



**Jammu and Kashmir State Information Commission**  
(Constituted under Right to Information Act 2009)  
Old Assembly Complex, Srinagar, Fax No. 0194-2484269, 2484262  
Wazarat Road Near DC Office, Jammu, Fax No. 0191-2520947, 2520937  
www.jksic.nic.in  
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**File No:** SIC-J-Comp-174/2012  
**Decision No:** SIC-J-Comp/174/2012/103

Dr. Rehmatullah	Complainant	Present
Sh.Rajinder Kumar Saproo	PIO	Present
Executive Engineer PWD(R&B), Jammu.		
Sh. Anil Kumar Sharma Proprietor for A.K Constructions, Builders & Engineers.		Absent

**Jammu**  
**26-04-2013**

Briefly the facts in this complaint are that Dr. Rehmatullah B.C-354, Residency Road, Jammu moved an application dated 13-10-2012 under J&K RTI Act, 2009 before the Chief Engineer, R&B, Jammu seeking the following information relating to A.K. Constructions:-

- 1. Whether R&B has allotted/got executed/or any kind of works/supplies through above named Contractor.*
- 2. Whether the allotting authority was competent to make such order or allotment.*
  - a. You are requested to provide the names of work, Date of start of works, date of completion of work, estimated cost of*

*works. Total payment made to AK Construction, Date of payment, Name of Authority/Designation through whom allotment/supply order made.*

*b. Whether the works/supplies were within the time as per agreement, if not what action was imitated by the competent authority.*

*c. How much payment is still due to the Contractor?*

*3. How much outstanding the Contractor owes to the R&B if any.*

After receiving the application of the information seeker the PIO O/o Chief Engineer PWD(R&B), Jammu served written notice bearing no. CEJ/G/11955-77 dated 15-10-2012 to M/s A.K. Constructions, 210, South Block, Bahu Plaza, Rail Head Complex, Jammu informing them that the applicant has sought information under the J&K RTI Act, 2009 about M/s A.K. Constructions from 01-01-2004 to 22-09-2012 and as the information sought by the applicant relates to third party i.e. A.K. Constructions and your consent is required as per Section 11 of J&K RTI Act, 2009 and requested them to convey their response whether the information should be disclosed to the applicant or not.

In response to the aforesaid notice M/s A.K. Constructions, Builders & Engineers communicated vide letter no. AKC/262 dated 20-10-2012 that

*"you are requested not to disclose any information regarding our private concern i.e. M/s A.K. Constructions, Builders and Engineers, as this information can be used in tracking the rate structure of our future projects by our competitors"*

The PIO vide office letter no. CEJ/G/12457-83 dated 22-10-2012 informed the applicant accordingly. The PIO also mentioned the names and addresses of 1<sup>st</sup> Appellate Authority alongwith their jurisdiction in the said letter. The applicant instead of approaching the FAA approached the Commission directly and filed a complaint dated 25-10-2012 alleging therein

that he has been wrongly denied the information by the Chief Engineer (R&B), Jammu by invoking Section 11 of J&K RTI Act, 2009 and there is a deliberate attempt on their part to conceal the information and suppress the evidence required by him as a complainant before the Hon'ble State Accountability Commission where the allotment of multicore Ganpat Bridge, Doda without CDR/Bank Guarantee is under enquiry. The complainant further prayed that nature of information sought by him does not attract restrictions contained in Section 11 (Third Party Information) of the J&K RTI Act, 2009.

On receiving the complaint of the information seeker the Commission issued notice bearing no. SIC/J/C/174/2012/5436 dated 05-11-2012 and directed the PIO PWD (R&B), Jammu to send counter reply to the Commission within 7 days of receipt of the notice and accordingly the PIO filed counter reply vide office letter no. CEJ/G/RTI/13821 dated 14-11-2012. The PIO in counter reply submitted that as per Government of India's office memorandum dated 01-06-2009, 05-10-2009 and 27-04-2010, "The third party information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party is exempt from disclosure. Such an information shall not be disclosed unless the competent authority is satisfied that large public interest warrants the disclosure of such information". The PIO further submitted that in the present case the applicant has not been able to prove larger public interest. Meanwhile, the Commission received a letter bearing no. AKC/275-76 dated 29-11-2012 from Sh. Anil Sharma, proprietor M/s A.K. Constructions Ltd. requesting therein that he be given an opportunity of being heard in terms of Section 16 (5) of J&K RTI Act, 2009 as the information sought by the information seeker is a third party information. Accordingly, notice was sent to Sh. Anil Sharma, proprietor M/s A.K. Constructions Ltd. to appear before the Commission on 01-01-2013 and he was directed to file objections within a week's time and the matter was adjourned. In response to Commission's

direction Sh. Anil Sharma, proprietor M/s A.K. Constructions Ltd. submitted a letter bearing no. AKC/302 dated 19-01-2013 and requested

*"that the information asked for by Dr. Rehmatullah regarding M/s A.K. Constructions, Builders & Engineers cannot be provided as our works are spread all over the state including militancy infested area, so this information can go to undesirable elements who can threaten us for their ulterior motive."*

The matter was again listed for hearing on 28-02-2013 and the information seeker was directed to submit in writing and substantiate the larger public interest which warrants the disclosure of information. M/s A.K. Constructions Ltd. were also directed to file revised objections within 10 days. The matter was adjourned and was listed for hearing on 25-03-2013. Dr. Rehmatullah the information seeker vide his letter no. RTI/GP/DK/11 dated 06-02-2013 submitted before the Commission that the information asked by him would prove a vital piece of evidence in the State Accountability Commission as the contractor in question was allotted the contract of Rs. 30.39 crores without invitation of Bids/Tenders in utter disregard to codal formalities, rules and regulations. The information seeker further submitted in the aforesaid letter that M/s A.K. Constructions, Builders & Engineers Ltd. left the construction work after drawing of Rs. 7.39 crores advance money. The information seeker also contended that the plea taken by the M/s A.K. Constructions Ltd. and put forth by the PIO that the rates of works shall get disclosed to his competitors is a ridiculous stand as the rates are always announced at the time of opening of tenders to determine the lowest rates for compilation of comparative statement of the works which are advertised for open bidding. The allotment of any work without following the codal formalities of tendering and bidding is in itself an irregular act which cannot be covered under any rule or law. The information seeker, also, took the stand that the third party plea of threat perception is not tenable as the firm must have earned the execution of works after due process of competition which may be known to everybody connected with such works.

He further submitted that M/s A.K. Construction Ltd. are trying to claim such a situation after swindling public money in crores in connivance with public men and functionaries.

The matter was adjourned several times in order to provide M/s A.K. Constructions, Builders & Engineers Ltd. an opportunity to file written objections. However, on 25-03-2013 they were given last and final opportunity to file written objections within a week's time but even till date no response has been received from them. The matter was listed for hearing on 26-04-2013 but no one appeared on behalf of M/s A.K. Constructions Ltd. despite proper notice issued to them by the Commission. What thus emerges from the forgoing facts is that a balance has to be struck making principles of promoting honest and open government by ensuring public access to information possessed by a public authority on the one hand and the principle of confidentiality of information the disclosure of which is likely to cause substantial harm to the position of a person about whom the information is sought. Section 11 does not give a third party an unrestrained veto to refuse disclosure of information. Section 11 clearly anticipates situation where the PIO will not agree with the claim for non disclosure by a third party and provides for an appeal to be made by the third party against disclosure, which would have been unnecessary, if the third party have been given a veto against a disclosure. M/s A.K. Constructions, Builders & Engineers Ltd. had taken the stand before the PIO that the information regarding their private concern can be used in tracking the rate structure of their future projects by their competitors. Whereas the stand taken by A.K. Constructions Ltd. before the Commission is that the information asked about their private concern should not be provided as their works are spread all over the state including militancy infested area and this information can go to undesirable elements who can threaten them for their ulterior motive. Both the stands are thus contradictory to each other.

The perusal of the aforesaid facts and the RTI application of the information seeker show that the information sought by the information seeker

nowhere relates to commercial confidence or trade secrets, the disclosure of which would harm the competitive position of a third party. The J&K RTI Act, 2009 envisages the regime of information for the people of the State to secure access to information under control of public authorities, in order to promote transparency and accountability in the working of every public authority, and also to contain corruption and to hold government and its instrumentalities accountable to the governed. The information seeker has been able to substantiate his contention relating to disclosure of information which is required by him in the larger public interest which outweighs in importance any possible harm or injury to the interests of a third party. The larger public interest requires that the information requested by the information seeker may be disclosed to him and the order passed by the PIO bearing no. CEJ/G/12457-83 dated 22-10-2012 is set aside. The PIO is hereby directed to dispose of the application of the information seeker in the light of the aforesaid observations within two weeks from the date of pronouncement of this order under an intimation to the Commission

The complaint is accordingly disposed of.

**Sd/-**

Dr. S.K. Sharma

State Information Commissioner

Copy to the :

1. 1<sup>st</sup> Appellate Authority / Chief Engineer (R&B), Jammu.
2. Public Information Officer / Sh. Rajinder Kumar Saproo, Executive Engineer, PWD(R&B), Jammu.
3. Dr. Rehmatullah B.C-354, Residency Road, Jammu
4. Sh. Anil Kumar Sharma, Proprietor for A.K Constructions, Builders & Engineers.
5. Guard file.

Jang Bhadur

Joint Registrar

State Information Commission