



**Jammu and Kashmir State Information Commission**

(Constituted under Right to Information Act 2009)

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File No: SIC/CO/Comp/57/2013

Decision No: SIC/CO/Comp/57/2013/512

Title:- Chaggar Singh Rakwal

V/s

PIO Pollution Control Board, Srinagar

Srinagar

08.10.2013

This is a second appeal filed by Shri Chaggar Singh Rakwal, a resident of the State in this Commission on [13.7.2013.To](#) adjudicate the appeal, Registry of this Commission fixed the hearing today and Shri Arun Kumar Tiku, Member Secretary-cum FAA Pollution Control Board and Shri M.M. Shah, Legal Advisor-cum-PIO attended. The appellant did not attend in spite of providing him an opportunity of being heard. Brief facts and grounds of the appeal are that the appellant filed an RTI application before PIO J&K Pollution Control Board on 4.4.2013 seeking certain information as listed in his application. The PIO passed order on 18.5.2013 vide No: SPCB/Estt/CD/RTI/92/2013/604. The appellant filed first appeal before the FAA on 11.5.2013 stating therein that he did not receive any response within 30 days of filing the RTI application. It seems that immediately after the receipt of first appeal, the PIO passed the above order dated : 18.5.2013. First appeal dated: 11.5.2013 having become thus infructuous, the appellant filed another appeal dated: 26.5.2013 after receipt of PIO's order. In this appeal, he alleged that the information so given by the PIO was incomplete. Before disposing of this appeal, the FAA issued a notice for appearance of appellant before him vide letter under No: 1178-79 dated: 11.6.2013. The hearing was fixed on 26.6.2013. The appellant as usual did not respond to the notice of the FAA. The FAA accordingly passed order on 08.08.2013. Again not being satisfied with this decision of FAA, he preferred second appeal before the Commission stating therein that PIO gave misleading information and withheld certain information and it is also mentioned that no documents were attached with the letter though it was mentioned that copies of information were enclosed. The PIO further took the plea that documents like Project Report cannot be provided treating such documents as "privileged document" when such documents are public documents. The appellant has also assailed FAA's order by stating that he did not give him an opportunity of being heard. The Commission has perused the record

available and heard the FAA and PIO. There has been a few days delay by the PIO in passing order which is attributable to the fact that the RTI application was first sent to PIO Regional Director Pollution Control Board, Jammu who then forwarded it to the present PIO. It seems that Director in Jammu has not forwarded RTI application within 5 days as provided under the Act. It is advised that in future the forwarding should be done in accordance with the provisions of the law. It would be appropriate to reproduce the points of information sought by the appellant:-

1. About (sic) if NOC is issued in favour of M/s Kay Ess Engineering works in village Rampur (Billawar) for manufacture of Hume pipes, PCC poles, cement tiles, fabricated steel bridge, hot steel furniture Steel, Door window frame, Barbed wire chain link fencing wire creates(sic)

2. Provide information about the procedures rules and norms prescribed by the Pollution Control Board for grant of NOC in favour of any Small Scale/Medium Scale unit to be installed within the inhabitation.

3. Provide the attested true copies of the project report, certificates NOC's procured by the unit holder M/s Kay Ess Engineering Works, Rampur. About if pollution control Board issued NOC on such certificates or after investigating process of manufacturing.

4. About action taken in complaint addressed to the Chairman, J&K State Pollution Control Board Jammu dated: 18.3.2013 received in the office under Receipt No: 217 (Copy of complaint is enclosed).

The PIO has provided information on first point. Hence no interference by the Commission. The information on point No: 2 has also been provided. With regard to information at point No: 3, the PIO's reply is as under:-

“Copy of consent is enclosed. However, the copy of the project report cannot be provided, as it is a privileged document held by the Board on behalf of the unit holder. After application is received, site is evaluated by the field staff before granting consent”.

The PIOs reply is not in accordance with Section 11 of the Act. Section 11 has provided for disclosure of even third party information provided a procedure is followed i.e an opportunity is given to the third party for giving objections, if any for the disclosure of information and objections, if any, have to be sought within 10 days of the receipt of such notice. If objections are received within 10 days then the PIO is under legal obligation to weigh these objections and to see whether or not the disclosure of information over weighs the interest of third party or public interest. In simple language, it means that if the PIO comes to the conclusion that the disclosure of information is overwhelmingly in public interest then it has to be disclosed whatever may be the objections. In a case of pollution caused because of establishment or setting up of certain units manufacturing certain hazardous substances which will cause pollution and is deterrent to public health, the eradication of pollution and preserving human habitat is of high public value, therefore, such information has to be disclosed. However, the project report prepared by the third party for establishing his own unit, manufacturing concern or any other business establishment is covered under prohibitive clause of Section 8(i) which is reproduced as under:-

“Information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information: Provided that the information which cannot be denied to the Parliament or the State Legislature shall not be denied to any person”.

The PIO is directed to seek the objection of the third party within 10 days from the date of pronouncement of order i.e today the 8<sup>th</sup> October, 2013 and after receiving the objections decide whether the disclosure of information is in larger public interest and disclose the information by uploading the information on the website of the department. Copy of the order be sent to this Commission also within 5 days from the issue of the order. The appellant will then download the information from the website of the Department. The appellant is also directed to cooperate with the PIO and appear before the PIO if he is called because it is seen from the records that he has developed a habit of not appearing either before the FAA or before the Commission.

3. While concluding this order PIO's attention is invited to provisions of Section 7(8) which enjoins upon the PIO to inform the appellant about his right to appeal and particulars of the FAA. Appeal is accordingly disposed of.

Sd/-  
( G.R. Sufi )  
J&K State Information Commission

Copy to;-

1. First Appellate Authority, J&K Pollution Control Board, Srinagar
2. Public Information Officer, J&K Pollution Control Board, Srinagar.
3. Shri Chaggar Singh Rakwal, S/o Mangal Singh Rakwal, R/o Village Rampur Bajwal, Tehsil Billawar, District Kathua-184203.
4. Private Secretary to Chief Information Commissioner.
5. Guard File.

( G.Q. Bhat )  
Registrar  
J&K State Information Commission

Title:- Shri Rashu Kanna  
V/s  
PIO DC Office Jammu

Jammu  
03.10.2013

This is a second appeal filed by Shri Rashu Kanna, a resident of the State before this Commission on 30.9.2013. To adjudicate the appeal, the Registry of the Commission posted the appeal for hearing. S/Shri Sher Singh, Assistant Commissioner (Revenue)-cum-FAA, Shri Sanjay Badyal Tehsildar-cum-PIO and Shri Rashu Kanna attended. Both the parties were heard. Brief facts and grounds of appeal as under:-

The appellant Shri Rashu Kanna, a resident of the State filed an RTI application before the PIO-Tehsilda Territorial on 11.5.2011 Shri Shesh Pal Salgotra. After going through the RTI application, the Commission has found that the information sought was of very high public value which hinges around transparency and accountability which is the aim of the Act to be brought in the working of every public authority. Hence it would be appropriate if the information so sought is reproduced hereunder:-

1. Field Book of Survey No: 355 in Central Record Room shows total land area 155 kanal and 5 marla only and does not correspond to (jamabandi) & Misal Haquiat showing 165 kanal and 5 marla land area of village upper Thather Distt Jammu. Kindly provide the information regarding steps taken by former Deputy Commissioners Jammu/present one in rectification of record i.e 10 kanal and 5 marla sold by land mafias (sic) excess to original land area.
2. Field Book of Survey No: 373 in Central Record Room shows total land area 302 kanal and 18 marla only whereas (jamabandi) show sale of 414 kanal and 8 marla land area of herein above village. Kindly provide the information steps taken by former Deputy Commissioners Jammu/present one in rectification of record i.e excess sale of 112 kanals and 8 marla by sold by land mafias excess to original land area.
3. Steps taken by former Deputy Commissioners Jammu/present one to restore the original plots to number of vendees purchased plots in 1990 and free these plots from the clutches of land grabbers who are claiming these plots under vicinity of Survey No: 373 whereas said survey No was 355 in early 1990's.

2. The PIO passed the order on the same day not giving any information to the appellant. The Commission has noted with pain and anguish that said PIO Shri Shesh Pal has acted in absolute haste thus demonstrating clearly lack of knowledge of the State RTI Act which is in operation since 2009 in the State. Before promulgation of present Act the present Act had repealed earlier Act of 2004. Thus the concept of RTI is in vogue in the State since 2004. The Commission