



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/J/A/161/2017

Decision No. SIC/J/A/161/2017/**270**

Penalty Proceedings

In appeal No. SIC/J/A/161/2017 titled

Sh. Ahmad Din Lohar Vs. PIO/BDO, Gool, Ramban.

ORDER

23-07-2018

These penalty proceedings owe their genesis to the 2nd appeal No. SIC/J/A/161/2017 filed by the appellant Sh. Ahmad Din Lohar S/O Late Haji Ghulam Rasool R/O Gool, Ramban against Public Information Officer/BDO, Gool contending therein that the PIO has not furnished the information to him within the period specified in section 7(1) of the J&K Right to Information Act, 2009 in response to his RTI request dated 06-03-2017. In the said RTI request, the appellant (applicant then) had sought information with regard to

population, with name of the family members, of Panchayat Constituencies Gool-B and Gool-Parthimulla. On failure of the PIO to provide information, the appellant had filed 1st appeal before Director Rural Development Department on 10-07-2017. The said appeal was transferred by Jt. Director Rural Dev. Department, Jammu vide communication No. DRDJ/RTI-Appeal/197/2017-18/14571-73 dated 19-07-2017 to Assistance Commissioner Development, Ramban (First Appellate Authority) with a direction to hear the appeal and instruct the PIO/BDO, Gool to furnish the information to the appellant. When the PIO failed to provide the desired information to the appellant even after the directions from Directorate of Rural Development, Jammu, the appellant filed 2nd appeal before the State Information Commission on 25-10-2017. The said appeal was heard by the SIC on different dates of hearing but the PIO/BDO, Gool did not attend any hearing inspite of notices issued by the Commission to him for personal attendance. The Commission was informed by the Directorate of Rural Development Department that the then PIO/BDO Mr. Bahar Ahmad Wani has been transferred from Goolon 11-12-2017 and is now posted as BDO, Gundi Dharam, Ramban. He was replaced by Sh Tariq Suharwardi, who too was transferred in March, 2018 and replaced by Sh. Rajinder Singh. Finally the appeal was disposed of by the SIC on 15-03-2018 as under:-

“After hearing the appellant and the representative of the FAA and also after perusing the records made available, this appeal is disposed of with the following directions:

- 1. The present PIO/BDO, Gool, Mr. Rajinder Singh is directed to provide the information as sought by the appellant within a period of 15 days from the date of receipt of this order. In case the PIO fails to provide the information to the appellant within the above referred period, the appellant shall have liberty to file a complaint against the PIO under section 15 of the J&K RTI Act, 2009;**
- 2. The Registry is directed to initiate proceedings against the then PIO/BDO, Gool, Mr. Bahar Ahmad Wani for imposition of penalties under section 17 of the Act for denying information to the appellant within specified time and also for persistently refusing such information even after the directions from FAA and the SIC;**
- 3. The Registry is also directed to send a copy of this order to the Director, Rural Development Department, Jammu being the Controlling Authority of the PIO, for his information and necessary action”.**

Accordingly, a notice was issued to PIO/BDO, Gool to show cause within a period of 15 days as to why penalty as envisaged under section 17 of the J&K RTI Act, 2009 may not be imposed upon him for denying the information to the appellant. As no

explanation was received from the PIO, another notice was issued by the Registry to him on 14-06-2018 directing him to appear before the Commission on 25-06-2018 for personal hearing.

When the penalty proceedings came up for hearing before the Commission on 25-06-2018, the PIO did not appear, nor had he submitted any explanation to the show cause notice. However, it was found by the Commission that the show cause notice had been sent to BDO, Gool and not on the present address of the then PIO/BDO, Gool (Mr. Bahar Ahmad Wani). The hearing was accordingly adjourned and the Registry was directed to issue a fresh show cause notice by name to Mr. Bahar Ahmad Wani, the then PIO/BDO, Gool (now BDO, Gundi Dharam, Ramban) and send it to his present official address directing him to file reply to the show cause notice within a period of 15 days and also to appear before the Commission on 23-07-2018 for personal hearing. Accordingly the Registry issued a fresh show cause notice to the then PIO/BDO, Gool by his name on 10-07-2018 directing him to explain his lapse in furnishing the information to the appellant and also for his appearance before the Commission on 23-07-2018.

The penalty proceedings again came up for hearing before the Commission today on 23-07-2018. Sh. Bahar Ahmad Wani, BDO Gundi Dharam and then PIO/BDO, Gool appeared in person and also filed a written explanation dated 21-07-2018. In his written statement, Sh. Wani submitted that he has furnished information to the appellant on 11-10-2017 in respect of two out of the three points in response to the RTI application dated 11-07-2017 filed by the appellant. When the then PIO was told that the present penalty

proceedings were relating to non-furnishing of information in respect of RTI request dated 06-03-2017, and not in respect of RTI request dated 11-07-2017, he submitted that he has no knowledge about the said RTI application dated 06-03-2017. During the hearing, Mr. Wani also submitted that the BDO office does not maintain the population details of the Panchayat wards/constituencies and, therefore, no information could have been furnished to the appellant in respect of RTI application dated 06-03-2017. When he was asked as why he did not inform the appellant that the population details are not available with the PIO and why no response was given to his RTI request, Mr. Wani again expressed his ignorance about the RTI request dated 06-03-2017. While explaining his non-appearance before the Commission during hearings of the appeal, the then PIO submitted that he had been transferred from Gool on 11-12-2017 and these notices were issued to BDO, Gool. Therefore, he did not receive any notice for appearance before the Commission in the 2nd appeal.

The argument of Mr. Wani, the then PIO/BDO, Gool that he has no knowledge of RTI request filed by Mr. Ahmad Din Lohar on 06-03-2017 cannot be accepted. The applicant had posted the RTI application through registered post. The postal receipt made available by the appellant indicates that the RTI request was dispatched on 06-03-2017 through India Post at 12:49 hours. Thereafter, this RTI request also was forwarded by the Directorate of Rural Development Department, Jammu alongwith a copy of 1st appeal to Assistant Commissioner Development, Ramban with a copy to BDO, Gool vide communication No. DRDJ/RTI-

Appeal/197/2017-18/14571-73 dated 19-07-2017. When the appellant filed 2nd appeal before the SIC on 25-10-2017, Mr. Wani was still posted as BDO, Gool. Moreover, the argument of Mr. Wani that the office of BDO does not maintain the population details of Panchayat wards/constituencies is also worth rejection. In the first place, such details are supposed to be available with BDO as he is the election authority for holding Panchayat elections in his Block and obviously the BDO has to maintain the details about the population and registered voters of all the Panchayat constituencies his Block. Assuming for a while that his office does not maintain the details about population of Panchayat constituencies, the then PIO/BDO should have responded to the RTI application filed by the appellant on 06-03-2017 by saying that such records are not maintained by his office. Every RTI request has to be responded by a PIO, either by providing the information as sought or by refusing the same claiming exemption from disclosure under section 8 of the J&K RTI Act or if the information is not available, by informing the applicant accordingly. No response amounts to denial of information.

Sub-section (1) of section 7 of the J&K Right to Information Act, 2009 mandates that the Public Information Officer on receipt of a request under section 6 shall, as expeditiously as possible, and in any case within thirty days of the receipt of the request, either provide the information on payment of such fee as may be prescribed or reject the request for any of the reasons specified in section 8 and 9. Sub-section (2) thereof provides that if the PIO fails to give decision on the request for information within the period

specified under sub-section (1), the PIO shall be deemed to have refused the request. In the present case, the then PIO/BDO, Gool has neither furnished the information sought by the applicant, nor rejected his request for information within the specified period of 30 days. He is deemed to have refused the request of the applicant in terms of section 7(2). It was for this reason that in the 2nd appeal, the Commission came to the conclusion that Mr. Wani has denied the information to the appellant.

Sub-section (1) of section 17 of the J&K RTI Act, 2009 provides that where the State Information Commission at the time of deciding any complaint, appeal or reference, is of the opinion that the PIO has, without any reasonable cause, refused to receive any application for information or has not furnished information within the time specified under sub-section (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall impose a penalty of two hundred and fifty rupees each day till application is received or information is furnished, so however, the total amount of such penalty shall not exceed twenty-five thousand rupees. The proviso to this sub-section also provides that the PIO shall be given a reasonable opportunity of being heard before any penalty is imposed on him.

In the present matter, the PIO has not responded to the RTI request of the appellant. He has neither furnished the required information to the appellant (applicant then), nor rejected his request for any justifiable reasons within the period of 30 days from the date

of filing the request by the applicant. For the said reasons, he is liable to suffer the vice of section 17 of the J&K RTI Act, 2009.

Any lenient view in this matter would only encourage infringement and transgression of the provisions of J&K RTI Act, 2009 at the hands of PIOs and would obstruct and frustrate effective implementation of the Act in the State. The Commission accordingly felt that this was a fit case for imposition of penalty on the then PIO/BDO, Gool Mr. Bahar Ahmad Wani for denying the information to the applicant Mr. Ahmad Din Lohar (appellant) within the period specified in section 7(1) of the RTI Act. Accordingly, a show cause notice was served upon Mr. Bahar Ahmad Wani to explain why penalty should not be imposed upon him for refusing the request for information of the appellant and he was also given an opportunity of being heard by the Commission before imposing any penalty on him. The Then PIO/BDO failed to show any cause for denying the information to the appellant and could not justify such inaction.

A penalty of Rs. 10,000/- (Rupees Ten Thousand) is accordingly imposed upon Mr. Bahar Ahmad Wani, the then PIO/BDO, Gool and now BDO, Gundi Dharam, Ramban payable by him in person and deductible from his monthly salary. The Drawing & Disbursing Officer/District Panchayat Officer, Ramban is directed to deduct an amount of Rs. 10,000/- from the salary of Mr. Bahar Ahmad Wani, BDO, Gundi Dharam immediately in two equal installments and deposit the same in the relevant Government Account. The District Treasury Officer, Ramban is also directed not to honour/accept any salary bills from DDO/DPO, Ramban unless

and until the said amount is deducted by him from the salary of Mr. Wani. District Treasury Officer, Ramban and DPO, Ramban are also directed to submit compliance report to the Commission as soon as the amount of penalty is realized.

Registry to forward a copy of this order to Director General, Accounts & Treasuries, J&K and Director, Rural Development Department, Jammu for information and for issuance of necessary directions in this regard to District Treasury Officer, Ramban and District Panchayat Officer/DDO, Ramban respectively.

Sd/-

(Mohammad Ashraf Mir)
State Information Commissioner

No:-

Date:-

Copy to the :-

1. Director General, Accounts & Treasuries, J&K, Jammu.
2. First Appellate Authority/ Director, Rural Development Department, Jammu.
3. Public Information Officer/BDO, Gool; District, Ramban.
4. PS to SIC for information of HSIC.
5. Sh. Ahmad Din Lohar S/o Sh. Haji Ghulam Rasool R/o Gool Tehsil Gool, District Ramban.
6. Office File.

Joint Registrar,
State Information Commission.