



Jammu and Kashmir State Information Commission

(Constituted under Right to Information Act 2009)

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File No: 1. SIC/CO/Comp/88/2013

2. SIC/CO/Comp/90/2014

Decision No: SIC/CO/SA/88/90/2014/582

Title:- Muzamail Ahmad Ahangar and
Noor-ul-Sajad
V/s

PIO Legislative Council

Jammu

28.01.2014

These are two complaints filed by Shri Muzamil Ahmad Ahangar and Shri Noor-ul-Sajad in this Commission on 16.12.2013 and 30.12.2013. Shri Ishfaq Ahmed Wani, Special Assistant to Hon'ble Chairman-cum- FAA and Shri A.M Dar, Under Secretary-cum-PIO Legislative Council attended. Complainants were heard through video conferencing. The brief facts of the complaints are that the complainants had filed two RTI applications before PIO Legislative Council on 14.10.2013. The PIO was required to pass an order within a maximum period of 30 days. However, the PIO passed orders on 06.12.2013 and 09.12.2013 respectively. The complainants have approached this Commission on 30.12.2013 and 16.12.2013. As the facts are almost identical, therefore, for convenience sake both the complaints are disposed of in this single order.

2. The PIO initially argued that RTI application was received on 21.10.2013 in the case of Shri Muzamal Ahmad Ahangar. However, as per the receipt issued by the Legislative Council Secretariat, applications have been received on 14.10.2013. As the order has been passed considerably late and also as per complaint information provided is "incomplete and misleading" therefore penalty

proceedings as provided under section 17 of the State RTI Act are hereby initiated and the then PIO Shri Gh. Mohd. Bhat presently Deputy Secretary Legislative Council is directed to explain reasons, if any, for not imposing penalty in both the cases. His reply, if any, must reach this Commission within 15 days from the receipt of this order. The present PIO is required to serve a copy of this order on the then Plo Shri Gh. Mohd. Bhat. The then PIO has casually dealt with the issue. As per section 7(8) a statutory duty is cast on the PIO to inform the complainants about their right to file first appeal and also to give full particulars of the FAA. The PIO has not done his duty in accordance with law.

3. The complainant's attention is invited to the Hon'ble Supreme Court of India's decision in the case of Chief Information Commissioner Manipur and Another v/s State of Manipur and Another in Civil Appeal Nos. 10787-10788 of 2011 arising out of SLP© No:32768-32769/2010 wherein the Hon'ble Supreme Court has clearly laid down that information seekers should utilize the institution of FAA and they should not be allowed to bypass the institution of FAA and thus making the institution of FAA as redundant. Thus, both the complainants should have filed first appeal as provided under section 16 of the State RTI Act 2009.

4) During the hearing on 28.1.2014 through video conferencing both the complainants were jointly arguing their case and their attention was brought to Hon'ble Supreme Courts decision as referred above and they were apprised that as per section 15 of the State RTI Act, the Commission's jurisdiction is only limited to investigating why information, if any, was provided late and also whether information so provided was falling in the category of information giving knowingly incorrect, incomplete or misleading. The Commission's mandate of receiving and enquiring into a complaint from any person emanates from section 15 which reads as under:-

"Powers & Functions of Information Commission:- (1) Subject to the provisions of the Act, it shall be the duty of the State Information Commission to receive and inquire into a complaint from any person:-

a) who has been unable to submit a request to the Public Information Officer either by reason that no such officer has been designated under the Act, or because the Assistant Public Information Officer has refused to accept his or her application for information or appeal under the Act for forwarding the same to the Public Information Officer or senior officer specified in sub-section (1) of section 16 or the State Information Commission, as the case may be;

b) who has been refused access to any information requested under the Act;

c) who has been given a response to a request for information or access to information within the time limit specified under the Act;

d) who has been required to pay an amount of fee which he or she considers unreasonable;

e) who believes that he or she has been given incomplete, misleading or false information under the Act; and

f) in respect of any other matter relating to requesting or obtaining access to records under the Act.”

And then sub section 2 has given the mechanism and powers for the Commission to investigate the complaint. If during the investigation, prima facie, it becomes evident that information was given late and even if the information was given to, it was found that it was incomplete, misleading or false then penalty as provided under section 17 of the RTI Act will be imposed if there are no reasonable grounds for such action. The learned information seeker Shri Muzamil Ahmed who argued his own complaint as well as complaint of Shri Noor-ul-Sajad submitted that under section 16 appeal is maintainable only if a decision is not received within time specified in section 7. Hence both of them did not file first appeal as their case is covered under section 15 and requested the Commission for an order to the PIO to disclose complete and correct information. The Commission has considered the submissions of the learned complainants who are practicing advocates. Section 16 (1) covers both the situations which are prevalent in both the complaints i.e first order under section 7 has not been passed by PIO within the time laid down in section 7(3) of the Act. Secondly section 16 has brought the entire order passed by PIO under its ambit. It would be relevant to reproduce section 16(1) as under:

“Any person who does not receive a decision within the time specified in sub-section (1) or clause (a) of sub-section (3) of section 7, or is aggrieved by a decision of the Public Information Officer, may within thirty days from the expiry of such period or from the receipt of such a decision prefer an appeal to such officer who is senior in rank to the Public Information Officer, in each public authority.

Provided that such officer may admit the appeal after the expiry of the period of thirty days if he or she is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.”

The complainants are expected to go through the section 16 of the State RTI Act which clearly provides for filing of first appeal if they were “aggrieved by” the decision of the PIO. They may file first appeal before FAA. FAA is advised to consider their request of condonation of delay in accordance with the advice given by the Hon’ble Supreme Court in the above referred decision.

The complaints are accordingly disposed of.

Sd/-
(G.R. Sufi)

J&K State Chief Information Commissioner

Copy to:-

1. Shri Ishfaq Ahmed Wani, Special Assistant to Hon’ble Chairman-cum-First Appellate Authority, Legislative Council, J&K Jammu.
2. Shri A.M. Dar, Under Secretary-cum-PIO, Legislative Council, J&K Jammu
3. Shri Muzamil Ahmed Ahangar(Advocate), S/o Gh. Qadir Ahangar, R/o Lane No 4, S.D Colony, Batmaloo, Srinagar.
4. Shri Noor-ul-Sajad (Advocate), S/o Noor Mohd. Dar, R/o Nund Reshi Colony Bemina, Srinagar
5. Private Secretary to Chief Information Commissioner
6. Guard file.

(G.Q.Bhat)
Registrar
State Information Commission