



J&K State Chief Information Commissioner
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Wazarat Road, Jammu. Fax No: 0191-2520947, 2520927

File No. SIC/CO/SA/191/2014/
Decision No. SIC/CO/SA/191/2014/698

Title: Shri Om Prakash

V/S

- 1. First Appellate Authority, Zonal Headquarters, Crime Branch, Jammu.**
- 2. Public Information Officer, Zonal Headquarters, Crime Branch, Jammu.**

Jammu
04-12-2014

This is a 2nd appeal filed by Shri Om Prakash, a resident of the State against the denial of information by FAA/PIO, Zonal Headquarters, Crime Branch, Jammu. Mr. Abdul Wahid, Dy. Superintendent of Police, Crime Branch, Jammu (PIO) and the appellant attended the Commission. Brief facts of the appeal are that the appellant filed an RTI application in the office of Inspector General of Police, Crime Branch, J&K, Jammu on 24-02-2014 seeking following information;

1. Please provide me information as to what action has been taken on the application of undersigned regarding Khasra No. 320/2 at Narian Nagrota, Patwar Halqa Kattal Battal, Jammu addressed to the IGP, Crime Branch, J&K, Jammu dated: 20-04-2009.
2. Please provide me the information regarding below named persons who have shown their addresses in the revenue record and other official correspondence which I have mentioned under their respective names. These persons are not available at these addresses. As an investigating officer, please inform the undersigned;
 - a) Whether these addresses of following persons are correct.
 - b) Whether these persons are still alive.
 - c) If they are alive, please provide information about their present addresses.
 - d) If any of them is more, please provide information of names and addresses of their sons Sardar Daljt Singh S/o Pritam Singh R/p Gol Gujral Tehsil and District Jammu, Smt. Ambika D/o Bishan Kumar Gupta, Visynu Kumar Gupta W/o Girish Chandar Bhatia, Gandhi Nagar, Jammu, Shri Rajinder Gupta S/o Som Nath Gupta R/o H.No. 463, Rehari Colony, Jammu.

The PIO passed an order on 24-03-2014 and information seeker was informed that FIR bearing No. 24/2010 u/s 419, 420, 467, 471, 120 RPC stands registered at Police Station, Crime Branch, Jammu. However, most of the information was denied on the plea

that it is covered under Section 8(1) (g) of J&K RTI Act, 2009. Aggrieved of the order of PIO, appellant preferred first appeal before First Appellate Authority, O/o Director General of Police, J&K on 12-04-2014, which was transferred by DIG (Adm) / FAA, Police Headquarters, J&K, Jammu vide his letter dated: 16-04-2014 to Senior Superintendent of Police, Crime Branch, Jammu, who was the concerned FAA in the case. The Sr. Superintendent of Police, Crime Branch, Jammu (FAA) vide his letter dated: 25-04-2014 informed the appellant that information sought is covered under Section 8(1)(g) of J&K RTI Act, 2009 and can not be provided, hence upheld the order of PIO. However, adjudication of first appeal was not done in accordance with law. No opportunity notice of being heard was given to the appellant. Under J&K RTI Act, 2009, there is a proper mechanism of institution of FAA. In accordance with Section 16 of J&K RTI Act, 2009, the FAA is a designated officer, who is senior in rank to the PIO. The term adjudication has been defined in the Black's Law Dictionary (6 Edition) as under;

" The legal process of resolving a dispute. The formal giving or pronouncing a judgement or decree in a curt proceeding; also the judgment or decision given". Deep Chand and others Vs Land Acquisition Officer and others, (1994), 4 SCC 99 (Refer Encyclopaedic Law Lexicon, 2013-Second Edition by Justice C.K.Thakker).

Therefore, it is thus understood that there can not be any adjudication unless both the parties are heard. The FAA is therefore advised that in future while adjudicating an appeal, he should hear both the parties and adjudicate appeal strictly in accordance with law. Secondly, the only purpose of the J&K RTI Act, 2009 is to bring transparency and accountability in the working of the public authorities. The FAA and PIO in the said Act are public authorities, therefore, to uphold the principal of accountability they have to identify themselves while passing order. Besides, there are several Government Circulars issued since 2004 dated: 14-07-2004 reiterated through Circular No. 16-GAD of 2011 dated: 08-04-2011, Circular No. 23-GAD of 2012 dated: 09-08-2012, Circular No. 20-GAD of 2013 dated: 10-09-2013 and the latest Circular No. 06-GAD of 2014 dated: 23-01-2014 whereunder it is clearly impressed upon all the officers/officials to indicate their names and designation below their signature while initiating or endorsing any note/proposal for consideration of the competent authorities and also on the communications exchanged within different departments. The officers / officials have further been advised to mention their telephone numbers and e-mail addresses on all letters/letter heads / correspondence,

etc to make communication specific and easier. The FAA unfortunately has not adhered to this principal.

The Genesis of this RTI application is a complaint lodged by one Shri Om Prakash and others before IG, Crime Branch, Jammu on 20-04-2009 against some land grabbers at Village Nariana, Nagrota, Jammu in which investigation has been started on 28-04-2009 and a FIR was registered bearing No. 24/2010 dated: 09-11-2010 by the Crime Branch Jammu. Alleged land encroachment measuring 96 kanals has been done by some local interested persons. This land as per information seeker was originally belonging to his ancestors, which later on under land to tiller law was taken over by the Government and became Government land. But some interested parties have succeeded to grab this land fraudently. Information seeker wanted now information as reproduced above emerging from his complaint. The PIO during the proceedings before the Commission stated that no charge sheet has been produced in the competent court as the case was still under investigation. The PIO further stated that if information is disclosed at this stage, there is in all likelihood a possibility of apprehension of influencing witnesses and thus process of investigation may be impeded. The Commission has gone through the relevant records produced by PIO and is satisfied that if information is disclosed at this stage, it would impede the process of investigation. Hence, Commission upheld the order of FAA and PIO. However, before concluding this order, Commission would like to make following observation;

" Commission has been informed that though there is no time limit for producing challan in competent court, however, Investigating Officer will make utmost efforts to ensure that challan is produced as early as possible. The delay in disposal of said case would obviously defeat the very purpose of lodging a complaint with Crime Branch. The Commission was informed that the Crime Branch has prima facie found a cognizable case, therefore, it would be advisable and in the interest of bringing transparency and accountability to speed up the investigation process. During the proceedings, it was brought to the notice of Commission that a complaint was also lodged by Shri Om Prakash and others before Divisional Commissioner, Jammu who was acting as Deputy Custodian General/Financial Commissioner. An order was passed by Divisional Commissioner on 21-04-2012 and in the said order in the concluding para, the Divisional Commissioner has held that mutation no. 34 and 35 attested on 17-02-2006 and 29-05-2006 have been attested in gross violation of the Standing Order No. 23-A as well as Cabinet Order No. 578-C of 1954 and same cannot be allowed to sustain. It was also brought to the notice of Commission that an alleged fake

death certificate was issued by one Dr. Parminder Singh, the then BMO, Dhansaal. The said Doctor later on confirmed his negligence before Divisional Commissioner, Jammu vide his letter dated: 25-02-2009. In spite of that admission it was alleged that no departmental action was taken against said Doctor Mr. Parminder Singh who was indicted by Divisional Commissioner in the above mentioned order. He is reportedly still working and has rather than rewarded with a promotion. It is a shocking state of affairs. Nothing was forthcoming from records of Crime branch whether any action was recommended against said Doctor, Parminder Singh, the then BMO, Dhansaal who admitted to have issued fake death certificate to facilitate illegal transfer of government land to some private individuals. The Commission made telephonic enquiry from Office of the Divisional Commissioner, Jammu to the effect whether any punitive action against said Doctor Parminder Singh who indulged in gross misuse of his services. The Commission was informed that Doctor Parminder Singh was let off only with an apology. This is shocking and speaks volumes about the "tolerant culture" of the administration, wherein, senior Government officers can get away with impunity even after massacre of rules. An immediate action should have been initiated against said Doctor Parminder Singh, the then BMO Dhansaal as provided under J&K Government Employees Conduct Rules, 1971. The concerned officers have behaved like saints and have forgiven the said Doctor Parminder Singh, who indulged in gross misuse of his services. How can senior officers forgive an official who has admitted gross negligence and issued fake certificates. The State has been wronged and not the forgiving officer personally. The forgiving officers of the administration have done this act in gross violation of J&K Government Employees Conduct Rules, 1971. It will be relevant to reproduce Rule 3 of J&K Government Employees Conduct Rules, 1971 as under;

1. Every Government Employee shall at all times_

(i) Maintain absolute integrity;

(ii) Maintain devotion to duty; and

(iii) Do nothing which is unbecoming of a Government employee.

2. (i) Every Government employee holding a supervisory post shall take all possible steps to ensure the integrity and devotion to duty of all Government employees for the time being under his control and authority.

(ii) No Government employee shall, in the performance of his official duties or in the exercise of powers conferred on him, act otherwise than in his best judgment except when he is acting under the direction of his official superior and shall, where he is acting under such direction, obtain the directions in writing, wherever practicable, and where it is not practicable to obtain the direction in writing, he shall obtain written confirmation of the direction as soon thereafter as possible (Explanation—Nothing in clause (ii) of sub-rule (2) shall be constructed to justify a Government employee to evade his

responsibilities by seeking instructions from or approval of, a superior officer or authority when such instructions are not necessary under the scheme of distribution of powers and responsibilities.

A proper enquiry should have been immediately conducted against the said Doctor Parminder Singh, the then BMO, Dhansaal under J&K Civil Services (Classification, Control and Appeal) Rules, 1956 and a minimum punishment was that he be put under suspension till finalization of the enquiry. However, "saintness" of the officers have persuaded him to "forgive him" at the cost of government land which might be costing now a days crores. The Commission would like Chief Secretary of the State, Vigilance Commission, Vigilance Organization and Divisional Commissioner to re-consider this issue. While concluding this order, Commission once again would hope the Crime Branch to expedite the issue of filing challan in the competent court and provide information later on to the information seeker.

The 2nd Appeal is accordingly disposed of.

Sd/-

(G. R. Sufi)

Chief Information Commissioner

Copy to the:-

1. Chief Secretary, J&K, Government, Civil Secretariat, J&K, Jammu.
2. Chief Vigilance Commissioner, State Vigilance Commission, J&K, Jammu.
3. Divisional Commissioner, Jammu.
4. Director Vigilance, State Vigilance Organization, J&K, Jammu.
5. Inspector General of Police (Crime Branch), J&K, Jammu.
6. First Appellate Authority, Zonal Headquarters, Crime Branch, Jammu.
7. Public Information Officer, Zonal Headquarters, Crime Branch, Jammu.
8. Shri Om Prakash S/o Shri Dhani Ram R/o Narain P/o Kandoli, Nagrota, Jammu (Appellant).
9. Pvt. Secretary to HCIC.
10. Guard File.

(G.Q.Bhat)

Registrar,

J&K, State Information Commission