



Jammu and Kashmir State Information Commission
(Constituted under the Right to Information Act, 2009)
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Old Assembly Complex, Srinagar, 0194-2506660, 2506661
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File No. SIC/CO/SA/578/2018
Decision No. SIC/CO/SA/578/2018/**1127**

Final Order
(2nd Appeal)

Appellant : Sh. Ghulam Qadir Dar
R/O Panzan Chadoora, Distt. Budgam

Respondent : First Appellate Authority (FAA)/
Public Information Officer (PIO), O/O J&K
Projects Construction Corp. Ltd.

Date of Registration : 07.02.2018

Date of Decision : 06-06-2018

Brief Facts:

Briefly the facts of the case are that the appellant Sh. Ghulam Qadir Dar filed an RTI application dated 12.10.2017 before the PIO, O/O J&K Project Construction Corporation(JKPC) seeking certain information related to consolidated workers, their qualification, enhancement of wages etc. On not receiving the information from the PIO within the stipulated time period under Section 7(1), the appellant filed the 1st appeal by post addressed to the FAA, O/O J&K Project Construction Corporation on 16.11.2017. However, the FAA neither passed any orders nor disposed of the 1st appeal within the statutory time period. Feeling aggrieved of non-response of the FAA the appellant approached the State information Commission(SIC) by way of 2nd Appeal on 07.02.2018. Following this a notice was issued to the respondents dated 19.03.2018 for appearance

before the Commission on 12.04.2018 alongwith the counterstatement to the 2nd appeal.

Proceedings before the Commission:

The 2nd appeal was taken up for hearing first time on 12.4.2018 which was attended by the appellant as well as the PIO and FAA. Both parties were heard and following interim directions were issued to the respondents:-

It is very clear from the records and the submissions made by the parties that there has been an inordinate and inexplicable delay in providing information to the appellant (the then RTI applicant) and the delay is of over 06 months. The delay has not been explained with any substantial reason or grounds and appears to be due to sheer negligence of the PIO. The FAA has also not crowned himself with glory and in fact has miserably failed to perform his statutory duties enshrined under the J&K RTI Act, 2009 (section 16). It is, therefore, a double whammy for the J&KPCC. The PIO is accordingly called upon to explain why penalty may not be imposed upon him in terms of section 17 (1) on the grounds of inordinate delay amounting to refusal for providing information. The said explanation must reach the Commission before the next date of hearing.

The Registry is accordingly directed to fix the hearing on an appropriate date at Srinagar after Durbar Move.

In the mean time, the PIO, J&KPCC Headquarters is directed to provide the remaining information strictly in terms of the RTI application and the provisions of the J&K RTI Act, 2009.

Finally the appeal came up for hearing today on 06.06.2018, the respondents and the appellant attended the hearing. In exercise of powers under Section 16(11) the time period for disposal was extended further 60 days w.e.f 07.04.2018 i.e, upto 120 days from the date of filing of the 2nd appeal in the Commission in order to ensure continuation of hearings for final and judicious disposal of the appeal.

The appellant stated that despite interim directions dated 12.04.2018 he has still not been provided the remaining information as per his basic RTI application.

The PIO submitted a counterstatement during the proceedings which was taken on record. In the last 04 paras of his counterstatement the PIO has submitted as under:

The PIO (Hqr) JKPCCLtd. has not committed any negligence being law abiding and is well aware of the pros and cons for not providing any information under RTI Act to the appellant. The instant RTI was received at the closure of Darbar move at Srinagar and was forwarded to the concerned sections for taking necessary action.

However, during the closure of offices, the said RTI was inadvertently left at Srinagar. The PIO (Hqr.) JKPCCLtd. being obedient to the provisions of RTI Act,2009 always ensures timely disposal of RTI application. The PIO (Hqr.) JKPCCLtd. has received 83 No. of RTI applications during the last two years and has ensured for timely disposal of these RTI applications.

The PIO (Hqr.) JKPCCLtd. has highest regard for the Hon'ble Commission and the provisions of RTI Act,2009 has never willfully floating, disobeyed for delayed the action required under the provisions of Act. The delay caused is neither intentional nor deliberate.

The Hon'ble Commission is beseeched to not take any action under Section 17 (1) of RTI Act,2009 as there has been not deliberate delay in providing the information to appellant, and it is ensured on part of PIO (Hqr.) JKPCCLtd. that in future no such delay in providing the information to appellants shall be committed.

Further, both the respondents pleaded that they may not be penalised for the delay caused in providing of information to the appellant and that the mistake may be condoned. The respondents also requested the Commission that they will provide the balance information to the appellant within a day from the date of hearing.

Decision

The strong and repeated pleas by the FAA and the PIO that the delay was not intentional, and happened inadvertently during office move to Jammu in Oct-Nov 2017 is accepted to the extent that the inadvertent delay unaccompanied by any malafide, intentional tossing around or lack of diligence on the part of PIO, does not automatically call for imposition of penalty under Section 17 of the J&K RTI Act,2009. The PIO and FAA are however warned to be careful in future and ensure effective implementation of the J&K RTI Act,2009 in the J&KPCC while dealing with and responding to RTI applications and First Appeals. The penalty is therefore not being imposed in the present case on the basis of explanation tendered by the PIO. The Public Authority/MD, J&KPCC Ltd is directed to put in place an effective system for receipt of RTI applications and 1st Appeals in the Organisation and to ensure proper access to information to the RTI applicants and the 1st Appellants. These directions are issued in exercise of powers vested in the State Information Commission under Section 16(9)(a) of the J&K RTI Act,2009 and therefore, the said Public Authority through its Managing Director are expected to take immediate follow up action in the light of the above directions as these are binding in terms of section 16(8) of the Act.

With these directions, this 2nd appeal filed before the State Information Commission is disposed of.

The copy of Order be provided to the parties free of cost.

Sd/-

(Khurshid A. Ganai)

Chief Information Commissioner

Copy to the :-

1. Public Authority/Managing Director, J&K Projects Construction Corp. Ltd.Srinagar for information and n/a.
2. First Appellate Authority(FAA) O/O J&K Projects Construction Corp. Ltd.Srinagar for information and n/a.
3. Public Information Officer (PIO) O/o J&K Projects Construction Corp. Ltd.Srinagar for information and n/a.
4. Pvt.Secy. to CIC for information of the HCIC.
5. Sh. Ghulam Qadir Dar R/O Panzan Chadoora, Distt. Budgam, Pin-191113
6. Office Order file.

(Sheikh Fayaz Ahmed)

Registrar

J&K State Information Commission