



**Jammu and Kashmir State Information Commission**

شہنیشن کمیٹی انفارمیشن اسٹیٹسٹ کشمیر جموں ا  
(Constituted under the Right to Information Act, 2009)

**Wazarat Road, near DC Office Jammu, 0191-2520947, 2520937  
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File No. SIC/J/A/34/2018

Decision No. SIC/J/A/34/2018/313

**Final Order**

(Second Appeal)

Appellant : Sh. Pritam Singh Saini.  
Respondents : First Appellate Authority (FAA)/  
Sub-Divisional Magistrate (SDM),  
R.S. Pura and  
Public Information Officer (PIO)/  
Tehsildar, R.S. Pura.  
Date of Registration : 03.05.2018.  
Date of Decision : 26.07.2018.

**Brief Facts:**

This appeal has originated from the RTI request filed by the appellant (applicant then), Shri Pritam Singh Saini on 10-01-2018 with Public Information Officer/ Tehsildar, R. S. Pora, Jammu seeking information on the following six points:-

1. Please provide authenticated photo copies of Jamabandi for the year 1990 in respect of Khasra Nos. 144, 145/2, 145/3, 146, 150, 155, 157 and 160/3 of village Nehalpur (Simbal), Tehsil R. S. Pura with measurements of each Khasra No. with name of the owner, nature of the land, name of cultivator and also provide copies of Aks Shajra and copies

of Girdawaris of the above said Khasra Nos. for the year 1990.

2. Provide photocopies of Girdawaris and Jamabandi in respect of the above said Khasra Nos. 144, 145/2, 145/3, 146, 150, 155, 157 and 160/3 of village Nehalpur (Simbal), Tehsil R. S. Pura for the year 2017, with measurements of each Khasra No, name of the owner as well as cultivator in respect of each Khasra No. alongwith copies of Mutations attested in favour of the owner of the above for the above Khasra Nos and Agreements of all kinds executed, copies of Sale Deeds executed with name of the Court pertaining to the land of said Khasra numbers.
3. Provide information that whether the nature of the above said land of all Khasra numbers has changed. If so, copies of Orders, Circulars, guidelines for changing nature of the said land be provided to the applicant. Information be also provided that presently the above said land is whether under cultivation or constructions raised for residential purposes or for commercial purposes, separately for each Khasra Number.
4. Provide photocopy of Fard Intikhab issued in favour of Prem Singh S/O Joginder Pal Singh through attorney holder Ram Pal Sharma S/O Tara Mani and Satvinder Saini W/O Kamal Saini which has been rejected by the learned Sub-Registrar, R. S. Pura vide Decision announced on 30-09-2016.
5. Provide photocopies of Aks Shajra of Khasra No. 155, Khata No. 427, Khewat No. 9 of village Nehalpur (Simbal), Tehsil R. S. Pura with name of the owner alongwith copy of Khasra Girdawari for the years 2015 to 2017.

6. Provide information that on which Khasra Nos. the following buildings have been constructed in Village Nehalpur (Simbal), Tehsil R. S. Pura (1) Subash Saini Education Trust (2) Dr. Aparna ETT College and (3) Stephen International School/College showing measurement of the land over which all the said buildings alongwith their full premises i.e compound, lawn, orchard etc. have been constructed, with name of the owner of each Establishment, copies of mutations, agreements to sell, copies of Khasra Girdawri, Jamabandi, Fard Intikhab with Tateema Aks Shajra of each Khasra No. of the above said buildings.

As the PIO did not respond to the RTI request filed by the appellant, he filed first appeal with the First Appellate Authority/ SDM, R. S. Pura on 19-02-2018 seeking a direction to the PIO to provide information sought for by him. The FAA did not, however, dispose of the appeal within the period prescribed under RTI law. As such, the appellant filed this 2<sup>nd</sup> appeal before the State Information Commission on 24-04-2018 praying for a direction to the PIO for furnishing information to the appellant.

**Proceedings before the State Information Commission:**

The appeal came up for hearing before the Commission on 30-05-2018. PIO/Tehsildar, R. S. Pura and the appellant were present during the hearing. The PIO admitted during the hearing that he did not respond/reply to the RTI request and has recently on 04-05-2018 sought comments of the third party i.e the owners of the land about which information had been sought. In this connection, he stated that the owners have refused to disclose the information to the RTI applicant. Accordingly, vide communication No. PRS/OQ/2018-19/207 dated 29-

05-2018, the PIO informed the appellant that since the third party has objected to the disclosure of information relating to them, the information sought by him cannot be provided.

The appellant, however, submitted that land records can be accessed by any person and, therefore, he should be provided the information regarding the land identified by him at village Nihalpura, Simbal, Tehsil R. S. Pura and presently under the occupation of Stephens International School, Subash Saini Education Trust, Dr. Aparna ETT College etc.

After hearing both parties, the Commission observed that the PIO has not responded, which he fairly admitted, to the RTI request of the appellant within the period specified in section 7(1) of the RTI Act, 2009. Even the exercise of seeking comments of third party in respect of information relating to the third party has been undertaken by the PIO after more than three months, which process he was supposed to undertake within five days from the date of receipt of RTI request in terms of section 11(1) of the Act. His action can, therefore, in no circumstances be held to be a legitimate exercise of power vested in him under section 11 of the RTI Act. The Commission also observed that the belated action on the part of the PIO appears to be an afterthought only to justify non-action on the RTI request for more than three months.

The respondents also failed to show any evidence during the hearing that the FAA has responded to the first appeal or disposed that of. Like the PIO, the FAA has, therefore, failed to perform his statutory duty imposed upon him under the provisions of the RTI Act.

As regards the issue of obtaining copies of revenue records by the RTI applicant, the Commission, while referring to the Judgment of Delhi High Court in case *Registrar of Companies & Ors Vs. Dharmendra*

*Kumar Garg & Ors-* [W.P.(C) 11271/2009 decided on 1<sup>st</sup> June, 2012], observed that there were laid down rules and procedures for obtaining copies of documents like from Courts and revenue authorities and the information seekers should first exercise the right to obtain the copies under those rules/procedure. In above referred case, the Delhi High Court held that if another statutory provision, created under any law other than RTI Act, vests the right to seek information and provides the mechanism for invoking the said right (which is also statutory), that mechanism should be preserved and operated and not destroyed merely because another general law created to empower the citizens to access information has subsequently been framed. The Court also referred to the established principle of law that a general law has give way to the special law, even though enacted after the general law.

The Commission adjourned the hearing with the following directions:-

- (i) PIO and FAA to file a counter statement to the 2<sup>nd</sup> appeal with a copy to the appellant within a period of 15 days from the date of receipt of this order;
- (ii) PIO to allow inspection of available revenue record pertaining to the information sought in lieu of suo-mot disclosure under section 4 of the J&K RTI Act and provide copies on demand and if also sought in the RTI application in terms of the J&K RTI Rules, 2012 under intimation to the recorded owners/ stake holders in land;
- (iii) PIO to conduct proceedings under section 11 of the J&K RTI Act, 2009 for disclosure of requisite third party information like sale deeds, agreements, mutations, court registration etc. if available on record;

- (iv) PIO to explain why penalty under section 17 may not be imposed upon him for non-provision of available and givable information in terms of the provisions of the RTI Act amounting to refusal/ denial of information to the appellant (the then RTI applicant).

The appeal once again came up for hearing before the Commission today on 26-07-2018. The PIO/Tehsildar, R. S. Pura and the appellant were present. The third party Dr. Kamal Saini through his Counsel Mr. Anil Sethi, Advocate filed an application for intervention/impleadment as a party respondent in this appeal. Since a part of the information sought by the appellant in his RTI request related to the personal properties of the applicant, he is therefore, a necessary party in this appeal and should be impleaded/arrayed as party respondent and allowed the opportunity to put forth his case. The appellant, however, raised objections to the impleadment of the third party applicant as a party in this appeal on the ground that he has sought information about the properties of Subash Saini Educational Trust, Dr. Aparna ETT College, Stephen International School/College and Satvinder Saini W/O Kamal Saini etc. but the applicant was a stranger to such properties and hence, has no locus to be arrayed as a party. The Counsel for the applicant, however, submitted that the applicant was the Chairman of the Stephen International School/College about which information was sought and he also happens to be the husband of Satvinder Saini, whose property documents have also been sought to be obtained by the appellant. The objection submitted on 19-05-2018 by the Stephen International School/College to the disclosure of information related to its properties has also been signed by the applicant Dr. Kamal Saini in his capacity as the Chairman of School. The PIO/Tehsildar, R. S. Pura endorsed the claim of the applicant that the

establishments whose property documents have been sought by the appellant belonged to the applicant or his family. Therefore, the applicant qualifies to be a third party in this appeal in terms of section 11 read with clause (1) of section 2 of the J&K Right to Information Act, 2009. Sub-section (5) of section 16 of the J&K RTI Act, 2009 provides that if the decision of the PIO against which appeal is preferred relates to information of a third party, the Information Commission shall give a reasonable opportunity of being heard to that third party. Since a part of the information sought by the appellant related to the third party (applicant herein), the Commission is under a statutory obligation to hear the third party and provide him an opportunity of presenting his case. The application of Dr. Kamal Saini through his Counsel for impleadment as a party respondent (third party) is accordingly allowed.

The PIO/Tehsildar, R. S. Pura filed a written statement dated 10-07-2018 stating thereunder that he came to be posted as Tehsildar, R. S. Pura on 19-02-2018 and at the time of filing of RTI request by the appellant on 10-01-2018, he was not the PIO. Therefore, the delay for non-response from the date of filing the request till he joined as Tehsildar, R. S. Pura can be explained by the then PIO. He further submitted that he was apprised of the pending RTI request by his office only in the last week of April, 2018 and he immediately processed the same for calling objections from the third party and eventually called for the comments of the third party on 04-05-2018. The PIO also submitted that in compliance to the interim order of the Commission dated 30-05-2018, he furnished whatever information was available with him to the appellant vide his communication No. RSP/OQ/2018-19/432 dated 10-07-2018.

The appellant also filed his rejoinder dated 15-07-2018 to the information so provided to him by the PIO submitting therein that on July 11, 2018, the PIO and the FAA provided most of the information sought by him. However, information in respect of points 3, 4 and 6 has not been provided to him by the PIO. He submitted during the course of hearing of the appeal that while information relating to points 1, 2 and 5 has been provided by the PIO but information relating to points 3, 4 and 6 has been concealed and denied on the pretext of being not available with the PIO.

Mr. Anil Sethi, the Counsel for the third party, while advancing his arguments, submitted that the information sought by the appellant in points 4 and 6 of his RTI request relate to the land/properties of the third party. He submitted that the third party objected to the disclosure of information related to his assets vide his communication dated 19-05-2018 in response to the communication of the PIO dated 04-05-2018 seeking his comments. Accordingly, the PIO rejected the request of the appellant for disclosure of such information vide his communication dated 29-05-2018, being the authority competent under section 11(3) of the RTI Act to decide whether or not the third party information should be disclosed. That should have been the end of the matter so far as information relating to points 4 and 6 was concerned. Mr. Sethi further submitted that however, direction (iii) of the order dated 30-05-2018 of the State Information Commission gives an impression that the Commission has agreed with the decision of the PIO in relation to his decision of not disclosing the third party information as the PIO has been directed by the Commission to conduct proceedings under section 11 of the Act for disclosure of requisite third party information, if available on record. By virtue of this order, the Commission has virtually remitted the matter pertaining to information relating to points 4 and 6 of the RTI

request back to the PIO for taking a decision whether or not to disclose such third party information. The Counsel for the third party further submitted that since the PIO has not conducted fresh proceedings under section 11 and has not decided the issue of disclosure of the information or otherwise, the Commission should not take any view in respect of information relating to third party sought through points 4 and 6 of the RTI request filed by the appellant till the PIO decides that issue, being the competent authority in terms of section 11(3) of the Act.

Heard the parties at length and perused the documents, statements and counter statements filed by the parties in support of their respective arguments. Vide his communication dated 10-07-2018, the PIO has supplied the information and documents asked for by the appellant by virtue of points 1, 2 and 5 of his RTI request. In response to point 3, the PIO has informed the appellant that the desired information doesn't come under RTI Act. In response to points 4 and 6, the appellant has been informed that the information was not available with the PIO. Through point No. 3 of the RTI request, the appellant had sought information whether the nature of the land in question has been changed and whether such land was under cultivation or constructions raised for residential or commercial purposes. Under the provisions of Right to Information Act, a public authority is under an obligation to provide access to an information seeker to such information which qualifies to be 'information' within the meaning of clause (d) of section 2 of the Jammu and Kashmir Right to Information Act, 2009. The said section 2(d) defines the expression 'information' as any material held by a public authority in any form including records, documents, memos, e-mails, opinions, advices, circulars, orders etc. The information, access to which is sought by an applicant, has to be existing and available with the public

authority. The expression 'information' has been interpreted and deciphered by the Hon'ble Supreme Court and various other High Courts and also by the Central Information Commission in numerous judgments including *CBSE & Anr. Vs. Aditya Bandopadhyay & Ors* (SC), *Khanapuram Gandhia Vs. Administrative Officer* (SC), *Dr. Celsa Pinto Vs. Goa State Information Commission* (Bombay HC) and *Subrata Guha Ray Vs. CPIO* (CIC), to name a few, where it has been held that all and sundry information cannot be asked for by an applicant under the RTI Act. It has also been held that there is no obligation on a public authority to provide information, which is not available with, or held by, such authority and that PIO is not supposed to collate and create information that is not part of record of the public authority. There is also no obligation for a PIO to communicate reasons as to why a certain thing was done or not done, to interpret information or furnish replies to hypothetical questions, to reply assumptions and presumptions raised by an applicant in his RTI request or to offer reasons for non-compliance of any law, rules and regulations. As mentioned above, the appellant has sought information whether the nature of land in question has changed and whether the said land is under cultivation or under constructions raised for commercial or residential purposes. The PIO has informed the appellant that such information is not held by him and as such not within the ambit of RTI Act. Point 3 of the RTI request is in the shape of a questionnaire seeking personal views of the PIO. Such information not being available with the PIO in the form of a document or record, he is under no obligation to reply to the questions, presumptions and assumptions made by the appellant. The land use change or actual use of a particular piece of land can only be known by, and be available with, the PIO if Girdawari was done regularly by the revenue authorities. It is a common knowledge that in the State of Jammu and Kashmir, the Record

of Rights (Jamabandi) have not been updated or revised over a very long period and Khasra Girdawari is not being done regularly. Although, under the Land Revenue Act, the Revenue Officers/ official are required to update/revise Jamabandis once every four years and conduct Girdawari every year, for varied reasons including shortage of manpower and huge backlog, these exercises have either been abandoned or are not in the priority list of the Department. This laxity is also affecting the digitization of land records in the State. Though the Revenue Department is subjected to lot of criticism and blame on this account but asking for reasons and justification for non-compliance of provisions of the Land Revenue Act or the rules framed thereunder is outside the purview of definition of 'information' under section 2(d) of the J&K RTI Act. Since the information about change of land use or about actual use of the land mentioned in point No. 3 is not existing or available with the PIO in the form of record, for whatever reasons that be, the PIO can not be compelled to create or manufacture the information for the appellant. The decision of the PIO that information sought in point No. 3 of the RTI request does not come within the purview of section 2(d) of the RTI Act is accordingly upheld by the Commission.

Information sought through point Nos. 4 and 6 relate to third party. The decision of PIO conveyed to the appellant vide communication dated 29-05-2018 rejecting the request for disclosure of such information in view of the objections raised by the third party about its disclosure has not been approved of by the Commission on the ground that the PIO has simply passed a cryptic order without giving any reason or justification for taking the decision that he has taken. The Hon'ble Supreme Court has held in a number of cases including *M/S Kranti Asso. Pvt. Ltd. & Anr. Vs. Masood Ahmed Khan & Ors*; *A.K. Kraipak and Ors Vs. Union of*

*India and Ors* reported in AIR 1970 SC 150; *Kesava Mills Co. Ltd. and Anr. Vs. Union of India and Ors* reported in AIR 1973 SC 389; *Siemens Engineering and Manufacturing Co. of India Ltd. Vs. The Union of India and Anr.*, AIR 1976 SC 1785; *Lav Nigam Vs. Chairman and MD, ITI Ltd. & Anr.* [(2006) 9 SCC 440]; *Sudhir Kumar Vs. Union Of India* (2012) that the face of an order passed by a quasi-judicial authority or even an administrative authority affecting the rights of parties, must speak. Unreasoned and cryptic orders particularly when such orders are appealable deprive appellate authorities from knowing the reasons why and on what grounds a particular decision is made. The authorities should mention the arguments made and pleas taken by respective parties in their orders and give reasons for arriving at a particular decision. Since the order of PIO dated 29-05-2018 in respect of point 4 and 6 of the RTI request was unreasoned and cryptic, the Commission did not approve of the same and directed the PIO vide order dated 30-05-2018 to undertake fresh exercise of conducting third party proceedings under section 11 of the RTI Act. The PIO is yet to complete such exercise and decide the issue in relation to point Nos. 4 and 6 as to whether the third party information should be disclosed or not.

Information in response to point Nos. 1, 2 and 5 of the RTI request filed by the appellant has been furnished to him, which he has acknowledged. The PIO is not obliged to provide information in response to point No. 3 as the said information does not qualify to be treated as 'information' within the meaning of section 2(d) of the J&K RTI Act. The remaining two points viz point Nos 4 and 6 have been remanded back to PIO for undertaking fresh proceedings under section 11 of the Act. Once, the PIO undertakes third party proceedings and decides the issue whether such information should be disclosed or not, any of the

parties whose rights are affected or who would feel aggrieved have the remedy of filing a fresh appeal before the First Appellate Authority under sub-section (1) of section 16 or sub-section (2) of section 16, as the case may be, followed by a 2<sup>nd</sup> appeal under section 16(4) of the J&K RTI Act, 2009.

Coming to the question of delay in furnishing the information to the appellant by the PIO or non-disposal of first appeal by the First Appellate Authority, the Commission has already arrived at a prima facie conclusion that the PIO has failed to provide information to the appellant within the period specified in section 7(1) of the J&K RTI Act, 2009 and the FAA has failed to perform his statutory duties under the provisions of the RTI Act. Under section 7(1), the PIO has to furnish the information to the applicant as expeditiously as possible but in any case within 30 days of filing the request. In terms of section 7(2), if the PIO fails to supply information within 30 days, he shall be deemed to have denied the request. Denial of request or non-furnishing of information within 30 days subjects the PIO to the vice of section 17 of the Act whereunder the erring PIO can be penalized by a fine of Rs 250/- for each day of delay or refusal till the information is provided subject to a maximum fine of Rs. 25,000/- and also a recommendation for taking disciplinary action against him under the service rules applicable to him. Though the FAA cannot be visited with penalty of fine for abdicating the statutory duties cast on him under the RTI Act, the Commission is empowered to report the matter to the Government, for taking appropriate action for dereliction of duties and failure to perform statutory duty under, section 16 requiring the competent authority for securing implementation of the provisions of the Act. The FAA did not attend the hearing today, nor filed any statement explaining his failure to dispose of the first appeal within the prescribed

time limit. Though the PIO filed his explanation in response to the show cause notice issued by the Commission, but the said explanation was unsatisfactory. The PIO submitted that he joined as PIO/Tehsildar, R. S. Pura on 19-02-2018 and therefore, cannot explain why the then PIO has not dealt with the RTI request filed on 10-01-2018. He has not justified why he did not furnish information from 19-02-2018 to 10-07-2018 and why the third party proceedings were initiated as late as on 04-05-2018. The then PIO has caused the delay of one month, while as the present PIO has been responsible for delaying furnishing of information by more than four months and delaying initiation of third party proceeding by two and a half month when the same should have been initiated within 5 days of his assuming the charge of Tehsildar, R. S. Pura. He cannot hide behind his subordinate officials blaming them for not informing him or blaming the appellant of not reminding him. Even after informing the appellant that no information can be provided in respect of properties of the third party on 29-05-2018, the PIO has taken another month and a half to supply the balance information to the appellant withholding the third party part of the information. That much of information could have been supplied by the PIO even before seeking comments of third party on 04-05-2018. However, before any penalty is imposed upon the PIO for delaying the information to the appellant and before the FAA is reported to the Government for abdicating statutory duties of not deciding the first appeal within prescribed period, one more opportunity is granted to the PIO and the FAA to explain why appropriate action shall not be taken against them.

Nothing further survives for adjudication by the State Information Commission in this appeal and hence, this appeal is disposed of with the observations made hereinabove. However, the penalty proceedings shall

separately continue against the PIO/Tehsildar, R.S.Pura and FAA/SDM, R.S.Pura. The Registry shall accordingly issue notice to both the officers to appear before the Commission for explaining why appropriate action shall not be taken against them for not furnishing information by the PIO within specified period and for failure of the FAA in not disposing of the appeal within the prescribed time limit, respectively.

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

Copy to the:

1. FAA/Sub Divisional Magistrate, R. S. Pura.
2. PIO/Tehsildar, R. S. Pura.
3. Appellant—Sh. Pritam Singh Saini R/o Lower Muthi, Akalpur Marh, Tehsil & District Jammu.
4. Office File

**(Zaheer Abbas)**  
**Assistant Registrar**  
**State Information Commission.**