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Jammu and Kashmir State information Commission
(Constituted under The Right to Information Act, 2009)
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File No. SIC/RK-25/Comp/11-2011

Decision No. SIC/RK-25/Comp/11-2011/35

Author: G. R. Sufi, Chief Information Commissioner, J&K.

Quorum: Shri G. R. Sufi, IRS (Retd.), Shri Nazir Ahmad.

Title:- Mohammad Afzal Bhat V/s Accountant General, J&K.

Srinagar
18-04-2013

This is a complaint filed by Mohammad Afzal Bhat, a resident of the State before the Commission on 04-11-2011 against the PIO of Principal Accountant General Office Srinagar, Kashmir. After receiving the complaint of the complainant, the registry of the Commission vide notice under No. SIC/RK-25/comp/11-2011/2532-33 dated: 15-12-2011 brought to the notice of PIO that under section 2(f) of the J&K RTI Act, 2009, a public authority has been defined as any authority or body or institution of self-government established or constituted-

1. By or under the Constitution of India or the Constitution of Jammu & Kashmir.
2. By any other Law made by Parliament.
3. By any other law made by the State Legislature.

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4. By any notification issued or order made by the Government and includes any---

- a) Body owned, controlled or substantially financed;
- b) Non Government organization substantially, financed, directly or indirectly by funds provided by the Government;

Accordingly, the PIO was asked to dispose of the RTI application filed by the complainant as per the provisions of the Act. Subsequently, through another notice under No. SIC/RK-25/Comp/11-20113359-60 dated: 22-03-2012, the PIO was asked to appear before this Commission on 3rd of April, 2012 along with the relevant documents. However, the hearing for said date was rescheduled for 9th of April, 2012. On 9th of April, 2012, Shri S.A.Makroo, ASGI for Accountant General personally attended the Commission and submitted that the complainant had filed first appeal before the First Appellate Authority of Accountant General's Office and accordingly, First Appellate Authority had directed for disclosure of information under the Central RTI Act, 2005. Therefore, it was requested that matter may be closed, treating the order of FAA for the disclosure of the information. However, the Commission noted that First Appellate Authority's direction was that information be disclosed under RTI Act, 2005, i.e. Central RTI, Act and not under J&K RTI Act, 2009 under which Act the information was sought by information seeker. Therefore proceedings could not be closed. Shri Makroo requested that hearing may be adjourned for further three weeks time to enable him to submit a detailed rejoinder and counter statement. The plea for adjournment was granted vide Commission order dated: 09-04-2012. As the issue involved an important question of law, therefore on the recommendations of State Information Commissioner Kashmir Division, Chief Information Commissioner vide order dated 06.08.2012, constituted a Division Bench comprising of Chief Information Commissioner and State Information Commissioner to hear and decide the complaint. The Division Bench heard the complaint on 30.08.2012.

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The respondent has objected to the applicability of J&K State RTI Act, 2009 to the Public Authority of Central Government on a number of reasons. The PIO, Shri Darshan Lal vide his written submissions has taken a plea that the then repealed rule 20(4) of J&K RTI Rules, 2010 required that the Commission with relevant data write to the Ministry concerned for taking measures to sensitise the officers of the department about their obligations under the Act and the ministers referred here mean only the State Minister who may sensitise the department functioning in J&K. It is further submitted that answering respondent is representing an independent entity in the Jammu & Kashmir State vis-a-vis Comptroller and Auditor General of India created under Constitution of India, and does not come under the control of any ministry in the Union Government or Jammu & Kashmir State Government. Therefore, the PIO contends that only such public authorities functioning in J&K State who are directly working under the control of State or alternatively are dependent on the proceeds drawn from the consolidated fund of the State, are governed by the J&K RTI Act, 2009 and not those authorities which are reliant on the consolidated fund of India. In the same breath, the PIO has admitted that under section 5(1) of RTI Act, 2005, the Comptroller & Auditor General of India has designated the Group Officer in-charge of administration of the office of Accountant General (A&E), J&K, Srinagar as Public Information Officer (PIO) and in pursuance to said order the answering respondent is functioning as Central Public Information Officer (CPIO) of the office of Accountant General (A&E), Jammu & Kashmir, Srinagar. It is further stated that Central Information Commission is exercising its jurisdiction vis-vis, the office of Accountant General (A&E) Jammu & Kashmir Srinagar from abinitio and have heard and decided the complaints against the office of Accountant General (A&E), Jammu & Kashmir, Srinagar.

It is also averred that for the PIOs representing Central Government in the jurisdiction of State of Jammu & Kashmir, it is the Central Information Commission which has the jurisdiction and Central Information Commission have heard and decided

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complaints under Central RTI Act, 2005 against the office of Accountant General (A&E), J&K. In this connection, reliance has been placed on the order passed by Central Information Commission in the case of S.N. Kangotra V/s Office of Accountant General (Case No. CIC/AT/C/2007/00139 dated: 31-01-2008). In its earlier rejoinder to Commission's notice, bringing to the knowledge of respondents, section 2(f) of State RTI Act 2009, the respondent has stated that "Section (2) Chapter – I Preliminary of RTI Act (Central Act) does not extend to the State of J&K only in the sense that if there are Public Authorities under the control of State of J&K and located exclusively within the State of J&K and they hold information, then such information cannot be accessed by filing application under RTI Act (Central RTI Act, 2005) with such Public Authority in the State of Jammu & Kashmir. The respondents have agreed that they fall within the jurisdiction of Central Information Act, 2005, thus contradicting their earlier stand that Comptroller & Auditor General, J&K being a constitutional authority, does not come under the purview of Transparency Laws i.e., Right to Information Act. Relying on Central Information Commission's another decision in the case of Ms. Veena Kohli V/s Ministry of Defence in the Appeal No. CIC/WB/C/2007/00636-SM dated: 20-05-2007, it is submitted that Central Information Commission has held that the Central RTI Act, 2005 is applicable to the State of J&K, so far as Central Government Establishments located in J&K are concerned. To buttress its arguments, the respondent have also referred to Hon'ble Delhi High Court's judgment dated: 03-02-2009, wherein the Hon'ble High Court upheld the decision of Central Information Commission as referred above.

The Commission has gone through the findings given by the Hon'ble Delhi High Court in the above decision. The Hon'ble Delhi High Court has rightly concurred with the view that under the State RTI Act, which is a separate enactment, there would be a Commission for the State. It is stated that section (2) of Chapter-I of Central RTI Act, which deals with the non application of Central Right to Information Act, 2005, to the State, simply

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means that no information can be sought under Central RTI Act from public authorities of J&K Government. However, with regard to the presence of Central authorities in the J&K, like defence forces etc. posted in the State, the simple and only question before the Hon'ble High Court was whether they were precluded from the operation of Central RTI Act in the State. The Hon'ble High Court has nowhere held that J&K State RTI Act is not applicable to the public authorities working in the J&K through their agents i.e number of officers holding number of positions and some among them have been designated as PIOs and FAAs. The respondent has further tried to emphasize that they do not come under the same law passed by Union Parliament and the State Legislature and if there is conflict between two laws it is central Act which will prevail. The Commission has deliberated upon this point and given due thought to this objection and have found that the PIO's contentions are misplaced. First of all, there is broadly no conflict between the Central Act 2005 and the State RTI Act, 2009. Though it is an accepted constitutional position that in case of a clash between two laws passed by Union Parliament and the State Legislature on a particular subject which falls under the Concurrent List, it is the central law which will prevail. However, PIO is ignorant of special constitutional relationship of State of J&K with Union of India. The constitutional relationship of J&K with the Union of India is governed by Article-370 of Constitution of India. The State Legislature is functioning and deriving its powers from the Constitution of Jammu and Kashmir. It would be relevant to reproduce briefly the constitutional provisions contained in Article-370 which enumerates and prescribes the limitation for the powers of Union Parliament to make laws for State of J&K. It reads as under:-

Notwithstanding anything in the constitution i.e Constitution of India,

- a) **the provisions of article 238 shall not apply in relation to the State of Jammu and Kashmir;**
- b) **the power of Parliament to make laws for the said State shall be limited to-**

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- i. those matters in the Union list and the Concurrent List which, in consultation with the Government of the State, are declared by the President to correspond to matters specified in the Instrument of Accession governing the accession of the State to the Dominion of India as the matters with respect to which the Dominion Legislature may make laws for that State; and
- ii. such other matters in the said Lists as, with the concurrence of the Government of the State, the President may by order specify.

Thus J&K State has a distinctive and distinguishable position in the Union of India in view of a special status conferred on it by Article 370 of the Indian Constitution, hence the State Legislature legislates on the matters which other legislatures in the country do not legislate. Therefore, in accordance with this Constitutional Status, the State legislature in its judicial competence has passed State RTI Act, 2009 (Act VIII of 2009 dated: 30-03-2009) which has brought in its ambit State as well as Central Public Authorities working in the State.

The CAG is a constitutional body and as such is a Public Authority, hence J&K State RTI Act, 2009 is applicable to it. The State Information Commission is entrusted with the job of ensuring transparency and accountability in the working of every public authority in the State as enshrined in the preamble of J&K RTI Act 2009. The commission has to ensure that right to access the information given to citizens of the State as prescribed in section 3 of State RTI Act is strictly implemented. Section 6 of State RTI Act elaborates that application can be made to concerned public authority and the concerned public authority has been defined in section 2(f) of State RTI Act as under:-

- (f) **“public authority” means any authority or body or institution of self-government established or constituted --**
- (i) by or under the Constitution of India or the Constitution of Jammu and Kashmir;
 - (ii) by any other law made by Parliament;
 - (iii) by any other law made by the State Legislature;
 - (iv) by notification issued or order made by the Government, and includes any-

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- (A) body owned, controlled or substantially financed;**
- (B) non-Government organization substantially financed, directly or indirectly by funds provided by the Government.**

The Commission has considered the submissions of the respondent and perused the records and gone through the Hon'ble Delhi High Court's Decision relied upon by the respondent and also taken note of the decision given by the Central Information Commission. At the outset, it is held with due respect, that the Central Information Commission's decisions, instructions, etc are not binding on the State Information Commission. The State Information Commission is the creation of J&K RTI Act, 2009. Section 12 of J&K RTI Act, 2009 provides for the constitution of a State Information Commission which came into existence through a notification vide No. (SRO 325 dated 19.10.2009). The State Information Commission derives its powers from the State RTI Act, 2009. Like Central Information Commission, it is an autonomous quasi judicial authority, wherein Chief Commissioner and Commissioners have been appointed by the Hon'ble Governor of the State. Thus the State Information Commission is a distinct and separate body from the Central Information Commission.

Therefore, there is no dispute about the fact that Comptroller & Auditor General fall under the definition of public authority given in the State RTI Act, 2009, which is analogous and akin to definition given in the Central Information Act. Secondly, in both the Acts, there is no clash and conflict. With few variations and exceptions, the provisions of J&K RTI Act, 2009 are the same as that of Central Information Act, 2005. Here in this case, it would be relevant to find the source of information which the complainant had sought. Nature of information as sought by the information seeker clearly shows that information so sought is in the possession of authorities of Comptroller & Auditor General's office situated within territorial limits of J&K State. The Commission also declares that it has no objection that people may access information from the Central offices located in the territorial jurisdiction

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of J&K through Central RTI Act. But if any resident/residents of J&K State want to invoke J&K RTI Act, 2009 and seek information from the public authorities of Central Government functioning or acting within the territorial limits of the J&K State and if the information flows and originates within the territorial limits of J&K, same cannot be denied to him/them by stating that the State RTI Act, 2009 is not applicable to the central Government offices operating in the State of J&K.

The respondents have nowhere rebutted that the J&K State Legislature has legislative competence to include public authorities established or constituted by or under the constitution of India or by any law made by Parliament in the definition of Public Authority in section 2 of the J&K RTI Act, 2009. The reference of the respondent to J&K RTI Rules, 2010 that there was no reference to State Appellate Authorities in those rules and thus by implication that means that the Act is not applicable to the respondents, is bereft of any merit. It is the substantive law, i.e., section 2(f) of J&K RTI Act, 2009 which has clearly brought all public authorities established by or under the constitution of India and by or under Act of Parliament which will prevail. Section 2 is part of substantive Law i.e., J&K State RTI Act, 2009. The omission in the rules, which is an executive act, cannot take away the right of a resident of the State to seek information from any central public authority constituted or established by the constitution of India or by any act of Parliament. It is worthwhile to mention that J&K State RTI Rules 2010 have since been repealed by replacing them with J&K RTI Rules 2012 which does not contain said referred Rule.

In view of the above findings, the State Information Commission holds that CAG is a Public Authority as defined in Section 2(f) of the J&K RTI Act, 2009 operating within the territorial jurisdiction of State of J&K directly or through their subordinate offices posted within the territorial limits of J&K, thus fall under the purview of J&K RTI Act, 2009 in respect of information that flows and originates from records held by these Public Authorities within

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the state. The Commission therefore directs the concerned designated PIOs for the offices of CAG working in J&K State to receive applications from residents of J&K State under section 6 of the J&K RTI Act, 2009 and dispose them under section 7 of the said Act. Similarly, the designated First Appellate Authorities posted in the said offices are directed to receive and adjudicate appeal filed before them under section 16 of the J&K RTI Act, 2009.

The complaint is accordingly disposed of.

Sd/-
(Nazir Ahmad)
State Information Commissioner

Sd/-
(G.R. Sufi)
State Chief Information Commissioner

Copy to the: -

1. Comptroller and Auditor General of India, 9, Deen Dayal Upadhyay Marg New Delhi -110 124.
2. Principal Accountant General (Audit) J&K, Jammu/Srinagar.
3. Director Information J&K, Jammu/Srinagar.
4. Sh. Mohammad Afzal Bhat r/o Gulposh Apartments, Quarter No. 13, Block B, Bemina, Srinagar.

(Mohammad Shafi)
Assistant Registrar,
J&K State Information Commission