



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
www.jksic.nic.in

File No. SIC/J/SA/248/2018
Decision No. SIC/J/SA/248/2018/**298**

Final Order

Appellant : Sh. Mohammad Shafi Bhat

Respondents : First Appellate Authority (FAA)/ Chief Engineer, PMGSY, Jammu
Public Information Officer (PIO)/Accounts Officer, O/o PMGSY (JKRRDA), Jammu

Date of Receipt : 05.03.2018

Date of Decision : 27.08.2018

The brief facts of this case are that the applicant Mr. Mohammad Shafi Bhat sought the following information from PIO O/O Chief Engineer, PMGSY, Jammu on 15.11.2017:

1. Give detail and furnish information by means of record whether any work has been allotted to the M/S B&L Projects Construction Private Ltd. having its office at Green Park, Hyderpora, Bypass West, Srinagar from 2013 to 30 October 2017 by your department.

2. Give detail and furnish information by means of record if any contract work has been awarded to the above mentioned agency by your department then furnish all bidding documents including turnover, contractor, Registration certificate, Tin certificate, Experience certificate, office registration, allotments, Bank Guarantees, Financial certificates and I.T.R.
3. Give detail and furnish information by means of record how many partners are in the said agency i.e., B & L Projects Construction private Ltd. And give the name along with details of works/contracts allotted to the said Firm/Agency till date.
4. Give details and furnish documents of Credit Certificate, joint Venture, Contractors Registration and Manpower Certificate (machinery and manpower) of the aforesaid mentioned Firm/Agency.
5. Furnish along with record executed court documents and affidavits submitted by the said Firm/Agency at the time of inviting tender, bidding and final award.
6. Furnish details along with record how many contracts/works awarded to the said Firm/Agency and by

which division. Further, furnish record how much payment has been released to the said Firm/Agency from 2013 to October, 2017.

7. Give detail and furnish record of all other documents submitted by the said Firm/agency before your department in relation to any work undertaken by the said constructing agency from 2013 to October 2017 awarded to the said agency.

The designated PIO/Accounts Officer, PMGSY vide his communication dated 19.12.2017 informed the applicant that the supply of information sought by the applicant would seriously affect the execution of different works on various projects and would harm the progress of connectivity. The applicant was also informed that the information is pertaining to the privacy of third party and therefore, cannot be provided in terms of Section 8(1)(d) of the J&K RTI Act. Aggrieved by the said communication of the PIO, the applicant filed First Appeal before the FAA in the O/o Chief Engineer, PMGSY, Jammu on 15.01.2018. The said appeal was disposed of by the Chief Engineer, PMGSY, Jammu on 22.01.2018 informing the applicant to visit the website of the

department www.omms.nic.in as the said information has already been disclosed suo-motto by the public authority on the web-site in conformity with Section-4 of the J&K RTI Act. The applicant subsequently filed 2nd appeal before the State Information Commission (SIC) on 19.02.2018, stating there under that the information sought by him is not available on the said web-site and the FAA has passed the order dated 22.01.2018 without verifying whether the above said information was available on the departmental web-site or not.

Proceedings before the State Information Commission:

The instant appeal came up for hearing before the SIC on 02.04.2018. Neither respondents nor the appellant appeared for hearing despite due notice issued to them by the SIC.

The hearing in the appeal was accordingly adjourned with the direction to the appellant as well as the PIO to be present in person before the SIC on the next date of hearing.

The appeal again came up for hearing before the SIC on 24.04.2018. The appellant was not present. The PIO attended the hearing and the FAA was represented by Mr. Gopal Sharma, AEE,

PMGSY. The PIO submitted that the information sought by the appellant was exempted from disclosure under Section 8(1)(d) of the RTI Act as the disclosure of the same would harm the competitive position of 3rd party, namely, M/S B&L projects Construction Pvt. Ltd. The Commission drew the attention of the PIO towards the provisions of Section-10 of the J&K RTI Act, 2009, where under the PIO can sever certain parts of information that are not exempted under Section-8 and provide the same to an applicant, withholding the parts of information that is exempted from disclosure under Section-8. After going through the RTI application filed by the appellant, the SIC felt that the parts of the information relating to works allotted to M/S B&L projects Construction Pvt. Ltd, the documents like turn over, registration certificate, tin certificate, amount of bank guarantees submitted by the Contractor as part of bidding documents, the letter of allotment and letter of acceptance executed by the contractor with the public authority etc. cannot be classified as “*trade secrets*”, the disclosure of which would harm the competitive position of the contractor and as such, is not exempted from disclosure under Section-8. This information can be furnished to the appellant. However, the information with

regard to the bank details of the contracting company, their credit details, details about the partners of the said company, machinery and manpower with the company and joint ventures of the said company falls within clause (d) of Section 8(1) of the J&K RTI Act, 2009 and the PIO is not under any obligation to disclose the said information unless public interest justifies such disclosure. The PIO was accordingly directed during the hearing to provide the parts of information, which are not exempted under Section-8 to the appellant within a period of one month.

The hearing was accordingly adjourned. The appellant was directed to present himself before the Commission on the next date of hearing. The PIO was also directed to provide the information to the appellant within a period of one month and also appear before the SIC on the next date of hearing. The FAA was exempted from appearance on the next date of hearing.

The appeal again came up for hearing before the Commission today on 27.08.2018. The appellant Sh. Mohammad Shafi Bhat as well as the PIO/Accounts officer, PMGSY (JKRRDA) Jammu, Mr. Amit Paul were present. The PIO submitted that in pursuance to the directions given by the SIC on 24.04.2018, part

of the information was sent to the appellant through registered post. The said information contained the payment details of the contractor, the performance security given by him and the Notice to Proceed the Work (NPW). The rest of the information was not provided as the same is exempted from disclosure in terms of Section 8(1)(d) of the J&K RTI Act as the 3rd party has objected to the disclosure of the said information to the appellant. The appellant, however, submitted that he has not received even the part information as claimed by the PIO. He, however, submitted that as per the statement of the PIO about the information sent by him, the Experience Certificate submitted by the contractor, the Bank Guarantee and turnover details submitted by the contractor are not part of the information claimed to have been sent to the appellant, besides the letter of acceptance issued by the department is also not part of the information sent to him. The PIO submitted that the 3rd party namely M/S B&L projects Construction Pvt. Ltd. has objected to the disclosure of details about the Bank Guarantee submitted by him during the tendering process. At this stage, the attention of the PIO was drawn towards Section-11 of the J&K RTI Act, where under the PIO has to take a decision about the disclosure of information

relating to 3rd party after a submission has been made by the 3rd party. The PIO can disclose the information even after the 3rd party has objected to such disclosure if the PIO feels that such disclosure is in the larger public interest. Every tender inviting notice contains certain essential requirements which the participating contractors/bidders have to fulfill before their bids are received/accepted. The two important requirements for every bidding process are the experience of the participating contractors/bidders in executing similar projects and the annual turnover of the contractor besides the Bank Guarantee for ensuring timely execution of the project. The appellant in the present case has alleged that the contractor M/S B&L projects Construction Pvt. Ltd. has produced forged documents in respect of experience of the company and also the turnover details submitted by it. Therefore, it would be in public interest to disclose the information with regard to experience submitted by the 3rd party, the annual turnover details shown by him and also the Bank Guarantee submitted while participating in the bidding process. The objection of the 3rd party in disclosure of such information does not impact or limit the power of the PIO to disclose such information in the larger public interest.

After hearing the parties, the appeal is disposed of with a direction to the PIO to provide another copy of information to the appellant which he claims to have been sent to him in respect of payment details, performance security and notice to proceed the work. The PIO is also directed to provide a copy of the Experience Certificate, Bank Guarantee and turnover details furnished by the contractor while participating in the bidding process besides copy of the acceptance letter issued by the department to him. This information should be provided to the appellant within a period of 15 days from the date of receipt of this order. In case the PIO fails to provide the above referred information to the appellant within the aforesaid period, the appellant shall be at liberty to file a complaint under Section-15 of the Act before the SIC.

**Sd/-
(Mohammad Ashraf Mir)
State Information Commissioner**

(Ahmad Sajad, PA)