



Jammu and Kashmir State Information Commission

(Constituted under Right to Information Act 2009)

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www.jksic.nic.in

File No: SIC/CO/Comp/26/2013

Decision No: SIC/CO/Comp/26/2013/478

Title:- Prof. S.K. Bhalla S/o Late K.L. Bhalla
R/o H.No 386 Rehari Colony
Jammu

V/s

Public Information Officer, General Admn. Deptt.

Srinagar

09/07/2013

This is a complaint filed by Prof. S.K. Bhalla, a resident of the state before this Commission on 13.5.2013. The brief facts of the complaint are that the complainant filed an RTI application before PIO General Admn. Department J&K Government, Civil Secretariat which was received by the PIO on 10.4.2013. An order under Section 7 was to be passed under the State RTI Act on this application within a maximum period of 30 days. The PIO vide his rejoinder dated: 8.7.2013 has submitted before this Commission that as this information pertained to the Vigilance section of the General Admn. Department, therefore, the application was forwarded to the said section under Section 5(4)(5) for seeking assistance on 12.4.2013 i.e within the time allowed under the Act. The Assistant i.e the concerned officer of the vigilance wing GAD responded to this communication of the PIO vide his letter No: GAD(Vig)316-Comp/2012 dated: 10.5.2013 refusing to give any assistance on the plea that the information sought was not in accordance with sub rule (2) of RTI Act. The PIO states that this communication was forwarded to the information seeker vide his letter dated: 11.5.2013. The PIO further stated that perusal of the application filed by the complainant reveals that the information sought for is "actually a questionnaire which is not covered under the definition of information in Section 2(d) of the State RTI Act. PIO. To buttress his stand has referred and relied on Hon'ble Supreme Court of India's decision in the case Civil Appeal No.6454 of 2011 titled CBSE V/s Aditya Bandopadhyay & Others and accordingly PIO submits that the information sought was not covered under the definition of RTI Act and this fact was communicated to the information seeker vide the PIOs order dated: 11.5.2013 under No: GAD/RTI/794/2013. The complainant who is represented by Mr. Zulker Nain Sheikh Advocate is insisting that proceedings under Section 17 be initiated against the PIO because first he had to ensure that assistance from any other officer working under the same public authority has to be received within 5 days and secondly when the order was passed it had to be dispatched within a reasonable time. The provisions of Section 5(5) make it obligatory on the part of the assistant to render all the assistance to the PIO seeking his assistance and for the purpose of any contravention of the Act the said assistant will be deemed to be a PIO in default. Section 5(5) has to be read with Section 7(1) of the RTI Act which makes it statutorily incumbent on the PIO to pass an order as expeditiously as possible and in any case within 30+5 days from the receipt of the request. The assistant under the circumstances cannot be allowed to sit on the communication of a PIO and render the assistance as and when he likes. The maximum period for providing or denying information is 30 days and all process i.e seeking assistance, giving assistance, collecting and collating information has to be done within the outer limit of 30 days. The PIO submits that as and when he received the assistance he passed the order on 11.5.2013 i.e within a day and thus there was no intention on his part to delay the passing of order. The complainant, however, has

contended that overall effect is that there has been considerable delay in communicating decision of the PIO to him. Admittedly, order was passed on 11.5.2013 but it has been dispatched on 19.6.2013 as per postal dispatch under No: RE805629245IN dated: 19.6.2013. The delay in dispatching the order is unexplained and to be ascertained. It is also observed that the officer who has provided the assistance to PIO has exceeded the brief period given to him under Section 5(4) of the State RTI Act. Under the said provisions he is obliged to provide assistance and not to decide on the legality of the application or givability or otherwise of the information in view of definition of information under Section 2(d) of the State RTI Act. It is the PIO who has to decide about the legality of the request of information and givability or otherwise of the information. As the order was passed late and it was communicated still beyond reasonable time, therefore, PIO is required to explain why penalty proceedings under Section 17 of the State RTI Act may not be initiated against him. His reply, if any, must reach to this Commission with 15 days from the receipt of this order.

The counsel of the complainant has informed the Commission that subsequently after receiving the order dated: 11.5.2013 he has filed first appeal before the FAA on 28.6.2013. Hence Commission is not adjudicating on the correctness and legality of the action of Assistant of PIO i.e Under Secretary (Vig) GAD and later on concurred by the PIO whether the information sought in the shape of questionnaire and whether the Hon'ble Supreme Court's findings in the decision referred above has correctly been applied and understood or has been collected out of the context without appreciating the underlining idea with regard to availability of the information available on record in the shape of the complaint by the complainant and whether information was on record regarding the initiation of action or otherwise on the complaint. This is left to the FAA and it is expected that he will adjudicate the appeal in a very speaking, reasonable and legally sound order. The Commission would also like the FAA to adjudicate the first appeal as early as possible after giving due opportunity of being heard to the appellant.

Sd/-
(G.R. Sufi)

J&K State Chief Information Commissioner.

Copy to the:-

1. Public Information Officer, General Administration Department, J&K, Srinagar.
2. Prof. S.K.Bhalla S/o Late K.L.Bhalla R/o H.No.386 Rehari Colony, Jammu.
3. Private Secretary to Hon'ble Chief Information Commissioner.
4. Guard file.

(Mohammad Syed Shah)
Registrar
J&K State Information Commission, Srinagar