kind of information sought by the appellant in RTI application dated 03-11-2017 like APRs, leave availed, number of days office attended by ZEO, tours/inspections conducted by him, details of officials accompanying him, arrival and departure register etc. etc. is no more *res integra* and stands settled by two decisions of the Hon'ble Supreme Court in Girish Ramchandra Deshpandevs. Central Information Commissioner &Ors.,(2013) 1 SCC 212 and R.K. Jain vs. Union of India &Anr., (2013) 14 SCC 794. In Girish Ramchandra Deshpande's case, the Supreme Court held as under:-

***"The performance of an employee/officer in an organization is primarily a matter between the employee and the employer and normally those aspects are governed by the service rules which fall under the expression "personal information", the disclosure of which has no relationship to any public activity or public interest. On the other hand, the disclosure of which would cause unwarranted invasion of privacy of that individual. Of course, in a given case, if the Central Public Information Officer or the State Public Information Officer or the appellate authority is satisfied that the larger public interest justifies the disclosure of such information, appropriate orders could be passed but the petitioner cannot claim those details as a matter of right."***

(13) The Commission is, therefore, satisfied that whatever information could have been provided by the PIO to the appellant in his RTI application dated 03-11-2017 has been provided to him and the rest could not have been disclosed by the PIO in absence of existence of any larger public interest in the disclosure of such information.



(12) With the aforesaid observations, these two 2<sup>nd</sup> appeals are disposed of.

**-sd-**

(Mohammad Ashraf Mir),  
State Information Commissioner,  
J&K State Information Commission.

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No. SIC/J/A/**232&235**/2017

Dated: / /2018.

Copy to the:

- 1 First Appellate Authority (FAA) Joint Director (SSA), Jammu for information.
- 2 Public Information Officer (PIO), Chief Education Officer, Udhampur for information.
- 3 PS to SIC for information of HSIC.
- 4 Sh. Beer Singh, RTI Activist R/o Ghantwal, Tehsil Chenani, District Udhampur.
- 5 Guard file.

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