



**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](http://www.jksic.nic.in)

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File No. SIC/J/A/177/2017 &

File No. SIC/J/A/178/2017

Decision No:- SIC/J/A/177/178/2017/**116**

Appellant:

Dr. Sapna Sharma,  
House No. 25-A, Shastri Nagar, Jammu

Respondents:

1. First Appellate Authority:  
Registrar, University of Jammu.
2. PIO: University of Jammu.

Date of Registration : 14-12-2017

Date of Decision : 09-01-2018

**FINAL ORDER**

These two 2<sup>nd</sup> appeals, Appeal No. 177/2017 and Appeal No. 178/2017, arise out of the orders of First Appellate Authority under No. 1<sup>st</sup> AA/17/452-53 and No. 1<sup>st</sup> AA/17/454-55, both dated 20-11-2017 and the disposal of RTI applications filed by the appellant by the PIO vide his communication No. PIO-II/JU/17/2725 dated 30-08-2017 and No. PIO-II/JU/17/2772 dated 09-10-2017. The appellant in these appeals had filed two RTI applications with the PIO seeking information. By application dated

05-08-2017, the appellant had requested for providing the copies of legal opinion obtained by the University in the regularization matter of Dr Bharti Prabhakar, Dr Pallavi Sachdeva and Dr Sandeep Singh besides the copy of communication of Department of Sociology applying for UGC-SAP and copy of minutes of DAC, Deptt. of Sociology downgrading the post of Reader in 2005-06. By RTI application dated 13-09-2017, the applicant had sought the copy of communication made by Chancellor's Secretariat with the University pertaining to the representation of the applicant, copy of reply of the University thereto and the copy of legal opinion of Advocate Anil Sethi alongwith the copies of correspondence made with the said Advocate. The PIO provided the rest of the information sought by the applicant in both applications except the copies of legal opinions tendered by the Standing Counsel of the University on the ground that the copies of legal opinion cannot be provided as the same was third party information. The applicant filed 1<sup>st</sup> Appeals before the First Appellate Authority and the FAA disposed of these appeals holding that the copies of the legal opinion cannot be provided as the opinions are privileged and are not subject to disclosure. Hence, these appeals before the State Information Commission.

**Proceedings before the Commission:**

The 2<sup>nd</sup> appeals were heard by the State Information Commission on 09-01-2018. Both the appellant as well as the PIO of the Jammu University were present in person. The PIO filed the reply/counter statement to the appeal, which was taken on record. The appellant submitted that the PIO has unjustifiably denied her the access to legal opinions obtained by the University from the Standing Counsel of the University. She stated that all these legal opinions related to the regularization of various faculty

members including her and that the University regularized other faculty members on this legal advice while in her regularization case, the legal opinion was not acted upon. Therefore, she has a right to know what the Standing Counsel of the University had advised and how the University has differentiated her case for a differential treatment. She also stated that since it concerned her career and violated her fundamental right of being treated equally amongst the equals, she has a right of finding the basis of being denied equal treatment. For that purpose, she required the legal opinions received by the University in respect of the faculty members mentioned by her in her application and the PIO cannot claim exemption of these documents from disclosure. The PIO, through counter statement filed and oral arguments made during the hearing, claimed that the legal opinion received by the University from its Standing Counsel is a privileged document and is exempted from disclosure. He stated that the legal opinion is available to the University in a fiduciary relationship with the Standing Counsel and hence a third party information, which cannot be provided being exempted from disclosure under clause (e) of sub-section (1) of section 8 of the Jammu and Kashmir Right to Information Act 2009. He also stated that no larger public interest existed in the present case, which would warrant disclosure of such information. He, therefore, defended his order of rejecting the request in respect of providing the copies of legal opinions and also the dismissal of 1<sup>st</sup> appeals by the FAA.

**Decision:**

The issues before the State Information Commission in the present appeals are as under:-

- (i) whether 'legal opinion' can be termed as information within the meaning of section 2(d) of the J&K Right to Information Act, 2009;
- (ii) whether the legal opinion obtained by the University from its Standing Counsel can be categorized as privileged and confidential information and hence immune from disclosure; and
- (iii) Whether such information can be termed as information given in a fiduciary capacity and exempted from disclosure under section 8(1)(e) of the J&K Right to Information Act, 2009.

Section 2(d) of the Jammu and Kashmir Right to Information Act, 2009 defines the term 'information' meaning any material in any form including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders etc. Opinion and advice includes the opinion or advice given by an advocate, standing counsel, public prosecutor, Advocate General etc. However, every kind of information is subject to limitations prescribed under section 8 of the J&K Right to Information Act. The opinion or advice given by a lawyer or a Standing Counsel is also subject to the limitations prescribed under section 8 of the Act.

The confidentiality and protection from disclosure of legal opinion or advice tendered by a lawyer to his client emanates from sections 126 and 129 of the Evidence Act, Svt. 1977. Section 126 prevents an Advocate from disclosing any communication made to him by the client or any advice given by him to his client, except with his client's express consent. Section 129 protects from disclosure the confidential communications between an advocate and his client in the course of their relationship as lawyer and client.

Section 19 of the Jammu and Kashmir Right to Information Act, 2009 gives the provisions of the RTI Act an overriding effect over other laws. It provides that the provisions of the Act shall have effect notwithstanding anything inconsistent therewith contained in the State Official Secrets Act, Samvat 1977 and any other law for the time being in force or in any instrument having effect by virtue of any law other than the RTI Act. J&K Right to Information Act has been enacted in the year 2009 and by virtue of section 19, its provisions have an overriding effect on all other laws enacted prior to this Act including the provisions of the Evidence Act of Samvat 1977. The Central Information Commission in case of **Vinod Sunder R VS Department of Space** decided on 20<sup>th</sup> March, 2012, File No. CIC/LS/A/2011/0003523 held that non-obstante clause of the subsequent law i.e., section 22 of the Central RTI Act (corresponding to section 19 of the J&K RTI Act) will prevail over the provisions of the Evidence Act.

In another decision in **Mralok Srivastava vs University Grants Commission**, decided on 24 November, 2015, the Central Information Commission held as under:-

***“Section 22 of the RTI Act which accorded overriding effect to RTI Act over all other statutes cannot be totally brushed aside, and it has to be read in addition to provisos in section 8 of RTI Act. The difference between an individual client and State consulting its legal counsel also needs to be understood. The peculiar character and public office of Government pleader, public prosecutor and standing counsel of the University is different from private character of an individual client locked up in legal conflict with another individual. The RTI Act is made to bring the***

***practical regime of transparency and accountability. University is the public authority, which cannot appoint its legal counsel or employees at its sweet will, but it has to follow due process in transparent manner. If a citizen seeks to know that process, he/she has to be informed within the four corners of RTI Act, 2005.***

***Hence in this situation, not section 126 or 129 of Evidence Act, but sections 3, 6, 8 and 22 of Right to Information Act need to be invoked.”***

Therefore, the legal advice tendered by the Standing Counsel to the University cannot be termed as privileged and confidential communication by invoking the provisions of the Evidence Act and the same cannot be denied under RTI Act, in view of the overriding effect of the provisions of RTI Act over all other laws including the Evidence Act.

Now the question arises whether legal opinion tendered by the Standing Counsel to the University can be termed as information given in a fiduciary capacity and exempted from disclosure under section 8(1)(e) of the J&K Right to Information Act, 2009. ‘Fiduciary relationship’ is a relationship under which one person is under a duty to act for the benefit of the other on matters within the scope of the relationship. As per the dictionary meaning, the fiduciary relationships- such as trustee-beneficiary, guardian-ward, agent-principal and attorney-client – requires the highest duty of care. This relationship usually arise in one of four situations: **first**, when one person places trust in the faithful integrity of another, who as a result gains superiority or influence over the first: **second**, when one person assumes control and responsibility over another: **third**, when one person has a duty to act for or give advice on matters falling within the

scope of the relationship; and **fourth**, when there is a relationship that has traditionally been recognized as involving fiduciary duties, as with a lawyer and a client or a stockbroker and a customer.

A Division Bench of the Calcutta High Court, in **University of Calcutta Vs Pritam Rooj**- AIR 2009 Calcutta 97, held as under:-

***“The plea of fiduciary relationship advanced by the CBSE has not impressed us. Fiduciary relationship is not to be equated with privacy and confidentiality. It is one where a party stands in a relationship of trust to another party and is generally obliged to protect the interest of the other party. While entrusting the examiner with the work of assessment/ evaluation of an answer script there is no agreement between the examiner and the public authority that the work performed by the examiner shall be kept close to the chest of the public authority and shall be immune from scrutiny/ inspection by anyone. At least something in this respect has been placed before us. Since the RTI Act has been enacted to promote transparency and accountability in the working of every public authority and for containing corruption, even if there be such a clause in the agreement between the examiner and the public authority, the same would be contrary to public interest and void. We have no hesitation to hold that even if there be an agreement between the public authority and the examiner that the assessment/ evaluation made by the latter would be withheld on the ground that it is confidential and as assurance is given in this respect, the same cannot be used as a shield to counter***

***a request from an examinee to have access to his assessed/ evaluated answer scripts and the RTI Act would obviously override such assurance. Having regard to or understanding of the meaning of the word 'fiduciary', there is little scope to hold that the etchings/ markings made on answer scripts by an examiner are held in trust by the public authority immune from disclosure under the RTI Act. We find no force in such contention which, accordingly, stands overruled."***

In **Treesa Irish Vs Central Public Information, WP (C) No. 6532 of 2006** (decided on 30<sup>th</sup> August, 2010), the Kerala High Court while agreeing with the conclusions of Calcutta High Court about fiduciary relationship in the above referred case, held as under:-

***"It will be difficult to 'protect' the communication between a Standing Counsel and University equating with that of a communication between ordinary accused and criminal lawyer, attributing 'fiduciary relationship'. When both the public authority and Standing Counsel of the University is expected to protect the public spirit, accountability, fairness in procedure, how can they convert 'fiduciary relationship' even if it exists, to convert the communication as 'secret' or 'confidential'? Are they really protecting the beneficial interests of the public authority? What harm will result if the legal opinion and information related to it is given, and if that information is used before any court of law? If the rejection of the appellant's wife is upheld by the court, the University's contention will prevail, otherwise, a wrong or illegality will be corrected. In both ways there will be***

***possibility of advancing the interest of justice. Public authority is expected to function for the beneficial interests of the society, from which the citizen or applicant or appellant emerged and seeking information.”***

In case **Mralok Srivastava vs University Grants Commission** (referred above), the Central Information Commission allowed the appeal of the applicant and held that the opinion given by the standing counsel is the information held by the University and it has to be disclosed and under section 8(1)(e) and section 8(2) read with section 22 of the RTI Act, the competent authority should have considered existence of public interest in RTI request and given the information.

In case **Mr. Mukesh Agarwal vs Reserve Bank Of India** decided on 6<sup>th</sup> July, 2012, the Central Information Commission rejected the contention of the PIO of RBI that the legal opinion given by the standing counsel to the RBI was a privileged document and hence confidential and immune from disclosure and also the argument that advice provided by a lawyer to a customer is held by a customer in fiduciary relationship and hence is exempt under section 8(1)(e) of the RTI Act. The CIC held that legal opinion tendered by the Standing Counsel is not exempted from disclosure.

In another case decided by the **Central Information Commission** on 30<sup>th</sup> August, 2009 pertaining to GGSIP University, the CIC held that exemption under section 8(1)(e) of the Right to Information Act cannot apply to the information held by a client in a lawyer-client relationship or with the patient in a doctor-patient relationship. While giving this important judgment, Mr. Shailesh Gandhi, the then Central Information Commissioner held that ‘the relation of trust in that relationship is one way and it is only the lawyer who holds the information in a fiduciary capacity and not the

University. Allowing the appeal, the CIC held that the disclosure of the legal opinion does not harm the lawyer who has given this opinion. The information has been sought by the applicant from the University and not from the lawyer, who alone holds such information in fiduciary capacity. The University does not act in fiduciary capacity while disclosing the information it has received from its lawyer.

Viewed the present case in the light of the judicial pronouncements and the orders of the Central Information Commission referred to hereinabove, the information sought by the appellant in the present appeals in the form of legal advice obtained by the University of Jammu from its Standing Counsel can neither be termed as privileged or confidential and hence immune from disclosure, nor can the University be said to be holding such information in fiduciary capacity so as to claim exemption under section 8(1)(e) of the J&K RTI Act, 2009. Only the Standing Counsel of the University can claim fiduciary relationship with the University in case the applicant directly seeks information from him. The applicant, appellant before the Commission, has sought the information from the University. The University has obtained the legal advice from its Counsel and it does not hold the same in fiduciary capacity but as a public authority. Hence it cannot claim exemption of such information from disclosure.

Even the information held by a person in fiduciary capacity is to be disclosed in the larger public interest. The appellant in the present case feels that she has been discriminated against even though the legal advice in her case was similar to the ones in other cases who have been regularized by the University on the strength of such legal advice. It is her legal right to claim justice against the perceived wrong done to her in the matter of her regularization. She feels that the legal advice tendered by the

Standing Counsel to the University in the relevant cases would help her in pleading her case properly. Therefore, it is in public interest to disclose the said information, as the appellant is a citizen and thus a part of the public.

These two appeals, Appeal No. 177/2017 and Appeal No. 178/2017, are allowed and the orders of PIO and the FAA in rejecting the request of the appellant for providing copies of legal opinions obtained by the University from its Standing Counsel are set aside. The PIO is directed to provide the copies of legal opinions obtained by the University in the regularization matters of Dr Bharti Prabhakar, Dr Pallavi Sachdeva, Dr Sandeep Singh and in case of the appellant to the appellant within a period of three weeks from the date of receipt of this order. The appeals are accordingly disposed of.

**Sd/-**

**Mohammad Ashraf Mir**

State Information Commissioner

Dated:-

No:-

Copy to the:-

1. FAA/ Registrar, University of Jammu.
2. PIO/ University of Jammu.
3. Appellant—Sh. Sapna Sharma R/o H. No. 25-A, Shastri Nagar, Jammu.
4. Office file.

**Deputy Registrar,**

**State Information Commission.**