



**Jammu and Kashmir State Information Commission**

(Constituted under Right to Information Act 2009)

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File No: SIC/CO/SA/110/2014

Decision No: SIC/CO/SA/110/2014-651

Title: Hakeem Tanveer V/s PIO Vigilance Organization Kashmir and  
PIO Forensic Science Laboratory, Jammu

Srinagar  
17.07.2014

This is a second appeal filed by Shri Hakeem Tanveer against the denial of information sought by him vide his RTI application dated: 11.10.2013 from PIO(s) of Forensic Science Laboratory, Jammu and State Vigilance Organization vide his RTI application. The PIO submitted that the information related to FIR No: 19/2005 which was registered against the officers/officials of Rural Dev. Deptt Baramulla regarding non execution of electrification works of various Panchayat Ghars of district Baramulla. The PIO further informed the appellant that Hon'ble High Court had stayed the production of challan and accordingly invoking section 8(g) of the State RTI Act, the PIO informed the appellant that the information sought by the appellant could not be provided. Being aggrieved with this order, appellant filed first appeals before the FAA(s) of Forensic Science Laboratory and Vigilance Organization arguing therein that since the investigation was complete and sanction stands accorded to file a case before the competent authority, so section 8(1)(g) of the State RTI Act which prevents the disclosure of information

which would impede the process of investigation or apprehension or prosecution of offenders was not applicable. The appellant had argued that the information so sought was not only vital for his career but also for his life as he was passing through “mental pain and agony” due to “false report of the Forensic Laboratory”. Therefore, he had pleaded before the FAA(s) for ordering the disclosure of information. The FAA(s) did not find favour with the appellant’s submissions and upheld the order of the respective PIO(s). Again being not satisfied with the orders of FAA(s), the appellant approached this Commission with second appeal for issuing a direction to allow the appellant to inspect the records and furnish information. The Commission heard this appeal from time to time by enforcing the attendance of concerned parties. A brief order was pronounced by the Commission on 8.5.2014 in open court upholding the stand of the PIO, State Vigilance Organization and FSL that under the facts and circumstances of the case section 9(1)(g) was applicable, hence the PIOs order was upheld. In consequence of that order the detailed reasons are as under:

The information so sought relates to vigilance proceedings before the State Vigilance Organization accusing number of public servants including the information seeker for the commission of offences punishable under section 5(1)(c), 5(1)(d) r/w section 5(2) of Jammu and Kashmir Prevention of corruption Act Samvat 2006 and section 120(b), 467,468,201 RPC in case of FIR No: 19/2005 P/S VOK. It will be relevant to give a brief summary of this high profile corruption case.

The State Vigilance Organization had received an intimation disclosing that officers/officials of Rural Development Department Kashmir defrauded the government exchequer in the process of execution of electrification works in panchayat ghar buildings in District Anantnag and Baramulla. Thus an FIR was

registered on 18.6.2005 in Police Station of Vigilance Organization. The investigation allegedly had revealed that in the year 2004-2005 accused public servants which included the information seeker had committed offences punishable u/s 5(1) of the Ranbir Penal Code and an FIR was accordingly lodged under No: 19/2005 dated: 18.06.2005. There were serious charges of defrauding the government exchequer in the execution of electrification of works in panchayat ghars of district Anantnag and Baramulla. The information seeker had approached the PIO Forensic Science Laboratory, Srinagar for providing him the copy of the report and relevant documents under RTI Act 2009 because the information seeker had come to know that there was a report of examination done by the FSL Srinagar for certain documents. PIO did not provide this information after invoking section 8(1)(g) of the State RTI Act. The appellant had also approached the Vigilance Organization, Kashmir under RTI Act for seeking information regarding the case. As the appellant was aggrieved by the orders of the PIO and FAA of the Vigilance Organization, therefore, he filed second appeal before this Commission for a direction to the PIO(s) of Vigilance Organization and Forensic Laboratory, Srinagar to disclose the information. The Commission has heard the appeal from time to time. Appellant as well as the PIO(s) attended. The PIO, Vigilance Organization defended his order of refusing information on the plea that this case is covered strictly under section 8(1)(g) of the State RTI Act. The PIO further argued before the Commission that disclosure of this information at this stage would adversely affect the conduct of investigation at the trial court. It was further brought to the notice of the Commission that Hon'ble J&K High Court had stayed the production of challan before the competent court. Contrary to the PIO's submissions and pleadings, the appellant has insisted before the Commission that investigation in this case was complete and sanction for launching prosecution stands accorded. Therefore, the information required does not fall under section 8(1)(g) of the State RTI Act.

The Commission has considered carefully the contentions of the PIO and has perused the arguments of the appellant. Before adjudicating the rival submissions, the Commission would like to highlight the basic purpose, spirit and rationale of the State RTI Act, 2009. It would be appropriate to reproduce the relevant portion of the preamble of the State RTI Act which reads as under:-

“An Act to provide for setting out the regime of right to information for the people of the State to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a State Information Commission and for matters connected therewith or incidental thereto.

Whereas, the Constitution of India has established Democratic Republic; and  
Whereas, democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Government and its instrumentalities accountable to the governed;”

The law is, therefore, clear that the purpose and aim of the RTI Act is to establish a regime of transparency and accountability in the working of every public authority. The question would arise what for this transparency and accountability is needed. The preamble itself replies this vital query and the reply is that whole exercise is done to contain corruption. Therefore, if corruption in any form will not be contained with the help of the RTI Act, then the very rationale of the RTI Act will be at stake. There is no doubt that the case in which the information seeker is accused is very high profile case of corruption and the Legislature has ensured that the Act could not be used to defeat the very purpose of the Act i.e to contain corruption. Hence, the Legislature has laid down a number of restrictions for disclosure of information under section 8 of the State RTI Act. Section 8(1)(g) clearly lays down that “no information should be given which would impede the process of investigation or apprehension or prosecution of offenders”. The question which is to be replied by the Commission is whether the PIO was right in holding that the investigation in this case was not complete in view of the fact

that the appellant has strongly pleaded that investigation has been completed. The PIO Mr. Gulshan Ahmed has invited the Commission's attention to provisions of section 173(8) of the Code of Criminal Procedure Samvat 1989. It would be relevant to reproduce the said provisions of law as under:

“Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer-in-charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-section (2) to (6) shall as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2)”.

The Vigilance Organization has been stopped from proceeding further because of the stay of the Hon'ble J&K High Court in this case. Hence, report of the police officer could not be produced before the Magistrate. Section 173(8) reproduced above has clearly laid down that the Magistrate has powers to order for further investigation in respect of an offence after a report under sub section (2) has been forwarded to the Magistrate. Thus, it is established that the investigation in the case is not complete and the case strictly falls under the provisions of section 8(1)(g) of the State RTI Act. Therefore, any disclosure of information at this stage would definitely affect the process of investigation and it would ultimately negate the purpose and rationale of the State RTI Act as laid down in the preamble of the Act which has been reproduced above. Under the facts and circumstances of the case, the appeal filed before this Commission for disclosure of information is hereby rejected and orders of the PIO and FAA of Vigilance Organization are upheld.

As this is a very high profile case of corruption, it would be in the fitness of the things and in accordance of the objectives of the State RTI Act to ensure that Vigilance Organization expedites its efforts for getting the stay vacated by the Hon'ble Court.

Sd/-

( G.R. Sufi )

Chief Information Commissioner

Copy to:-

1. First Appellate Authority, J&K Vigilance Organization, Srinagar
2. Public Information Officer, J&K Vigilance Organization, Srinagar
3. First Appellate Authority, J&K Forensic Science Laboratory, Jammu.
4. Public Information Officer, J&K Forensic Science Laboratory, Jammu
5. Shri Hakeem Tanveer, S/o Late Abdul Khaliq, R/o Laldad Sangrama, Sopora
6. Private Secretary to Chief Information Commissioner
7. Guard file.

( G.Q. Bhat )

Registrar

State Information Commission