



Jammu and Kashmir State information Commission
(Constituted under the Right to Information Act, 2009)
Old Assembly Complex, Srinagar. Tel/Fax No. 0194-2484269
Wazarat Road, Jammu. Tel/Fax No. 0191-2520947

File No: SIC-J//Comp/16-May-/2011

Decision No. 05/CO/2012

Dated:- 10 .01.2012

Title: Shri D. N. Sharma v/s PIO/Tehsildar, Ramban

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The penalty proceedings under Section 17 of the State RTI Act 2009 were initiated in this case vide this Commission's order No. 34 of SIC/j/Camp dated 18.08.2011. The defaulter's reply, if any, was sought by asking him why penalty may not be imposed on him by passing the order under section 7 of the State RTI Act 2009 beyond the stipulated period of time. However, no reply, as reported by the Registry, has been received. Consequently another show cause notice was issued to the then PIO/Tehsildar, Ramban Shri Gandarb Singh on 19.12.2011 and reply was sought within 7 days. A copy of the communication was also addressed to the Dy. Commissioner, Ramban for ensuring the service of this notice. Again this opportunity has not been responded by the then PIO, Ramban. Therefore the Commission is constrained to take a decision on the merits and on the availability of the facts on record. The brief facts of this case are as under:-

A citizen of J&K Shri D. N. Sharma exercising his right under the State RTI Act 2009 had filed an application under Section 6 of the Act before the Tehsildar-cum-PIO, Ramban Shri Gandarb Singh on 23.08.2010. Therefore, this application was to be disposed of within 30 days from the date of receipt of the same in the office of the PIO. Shri Srinath Suman, Tehsildar Ramban who attended the proceedings before this Commission as new PIO on 11.08.2011 confirmed that this information was not given to the information seeker till 11.10.2010 when the information seeker filed 1st Appeal before the 1st Appellate Authority. Unfortunately even the 1st Appellate Authority who under the scheme of the Act is senior authority to the PIO did not pass the order adjudicating the 1st Appeal. In accordance with the provisions of Section 15 of the State RTI Act 2009 Shri D. N. Sharma filed a complaint on 09.05.2011 which was received in this Commission on 20.05.2011 requesting for providing information and informing him what action was taken against the guilty officer who allegedly had fraudulently issued RBA certificate in favour of Smt. Dhoop Devi w/o Shri Chain Singh. It seems that immediately after the complainant approached this Commission with a complaint under Section 15 of the Act, the present PIO passed an order on 21.05.2011 providing the information. Hence the penalty proceedings were initiated which are now being finalized.

Provisions of Section 17 of the State RTI Act 2009 has cast a duty and obligation on the Commission to the effect that **"it shall impose a penalty of Rs. 250/- for each day till application is received or information is furnished, so however, the total amount of such penalty shall not exceed Rs. 25000/-."** The provisions of this section have made it further clear that the burden of proving that the PIO acted reasonably and diligently shall be on the PIO. The PIO Shri Gandarb Singh has thus failed to establish that his failure to act reasonably and diligently was because of a reasonable cause. Hence he is liable for being penalized. The period of default starts roughly from 01.09.2010 (taking into account the days for receipt of application in the officer of PIO). So far it has been a general refrain by the PIOs that they were not so knowledgeable about the Act and its consequences. This was particularly so in view of the fact that though the act was promulgated in the State since 2009 and came into effect from March 2009, no Commission was constituted to get the Act implemented. The Commission was established with the appointment of the State Chief Information Commissioner on 28.02.1011, which received wide publicity. Therefore it is reasonable to expect that the PIOs should have geared them up to start implementing the act earnestly.

The denial of information without any reasons at all is a flagrant violation of the will of the Legislature of the State which is reflected in the State RTI Act 2009 which has made it incumbent on all the public authorities and the semi-government authorities to disclose the information if asked, because the very preamble of the State RTI Act 23009 has laid down that transparency of information is vital to the functioning of a vibrant democracy thus to ensure an informed citizenry. The preamble further lays down that by disseminating the information **"the government and its instrumentalities are accountable to the governed."** The State RTI Act is almost the replica of the Central Information Act. While interpreting and adjudicating upon the various aspects of Central Information Act, the Honb'ble Apex Court of the country in its judgement in the Civil Appeal No. 6454 of 2011 (Arising out of SLP (C) NO. 7526/2009) titled CBSE & Anr V/S Aditya Bandhopadhyay and ors. has held that dissemination of information is a rule and non-disclosure is an exception. Therefore, under the facts and the circumstances of the facts the Commission holds Shri Gandarb Singh liable to be penalized under Section 17 of the Act as he has failed to discharge his statutory duty cast on him as PIO without any reasonable cause.

Taking an overall view it will be reasonable to treat the period of default unexplainable from 1st March, 2011 to the date when the information was provided to the information seeker i.e. 21.05.2011. The total period of default is calculated as under:-

1. Date of application u/s 6 of J&K RTI Act, 2009 for seeking information is **23.08.2010.**
2. Due date of providing information is **21.09.2010**
3. Actual date of providing information is **21.05.2011**
4. Penalty to be imposed for each day is Rs. **250/-**
5. Unreasonable period of default is **81**

Therefore an amount of Rs. 20250/- is worked out as penalty which is calculated as under:

81 days X Rs. 250 (per day) = Rs. 20250/-

The Drawing and Disbursing Officer of the office of Tehsildar, Ramban will ensure deduction of Rs. 20250/- from the salary/pension, as the case may be, of Mr. Gandarb Singh, the then PIO/Tehsildar, Ramban in 3 equal instalments as provided in Rule 36 (3) of J&K State RTI Rules, 2010 and remit it to the Government Account with an intimation to this Commission. In case of any default committed by the DDO in this regard, he (DDO) will be personally liable for making the payment towards the Government account. This order has to be complied within fifteen days from the date of receipt of the order.

Mr. Gandarb Singh, the then PIO/Tehsildar, Ramban is at liberty to file a Review Petition before this Commission for review of this order as provided under Rule 36 Clause (4) of J&K RTI Rules, 2010.

Sd/-

(G. R. Sufi)

State Chief Information Commissioner

(Mohammad Sayed Shah)

Registrar,

State Information Commission.

Copy to the:-

- 1- Dy. Commissioner Ramban.
- 2- Shri Gandarb Singh, Tehsildar-cum-PIO, Tehsildar's office Ramban.
- 3- Shri D. N. Sharma S/o: Shri Om Prakash R/o: H. No466/Lane - 1, Greater Kailash, Jammu (complainant/ Information Seeker).
- 4- Tehsildar Ramban, DDO, Tehsil Office Ramban.
- 5- Treasury Officer Ramban.
- 6- Guard file.