



Jammu and Kashmir State Information Commission

جموں اینڈ کشمیر سٹیٹ انفارمیشن کمیشن

(Constituted under The Right to Information Act, 2009)

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

Decision No.SIC/CO/SA/21/2013/438

Title:- Ms. Ripul Sharma C/o Sheikh Faisal Qayoom, No.No.2, Custodian Hamlets, Opposite Gurdwara Banga Sahib, Bagat Barzulla, 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. Arshi Rasool, 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 proper 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 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 be 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 of 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 photo stat 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 for 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 the order 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

RTIact. However, there is nothing emerging from the order 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 Commission had approached the J&K Hon'ble High Court. 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 strongly assailed the decision of FAA by alleging that the personal hearing notice directing her to attend his 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, dallying and inconsiderable attitude of the authorities of the J&K PSC made a poor student like her to travel to Jammu but still not provide the information. It is therefore, prayed that the Commission pass the directions for disseminating information in order to uphold this a spirit of right to information act. The commission has considered the submissions of the appellant and perused the order 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 which will discuss later on this order. 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, non from this order what the PIO means by diversion of

resources, whether it is diversion of J&K PSC resources or something else. However, it has offered the appellant to have inspection of her

Thus, the fundamental right of the RTI seeker has been denied. The issue of providing answer scripts to the information seeker on their demand under RTI Act has been settled in Apex Court of the Country i.e Hon'ble Supreme Court of India in its celebrated decision titled Central Board of Secondary Education V/s Aditya Bandhopadhyay and others. The Hon'ble Supreme Court in its elaborate decision has held that while writing answer papers the candidates in examination conducted by Union Public Services Commission or anybody like CBSE have to provide same information which is created by the candidates to that test/examinations. All the issues whether CBSE which conducts examinations of various kind of test/examinations throughout the country and number of such answer books runs to more than 50 lacs, the information has to be still disclosed under RTI Act in view of the number of decisions of Hon'ble Supreme Courts and other Honble High Courts. Treating to RTI as fundamental right the State Information Commission while following the Hon'ble Supreme Court's decision in many cases by the Commission. Ordered for the disclosure of such information by the State Public Services Commission. Denying of the said information to the appellant would therefore, tantamount to denial of fundamental right. The PIO or FAA could compel the information seeker to opt for inspection rather than getting photo copies of her answer scripts. The Hon'ble Supreme Court did not accept the contention of CBSE that disclosure of information of lacs of answer books would divert the resources of the Commission. Therefore, the State Information Commission following the Hon'ble Supreme Court decision and its

own decision as referred above hereby directs the PIO to provide Xerox copies of answer books as mentioned by the appellant in her application dated 12-10-2012. The PIO at the most could have asked copy charges as provided under the Act with 30 days of the filing of application which option he has now foregone. The Commission has gone through FAA's order rejecting the appellant's request for providing information. The FAA unfortunately has not given any office/ own inputs and opinion, he has simply copied order of PIO and rejected the applicant's request. The Commission is constrained to observe that the FAA being a Quasi Judicial Authority has failed to adjudicate the appeal of the appellant in judicious and reasonable manner. The PIO's order is also incomplete in the sense he has failed to inform the RTI appellant about her right of first appeal as provided under section 7(8). He had to give complete particulars of FAA in his order. It is painful to observe that State RTI Act being in operation since 2009 and inspite of fact the State RTI Commission has passed numerous orders connected with State Public Services Commission. The PIO is not still conversed with the provisions of State RTI Act.

Information may be disclosed within 15 days from the receipt of the order.

(G.R.Sufi)
Chief Information Commissioner, J&K.