



**Jammu and Kashmir State Information Commission**

جموں اینڈ کشمیر سٹیٹ انفارمیشن کمیشن

(Constituted under The Right to Information Act, 2009)

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

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File No: SIC/J-Comp/2-Nov/2011  
Decision No: SIC/J-Comp/2-Nov/2011/49

1.	Ms. Sanna Mir	Complainant	Absent
2.	Sh. Balvinder Singh	Complainant	Present
3.	Sh. Riaz-Ul-Hussan Malik	Complainant	Absent
4.	Sh. Anil Kumar Gupta	Complainant	Absent
5.	Director / Principal, ASCOMS (Acharya Shri Chander College of Medical Sciences and Hospital), Sidhra, Jammu Through Sh. Achal Sharma Advocate.		Present

**Jammu**

**01-03-2013**

The Commission received four complaints on different occasions alleging therein the denial of information by Director / Principal ASCOMS on the ground that ASCOMS is not a public authority as defined in section 2(f) IV (A) & (B) and is thus not under a statutory obligation to provide the information to the information seekers. These complaints raised an important question of interpretation of law, whether ASCOMS is a public authority or not and were thus clubbed together for disposal by a common order? Before dwelling on the question of interpretation of "public authority", it would be appropriate to narrate briefly the facts in each complaint.

**Ms. Sanna Mir**

Briefly the facts in this complaint are that Ms. Sanna Mir D/o Sh. Shabir Ahmad Mir R/o 68-Chinar Colony Bhagati Barzulla, Srinagar moved an application dated 14-09-2011 under J&K RTI Act, 2009 before the Director Admissions Acharya Shri Chander College of Medical Sciences and Hospital Sidhra, Jammu seeking the following information:-

- 1. Whether selections of MBBS under NRI/NRI wards Quota for the session 2011 has been made or not by your institute.*
- 2. If yes, provide me list of selected candidates and full details of selection.*
- 3. Whether my admission for selection of MBBS under NRI wards Quota was entertained and considered as per the Court direction already conveyed.*
- 4. If considered, whether I have been selected for such course under NRI wards Quota.*
- 5. If not what are the reasons.*

Having received no response from the Director Admissions, Acharya Shri Chander College of Medical Sciences and Hospital Sidhra, Jammu within the statutory period, the applicant filed complaint before the State Information Commission, Srinagar on 20-10-2011 which was send to Jammu Office and received on 01-11-2011. The Commission issued a notice bearing no. SIC/J/Comp.2 Nov/2011/1317 dated 19-12-2011 to PIO O/o ASCOMS and directed him to send reply within 7 days. In response to the Commissions notice the Director / Principal submitted a reply vide no. ASCOMS/Adm/DP/3835 dated 02-01-2012 praying therein that the matter being sub-judice before the Hon'ble High Court on identical facts and circumstances, the complaint before the Commission is not maintainable and is liable to be dismissed.

**Sh. Balvinder Singh**

Briefly the facts in this complaint are that Sh. Balvinder Singh R/o H.No. 127 Sector-2, Lane No. 2, Nanak Nagar, Jammu moved an

application dated 03-12-2010 under J&K RTI Act, 2009 before the PIO, ASCOMS Sidhra, Jammu seeking the following information:-

- 1. How many seats have been reserved for the children's of poor and backward families in your college?*
- 2. How many students applied under the said categories in your college during the last two years (2008-09, 2009-10)? Give detail.*
- 3. Provide the detail of students who have been given admission in your college under the above said categories during the last two years (2008-2009, 2009-10)?*
- 4. Provide the copy of income certificate submitted by each student who has been given admission in your college.*
- 5. How many students had applied for admissions in your college under the sports category during the last two years (2008-2009, 2009-10) give detail along with their residential addresses and contact no's?*
- 6. Provide the copy of the sports certificate submitted by each student on the basis of which they have been given admission in your college under the sports category?*

Director / Principal vide letter no. ASCOMS/ADM/DP/2835 dated 20-12-2010 refused to provide the information to the information seeker on the plea that J&K Right to Information Act, 2009 is applicable to government hospitals / institutions and Acharya Shri Chander College of Medical Sciences and Hospital is neither owned nor controlled or substantially financed by the government and as such it does not come within the ambit of J&K RTI Act, 2009.

**Sh. Riaz-ul-Hussan Malik**

Briefly the facts in this complaint are that Sh. Riaz-ul-Hussain Malik R/o H.no. 168, Bathandi morh near Gulfam Hotel, Narwal, Jammu moved

an application dated 25-06-2012 under J&K RTI Act, 2009 before the PIO, ASCOMS Sidhra, Jammu seeking the following information:-

*Kindly provide list of Indian MBBS Migrant students from foreign countries to ASCOMS, Jammu w.e.f. 01-01-1990 to date alongwith their detailed bio-data & grounds of migration of each migrated student.*

Director Principal ASCOMS vide letter no. ASCOMS/ADM/DP/RTI/1036 dated 30-06-2012 refused to provide the information to the information seeker on the ground that the ASCOMS is neither owned nor controlled or substantially financed by the government, as such does not come within the ambit of J&K RTI Act, 2009.

**Sh. Anil Kumar Gupta**

Briefly the facts in this complaint are that Sh. Anil Kumar Gupta R/o H.No. 84 W.No. 15, Udhampur moved an application dated 13-08-2011 under J&K RTI Act, 2009 before the Director Admissions / Association of Private Unaided Medical & Dental Colleges of J&K C/o ASCOMS Sidhra, Jammu seeking the following information:-

- 1. List of candidates along with address and mobile nos. who joined MBBS course 2011 in ASCOMS under category 2<sup>nd</sup>.*
- 2. List of candidates along with address and mobile nos. who did not join the MBBS course 2011 in ASCOMS under Category 2<sup>nd</sup>. (Although in Selection list)*
- 3. No. of candidates who were allowed to join MBBS course 2011 from waiting list under category 2<sup>nd</sup> along with their address and mobile nos. and marks secured by them in common pre medical entrance test held on 24-07-2011.*

Director Admission ASCOMS, Sidhra Jammu vide Ref. no. ASCOMS/ADM/DA/677 dated 18-08-2011 refused to provide the information to the information seeker on the ground that the ASCOMS is neither owned nor controlled or substantially financed by the government, and as such it does not come within the ambit of J&K RTI Act, 2009.

However, the complainant filed an application before the Commission dated 01-09-2011 requesting therein the withdrawal of his RTI application with the submission that he has got the information from ASCOMS and was not interested in pursuing his application. The Commission did not allow the complainant to withdraw his complaint in view of the importance of the issue involved for interpretation. Moreover, the complainant did not provide any proof to the effect that the ASCOMS has accepted the applicability of the State RTI Act, 2009. Rule 26 of the of the J&K RTI Rules, 2010 (now repealed) provided that Commission may in its discretion allow a prayer for withdrawal of an appeal or a complaint during the course of its hearing, if such prayer is made by the appellant or complainant on an application made in writing.

The stand taken by the ASCOMS in all these complaints is that it is not a "public authority" as defined in Section 2 (f) (iv)(A)&(B) of the J&K Right to Information Act, 2009 as it is neither controlled nor substantially financed by the Government. The information seekers were thus denied the information solely on this ground. All these complaints thus raised a common question for interpretation and were thus clubbed together for disposal.

The short question which arises for consideration in all these complaints is whether ASCOMS is a Public Authority within the meaning of Section (2)(f)(iv) (A) & (B) of J&K Right to Information Act, 2009.

Section (2)(f)(iv) of RTI Act reads as follows:-

"Clauses (a)(b)(c)(d) and (e) of Section 2 omitted"

(f) "public authority" means any authority or body or institution of self-Government established or constituted.....

(iv) by 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.

One of the complainant's Sh. Balvinder Singh has stated that the ASCOMS has been provided 250 kanals of land in village Majeen at a very nominal premium of Rs. 5,000/- per kanal and Rs. 50/- per kanal as ground rent. He has also annexed a copy of the lease deed executed in favour of ASCOMS. The lease deed attached with the complaint substantiates the assertion of the complainant. Sh. Achal Sharma, the learned counsel for ASCOMS has not denied the execution of said lease deed at such concessional rates, rather it has been submitted that ASCOMS is financially an independent body and is not dependent on the Government for its functioning. In written objections filed on 05-11-2012 he submitted that Acharya Shri Chander College of Medical Sciences and Hospital is a private unaided institution which is neither controlled or substantially financed by the government or by any semi-government institution. Moreover, the respondent institution is self-financed institution and has not received any substantial aid or grant from any government agency. Thus mere grant of lease at concessional rate does not amount to substantial finance. He further stated, whether the body is substantially financed or not has to be decided by looking into the overall financial dealing and budget of the respondent institution. Hence, it is not a public authority as defined under section 2(f)(IV) (A)&(B) of the RTI Act because the respondent Medical College and Hospital is not constituted, established or owned or controlled by the Government of Jammu and Kashmir. Therefore, the argument of the learned counsel is not only that there is no substantial finance from the Government but it is not a body either owned or controlled by the Government. The learned counsel for ASCOMS further stated that in case it is held to be a non-Governmental organization, even then it is not substantially financed either directly or indirectly by the Government. Therefore, it was contended that they are not bound to disclose the information sought for by the information seekers as it is not a public authority. The complainant on 16-11-2012 during the course of hearing requested the Commission that the counsel for ASCOMS be directed to produce the Audit reports since its inception in order to ascertain whether the lease of said land constitutes "substantial finance" to ASCOMS. The

counsel for ASCOMS was accordingly directed to produce the Audit reports before the Commission within ten days and he produced the same. It is an admitted fact that the ASCOMS has been provided lease of 250 kanals of land at a concessional rate of Rs. 5,000/- per kanal as premium and Rs. 50/- per kanal as ground rent.

Complainant has asserted that ASCOMS is a "Public Authority" as it is controlled by the State Government and has been "substantially financed" by the State Govt. at the time of its establishment. He has contended that the rate of land charged as premium from ASCOMS is less than that on which it was acquired by the Government. He has also submitted that the said concession granted by the Government constitutes a substantial finance even if the whole financial position of ASCOMS is taken into consideration.

The Commission would like to determine whether the rates at which land is leased out to the respondent institution constitutes substantial finance. The perusal of lease deed dated 10-07-2000 executed by Principal Secretary, Housing and Urban Development Department, Jammu / Srinagar and Vice Chairman, Jammu Development Authority, Jammu in favour of Shri Chander Chinar Bada Akhara Udasin Society through its Vice President Shri Dharam Vir Batra shows that 100 Kanals of land was leased out to ASCOMS at a premium of Rs. 25,000/- per kanal but later on the said premium was reduced to Rs. 5,000/- per kanal. The Lease Deed further reveals that a total of 250 Kanals of land was leased out to Shri Chander Chinar Bada Akhara Udasin Society at concessional rate of Rs. 5,000/- per kanal. Perusal of the letter of Vice-Chairman, JDA produced by the complainant shows that the market value of the land leased out to Shri Chander Chinar Bada Akhara Udasin Society at the relevant time was Rs. 50,000/- (Rupees Fifty Thousand) per kanal. The total market value of 250 kanals of land leased for the establishment of ASCOMS thus comes out to be Rs. 1,25,00,000/- (Rupees One Crore and Twenty Five Lakh). But the said 250 kanals of land was leased out at meager premium of Rs. 5,000/- per kanal which comes out to be Rs. 12,50,000/- (Rupees Twelve lakh fifty

thousand). Thus the indirect financial aid provided by the state government for the establishment of ASCOMS comes out to be more than Rs. One crore. I am of the opinion that an indirect aid of more than Rs. One crore that too at the time of the establishment of an institution, can by no means be termed as trivial. The learned counsel for ASCOMS has failed to produce any such document which could lead to the conclusion that an indirect aid of more than Rupees One Crore was trivial for ASCOMS.

The complainant has raised another ground in support of his contention that the ASCOMS is a "Public Authority". He has asserted that the ASCOMS is a body controlled by the government and is "Public Authority" within the meaning of section 2(f)(iv)(A) of the J&K RTI Act, 2009. In support of his contention he has relied on certain terms and conditions of the Lease Deed. Clause (iv) of the Lease Deed stipulates that 25% of the bed capacity of the proposed hospital shall be reserved for the poor people free of charges. By virtue of Clause (v) of the Lease Deed, the lessee shall be bound by such other terms and conditions as may be prescribed by Health and Medical Education Department. Clause (VII) stipulates that the society shall be indissoluble. Clause VIII lays down that the society shall be bound by the guidelines / norms in the matter of admission of students as may be prescribed by Competent Authority (Now BOPEE) from time to time as also the orders of Supreme Court on the subject.

The definition of public authority Under Section 2(f) is only an inclusive definition and must receive a liberal interpretation. The objective enshrined in the preamble of RTI Act is to promote transparency and accountability in the working of public authorities. Democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold governments and their instrumentalities accountable to the governed. RTI Act attempts to inculcate openness in our democratic republic and one of the salient features of openness in democracy is an access to information about the functioning of public authorities.

The principle of purposive interpretation has been explained by Chief Justice S.R Dass in Bengal Immunity Co. Ltd V/s State of Bihar AIR 1955 SC 661 in Para 22 at page 674 of the report. The learned Chief Justice referred to and adopted the principles laid down in Heydon's case (1584) 3 Co. Rep 7a(v). Those principles are:

1. What was the common law before the making of an Act.
2. What was the mischief and defect for which the common law did not provide.
3. What remedy the Parliament hath resolved and appointed to cure the disease of the common law, and
4. The true reason for the remedy.

If we follow the aforesaid four principles, it will appear that the constitutional principle of Right to Know which was virtually a common law principle of universal application was holding the field before enactment of the RTI Act, in as much as the Hon'ble Supreme Court of India has held in several landmark cases that Right to Know is a part of fundamental Right to freedom of speech and expression and also a part of fundamental Right to life. But there was no well structured Act laying down the procedure on how to exercise one's Right to know and Right to Information, that is why the RTI Act came into existence.

The Information seekers are interested in the activities of respondent Medical College and Hospital which operates in the vital sector of medical education and health. According to them with public resources invested in any institution imparting medical education and providing health facilities and the involvement of the State Government and the Jammu Development Authority in providing the land at a concessional rate in establishing the hospital shall be deemed to be coming under the purview of the laws of the land and a citizen has got right to gain access to information about the functioning of the institution in the **larger** public interest.

Though Section 2(f) IV (A) has used a term substantially financed. This sub-section is also preceded by words "**body owned or controlled.**" In respect of first two words i.e "body owned or body controlled" nowhere it is stated that a body must be wholly owned or wholly controlled by the State.

The word control does not mean deep and pervasive control. Even the term substantially financed has not been defined. Therefore, it has to be analyzed as to what is the object and purpose of the said Sub-section. Moreover, these words are to be read as alternatives not cumulatives. Section 2(f)(iv)(B) even ropes in Non-Governmental Organizations (NGO's) substantially financed, directly or indirectly by the funds provided by the Government. Therefore, if the object of the Act is to safeguard Right to have information from a public authority, then the Section must also see liberal interpretation as held by the Division Bench of Madras High Court in Tamil Nadu Road Development Corporation Ltd. represented by Director Incharge Chennai V/s Tamil Nadu State Information Commission reported in [2008(6)MLJ737].

On the question of being substantially financed there is no clear definition as to what is meant by the term substantially financed. Since the RTI Act does not quantify the amount of funding required for bringing institution or body within the ambit of public authority, the proper test will have to be applied depending upon the facts and circumstances of each case in order to apply the provisions of the RTI Act. Therefore, every citizen has a right to know the working of such bodies and they must explain to the people about their activities. Transparency in their functioning and right to know of a citizen can never be curtailed or restricted on the plea of the respondent institution before the Commission.

For the purpose of interpreting the term" **controlled by Government** as found in Section 2(f)(iv)(A) of the RTI Act, the public authority need not to be a State within the meaning of Article 12 of Indian Constitution. That is taken care by Section 2. By a notification the Government under Section 2(f)(iv) can include any other organizations which are not State and that may include even a private organization. In order to make its intention explicit to cover a wide range of bodies an inclusive definition is found in Section 2(d) and Sub-section (B) of Section 2(f)(iv) which covers non-governmental organizations (NGO's) with substantial funding by the Government. Therefore, a test of inclusiveness is applied to bring an

organization within the ambit of Section 2(f)(iv) (A&B). The test that is to be applied must keep in mind the preamble and the statement of object and reasons behind the RTI Act.

Considering the above factual matrix of case at hand, one can sum up that 250 kanals of land has been allotted to the ASCOMS at a very nominal premium of Rs.5000/- per kanal and at a highly subsidized nominal ground rent of Rs.50 per kanal by the JDA. The ASCOMS is under the control and regulation of Medical Council of India. The University of Jammu also exercises academic control for the purposes of its affiliation and conduct of examinations and award of Degrees to the students. The Health and Medical Education Department of the State Government also exercises control over the respondent institution.

Today, State of J&K is facing a difficult task of ensuring social justice and equality to all the people and sections of society. The model chosen by the Government as a social service state in spreading welfare and its benefits especially the Medical Education and Health Services, the role of the Private Institutions which are tasked to assist in this endeavour is commendable. The important role that Right to information plays in achieving this objective can't be understated. It is in this context that Section 2(f)(iv)(A)&(B) recognizes that the non-state actors shall also have statutory obligation to disclose the information which would be useful and necessary for the people they serve. It furthers the process of empowerment, assures transparency and accountability and makes democracy responsible and meaningful in accordance with the cherished ideals enshrined in the Preamble of the Indian Constitution and the Constitution of Jammu and Kashmir as well.

On consideration of all the above factors the Commission holds that the ASCOMS possesses the essential elements/ingredients of Section 2(f)(iv)(A)&(B) which is substantially financed by the Government and controlled by different agencies under the State Government. The Medical Council of India, University of Jammu, Board of Professional Entrance Examinations (BOPEE), and Health and Medical Education Department of

the State Government play an important role in regulating its activities including professional and academic standards. It is, therefore, covered by the regime of RTI Act and can be called a public authority.

The Commission, therefore, directs the Director / Principal, ASCOMS to designate Public Information Officer (PIO) and First Appellate Authority at the earliest under Section 5 of the RTI Act and also to comply with the mandate of Section 4 of the RTI Act by 30<sup>th</sup> of April, 2013. The information sought by the information seekers be provided to them within one month of pronouncement of this order under an intimation to the Commission. They may also be allowed to inspect the records in case the information sought by them is voluminous in nature and be provided copies of documents required by them if any on payment of fee as prescribed in the J&K Right to Information Rules, 2012.

The Complaints are disposed of on above terms.

Notice of this decision be given free of cost to the parties.

**Sd/-**  
( Dr. S.K. Sharma)  
State Information

Commissioner  
Copy to the:

1. Director / Principal, Acharya Shri Chander College of Medical Sciences and Hospital), Sidhra, Jammu.
2. Sh. Achal Sharma, Advocate for ASCOMS.
3. Ms. Sanna Mir D/o Sh. Shabir Ahmad Mir R/o 68-Chinar Colony Bhagati Barzulla, Srinagar.
4. Sh. Balvinder Singh R/o H.No. 127 Sector-2, Lane No. 2, Nanak Nagar, Jammu.
5. Sh. Riaz-ul-Hussain Malik R/o H.no. 168, Bathandi morh near Gulfam Hotel, Narwal, Jammu.
6. Sh. Anil Kumar Gupta R/o H.No. 84 W.No. 15, Udhampur.

(M.S Shah)  
Registrar,  
State Information Commission