



Jammu and Kashmir State Information Commission

(Constituted under Right to Information Act 2009)

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

Decision No: SIC/CO/SA/SO/2013/518

Title:- Mst. Masooda

V/s

PIO Financial Commissioner

Revenue.

Srinagar

22.10.2013

This is a second appeal filed by Mst. Masooda W/o Mohd. Shrief Mir, Mst. Irshada W/o Farooq Ahmed Mir, both residents of the State in this Commission on 26.06.2013 against the PIO Financial Commissioner Revenue's office.

2. The brief facts and grounds of the appeal are that the appellants filed an RTI application before the Administrative Officer-cum-Public Information Officer on 26.3.2013 seeking the following information:-

“1. Attested copy of application dated: 31.01.2013 be provided.

2. Attested copy of any order passed on the application dated: 31.01.2013 be provided.

3. Copy of any order passed against our records viz mutation No: 2962, 3399 and against judgment of Hon'ble Sub Judge Pulwama dated: 31.3.2010 be provided which hinders you to take action against defaulting Tehsildar”

The PIO passed an order vide his No: 671-72/FC-AP dated: 10.4.2013 within the stipulated period and informed the appellants to file first appeal before the FAA if

not satisfied with the reply/ information provided to them. Aggrieved with the order of the PIO, the appellants filed first appeal before the FAA on 22.4.2013 stating therein that part of the information provided by the PIO is irrelevant and that information provided on point No: 2 of the RTI application dated: 26.3.2013 vide his **so called order** dt: 21.2.2013 is incorrect.

The FAA disposed of the appeal on 17.5.2013 after giving an opportunity of being heard to the appellants in presence of the PIO and directed the Tehsildar concerned to be present before the PIO of his office on 20.5.2013 at 2.00 p.m alongwith the report and warned the Tehsildar concerned of disciplinary action against him. The appellants again approached the FAA against order vide their application dated: 3.6.2013. Again on 20.6.2013, FAA passed an order disposing of the first appeal directing the PIO to provide copy of any fresh report received from Tehsildar Pampore to the appellants without any laxity with an intimation to the FAA and the State Information Commission. The appellants not satisfied with the decision of FAA preferred second appeal before the Commission. The appellants state that they did not ask for copies of correspondence between the PIO and FAA. The appellants further state that they be given information which is in accordance with their application dated: 26.3.2013. The PIO has provided photocopy of the application dated: 31.1.2013. Similarly, PIO has stated that the photocopy of the order passed on the application dated: 31.1.2013 has also been enclosed. The appellant's grievance is that they wanted attested copies and PIO has given only photocopy.

3. The Commission has heard the PIO as well as the appellants. It has been averted before the Commission that the application dated: 31.1.2013 was not a record which was diverted by the PIO nor any officer connected with the PIO's office or F.C Revenue's office. It was an application submitted by the appellants to this office, the copy of which they wanted under RTI Act which has been provided. The said application was a document which was already in public domain because it was written by the appellants themselves and was in their possession. Therefore, had PIO been quite well versed with the provisions of the RTI Act, he could have very well taken a plea as this information is already in public domain in the shape of original copy being in the possession of appellants, therefore, it did not fall within the definition of information held by the public authorities. The definition of information is given in Section 2(d) of the Act. Secondly, Section 6 of the Act prescribes that information will be only that which is held or possessed by the public authority. The Commission, therefore, is of the

considered view that there is no need for the PIO to give a certified copy of the appellant's application dated: 31.1.2013 which is a document which has been brought into public domain by the appellants themselves and this can be returned back if asked under RTI in the same shape as it was given. The PIO's action is accordingly upheld and appellant's contention that attested copy has not been given is rejected. The second point of information is that appellants wanted copy of the order passed on the application dated: 31.1.2013. But they state that they were only given a copy which was annexed with the order. The PIO has consistently taken a plea that actually no order was passed. It was only a letter but inadvertently the phraseology "Order" was used which has become bone of contention between the information seekers and this office which needs to be cleared. The Commission during the several hearings made it clear to the information seekers and has observed that there is possibility of a clerical or typographical mistake erupting in the Government documentation and if the mistake is confirmed it cannot be said that actually there was a "order". Technical mistakes and clerical mistakes is a common phenomenon in any situation. The appellants could not prove by any concrete evidence that there was no clerical mistake. The PIO has also, on the directions of Commission, produced an affidavit duly notarized confirming on oath that the word "order" has been written inadvertently by the undersigned which is being referred to by the appellants. Considering all these facts and evidences on file, the Commission concludes that there was no order passed by the PIO. He has given a copy of the application to the appellants which should suffice as compliance with the RTI Act. The third point of information asked by the appellants was "providing any order passed against our records mutation No: 2962,3399 against the judgment of Sub Judge Pulwama dated: 31.3.2010 be provided which hinders you to take action against the defaulting Tehsildar". This point was replied by the PIO by stating that as per records no order against the judgment of the Hon'ble Sub Judge Pulwama dated: 31.3.2010 has been passed by this office. Nothing has been brought by the appellants before this Commission to prove that PIO's information on this point is incorrect or incomplete. However, the PIO and FAA during their appearance before this Commission have repeatedly informed this Commission that a mutation issue is pending for adjudication before the Financial Commissioner Revenue and once the order is passed that will have a bearing on the point of information and information will be given. Though the proceedings in this case are pending for so many months there does not seem to be any urgency with the authorities to adjudicate the issues which have larger implications viz-a-viz serious

allegations against the Tehsildar who is involved in the process. The Commission would once again advise the F.C Revenue to decide this issue without any further waste of time. From the records before the Commission, it is seen that the appellants had made serious allegations against the concerned Tehsildar. Even the FAA had observed that there are allegations against the Tehsildar and action has to be taken against him. The Authorities have been taking the plea that as the entire matter is sub-judice before the F.C Revenue no action can be taken till the decision is given by the F.C. The information seekers has brought to the notice of Commission that a complaint was filed against the Tehsildar dated: 23.1.2013 before the learned Financial Commissioner Revenue for taking action against the Tehsildar as per law for allegedly misusing the court of learned F.C Revenue. Obviously if there are serious allegations, the efficacy of investigation will get diluted if timely action is not taken. The essence and spirit of State RTI Act as contained in its preamble is to bring transparency and accountability in the working of every public authority and Commission has been assigned the task of making such transparency and accountability workable. Therefore, Commission would once again emphasize on a speedy investigation and disposal of any kind of action whether administrative or quasi judicial so that nobody takes the shelter of "inquiry is being conducted" to get undue protection against the allegations leveled against him.

4. It has been observed that the public authority in this case Financial Commissioner Revenue is under legal obligation vide Section 4 of the State RTI Act to make a suo moto disclosure of the information held and possessed by him as such public authority. This information was to be uploaded and disseminated within 120 days from the enactment of State RTI Act 2009 w.e.f 20th March, 2009. Unfortunately, inspite of lapsing of four years only a sketchy and piece meal compliance has been made. As per Section 4 (2)(b) the public authority had to disseminate suo moto information on the following points. This is statutorily compulsory to be done whereas other provisions of the Act like digitization of the records is also needed, however, with a rider that if the resources so permit. As enough time has been given for compliance, therefore, Commission directs that this information be uploaded and disseminated in the official website of the F.C Revenue within 20 days from the date of receipt of this order. As per Section 4 read with Section 15 any resident of the State can file a complaint before the public authority and later on before this Commission if compliance with the provisions of Section 4 is not made. These directions are issued by the Commission in accordance with Section 16(8) of the State RTI Act.

- (i) the particulars of its organization, functions and duties;
- (ii) the powers and duties of its officers and employees;
- (iii) the procedure followed in the decision making process, including channels of supervision and accountability;
- (iv) the norms set by it for the discharge of its functions(v) the rules, regulations, instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions;
- (vi) a statement of the categories of documents that are held by it or under its control;
- (vii) the particulars of any arrangement that exists for consultation with, or representation by, the members of the public in relation to the formulation of its policy or implementation thereof;
- (viii) a statement of the boards, councils, committees and other bodies consisting of two or more persons constituted as its part or for the purpose of its advice, and as to whether meetings of those boards, councils, committees and other bodies are open to the public, or the minutes of such meetings are accessible for public;

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- (ix) a directory of its officers and employees;
- (x) the monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations;
- (xi) the budget allocated to each of its agency, indicating the particulars of all plans, proposed expenditures and reports on disbursements made;
- (xii) the manner of execution of subsidy programmes, including the amounts allocated and the details of beneficiaries of such programmes;
- (xiii) particulars of receipts of concessions, permits or authorizations granted by it;
- (xiv) details of receipt of the information, available to or held by it, reduced in an electronic form.
- (xv) the particulars of facilities available to citizens for obtaining information, including the working hours of a library or reading room, if maintained for public use;
- (xvi) the names, designations and other particulars of the Public Information Officer;
- (xvii) such other information as may be prescribed; and thereafter update these publications every year.

The appeal is accordingly disposed of.

Sd/-
(G.R.Sufi)
State Chief Information Commissioner

Copy to:-

1. Financial Commissioner Revenue J&K. His attention is invited to the discussions held with the Chief Information Commissioner on 16.9.2013 with reference to Section 22.
2. First Appellate Authority, F.C Revenue J&K Srinagar/Jammu
3. Public Information Officer, F.C Revenue J&K Srinagar/Jammu
4. Ms. Masooda W/o Mohd. Shrief Mir,R/o Kadalbal Pampore.
5. Private Secretary to Chief Information Commissioner
6. Guard File.

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