



Jammu and Kashmir State Information Commission

شہن یشن کمیت انفارمیر اسٹیٹنڈ کشمیر جموں ا

(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/CO/Comp/165/2017

Decision No. SIC/CO/Comp/165/2017/1129

Dated: 23.05.2018

Final Order

Subject: Complaint u/s 15 of the J&K RTI Act, 2009 filed by Sh. Ashok Kumar on 13.12.2017 against the PIO, J&K State Social Welfare Board.

Brief Facts:

Sh. Ashok Kumar, R/o. H. No. 280/2, Narwal Pain, Satwari, Jammu Cantt-03 filed a complaint in the State Information Commission (SIC) on 13.12.2017 against the PIO, J&K State Social Welfare Board (SWB) on the following grounds:

1. That he had sought following information about Project Implementing Committees & Welfare Extension Projects availing Grant in Aid (GIA) from J&K State SWB for running crèches under Rajiv Gandhi National Creche Scheme for children of working mothers:
 - a) *Copy of Income & Expenditure Account for the Financial Year 2015-16 & 2016-17.*
 - b) *Details of Functionaries of the Implementing Committees.*
 - c) *Authorized Bank Account Signatories of the Implementing Committees.*

d) Bank Account Details of the Implementing Committees.

2. That despite lapse of 03 months no information has been provided.
3. That instead, misleading information has been provided by the PIO stating that the centers had been closed down w.e.f. 31.03.2016 although the complainant/the then RTI applicant had sought information pertaining to 2015-16 and 2016-17.
4. That the J&K State SWB has been providing GIA under the Rajiv Gandhi National Creche Scheme for children of working mothers for last more than a decade and, therefore, requisite information should be available with the J&K State SWB.
5. That for failure to provide information about the Project Implementing Committees and Welfare Extension Projects, the PIO, J&K State SWB needs to be penalized under section 17 of the J&K RTI Act, 2009.

Proceedings:

This complaint was heard by the CIC on 15.03.2018, 09.04.2018 and 23.05.2018. The complainant was not present on 15.03.2018 while as Secretary, J&K State SWB and the PIO/Ms. Gul Yasmeen were present. The PIO stated that information could not be collected as the record keepers within J&K State SWB failed to provide the requisite information to her to enable her to forward the same to the complainant/the then RTI applicant Sh. Ashok Kumar. Accordingly, it was decided to hear the concerned officials including the Administrative Officer of the Board.

The complaint came up for hearing again at Srinagar office on 09.04.2018. The complainant was heard through teleconferencing as Video Conferencing could not materialize. PIO attended at Srinagar. The Administrative Officer did not attend as he was on leave.

Finally, the complaint came up for hearing at Srinagar on 23.05.2018. PIO, Administrative Officer and the Section Officer attended. The complainant was heard through Video Conferencing from Jammu office of the SIC.

Decision:

In this complaint filed by Sh. Ashok Kumar against the PIO, J&K State SWB Mrs. Gul Yasmeen, inquiry under section 15 (2) was held and officers viz. Secretary, J&K State SWB, Administrative Officer Sh. Vijay Kumar Tikoo and PIO/Mrs. Gul Yasmeen were heard. The records were also perused to ascertain whether the PIO had provided the information to the complainant/the then RTI applicant.

From the records on file, it transpires that the PIO/Mrs. Gul Yasmeen has repeatedly made attempts to obtain information from the office and dealing Assistant who are holding the requisite information. She has also periodically informed the complainant/the then RTI applicant. The failure to provide full information does not appear to be due to any malafide on the part of the PIO or her recalcitrant attitude or negligence on her part. The failure to provide information is mainly because full & detailed information about the Project Implementing Committees & Welfare

Extension Projects receiving GIA is not well maintained by the Board and the said Committees who are actually NGOs are not providing full information about (themselves) these entities. It is a systemic failure for which the PIO cannot be singly blamed. It also came to light that Sh. Ashok Kumar has filed about a dozen RTIs with the J&K State SWB of similar types and for obtaining voluminous information about the NGOs receiving GIA from the Board but which (information) the Board does not maintain in full measures.

The correspondence from the PIO with the Administrative Officer of the Board and one Sh. R.N. Badyal, Head Assistant and I/C Creche Scheme shows that she has tried to obtain information sought for by the RTI applicant Sh. Ashok Kumar and has even informed the RTI applicant about the directions issued to the NGOs receiving GIA that they must appoint PIOs and FAAs to respond directly to RTI queries & applications.

The complainant Sh. Ashok Kumar has filed rejoinder dated: 02.05.2018, received in the SIC on 05.05.2018 wherein he has informed that 59 nos. of crèches must have reportedly received about Rs. 38.88 lakhs as 90% GIA for the year 2015-16 and that *'it is hard to assimilate that how releases are made without obtaining utilization certificate, audited accounts details of functionaries, authorized signatories and bank accounts of the implementing committees.'*

The PIO vide her no. SWB/J&K/RTI/276-79 dated: 22.05.2018 has informed that information compiled by Sh. R. N. Badyal, I/C Schemes has been sent to Sh. Ashok Kumar on 18.05.2018. And that Sh. Badyal has

informed that 'project implementing committees have failed to submit the utilization certificate and audited income-expenditure statement and as such the said information is not available on record. These committees have subsequently been closed with effect from 31.03.2016 vide order no. SWB/J&K/CR/19 of 2016 dated: 01.03.2016.'

The complainant has also referred to the Standard Operating Procedure (SOP) and various judgements of superior courts to counter the counter statement of the PIO.

Be that as it may, there are no clear grounds visible that show any malafide on the part of the PIO of the J&K State SWB that would indicate or validate that she has or is deliberately sitting on the information sought by the complainant/the then RTI applicant. On the other hand, it appears that all the information sought by the complainant is not available with the J&K State SWB although it should have been as part of SOP and due diligence. In the meantime, imposing penalty under section 17 of the J&K RTI Act, 2009 on the PIO will not be fair and just. It is important to close the complaint with the observations that J&K State SWB should improve its functioning as the channeling and regulatory agency for the Rajiv Gandhi National Creche Scheme or get out of way, if it cannot. The NGOs receiving GIA are Public Authorities in terms of Section 2(f) of the J&K RTI Act, 2009 and, therefore, they cannot hide information that is disclosable under the J&K RTI Act, 2009. It appears that they are taking recourse to Court orders which the J&K State SWB should contest if the Court orders are in the nature of stay orders against disclosure of information.

The J&K State SWB must bring the facts to the notice of the funds releasing authority/source of funds if the NGOs/implementing committees under the Rajiv Gandhi National Creche Scheme are not following the SOP and the guidelines issued by the J&K State SWB.

With these observations/directions the complaint against the PIO is closed as not invoking imposition of penalty under section 17 of the J&K RTI Act, 2009.

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

Sd/-
(Khurshid A. Ganai)
Chief Information Commissioner

(P.A. Ajay)

No: SIC/CO/Comp/165/2017_____

Dated:

Copy to:

1. Head of the Public Authority/J&K State Social Welfare Board for information and necessary action.
2. PIO, J&K State Social Welfare Board for information and necessary action.
3. Private Secretary to CIC for information of the HCIC.
4. Complainant/Sh. Ashok Kumar, R/o. H. No. 280/2, Narwal Pain, Satwari, Jammu Cantt-03 for information.
5. Office file.

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