



Jammu and Kashmir State Information Commission

جموں اینڈ کشمیر سٹیٹ انفارمیشن کمیشن

(Constituted under The Right to Information Act, 2009)

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www.jksic.nic.in

File No.SIC/CO/SA/21/2013

Decision No.SIC/CO/SA/21/2013/437

Title:- Ms. Hina Ishaq R/o H.No. B-3, Gulbarg Colony, Peerbagh,
Srinagar.

V/s

1. First Appellate Authority,
J&K Public Services Commission,
Resham Ghar Colony, Bakshi Nagar,
Jammu.
2. Public Information Officer,
J&K Public Services Commission,
Resham Ghar Colony, Bakshi Nagar,
Jammu.

01-04-2013

Jammu.

This is 2nd appeal filed by Ms. Hina Ishaq, a resident of the State before this Commission on 08-03-2013. The appeal is basically against the FAA of J&K Public Services Commission who happens to be the Secretary of the J&K Public Services Commission. The registry of the Commission has issued notice to the FAA for his appearance before the Commission and also for submission of counter statement. Similarly PIO was also called to attend the Commission to defend his order. The Commission was informed through Shri Irshad Ahmad, PA to Secretary,

J&K Public Services Commission that the PIO is on leave hence he was heard on behalf of the PIO.

The brief grounds of the appeal are that the appellant had filed an RTI application on 12-10-2012 which was received in the office of PIO on 15-10-2012 requesting for providing of photo copies of answer scripts of General Studies A & B of CCE 2010(mains). The order on the application of the appellant was to be passed on within 30 days from the date of receipt as laid-down in section 7(8) of State RTI Act. The PIO passed order on 15-11-2012 which is within time, refusing the request of the RTI user on the plea that providing photostat copies of answer scripts to any candidate would lead to diversion of its meager resources. However, the appellant was allowed to inspect evaluated answer scripts.

Being aggrieved by refusal of the PIO to disclose information as sought by the appellant, the appellant filed 1st appeal before FAA /Secretary J&K PSC on 17-12-2012. The appellant vide her 1st appeal had brought to the notice of the FAA that the order of PIO on appellant's application was "antithetical" to what judgment of the Hon'ble Supreme Court in the case of Central Board of Secondary Education V/s Aditya Bandhopadhyay and others stands for. He had therefore, requested the FAA to adjudicate the appeal of the appellant and order for disclosure of the information under State RTI Act. The FAA has passed order on 17-12-2012 which he was otherwise required to pass within 30 days from the receipt of appeal i.e on 16-1-2013 which time is extendable by further 15 days after recording of reasons as provided under section 16(7) of State RTI act. However, there is nothing emerging from the order to show whether such time was extended or not. The FAA rejected the appeal of the appellant on the plea that J&K PSC did not provide copies of answer scripts to Shri Imran Rafi as the Public Services Commission had approached the J&K Hon'ble High Court who stayed the said order. The appellant being aggrieved against this decision preferred 2nd appeal before this Commission on 8.3.2013 which is the subject matter of this order.

The appellant has strongly assailed the decision of FAA by alleging that the "personal hearing notice directing her to attend FAA office on 15-1-2013 was received by her on 26-1-2013 making it

practically impossible for her to be present on 15-1-2013. The FAA did not pass any speaking order rather he cited same reason for denying her information which were given by the PIO. The order so passed clearly reflects the “lackadaisical” dillydallying and inconsiderable attitude of the authorities of the J&K PSC made a poor student like her to travel to Jammu but still she was not provided the information. It is therefore, prayed that the Commission pass the directions for disseminating information in order to uphold spirit of right to information act.” The commission has considered the submissions of the appellant and perused the orders passed by the PIO and FAA and heard the representative of PIO and FAA Mr. Irshad Ahmad, PA. The FAA wanted adjournment of this case. However, the commission has decided to pass the order as the issues arising in this appeal are already covered under Hon’ble Supreme Court decision in the case of Central Board of Secondary Examination V/s Aditya Bandhopadhyay and others. The PIO has refused the information on the plea that providing of photo copies of answer scripts to any of the candidates would lead diversion of meager resources. However, It is not clear how the resources of the State Public Services Commission can be diverted to provide copy of the answer scripts, a piece of information which has been created by the appellant herself and has been given to the PSC for evaluation. It is surprising that on one hand the lower authorities of the PSC are ready to appoint a team of 06 officers who will trace out the answer scripts of the information seeker and give her the option of inspection and on the other hand they are insisting that providing of answer scripts would divert resources. Once efforts are made by the PSC to trace answer book for inspection, there is no further effort to be made and it is simply requirement of making photo copies of answer books and providing the same to the appellant. Thrusting the option of inspection on the information seeker is against the basic right which the act has provided to the information seeker. It would be relevant to produce section 2(d) to know how term information has been defined by the State Legislatures in the act passed by it as act No.Viii 20th March, 2009 which was ultimately christened as the J&K RTI act 2009:-

“Information” means any material in any form including

records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any other law for the time being in force.

And RTI defined under section 2(i)

“right to information” means the right to information accessible under the Act which is held by or under the control of any public authority and includes the right to _

- (i) inspection of work, documents, records;
- (ii) taking note, extracts or certified copies of documents or records;
- (iii) taking certified samples of material;
- (iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through print-outs where such information is stored in a computer or in any other device;

The answer scripts handed over by the appellant to PSC is the information which is held by or is under the control of any public authority and State PSC is public authority as defined under section 2(f). This is inclusive definition and law has left the choice to the information seeker to opt either for option of giving the access to document which contains information or she/he may opt for inspection of work, documents, records etc. Thus, PIO has been nowhere given the powers to thrust as way of providing information to the information seeker.

The Hon'ble Supreme Court in its celebrated judgment in the case of Central Board of School Education and Anr. V/s Aditya Bandopadhyay and others while going through the definition of information in the Central RTI Act which is akin to State RTI Act that held when the answer book is evaluated by an examiner appointed by the examining body, the evaluated answer book becomes a record containing the opinion of the examinee. Therefore, the evaluated book is also an information under RTI Act. The Hon'ble Supreme Court has further held that examining bodies (Universities,

examination board, CBSE etc.) are neither security nor intelligence organizations and therefore, exemption under the Act will not apply to them. The disclosure of information also does not involve infringement in copy right, therefore, the Hon'ble Supreme Court held that the examining bodies which is bound to provide access to the information and any appellant can either inspect document/record, take notes, extract or obtain certified copies thereof. The Hon'ble Supreme Court gave this finding after carefully considering the submission of CBSE that 12 to 13 lakhs candidates from about 9000 affiliated schools across the country appeared in Class X and Class XII examinations conducted by it and this generates as many as 60 to 65 lakhs of answer books. The CBSE had also argued that by disclosing and providing of answer copes of entire examination system and evaluation by CBSE will be jeopardized. All these arguments were rejected by the Hon'ble Supreme Court.

The State Public Services Commission has a task of conducting examination and evaluating the answer books of very meager number of candidates as compared to a gigantic body that of CBSE, which have to conduct examination of lakhs of candidates. When Hon'ble Supreme Court has ordered for disclosure and providing of answer sheets. It has taken into account all impediments which the PIO and FAA have referred to in their orders which are under adjudication before this commission. Therefore, the commission directs the PIO to provide the information as sought by the appellant. The case of Imran Rafi as referred by the PIO is not comparable and if the Hon'ble High Court, J&K has granted the stay in his case that was a case specified and under different set of facts and circumstances. The information be disclosed to the information seeker within 15 days from the receipt of this order and the PIO is directed to confirm compliance of the order to this commission within 20 days after providing information to the information seeker. The information seeker's attention is invited to

section 15 of the State RTI Act which provides for filing of complaint before this commission in case information is denied or information provided is found to be incomplete, misleading or false information under the act. She may act accordingly.

Sd/-

(G.R.Sufi)

Chief Information

Commissioner, J&K.

Copy to the:-

1. First Appellate Authority, J&K Public Services Commissioner, Jammu.
2. Public Information Officer, J&K Public Services Commissioner, Jammu.
3. Ms. Hina Ishaq, H.No.B-3, Gulburg Colony, Peerbagh, Srinagar.
4. Guard file.

(Jung Bhadur)

Joint Registrar,

J&K State Information Commission at Jammu.