



**Jammu and Kashmir State Information Commission**

(Constituted under 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-CO/Comp-93/2014

Decision No: SIC-CO/Comp-93/2014-612

Title: Sh Gh. Mohammad Rah  
V/s  
PIO/ Srinagar Municipal Corporation.

**Srinagar**  
**18.03.2014**

This is a complaint filed by Sh. Gh. Mohammad Rah claiming to be the president of GAR Shopkeeper Association before this Commission on 29.08.2013. The Commission fixed hearing from time to time and has heard Sh. Hilal Ahmad, Secretary cum PIO Srinagar Municipal Corporation and Sh. Mudasir Bandey, Stores Officer cum Asstt. PIO SMC. The Commission has also heard Smt. Gurdeep Kour Under Secretary cum PIO Housing & Urban Development department to which department RTI application was addressed. The commission had intended to hear the complainant also in person. But inspite of the efforts of the Commission to trace the complainant, he could not be traced as per the report of the rider/notice server, the notice could not be served. The complainant has also not given any telephone No The absence of telephone No. also hindered the Commission to inform the said complainant about the hearing before this Commission.

The RTI application was transferred by PIO Housing & Urban Dev. Department to Srinagar Municipal Corporation on 17.07.2013. PIO/SMC in turn sought assistance of other officers under Section 5 for obtaining information. On receipt of this assistance from other officers working in the same Public Authority, PIO/SMC passed an order on 04.09.2013. Replying all points of information

except point No. 1 to 3 of RTI application wherein the complainant wanted to know whether it was a fact that below mentioned khokhas (listed in the application) were in existence at the places as mentioned in the application and were “illegally demolished” by SMC on 19<sup>th</sup> April 1997. It would be appropriate to observe that these khokhas were constructed unauthorizedly as reported by SMC. PIO/SMC reported on the basis of a report from a junior official to his senior officer that information was not available being quite old. This order has been dispatched through registered post and complainant vide his another representation to Commissioner/Secretary Housing & Urban Dev. Department on 19.09.2013 has confirmed of having received such information but insisted that the information so provided was wrong. Thus, the only ground of complaint before the Commission whether information as provided by PIO is wrong as alleged by the information seeker. The Commission has gone through the RTI application and the order passed by PIO. On first 3 points, information is denied to the information seeker on the plea that the information is not available. This is being done on the basis of a report from a very junior official. As per official rules and procedures the Govt. records maintenance and preservation is an important element of governance. Records cannot be claimed to have been destroyed or misplaced without any evidence on record. As this is a vital information Commission is not inclined to accept PIO’s argument on face value. In this regard PIO’s attention is invited to Delhi High Court judgement delivered on 13.09.2013 titled Union of India V/s Vishwas Bhamborkar in WP Civil 360/2012 with CMP 7664/2012 wherein it has been held that the Information Commissions are within their power to enquire under what circumstances the record is claimed to have been misplaced or not being traceable. PIO, Sh. Hilal Ahmad is directed to prove before the Commission that record was not traceable and explain what steps were taken to take action against the concerned officials/record holders for misplacing or not making the records available. The Commission would expect that PIO would take all steps to trace this record within 30 days from the issue of this order. On other points of information the Commission has found that by and large the information whatever was available was provided to the information seeker. The complainant has failed to prove before the Commission that information on other points is incorrect, incomplete and misleading. The Commission also invites the attention of complainant to Section 16 wherein he has been given a right to file an appeal before the First Appellate Authority and after filing an appeal before First Appellate Authority if the information is not given or the information so given was incorrect, incomplete and misleading, then law has provided for, of filing 2<sup>nd</sup> appeal before the Commission. The information seeker has not adhered to the provisions of law. The institution of First Appellate Authority cannot be made redundant by users of the Act by going to the Commission and requesting for a

direction to the Public Authorities for disclosure of the information. Hon'ble Supreme Court has held that mandate of Section 15 and 16 is restricted. The Commission in the case of a complaint can only investigate for not giving the information or take action under section 17 of the Act if information so given has been found to be incorrect or misleading. Therefore information seekers are advised to file appeal before First Appellate Authority before approaching the Information Commission. The complainant is also advised to furnish proof before the Commission, if any, that information so provided is incorrect or incomplete. This proof and evidence be provided within 15 days from the date of receipt of this order.

Subject to these findings the complaint is disposed of.

Sd/-

(G.R. Sufi)

Chief Information Commissioner

Copy to:-

1. Commr/Secretary to Govt. Housing & Urban Dev, Department, Civil Sectt. Jammu.
2. First Appellate Authority, Municipal Corporation, Srinagar
3. Public Information Officer, Municipal Corporation, Srinagar
4. Sh. Gh. Mohammad Rah, S/o Late Sh. Abdul Sattar Rah R/o Hazoori Bagh, Srinagar
5. Private Secretary to Chief Information Commissioner
6. Guard file.

( G.Q. Bhat )

Registrar

State Information Commission