



Jammu and Kashmir State Information Commission

(Constituted under Right to Information Act 2009)

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File No: SIC/CO/SA/27/2013

Decision No: SIC/CO/SA/27/2013/453

Title:- Shri Kovid Khosla (Advocate)
V/s
PIO Home Department

Jammu
23.5.2013

This is a second appeal filed by Shri Kovid Khosla, a resident of the State in this Commission on 25.3.2013. Both the parties i.e appellant as well as the PIO and the First Appellate Authorities were heard from time to time. The brief grounds of the appeal are that the appellant had filed an RTI application on 19.1.2013 before the Deputy Secretary-cum-PIO Home Department seeking the following information:

1. Names/occupation/department where employed of the persons to whom arms have been issued in year 2009-2013 on govt. exchequer and types of the arms issued with dates of issuance of such arms
2. Names and designation of the issuing authority who issued arms as mentioned above and criteria and procedure adopted by the Home Department for issuance of such arms on govt. expenditure.
3. Total number of arms licences issued by the Home Department or other competent officers of this department from 1.1.2011 to 1.1.2013 with

names/profession/occupation of such persons to whom such licences have been issued and date of receipt of applications for grant of arms licences and date of issuance of arms licences of such persons.

The order was to be passed by the PIO within 30 days from the date of receipt of application. The PIO passed order on 14.2.2013 giving the information with regard to total number of 22 armed licences having been issued in favour of the incumbents by the Home Department of J&K Government. However, names of these persons were not displayed/disclosed invoking Section 8(f) of the State RTI Act 2009. Being aggrieved with this order, the appellant Shri Khosla filed first appeal before Additional Secretary to Government (Litigation)-cum-First Appellate Authority of Home Department on 27.2.2013. This appeal was received in the First Appellate Authority's office on 28.2.2013 and First Appellate Authority passed order on 8.3.2013. Both the orders have been passed within time as provided under the Act which is appreciated. The First Appellate Authority upheld the finding of the PIO that disclosure of names and particulars of licence holders was fit under Section 8(5) of the State RTI Act and accordingly disposed of the appeal. The appellant again being aggrieved with the decision of First Appellate Authority filed second appeal in this Commission. The appellant has contended that the PIO has not appreciated the grounds for seeking the information and has pleaded that information so sought does not fall under Section 8(f) of the State RTI Act as same was already in the public domain and as per the judgements of various courts, the information which is already in public domain and which is related with the public activity cannot be denied to the information seeker. The PIO has also not appreciated the fact that provisions of Section 8(1) of the Act provide that information which cannot be denied to the Parliament or the State Legislature cannot be denied to any person and in the present case it can be said that the information sought cannot be denied to the Parliament or the State Legislature. The appellant has also argued that PIO concerned has failed to provide the information within the time stipulated as defined in the Act and the PIO's interpretation of RTI law is not strictly in accordance with the provisions of the Act. The denial of information as sought by him is deliberate and with the purpose of shielding the Tort Feasors in violation of the RTI Act. He has, therefore, prayed for disclosure of information as well as taking action against the erring and guilty officers by imposing penalty under Section 17 of the State RTI Act.

The PIO and the First Appellate Authority not only attended the Commission in person but have also sent their detailed rejoinders which are on file. It has been submitted that both the authorities disposed of the RTI application in accordance with law. Thus it is incorrect to say that appeal was rejected without following the correct procedure laid down in the State RTI Act. It is further submitted that the PIO did not violate any provisions of the RTI Act. Vide its subsequent rejoinder dated: 7.5.2013 under No: 2619, the PIO has given the details of the answers given the Hon'ble Minister concerned in the State Legislature with regard to same subject. The Commission has perused these documents and record. As stated earlier, the PIO and FAA have passed order within time and nothing substantial is brought before this Commission which proves that the orders were not passed in accordance with the provisions of the Act. The denial of information by invoking Section 8 is not deliberate attempt to conceal the information. Section 7 of the RTI Act has specifically provided that the PIO will either provide the information..... or reject the request for any of the reasons specified in Section 8 and 9. A provision of Section 18 of State RTI Act has given a protection against any legal proceedings to an officer which he consider it in good faith or intend to be done under the Act or any rule made thereunder. Therefore, PIO's order involving Section 8 and First Appellate Authority's decision in agreeing with the action. In the considered opinion of the Commission is an act which has been done in good faith. However, having said this, the action of PIO and FAA by invoking Section 8 is subject to Commission's review. While deciding the appeal of an appellant the State Information Commission has powers to require the public authority to take any such steps as may be necessary to secure compliance with the provisions of the Act including " by providing access to information if so requested in a particular form etc etc". The exemption for disclosure of information under Section 8(1)(f) is for that information which will endanger the life or physical safety of any person or identify the source of information or assistance given in evidence for law enforcement or security purposes. The appellant is seeking information obviously of those persons, individuals, professionals who have been allowed gun licences and all of them cannot, are not and will not fall under this category. The protection under Section 8 is given to those persons who are acting as informers to the security agencies and whose information is in confidence for law enforcing or security purposes. Therefore, this information be disclosed. The information seeker insists that with regard to information sought at point no: a,b and d of his

application he is satisfied with the reply of PIO but he wants information with regard to total number of armed licences issued by Administrative Secretary Home Department or other competent officers of the department from, 1.1.2011 to 1.1.2013. This information has to be given with names, present occupation of such persons. It is also to be disclosed when their applications for such licences were received and dates of issuance of arms licences to such persons. This information is not exempted under Section 8 of the State RTI Act because this falls under the information which is to be disclosed to the Legislature and the Parliament. The PIO in his submission before the Commission vide his letter dated: 7.5.2013 has given the details of information sought by the Hon'ble Members of the State Legislature and reply given by the Hon'ble Minister. It is found from the answer attached with this reply that the Hon'ble Minister gave district wise details of licences issued during the years 2011-2012 to armed/security forces and civilians. The Commission directs disclosure of this information only which concerns issuing of licences to civilians because army and security forces are covered under Section 8 of the State RTI Act. It is further important to note that the Hon'ble Minister has not denied anywhere to disclose their names. . The PIO as well as the appellant have also agreed for this time limit. It is further brought to the notice of Commission by the appellant that as per manual of police laws in J&K Volume 1 a number of registers and documents have to be maintained to list the arms licences. This further makes it clear that the Government wanted complete transparency for distribution of arms licences and their holders. Therefore, there is no point to bring them under the ambit of Section 8(f) which is relevant only for those individuals, persons etc who are providing assistance and help to law enforcing agencies and obviously they have to be protected for any harm. All other licence holders and licences should cum under transparency laws and their names and other particulars have to be disclosed. This information be disclosed on the website of the Home Department and the information seeker be advised to consult and download the same. An intimation regarding compliance be sent to this Commission within 10 days from the receipt of this order.

The information seeker in his second appeal at para No 5 has raised certain other issues with regard to the disposal of first appeal which he has informed the Commission that he is no more interested in getting any finding in this regard. No penalty proceedings or any action has to be initiated under the Act against the PIO or the FAA as the Commission has already held that

their orders have been passed within time and it is also held that order on denial of information was in good faith and as per the provisions of the Act. The appeal is accordingly disposed of.

Sd/-

(G.R. Sufi)

J&K State Chief Information Commissioner

Copy to:-

1. Public Information Officer, Home Department, Civil Secretariat, Srinagar
2. Shri Kovid Khosla, Advocate R/o Opposite Eicher Showroom, Main Road Sidhra, Jammu
3. Pvt. Secretary to Hon'ble Chief Information Commissioner
4. Guard file

(Mohammad Syed Shah)

Registrar

J&K State Information Commission