



**Jammu and Kashmir State Information Commission**

شہنیشن کمیٹی انفارمیری اسٹیٹ کاشمیر 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**

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File No. SIC/J/A/18/2017

Decision No. SIC/J/A/18/2017/130

**Final Order**

(Second Appeal)

- Appellant : Sh. Avinash Razdan.
- Respondents : First Appellate Authority (FAA)/  
Superintendent of Police, Headquarters  
Jammu and Public Information Officer (PIO)/  
Deputy Superintendent of Police,  
Headquarters Jammu.
- Date of Registration : 16.06.2017
- Date of Decision : 16.10.2017

**Brief Facts:**

This 2<sup>nd</sup> appeal was filed in the SIC on 16.06.2017 by the appellant Sh. Avinash Razdan seeking inquiry into the handling of his RTI application and First Appeal by District Police, Jammu and provision of information and documents pertaining to his arrest, compensation for the loss and detriment suffered and imposition of penalty on the concerned police authorities for not furnishing the information.

The 2<sup>nd</sup> appeal has arisen from the RTI application dated: 03.04.2017 filed by Sh. Avinash Razdan before the PIO, Zonal Police Headquarter (ZPHQ) on 12.04.2017 seeking information about his arrest on 12.12.2016 by the Bakshi Nagar Police Station. Specifically, he had sought copies of arrest memos, seizure memo, inspection memo, medical examination report, reasons for arrest, name of the police officers who ordered his arrest, copy of the warrant register maintained by the Police Station, Bakshi Nagar and Police Post, Sarwal etc.

As per records the PIO, ZPHQ, Jammu on 15.04.2017 transferred the RTI application of the appellant to SSP, Jammu under section 6 (3) of the J&K RTI Act. The PIO of the SSP office/District Superintendent of Police, Headquarters Jammu initiated collection of information on 18.04.2017 asking the Superintendent of Police (SP), City North, Jammu to provide the information and that as per section 5 (5) of the J&K RTI Act, all information providers in this RTI shall consider themselves as deemed Public Information Officers.

The appellant filed First Appeal on 15.04.2017 before the First Appellate Authority of ZPHQ, Jammu who received it on 18.04.2017 and disposed it on the same day informing the appellant that his RTI application had been transferred under section 6 (3) to SSP, Jammu and that he should approach PIO, SSP office, Jammu for the requisite information.

As per records, the PIO, SSP office, Jammu on 03.05.2017 informed the RTI applicant (now appellant) that matter was got verified through SP,

City North who vide his report No. PA/SPCN/RTI/17/10497/SPCN dated: 02.05.2017 has invoked section 8 (1)(g), which clearly reads as under:

**8. Exemption from disclosure of information- Notwithstanding anything contained in the Act, there shall be no obligation to give any citizen:-**

**(g) information which would impede the process of investigation or apprehension or prosecution of offenders:"**

The FAA of SSP office, Jammu vide his No. RTI-Appeal/2017/4895-98/SPHQJ dated: 04.05.2017 has also informed the appellant Sh. Avinash Razdan that information cannot be given in terms of section 8 (g) and disposed of the First Appeal accordingly.

The appellant in his 2<sup>nd</sup> appeal has invoked Article 22 (1) of the Constitution of India, the Hon'ble Supreme Court order in **D.K. Basu v/s State of West Bengal**, Guidelines of the Hon'ble Supreme Court and that 'An act of arrest of a person by the State is curtailment of one's right to life and personal liberty and that State can invoke its right to arrest a person according to procedure established by law so that the act of arrest is not arbitrary, unfair or unreasonable.' The appellant has quoted Article 22 (1) as under:

**"No person shall be deprived of his life or personal liberty except according to a procedure established by law."**

The appellant has alleged that the respondents failed to give him information within 48 hours under proviso to section 7(1) as it concerned life and liberty of a person.

In their counter statement/reply to the 2<sup>nd</sup> appeal filed by the respondents vide their no.RTI/73/2017/APP/10246-47 dated: 29.08.2017, they have responded as under:

- a. That the appellant was detained by Police on 12.12.2016 on the basis of a non-bailable warrant issued by Ld. Court of CJM, Jammu.
- b. That the appellant illegally confined a constable who had gone to his house on 12.12.2016 to execute the non-bailable warrant of the Ld. CJM.
- c. That the grounds of detention were disclosed to him at his own residence when the Police Tameeli visited his place to execute the non-bailable warrant.
- d. That the appellant was never arrested by the P.S. Bakshi Nagar on 13.12.2016 as such the question of arrest memo does not arise.
- e. That the appellant was produced in the CJM's Court on 13.12.2016 after his detention late night on 12.12.2016 in compliance with the CJM's non-bailable warrant.
- f. That warrant registers are secret documents and as such exemptions under the provisions of the J&K RTI Act, 2009 have been sought.
- g. That the Public Authority has executed the job in lawful & legal manner. There was no pressure on any of the Policemen from anybody/authority.
- h. That the grounds taken by the appellant are without any basis and devoid of any merit.

In his long rejoinder to the above referred to counter statement filed by the appellant on 09.10.2017, the appellant has alleged that the PIO, CPO HQRS, Jammu has misled the Hon'ble CIC to erroneously form an opinion that arrest and detention are two different things and quoted section 46 of CrPC on '**Arrest how made**'. The appellant in the same rejoinder has quoted sections 50-A (1) and section 61 of CrPC, Article 21, Article 22, Sections 80 and 81 of CrPC etc. and contended that Detention is the consequence of Arrest and is the '**state of being of a person afterwards his arrest.**'

The rejoinder of the appellant is in enormous detail and he has invoked many legal provisions. Through the rejoinder, the appellant has asked the CIC not to make his office a place to suppress information as a result of misrepresentation, not to be a spectator to the malafide intention of the concerned PIO who has deliberately given false evidence in judicial proceedings and to protect the dignity of the Constitution of India and not allow the PIO to misrepresent Article 22 read with section 51-A and section 61-CrPC.

In their second counter statement filed vide No. RTI/73/17/10984 dated: 09.10.2017 as a reply to the rejoinder of the appellant, the PIO of District Police has rebutted the accusation of the appellant Sh. Avinash Razdan citing the following arguments:

- a. That the appellant has taken contrary stands in his 2<sup>nd</sup> appeal and the rejoinder.

- b. That the appellant was detained/arrested on 12.12.2016 in pursuance to a non-bailable warrant and produced in the Court on 13.12.2016.
- c. That section 7(1) regarding providing information about arrest within 48 hours does not apply.
- d. Warrant was executed in terms of procedure under section 80, 81 of CrPC.
- e. There was no violation of Article 22 and the guidelines laid down by the Apex Court in the landmark judgment D.K. Basu v/s State of West Bengal.
- f. That the PIO has complied with the orders passed by the Commission on 04.10.2017 and that copy of the counterstatement was handed over to the appellant during the hearing itself.
- g. That the appellant was arrested/detained on 12.12.2016 in execution of a non-bailable warrant.
- h. That FIR No. 188/2016 u/s 342/332 RPC dated: 12.12.2016 stands registered against the appellant but he was never arrested on 13.12.2016. The said FIR is under investigation.
- i. That till date the appellant has not challenged the FIR.

The State Information Commission (SIC) has issued two interim orders during the hearing of this appeal on 25.09.2017 and on 09.10.2017. The directions on 25.09.2017 read as under:

***"A copy of the counter statement be provided to the appellant. This was done by the PIO during the hearing itself. The hearing in the 2<sup>nd</sup> appeal is adjourned. Registry to list the 2<sup>nd</sup> appeal for hearing on 9<sup>th</sup> October, 2017 at***

**10.30 am at Jammu office of the Commission. The respondent FAA, SP (HQRS) Jammu, PIO/SP City North, Jammu, PIO/DySP (HQRS) Jammu and the appellant Sh. Avinash Razdan are directed to attend the hearing on the next date of hearing.**

The directions on 09.10.2017 read as under:

***"In view of the above, the case is adjourned. The PIO/Deputy Superintendent of Police, Headquarters Jammu is directed to file reply to the rejoinder of the appellant, if any, before the next date of hearing (positively within two days) from the date of pronouncement of this order. Registry is directed to list the case again through Video Conferencing on 16.10.2017 for further hearing in the matter."***

**Decision (Final disposal of this 2<sup>nd</sup> appeal):**

The appellant approached the SIC in this 2<sup>nd</sup> appeal seeking information pertaining to his RTI application dated: 03.04.2017. The PIO in the counter statement dated: 17.07.2017 filed before the SIC on 17.07.2017 informed that SP (North) had invoked section 8 (g) of the J&K RTI Act, 2009 which allows the PIO not to disclose information to the RTI applicant and the same was conveyed to the appellant on 03.05.2017 by way of a reply. The FAA, O/O SSP, Jammu has taken a similar stand and conveyed to the appellant vide his No. RTI-Appeal/2017/4895-98/SPHQJ dated: 04.05.2017.

The appellant has in the course of this 2<sup>nd</sup> appeal raised many issues of law governing arrest, procedures followed by police and right to information under the proviso to section 7 (1) which reads as under:

***"Subject to the proviso to sub-section (2) of Section 5 or the proviso to sub-section (3) of Section 6, 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 reason specified in sections 8 and 9:***

***Provided that where the information sought for concerns the life or liberty of a person, the same shall be provided within forty-eight hours of the receipt of the request."***

The appellant has referred to the land mark Apex Court judgement in **D.K. Basu v/s State of West Bengal** which deals with arrest of a person by police and guidelines given by the Apex Court in this regard.

As far as the State Information Commission's jurisdiction under the J&K RTI Act, 2009 is concerned, there are two main issues which require to be disposed of in this 2<sup>nd</sup> appeal:

1. Whether the proviso to section 7 (1) regarding provision of information within 48 hours applies.
2. Whether exemption under section 8 (g) applies.

**As far as (1) above is concerned i.e. proviso under section 7(1), the PIO was not under any obligation to provide the information within 48 hours since the arrest had been made on 12.12.2016 in terms of the non-bailable warrant and the appellant was produced before the Court on 13.12.2016. The fact that the**

**appellant was produced before the Court on 13.12.2016 takes the steam out of the request of the appellant. Moreover, the appellant has filed the RTI application on 03.04.2017 when he was not under arrest and about 04 months had elapsed between his arrest on 12.12.2016 and the date of RTI application.**

The Central Information Commission in its Decision No. CIC/SG/A/2012/000814/18825 passed on 09<sup>th</sup> May 2012 in the appeal of one Sh. Pratap Kumar Jena v/s PIO, Central Institute of Psychiatry, Ranchi Jharkhand has held as under:

***"Proviso of Section 7(1) states that where the information sought concerns the life or liberty of a person, the same shall be provided within forty-eight hours of the receipt of the request. This provision has to be applied only in exceptional cases and the norm is that information should be provided within thirty days from the receiving date. Whether the information sought concerns the life or liberty of a person has to be carefully scrutinized and only in a very limited number of cases this ground can be relied upon. The government machinery is not designed in a way that responses to all RTI Applications can be given within forty-eight hours. A broad interpretation of 'life or liberty' would result in a substantial diversion of manpower and resources towards replying to RTI Applications which would be unjustified. Parliament has made a very special exception for cases involving 'life or liberty' so that it would be used only when an imminent threat to life or liberty is involved.***

***The life or liberty provision can be applied only in cases where there is an imminent danger to the life or liberty of a person and the non-supply of the information may either***

*lead to death or grievous injury to the concerned person. Liberty of a person is threatened if she or he is going to be incarcerated or has already been incarcerated and the disclosure of the information may change that situation. If the disclosure of the information would obviate the danger then it may be considered under the proviso of Section 7(1). The imminent danger has to be demonstrably proven. The Commission is well aware of the fact that when a citizen exercises his or her fundamental right to information, the information disclosed may assist him or her to lead a better life. But in all such cases, the proviso of Section 7(1) cannot be invoked unless imminent danger to life or liberty can be proven."*

From the above it is clear that proviso under section 7(1) was not applicable and, therefore, the request for information under this proviso was not justified. As far as applicability of section 8 (g) is concerned, the PIO of SSP office, Jammu was not correct in invoking this provision. Doubtless, there may be some type of information sought by the appellant which could fall under exemption as provided under section 8 (g) but not all of the information sought by him through his RTI application, for example arrest memo, inspection memo, medical examination report, reasons for arrest and warrant register. It is not clear how disclosure of the above information will come in the way of investigation or adversely impact the investigation. Seizure memo may be an exception as it is linked to investigation. However, there may be certain parts of information which may not be disclosable and that is best left to the PIO who could be

**asked to reformulate the reply to the RTI. Accordingly, in terms of powers vested under section 16 (9) (a) of the J&K RTI Act, 2009 the head of the Public Authority i.e. Head of the Police Department at the District level i.e. SSP (J) is directed to peruse the application of the appellant and have information provided to him in terms of his requisition and in terms of the above observations of the SIC within a period of 30 days from the date of receipt of this order.**

**The appellant has repeatedly referred to the Apex Court judgment in D.K. Basu v/s State of West Bengal and various provisions under CrPC pertaining to arrest and, therefore, his assertions and contentions need to be examined by the Police Department to see if any additional directions and guidelines are required to be issued by the PHQ to the Police Department authorities down the line to strictly follow the laid down procedures so that arrest of persons is effected strictly in terms of the law, rules and guidelines on the subject and that the fundamental rights of life and liberty guaranteed under Articles 21 & 22 are fully protected for all citizens and residents in the State.**

*With these observations/directions the second appeal is disposed of.  
Copy of this decision be given free of cost to the parties.*

**Sd/-**

**(Khurshid A. Ganai)**

Chief Information Commissioner  
J&K State Information Commission

(P.A. Ajay)

No: SIC/J/A/18/2017 \_\_\_\_\_

Dated:

Copy to:

1. SSP Jammu for information and necessary action.

2. FAA, O/O SSP, Jammu for information.
3. SP City North Jammu for information.
4. PIO, SSP Office, Jammu for information and necessary action.
5. Private Secretary to CIC for information of the HCIC.
6. Appellant/Sh. Avinash Razdan, S/o. Late Mohan Lal Razdan, R/o. 783, Subash Nagar, Jammu.
7. Office file.

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