



## **Jammu and Kashmir State Information Commission**

(Constituted under Right to Information Act 2009)

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No: SIC/CO/SA/157/2014

Dated: 28 /10/2014/667

### **Order u/s 17 of the J&K RTI Act, 2009**

1. The case under consideration involves the imposition of penalty u/s 17 of J&K RTI Act 2009 on BMO Verinag deemed PIO Dr. Gulam Mohd Bhat for his failure to provide assistance sought under section 5(4) of J&K RTI Act 2009 to Chief Medical Officer Anantnag for providing the information to information seeker under J&K RTI Act, 2009. The genesis of the case is that one Sh. Syed Muzafar Ahmad had applied to CMO cum PIO Anantnag for getting certain information under J&K RTI Act 2009 vide his application dt. 18.01.2014 received in the office of PIO on 27.01.2014. The PIO failed to pass an order as required u/s 7 of the Act. Consequently applicant preferred 1<sup>st</sup> Appeal with First Appellate Authority concerned on 20.03.2014. First Appellate Authority as per records has wrongly rejected the First Appeal on the ground that it did not pertain to him which he was otherwise required to forward to the concerned First Appellate Authority. Further as per the requirements of Principles of Natural Justice appellant was to be given the opportunity of being heard before taking any action in the matter which was not done by the First Appellate Authority.

2. Thereafter the appellant filed 2<sup>nd</sup> Appeal u/s 16(4) of the State RTI Act with the State Information Commission on 05.06.2014 with the prayer for directing the PIO concerned to provide the requisite information to the appellant. The case was fixed for hearing in the Commission on 01.07.2014 after registry issued notices to the parties. The hearing was attended by Sh. Nazir Ahmad, Chief Medical Officer cum PIO Anantnag, Dr. Gulam Mohd Bhat Block Medical Officer Verinag and Appellate Sh. Syed Muzaffar Ahmad. During the hearing CMO cum PIO Anantnag Sh. Nazir Ahmad

deposed before the Commission that immediately after receipt of RTI application he sought assistance u/s 5(4) of State RTI Act from Dr. Gulam Mohd Bhat, Block Medical Officer Verinag under whose domain the information was lying through his office letter on 28.01.2014. The said letter was sent through peon book and served on the said BMO, he disclosed. He further informed that the BMO was sent reminder on 02.05.2014. Besides, a wireless message was also sent to him for providing the information. However BMO concerned failed to provide the assistance.

3. After hearing the parties at length Commission disposed of the 2<sup>nd</sup> Appeal vide decision No. SIC/CO/SA/157/2014-642 dt. 01.07.2014. The operative part of the decision is given as under:

- i. "From the facts emerging from the record, it is established that Dr. Gulam Mohd Bhat, BMO Verinag failed to give any assistance to the CMO cum PIO. Thus he has denied the assistance/information. The Commission in accordance with section 7 read with section 17 of the State RTI Act declares him to be a deemed PIO who has failed to provide information within 30 days from the receipt of RTI application".
- ii. "As the Commission has noted that this information is givable under section 7 of the State RTI Act, therefore, the same be furnished to the information seeker within three days from the pronouncement of this order i.e today. Dr. Ghulam Mohd Bhat, BMO Verinag, who has been declared as deemed PIO is directed to explain why penalty under section 17 of the State RTI Act may not be imposed on him for failing to furnish information within stipulated period of time".

4. Commission thereafter received a complaint for non compliance under section 15(1)(e) r/w section 17(2) of State RTI Act on 16.07.2014 from complainant/appellant that he has been provided incomplete and misleading information by the Block Medical Officer Verinag cum deemed PIO. Consequently Registrar of the Commission issued show cause notice to the said BMO cum deemed PIO vide No. SIC/CO/SA/157/2014-717-18 dated 01-08-2014 directing him to

provide written reply within 10 days to the contentions raised in the complainant that he has been provided misleading and incomplete information despite Commission decision dated 01-07-2014. Further he was directed to explain as to why penalty proceeding may not be initiated against him u/s 17 of the State RTI Act for his failure to provide information to the information seeker within stipulated period as ordered by the Commission in its decision dated 01-07-2014. The copy of the said show cause notice was also served to Chief Medical Officer, Anantnag for information and necessary action, who vide his office letter No. Est/IV/RTI/3080-82 dated 08-08-2014 directed the BMO concerned to comply with the orders of the Commission and send para wise reply to the show cause notice. However, the BMO cum deemed PIO has shown disregard to the directions of the Commission by not replying till date.

5. Considered

6. The Commission is of the opinion that the BMO Verinag cum deemed PIO Dr. Gulam Mohd Bhat has violated a very cherished statutory right of the appellant by not providing him the requisite information sought by him under State RTI Act within the stipulated period. The Right to Information is an implicit fundamental right also, Which has been carved out of Fundamental Right of "Freedom of Speech and expression" enshrined in Article 19 (1)(a) of the constitution of India. This has also been upheld by the Hon'ble Supreme Court of India in various decisions viz State of Uttar Pradesh V/s Raj Narain (1975), Dinesh Trivedi v/s Union of India (1997), People's Union for Civil Liberties V/s Union of India (2004). Besides the preamble of State RTI Act also provides for the promotion of Transparency and Accountability in the working of every Public Authority. The Act provides for a set up in which public authorities are accountable to the governed.

7. In state of Uttar Pradesh v/s Raj Narain (1975) Hon'ble Supreme Court has held. "In a government of responsibility like ours where all the agents of Public must be responsible for their conduct, there can be but few secrets. The people of this country have right to know every Public act, everything that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing".

8. Now coming to State RTI Act, section 7 provides that "Public Information Officer on receipt of request under section 6 shall as expeditiously as possible and in any case within thirty days of the receipt of the request either provide the information

on payment of such fee as may be prescribed or reject the request for any of the reasons specified in section 8 & 9". Again section 5(5) of the Act is worth mentioning which says that "any officer whose assistance has been sought under sub section (4) shall render all assistance to Public Information Officer seeking his or her assistance and for the purpose of any contravention of the provision of the Act, such other officer shall be treated as a Public Information Officer".

9. Further proviso to section 17 of State RTI ACT provides that Public Information Officer shall be given a reasonable opportunity of being heard before any penalty is imposed on him. The Commission in compliance to the said provision provided an opportunity to the erring deemed PIO who failed to furnish any reply. Again the deemed PIO has failed to discharge the burden of proving that he acted reasonably and diligently as the onus was lying upon him in pursuance to second proviso to section 17 of State RTI ACT.

10. In this case the conduct of the said deemed PIO has been against the above mentioned statutory provisions as well as the law laid down by the Hon'ble Supreme Court of India. As such the Commission in accordance with the powers vested under section 17 of the State RTI Act holds Dr. Ghulam Mohd Bhat BMO Verinag cum deemed PIO to be in default and hereby impose a penalty on him which is worked as under:-

No of days of default	=	124
Penalty to be imposed for each day	=	250
Total amount of penalty comes to	=	31,000

11. However in view of the mandate given to the Commission under section 17 of the State Right to Information Act, 2009 the penalty amount has to be restricted to Rs.25000. Accordingly a penalty of Rs 25,000/- is imposed on Dr. Ghulam Mohd Bhat BMO Verinag cum PIO. The Drawing and Disbursing Officer will ensure deduction of penalty of Rs 25000 (Rupees Twenty Five Thousand Only) from the salary of Dr. Ghulam Mond Bhat BMO Verinag cum deemed PIO in two equal installments from the month of October and November 2014 and remit it to the Government Accounts head 0070- other administrative services with an intimation to this Commission. The DDO concerned is further directed to submit a compliance report

along with a copy of deduction certificate/challan with T.V NO and date to this Commission within 05 days of the compliance.

Sd/

G.R. Sufi

State Chief Information Commissioner

Copy to:

1. Commissioner/Secretary to Government, H&ME Deptt. Civil Secretariat Srinagar.
2. Director Health Services Kashmir Srinagar.
3. Chief Medical Officer Anantnag.
4. Dr. Ghulam Mohd. Bhat BMO Verinag.
5. Sh. Syed Muzffar Ahmad.
6. Guard file.

(G.Q. Bhat)  
Registrar

State Information Commission