



**Jammu and Kashmir State information Commission**  
(Constituted under The Right to Information Act, 2009)  
**Wazarat Road, Near DC office Jammu, 0191-2520947, 2520937**  
**Old Assembly Complex, Srinagar. 0194-2484269, 2484262**  
www.jksic.nic.in  
\*\*\*\*\*

File No: SIC-CO/SA/128/2014  
Decision No: SIC-CO/SA/128/2014/619

Title: Sh Parvaiz Ahmad Paray  
V/s  
Hon'ble High Court Jammu/Srinagar

**Srinagar**  
**09.04.2014**

This is a second appeal filed by Sh. Parvez Ahmad Paray, a resident of State against the failure of Public Information Officer and First Appellate Authority of the Hon'ble J&K High Court Srinagar to not honour his Right to Information under the State RTI Act. **The Right to Information has been equated by the Hon'ble Supreme Court of India with the fundamental rights of the citizens of India.** The Brief grounds of appeal are as under.

That the appellant filed an RTI application dated 19.09.2013 which has been received in the PIO's office of Hon'ble High Court on the same date. As per provisions of Section (7) of the State RTI Act, PIO of the Hon'ble J&K High Court Srinagar had to pass an order as expeditiously as possible but not later than 30 days. However, as the PIO did not pass the order within statutory limitation, the appellant preferred First Appeal before First Appellate Authority of the J&K Hon'ble High Court on 05.11.2013.

The First Appellate Authority (FAA) also failed to adjudicate the first appeal. As per provisions of Section 16 of the State RTI Act. FAA was under legal obligation to dispose of First Appeal within 30 days after hearing the appellant and the PIO which is further extendable by 15 days after recording the reasons for such extension. Nothing has been done by FAA. The Commission is constrained to observe that this is not first instance when the concerned officers of the Hon'ble J&K High Court have not appreciated the provisions of the State RTI Act. It is brought to the notice of erring public authorities that the right to information has been equated with fundamental rights conferred on the citizens of the country. Again being denied of any information the appellant preferred 2<sup>nd</sup> appeal before this Commission on 19.02.2014 which is being adjudicated in this order. It will be appropriate to reproduce firstly the statement of facts and the grounds of appeal raised by the appellant. The purpose for reproducing the entire statement of facts of filing appeal is to show the anguish and anger expressed by a resident of the State against the failure of concerned authorities to honour his right to information which has been conferred on him under Section (3) read with Section (6) of the State RTI Act.

1. "It is most respectfully submitted that I had filed an application for information under J&K RTI Act, 2009 to the PIO High Court of J&K Srinagar wing on 19.09.2013 alongwith application fee of Rs.10 in the form of Indian Post order No. 05F464154.(Copy .....)
2. In my application for information under J&K RTI Act, 2009 I had requested for photocopies of applications alongwith corresponding reports of the registry and remarks/order of the Hon'ble Chief Justice of High Court of J&K which I had filed with Srinagar wing of High Court of J&K and wherein I had sought permission to file review petition in Srinagar wing of the Court against the Division Bench judgement dated 10.05.2013 passed in Jammu wing of the court in LPA No. 102/2012 titled

"Parvaiz Ahmad Parry Vs State of J&K & Others". The title of my applications for permission was also "Parvaiz Ahmad Parry Vs State of J&K & Others" and were filed on three instances, first by my Council Sh. M.Y. Bhat, Advocate, High Court of J&K Srinagar on 20.05.2013 and later twice by me personally on 30.05.2013 and 06.06.2013. While submitting application for permission dated 06.06.2013, I made open submission in the court of Hon'ble Chief Justice, who directed that the application be sent to registry for report. On all the three instances, I & my council

Sh. M.Y. Bhat were verbally informed by Sh. Aijaz Ahmad Mir, Registrar Judicial who is also PIO in this matter, that my applications seeking permission to file review petition in Srinagar wing of the court has been rejected by Hon'ble Chief Justice. However, no reason or written proof was given to me by the Registrar Judicial and his office despite my several requests. I was personally told by Registrar Judicial that permissions are of administrative nature and therefore, they cannot be shared with applicants. The refusal of providing reason in writing by the Public Authority in this case runs against the spirit of clause (d) of Sub section (1) of Section 4 of the J&K RTI Act, 2009.

3. It is submitted that as per the existent practice Srinagar Wing of High Court of J&K, no receipt is given to applicants or their learned councils while filing applications seeking permission to file review petitions in Srinagar Wing of High Court of J&K.
4. It is submitted that in response to my RTI application, I received a letter from the PIO bearing number 35433 dated 23.09.2013 wherein I was informed that my RTI application is "without the No and title of review petition, so the application is return back to you in original for want of No. title and date of decision of the review petition." In response to the said letter, I submitted a clarification letter dated 01.10.2013 alongwith the letter sent by PIO in original, wherein I stated that said No. & title has already been provided in my RTI application. (Copy of clarification letter.....)
5. It is submitted that I was made to appear in the office of Registrar Judicial (Ex-officio-PIO) several times in the month of October 2013 and first week of November 2013 and I was told that the staff has been deputed to look for my applications and the rejection order of Hon'ble Chief Justice. But on every occasion, I was directed to return back to the office of the PIO on some other date, while in the meantime, the whereabouts of my applications was supposed to be located. Contrary to sub section (2) of section 6 of J&K RTI Act 2009, I was also made to give the reason for seeking the said information verbally, and to avoid any further inconvenience, I even gave the reason to the PIO so that provision of information is facilitated. After being disappointed on several occasions, I stopped visiting the PIO office w.e.f. 05.11.2013.
6. It is submitted that I received copies of internal communications between PIO & SO/Incharge, Counter Section, High Court of J&K bearing No. 38707 dated 11.10.2013; internal communication bearing No 46678-79 dated 26.11.2013; internal communication bearing No. 48563 dated 09.12.2013 and finally internal communication bearing No. 3411-12 dated 29.01.2014 by postal service (copy of four letter.....). In all these internal communications the PIO is seeking the requested information by me, the appellant, from S.O./Incharge, Counter Section. Apparently sending the copies of said internal communications to me, the appellant, seem to be an evasive tactic of either buying time or waiting for the stipulated

duration of 2<sup>nd</sup> appeal to elapse by the PIO with the malafide intent of concealing and denying the information requested in my RTI application.

7. It is submitted that on 05.11.2013 I preferred an appeal as per sub section (1) of section 16 of J&K RTI Act 2009 against PIO, for not providing the information requested or issuing any decision in this regard with FAA, which in this case is Sh. Suresh Kumar Sharma, Registrar General, High Court of J&K presently at Jammu through speed post bearing receipt No. EE871687363IN. Though the FAA should have provided his decision/order by or before 05.12.2013 but no such order has been issued till date. (Copy of RTI application.....)
8. It is submitted that when it became clear to me that the copies of applications alongwith the decision of Hon'ble Chief Justice will not be provided to me, I submitted another RTI application dated 05.11.2013 wherein I simply sought the status of my applications that I had filed to seek permission. However, the said RTI application is still lying pending with the IO, High Court of J&K Srinagar Wing.”

### **Relief sought:**

1. “The Commission may kindly initiate an enquiry in the matter as per sub-section (2) of section 15 of the J&K RTI Act, 2009.
2. The PIO may kindly be directed to provide the information as requested in my RTI application as per sub clause(i) of clause(a) of sub section (9) of Section 16 of the J&K RTI Act, 2009.
3. I, the appellant may be compensated for denial of information by the PIO as per clause (b) of sub section (9) of section 16 of the J&K RTI Act, 2009.
4. The PIO may be penalized as per sub section (1) and sub section (2) of Section 17 of the J&K RTI Act, 2009.
5. Any other relief as deemed fit by the Commission to uphold writ of law with respect to respecting the right to information of ordinary citizens like me as envisaged in the J&K RTI Act 2009 in the highest institution of justice in the State of J&K.”

The appellant could not attend in person before this Commission as he was away in Delhi. First Appellate Authority and Public Information Officer also did not attend inspite of the fact that the Commission has issued following notices to the FAA and PIO of the Hon'ble J&K High Court:-

- 1) No. SIC/CO/SA/104/214/1362-64 dated 05.03.2014.
- 2) No. SIC/CO/SA/104/2014/1488-90 dated 11.03.2014.
- 3) No. SIC/CO/SA/128/2014/13-16 dated 02.04.2014.

However, the representative of PIO Sh. Bashir Ahmad, Assistant Registrar has informed the Commission that on 21<sup>st</sup> of March when the case was fixed for hearing at Jammu Office, this was declared a public holiday. There is no communication from FAA to the Commission for his attendance or otherwise. The Commission has heard the 2<sup>nd</sup> appeal which has emanated from the failure of FAA to decide the First Appeal. Therefore, the Commission is of the considered opinion that during the 2<sup>nd</sup> appeal it is the FAA who has to respond to the Commission's notice as provided under Rule 8 of J&K Right to Information Rules, 2012. As the appeal is time bound in view of the limitation laid down in the Act for disposal of the 2<sup>nd</sup> appeal, the Commission heard the appellant on telephone. He again reiterated grounds of appeal raised in his second appeal. As per application dated 19.09.2013, the appellant has sought the following information:-

“Under the provisions of RTI Act, 2009 kindly provide me the certified copies of both the applications, along with the corresponding reports of registry and remarks/order of Hon'ble Chief Justice of High Court of Jammu and Kashmir.”

The appellant clarified that his RTI application consisted of 2 limbs i.e. he wanted copy of his 2 applications which have been addressed to the Hon'ble High Court and also corresponding report of registry and remarks/order of the Hon'ble Chief Justice of High Court of J&K. The Commission is of the view that the spirit of information as defined in Section 2(i) of the State RTI Act is to obtain information which is held by public authorities or inspecting the work/documents/records and taking notes, extracts or certified copies of documents or records under the control of any public authority. The definition has to be read in consonance with the preamble of the Act which provides the access to the people of the State to secure information which is under the control of public authorities. The purpose of securing such information is to promote transparency and accountability in the working of every public authority. The question arises whether a document which has been prepared by the appellant/information seeker himself and

which has been submitted to any public authority under any law or rules under which such public authority is working can be accessed under the State RTI Act. The Commission is of the considered opinion that such information is already in the possession and knowledge of the appellant. Thus it is already in public domain. However, appellant states that he has misplaced such copies of his application. Negligence of the appellant to preserve his own documents cannot be shifted to any public authority. The Commission is informed by Assistant Registrar, Sh. Bashir Ahmad that under the rules of J&K High Court any litigant can obtain copies of petition/writ/appeal after depositing fee as prescribed in such rules. The appellant is at liberty to obtain such information after applying under those rules and paying the fee. The Commission is constrained not to allow the appellant to reduce his liability of paying the fee by resorting to RTI. However, second limb of information is disclosable under the provisions of the State RTI Act which has not been disclosed so far. The Commission finds from the records that PIO had written to Section Officer, Counter Section, Hon'ble Court of J&K Srinagar on 11.10.2013, 26.10.2013 and 09.12.2013 seeking his assistance in providing this information to the appellant. This assistance has not been provided by the concerned Section Officer so far to the PIO. The State RTI Act has dealt with such situation. Section 5(5) of the State RTI Act makes it mandatory on the part of any officer to provide such assistance and if he fails to provide such assistance, he will be treated as a deemed Public Information Officer. The Commission is accordingly treating him as a deemed PIO. He has contravened the provisions of the State RTI Act. Thus he has attracted the provisions of Section 17 of the State RTI Act for being penalized for not providing information to the information seeker within the time stipulated under Section 7. Therefore, Syed Shamim Ahmad, Section Officer, Counter Section, J&K Hon'ble High Court Srinagar is required to explain the reasons for not being penalized under Section 17 for not disclosing the information. His reply, if any, must reach this Commission within 15 days from the receipt of this order. The penalty will be reckoned from the date the information became due under Section 7 till the date the information is actually given. The said officer is accordingly directed to discharge his obligations under the Act.

With the above directions the appeal is accordingly disposed of.

Sd/-

**(G.R. Sufi)**

**Chief Information Commissioner**

Copy to the:-

1. Registrar General, J&K High Court, Jammu (FAA).
2. Registrar Judicial, J&K High Court Srinagar wing (PIO).
3. Syed Shamim Ahmad, Section Officer, Counter Section, J&K Hon'ble High Court Srinagar.
4. Sh. Parvaiz Ahmad Parray C/o Sh. Ab. Rahim Parray R/o Solina Srinagar.

**(Mohammad Shafi)**

**Deputy Registrar,**

**J&K State Information Commission**