



Jammu and Kashmir State Information Commission

(Constituted under Right to Information Act 2009)

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www.jksic.nic.in

File:SIC/CO/SA/265/2015 .

Decision No: SIC/ CO/SA/265/2015/788

Appellant : Khurram Parvez

Respondent : PIO Zonal Police Headquarters J&K

Date of hearing : 05-08-2015

Date of Decision: 05-08-2015

Chief Information Commissioner: G.R. Sufi

Referred Sections: Section 5, 6, 7,16 of the J&K RTI Act, 2009.

Result: Appeal allowed/ disposed of.

1. Shri Khurram Parvez, a resident of the State has approached this Commission with an appeal under Section 16 of the J&K State RTI Act, 2009, seeking a direction to the PIO to provide him information which he had sought vide his RTI application dated: 24.11.2014. Shri Rajeshwar Singh AIG-cum-PIO Police Headquarters and Shri Murtaza Nasir, DDP-cum-PIO Zonal Police Hqrs also attended the hearing. Appellant also attended.

Facts

2. The information seeker Shri Khurram Parvez filed an RTI application on 24.11.2014 before Public Information Officer, PHQ J&K Jammu seeking the following information:

- “- All present SOPs in place for the Jammu & Kashmir Police
- Further, the time period for which the present SOP is in place
- Time periods in the past for which SOPs were present

- Has there ever been a period of time between 1989 to date when there were no SOPs in place for the J&K Police? If yes, details of time period should be provided.”

The PIO Zonal Police Headquarters (ZPHQ) Kashmir refused to disclose the information as it would prejudicially affect the sovereignty and integrity of India. The information seeker filed first appeal before the FAA on 29.1.2015 with a prayer for disclosure of information. FAA being a quasi judicial authority was under legal obligation to adjudicate the first appeal within 30 days. But the FAA passed an order on 7.4.2015 declining the information to the information seeker on the plea that the disclosure of information would “prejudicially affect the sovereignty and integrity of India-----“. The appellant then filed an appeal in this Commission on 27.5.2015. This appeal has been heard in detail after hearing the PIO DG Headquarters, PHQ, ZHQ and the appellant.

3. The Commission is pained to observe that the PIO has not dealt with the requests before him diligently and reasonably. Nothing has been mentioned by the PIO to justify his finding that information asked by the appellant with regard to Standard Operations Procedures will prejudicially affect the sovereignty and integrity of India. His order is perfunctory and mechanical in nature ignoring the provisions of section 7(8)(a) which envisages providing reasons to the information seeker for rejection of his request. The reason is not simply quoting the provisions of law but reason has to explain under what circumstances prohibition for seeking a particular information is applicable. The Commission is at a loss to understand how this routine information which otherwise should be on the website of the J&K Police becomes so dangerous and prejudicial if disclosed that it will affect the sovereignty and integrity of India, biggest democracy in the world and one of the leading powers in the region. The right to information given to the citizens of the country under the Central RTI Act 2005 has been replicated and reiterated in J&K RTI Act, 2009. Hon’ble Supreme Court in numerous celebrated decisions and judgments has equated this right with fundamental right of speech and expression given to the citizens of this country guaranteed by the Constitution of India (Article 19). It has further held that the disclosure of information is a general rule and withholding of information is an exception (CBSE v/s Aditya Bandhopdhyay). The Commission also does not appreciate that the FAA, Zonal Police Headquarters, Kashmir has also not adjudicated the first appeal of the appellant in a judicious and reasonable manner. Under Section 16 of the J&K State RTI Act, 2009, the FAA has to adjudicate a dispute between an appellant and a public authority i.e the PIO and has to follow the

principle of Audi Alterm Partem. This principle of law implies that no one should be condemned unheard.

4. Having been denied the information, the appellant approached the Commission with appeal assailing the findings of the above mentioned authorities on a number of grounds like PIO has failed to adhere to the mandate of the J&K State RTI Act, 2009 particularly Section 7(8)(a) which states that request for information can be rejected after passing a speaking order. PIO's order has to be reasoned and not arbitrary keeping in view the constitutional importance of the right to information. The PIO has not given any explanation with regard to what part of the information is hit under section 8(1)(a). Section 8(1) (a) refers to "sovereignty and integrity of India and security strategic, scientific or economic interests-----". No explanation is given which of these elements lead to the denial of information. It has further been argued that the provisions of Section 8(2) of the J&K RTI Act, 2009 envisages the need for disclosure of information being overwhelmingly in public interest. To buttress his submissions, the appellant has relied on Hon'ble Supreme Court's decision in the case of Naga Peoples Movement of Human Rights V/s Union of India (1998) 2SCC109 and states that the Court has highlighted the importance disclosure of standard operations procedures for the armed forces, which would include police personnel as well involved in such operations. The SOP is nothing but detailed "do's and don'ts" of the standard operating procedures for the armed forces and such guidelines were important and an effective check on the use/misuse of the power. If these guidelines can be made public before the court, similar operations, procedures for the police must be made public across the board.

The Commission has considered the submissions of the appellant, gone through the orders passed by the PIO and FAA and perused the relevant provisions of law. The Commission in the outset would express its anguish and sorrow that a serious issue concerning uprooting the militancy and maintenance of law and order, preservation of human life and avoiding undue harassment has not been dealt with the seriousness it deserved. The right to information has been conferred on the citizens of India and people of the State under the State's own Right to Information Act, 2009 with the sole objective of bringing transparency and accountability with the aim of developing and shaping a well informed citizenry which does not remain ignorant of the affairs of the State and the governance. Any issue which deals with human life and preservation of

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same gets priority in the Act. Maximum time for disclosure of other information is 35 days, but if somebody asks information which concerns the life or liberty of a person, the Act provides 48 hours for the disclosure. This underlines the importance and predominant value which the Legislature assigned to the preservation of life and liberty of the citizenry. Section 8(a) prohibits the disclosure of information which “prejudicially affects the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State or incitement of an offence”. These are serious concepts and they deserve to be seriously considered by the authorities who are vested with the duty of protecting and preserving the same. By disclosing an information on Standard Operation Procedure, how a police officer or an executive magistrate should act or not act while dealing with a law and order situation how can it affect prejudicially sovereignty and integrity of India? How can this disclosure be equated with the exalted concept of sovereignty and integrity of India? Therefore, any law or any procedure which is in force for preserving the human life and liberty have also to be regulated in such a way that there is no unjustifiable loss of life and curtailment of liberty and freedom of the citizenry. Therefore, the Legislature being conscious of these responsibilities has made the authorities bound to be transparent and accountable and provide the information which is sought by the citizenry on any subject of governance. The Hon’ble Supreme Court has, therefore, observed that under the RTI Act “disclosure of information is a general rule and exemption or prohibition of disclosure is an exception”.

The information sought by the appellant should ordinarily have been in public domain through the medium of suo moto disclosure as is envisaged in section 4 of the J&K State RTI Act, 2009 which was to be implemented within 120 days from the enactment of the Act. The FAA’s attention is invited to Section 4(b)(iii) and (v) which provides as under:-

“(b) publish within one hundred and twenty days from the commencement of the Act:-

(iii) the procedure followed in the decision making process, including channels of supervision & accountability;

(v) the rules, regulations, instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions;”

Sovereignty and integrity is a supreme uncontrolled, unlimited and unfettered power of a state to rule its subjects and to defend its territorial integrity and authority as a supreme power with independent authority,

personality and coercive power. Sovereign power is vested in the State and not in Government. The Commission is pained and aghast to see this exalted power being used to curb a minor and un-harmful desire of a citizen to know what are the Standard Operation Procedures in place in this state and for what period they were in place or was there any period when such procedures were not in force. While dealing with the writ petitions and appeals challenging the validity of armed forces (special powers) Act 1958 enacted by Parliament and the Assam Disturbed Areas Act 1955, Attorney General of India informed the Hon'ble Court that to ensure that there was no misuse of such drastic powers by the security forces, the instructions in the form of do(s) and don't(s) issued by the Army Headquarters from time to time are in force. He listed the certain do(s) and don't(s) before the Court which are attached with this order as "**ANNEXURE**".

The Court also referred to its order dated July 4, 1991 in Civil Appeal No: 2591 of 1991. Issued further following directions:-

"The Army Officers while effecting the arrest of woman or making search of woman or in searching the place in the actual occupancy of a female shall follow the procedure meant for the police officers as contemplated under the various provisions of the Code of Criminal Procedure namely, the proviso to sub-section (2) of Section 47, sub-section (2) of Section 51, Sub-Section (3) of Section 100 and proviso to sub-section (1) of section 160 of the Code". The safeguards against an arbitrary exercise of powers conferred under Section 4 and 5 as indicated above as well as the said direction should be incorporated in the instructions contained in the list of "Do's and Don't's" and the instructions should be suitably amended to bring them in conformity with the guidelines contained in the decisions of this Court in this regard".

The Hon'ble Court further held that it is necessary that a complaint containing an allegation about misuse or abuse of the powers conferred under the Central Act should be thoroughly inquired into and if it is found that there is substance in the allegation, the victim should be suitably compensated by the state and the requisite sanction under section 6 of the Central Act should be granted for institution of prosecution and/or a civil suit or other proceeding against the person/persons responsible for such violation" Upholding the validity of the law, the Court nonetheless in the strong terms has also issued the following directions:

"While exercising the powers conferred under clauses (a) to (d) of Section 4 the officers of the armed forces shall strictly follow the instruction contained in the list of Do's and don'ts issued by the

army authorities which are binding and any dis-regard to the said instructions would entail suitable action under the Army Act, 1950. The instructions contained in the list of Do's and Don'ts shall be suitably amended so as to bring them in conformity with the guidelines contained in the decisions of this Court and to incorporate the safeguards that are contained in clause (a) to (d) of Section 4 and

Section 5 of the Central Act as construed and also the direction contained in the order of this Court dated July 4, 1991 in Civil Appeal No: 2551 of 1991. A complaint containing an allegation about misuse or abuse of the powers conferred under the Central Act shall be thoroughly inquired into and, if on enquiry it is found that the allegations are correct, the victim should be suitably compensated and the necessary sanction for institution of prosecution and/or a suit or other proceedings should be granted under Section 6 of the Central Act”

If the Government of India has informed the court about these do's and don'ts, why is PIO denying the information to the appellant on the plea that it will prejudicially affect the sovereignty and integrity of India. Let the Commission now examine Section 8(2) r/w section 19 of the J&K State RTI Act, 2009. These two sections have made it abundantly clear that for the sake of transparency in the working of public authorities by ensuring the protection to right to information of the residents of the state, the prominence and importance has to be given to the disclosure of information if public interest overweighs any harm to the protected interest. Obviously, both these provisions of law have been in view and under the consideration of the Hon'ble Court when it observed that under this Act “disclosure is a general rule and exemption or prohibition is an exception”. As would be seen in the foregoing paragraphs, the information was sought on a very important subject of making residents of the state aware about the standard operation procedures which the police personnel and other security personnel are required to follow during their anti terrorism operations to protect and safeguard the sovereignty and integrity of the country. This information over weighs any protected harm. How can it be pleaded that by not disclosing and making them public one is protecting the sovereignty and integrity of the country. Attorney General of India has himself highlighted these standard operation procedures. Therefore, the PIO and FAA were duty bound to study law and procedures on the issue which included any orders/judgments of the higher courts. Therefore, in the facts and under the circumstances of the case and in law, the PIO is directed to disclose the information sought by the appellant within 15 days from the receipt of this order.

The Commission would also like to invite the attention of authorities to provisions of section 18 of the J&K State RTI Act, 2009 which provides that “ No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under the Act or any rule made there under”. This protection is provided only if orders are passed in good faith and not otherwise.

With these observations the second appeal is disposed of.

Sd/-

(G.R. Sufi)

J&K State Chief Information

Commissioner

No: SIC/CO/SA/265/2015

Dt:

Copy to:-

1. Director General of Police, J&K for his kind information
2. Shri Rajeshwar Singh, AIG-cum-PIO, J&K Police Headquarters, Srinagar
3. Shri Murtza Nasir, DDP-cum-PIO Zonal Police Headquarters, Srinagar.
4. Shri Khurram Parvez R/o House No: 1, Gupkar Road, Srinagar.
5. PS to Chief Information Commissioner
6. Guard file.

(G.Q. Bhat)

Registrar

State Information

Commission

ANNEXURE

DO'S

1. Action before operation
 - (a) Act only in the area declared 'Disturbed Area' under Section 3 of the Act.
 - (b) Power of open fire using force or arrest is to be exercised under this Act only by an officer/JCO/WO and NCO.
 - © Before launching any raid/search, definite information about the activity to be obtained from the local civil authorities.
 - (d) As far as possible co-opt representative of local civil administration during the raid.
2. Action during operation
 - (a) In case of necessary of opening fire and using any force against the suspect or any person acting in contravention to law and order,

ascertain first that it is essential for maintenance of public order. Open fire only after due warning.

(b) Arrest only those who have committed cognizable offence or who are about to commit cognizable offence or against whom a reasonable ground exists to prove that they have committed or are about to commit cognizable offence or against whom a reasonable ground exists to prove that they have committed or are about to commit cognizable offence.

© Ensure that troop under command do not harass innocent people, destroy property of the public or unnecessarily enter into the house/dwelling of people not connected with any unlawful activities.

(d) Ensure that women are not searched/arrested without the presence of female police. In fact women should be searched by female police only.

3. Action after operation

(a) After arrest prepare a list of the persons so arrested

(b) Handover the arrested persons to the nearest Police Station with least possible delay.

© While handing over to the police a report should accompany with detailed circumstances occasioning the arrest.

(d) Every delay in handing over the suspects to the police must be justified and should be reasonable depending upon the place, time of arrest and the terrain in which such person has been arrested. Least possible delay may be 2-3 hours extendable to 24 hours or so depending upon particular case.

(e) After raid make out a list of all arms, ammunition or any other incriminating material/document taken into possession.

(f) All such arms, ammunition, stores etc. should be handed over to the state police alongwith the seizure memo.

(g) Obtain receipt of persons arms/ammunition, stores etc so handed over to the police.

(h) Make record of the area where operation is launched having the date and time and the persons participating in such raid.

(i) Make a record of the commander and other officers/JCOs/NCOs forming part of such force.

(j) Ensure medical relief to any person injured during the encounter, if any person dies in the encounter his dead body be handed over immediately to the police alongwith the details leading to such death.

4. Dealing with Civil Court

(a) Directions of the High Court/Supreme Court should be promptly attended to.

(b) Whenever summoned by the courts, decorum of the court must be maintained and proper respect paid.

© Answer questions of the court politely and with dignity.

(d) Maintain detailed record of the entire operation correctly and explicitly.

DON'T'S

1. Do not keep a person under custody for any period longer than the bare necessity for handing over to the nearest Police Station.
 2. Do not use any force after having arrested a person except when he is trying to escape.
 3. Do not use third degree methods to extract information or to extract confession or other involvement in unlawful activities.
 4. After arrest of a person by the member of the Armed forces, he shall not be interrogated by the member of the Armed Force.
 5. Do not release the person directly after apprehending on your own. If any person is to be released, he must be released through civil authorities.
 6. Do not temper with official records.
 7. The Armed Forces shall not take back person after he is handed over to civil police.
- “LIST OF DO'S AND DON'TS WHILE PROVIDING AID TO CIVIL AUTHORITY”

DO'S

1. Act in closest possible communication with civil authorities throughout.
2. Maintain inter-communication if possible by telephone/radio
3. Get the permission/requisition from the Magistrate when present.
4. Use the little force and do as little injury to person and property as may be consistent with attainment of objective in view.
5. In case you decide to open fire:
 - (a) Give warning in local language that fire will be effective.
 - (b) Attract attention before firing by bugle or other means
 - (c) Distribute your men in fire units with specified Commanders
 - (d) Control fire by issuing personal orders
 - (e) Note number of rounds fired.
 - (f) Aim at the front of crowd actually rioting or inciting to riot or at conspicuous ring leaders i.e do not fire into the thick of the crowd at the back.
 - (g) Aim low and shoot for effect.
 - (h) Keep Light Machine Gun and medium gun in reserve
 - (i) Cease firing immediately once the object has been attained.
 - (j) Take immediate steps to secure wounded.
6. Make cordial relations with civilian authorities and Para Medical Forces.
7. Ensure high standard of discipline

DON'T'S

8. Do not use excessive force
9. Do not get involved in hand to hand struggle with the mob.
10. Do not ill treat any one, in particular, women and children
11. No harassment of civilians
12. No torture
13. No meddling in civilian administration affairs.
14. No military disgrace by loss/surrender of weapons
15. Do not accept presents, donations and rewards.
16. Avoid indiscriminate firing”.