



Jammu and Kashmir State information Commission
(Constituted under The Right to Information Act, 2009)
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Old Assembly Complex, Srinagar. 0194-2484269, 2484262
www.jksic.nic.in

File No. SIC-K/SA/28/2013
Decision No. SIC-/SA/28/2013/85

Title: Dr. Mushtaq Ahmad Khan v/s 1. Director School Education, Kmr.
r/o Mohalla Hathi Khan, 2. ZEO Srinagar
Srinagar 3. ZEO Nishat
(Appellant) 4. ZEO Zaldagar
5. ZEO Batamalloo
(Respondents)

Present: 1. Mrs. Suraya Akhtar, Joint Director Directorate of School
Education Kashmir (Rep. FAA)
2. Mrs. Sabiya, ZEO Zaldagar.
3. Sh. Mohammad Akbar, ZEO Batamalloo,
4. Sh. Iftikar Ahmad Fazili, ZEO Srinagar.
5. Dr. Mushtaq Ahmad Khan, Appellant.

Srinagar
28.10.2013

This Second Appeal has been filed in the Commission by Dr. Mushtaq Ahmad Khan r/o Mohalla Hathi Khan, Near Central Jail, Srinagar on 17.09.2013 stating therein that he filed an RTI application with the Zonal Education Officers of Srinagar, Batamalloo, Zaldagar and Nishat Zones on 17.06.2013 but he did not receive any information from these PIOs within stipulated time. That he filed First Appeal with the Directorate of School Education (FAA) on 31.07.2013 and on 05.08.2013, FAA directed PIOs to furnish information at the earliest. However, despite repeated directions

from the FAA the information desired was not furnished by the concerned PIOs. The appellant has accordingly requested the Commission to seek an explanation from the concerned PIOs for not furnishing the information under the Act and take necessary action against them for being ignorant.

Records enclosed with the appeal reveal that RTI applications have been filed by the appellant through Registered Post before ZEOs of Nishat, Srinagar, Batamaloo and Zaldagar on 17.06.2013 seeking information regarding details of schools, free books/uniforms, students enrolled, mid day meals scheme, teaching staff and rent etc. in schools in their respective zones. The appellant has also sought inspection of original records that are relied upon by the department to ascertain genuineness of the information provided.

Perusal of records reveals that First Appeal has been received by the Directorate of School Education Kashmir (DSEK) as is evident from the communication of PIO DSEK dated 05.08.2013 addressed to PIO/CEO Srinagar giving reference of appeal of the appellant dated 31.07.2013 and asking the CEO Srinagar to provide requisite information/counter statement to the information seeker with respect to his RTI applications dated 17.06.2013 within five days positively. This is followed by reminder dated 26.08.2013 from PIO DSEK impressing CEO Srinagar to provide requisite information/counter statement to the information seeker and cautioning him that for causing delay, CEO shall be personally responsible for the consequences.

During hearing Dr. Mushtaq Ahmad Khan, appellant admitted to have received information from ZEOs of Zaldagar, Nishat and Batamaloo. Regarding information regarding ZEOs office Srinagar, Shri Iftikhar Ahmad Fazili ZEO Srinagar submitted that he did not receive the RTI application sent through Registered and that he came to know about the RTI application

only from the letter of CEO Srinagar dated 07.08.2013 and in compliance to these orders he has sent information to CEO on 13.08.2013. However, the appellant contested vehemently on the ground that the RTI applications were sent to all the ZEOs through Registered Post on the same date and the acknowledgement of receipt of application can be seen on the website of Post Office. In proof thereof appellant produced photocopy of receipt of post office as evidence. ZEO Srinagar is therefore directed to provide a set of information to the information seeker.

Section 16(1) of the J&K RTI Act 2009 provides the procedure for filing and deciding appeal by 1st Appellate Authority stating that any person who, does not receive a decision within the time specified in sub-section (1) or clause (a) of sub-section of (3) of section 7, or is aggrieved by a decision of the PIO, may within thirty days from the expiry of such period or from the receipt of such a decision, prefer and appeal to such officer who is senior in rank to the PIO, in each public authority. Under section 16(7) of the Act, First Appellate Authority (FAA) is duty bound to dispose of an appeal filed under sub section (1) or sub-section (2) of Section 16 within 30 days of the receipt of the appeal or within such extended period not exceeding a total of 45 days from the date of filing thereof, as the case may be, for reasons to be recorded in writing.

In the instant case it is established from the records that First Appeal has been received in the office of DSEK and therefore FAA was duty bound to adjudicate the appeal ideally within 30 days of its receipt i.e., upto 05.09.2013 and in any case by or before 20.09.2013 giving reasons in writing for delay in disposing of the appeal. From the records placed before the Commission and as also admitted by PIO DSEK Mrs. Suraya Akhtar, appeal filed before Director SEK is still pending inspite of lapse of mandatory period as per section 16(7) of the J&K RTI Act, 2009 which is

serious lapse on the part of FAA who is also Head of Department of offices from whom information has been sought. Communication of PIO DSEK dated 05.08.2013 addressed to CEO Srinagar can by no means be treated as disposal of the appeal in view of the fact that First Appeal is to be disposed/adjudicated by the FAA under seal and signatures of FAA by passing a speaking order. The communication dated 05.08.2013 is only a process which has not been brought to logical end by FAA as required under section 16 of the Act.

In view of the above, the Commission deem it proper to remit the Second Appeal to Director School Education Kashmir (FAA (before whom First Appeal dated 29.07.2013 is pending adjudication)) with the direction to dispose of the appeal within one month of issue of this order after giving an opportunity to the appellant to substantiate alleged incomplete information and pass a speaking/reasoned order. He is also required to make a reference to the Commission as per Section 16(3) of the Act if there is any malifide denial of information by the PIO. FAA is also directed to call for remaining information from the CEO Srinagar or any other office under the Directorate.

During the course of hearing it also came to notice of the Commission that information pertaining to High and Higher Secondary Schools sought by the appellant are not held by ZEOs but by CEO Srinagar. Since the RTI application enclosed with the First Appeal have been forwarded to CEO Srinagar by PIO DSEK vide letter dated 05.08.2013, CEO Srinagar ought to gone through the RTI application and responded to limbs of information held by his office.

From records it is evident that CEO Srinagar has failed to dispose of the RTI application sent to him by PIO DSEK vide letter dated 05.08.2013. Prima facie it is also evident that ZEO Srinagar also failed to respond to the

RTI application within stipulated period and in fact he could not produce any evidence of any information having been sent to the information seeker before the date of hearing.

In view of above, Registry to issue show cause notices to CEO Srinagar and ZEO Srinagar by name to explain as to why penalty should not be imposed as per section 17 of the J&K RTI Act, 2009 for delay in disposing of the RTI application with prescribed period mandated under the Act. Their explanation should reach the Commission within 2 weeks from issue of this order. CEO Srinagar should also respond to the limb of information pertaining to his office within these two weeks.

As per Section 4 of the J&K RTI Act, 2009 it is obligatory on public authorities to display 17 types of information on its website. The Commission has observed that most of the information sought is of general nature which ought to have been displayed on the website of the Directorate and on the display boards of ZEOs/CEOs to enable public authorities refer to such information already available in the public domain. Director School Education Kashmir is directed to update on the website of School Education Department, information of general nature as per section 4 of the Act which would eventually reduce the burden of the PIO's while disposing of the RTI applications.

Appeal is disposed of with the above directions.

Announced in open court.

Sd/-
(Nazir Ahmed)
State Information Commissioner

Copy to the: -

1. Director School Education Kashmir (First Appellate Authority).
2. Joint Director School Education Kashmir (PIO).

3. Chief Education Officer Srinagar (PIO).
4. ZEO Zaldagar (PIO).
5. ZEO Batamalloo (PIO).
6. ZEO Srinagar (PIO).
7. ZEO Nishat (PIO).
8. Dr. Mushtaq Ahmad Khan r/o Mohammad Hathi Khan, Near Central Jail, Rainawari, Srinagar.

(M.S. Bhat)
Deputy Registrar,
J&K State Information Commission