



Jammu and Kashmir State Information Commission

(Constituted under Right to Information Act 2009)

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www.jksic.nic.in

File No: SIC/K/Comp/153/2011

Decision No: SIC/K/Comp/153/2011/543

Title:- Mehraj-ud-Din Bhat

V/s

Shri Abdul Rashid

Executive Officer

Municipal Committee, Bandipore

Jammu

28.11.2013

In this case Shri Mehraj-ud-Din Bhat, a resident of the state filed an RTI application under Section 6 of State RTI Act 2009 before the PIO/Executive Officer, Municipal Committee, Bandipora on 5.3.2011 seeking the following information:-

- a) List of all such employees appointed till 31.3.2006 with full particulars;
- b) list of persons employed/appointed from 01.04.2006 to 28.2.2011 with full particulars along with copies of appointment/engagement orders;
- c) Approval/sanction of the competent authority for making such appointments with full details/copies thereof;
- d) list of all such employees who stand transferred from these municipalities outside district;
- e) details of major works executed in the municipality during the last two financial years;
- f) copy of the pay bill for these municipalities of all employees/DW's/casual labours for the month of 02/2011.

In accordance with the provisions of Section 7 of the State RTI Act, the PIO had to provide this information as expeditiously as possible but not later than 30 days which was not done. Having failed to receive any information the appellant filed first appeal before FAA i.e Director Local Bodies, Kashmir on 10.5.2011 which also was not adjudicated by the FAA. Consequently, a second appeal as provided under Section 16 of the State RTI Act was filed before this Commission 5.8.2011. The second appeal was adjudicated upon by this Commission vide its order No: SIC-K/Comp/153/2011 dated: 11.10.2011. During the hearing, penalty proceedings under Section 17 of the State RTI Act were initiated and PIO was directed to explain why penalty may not be imposed on him for not passing the order from 5.4.2011 to the date of actual order being passed. He was directed to submit his explanation to this Commission within 15 days from the receipt of this order. Vide his explanation under NO: MC/BPR/RTI/11/208-10 dated: 30.11.2011 which was received in the Commission on 02.12.2011, the PIO requested "to drop the penalty proceedings initiated against him on the plea that the delay in providing the information to the information seeker has not been made deliberately. The information sought has been kept ready by the undersigned. As soon as the information seeker will deposit the copying charges the undersigned within no time will provide the information to him".

2. The Executive Officer-cum-PIO, Municipal Committee Bandipore has brazenly overlooked the provisions of the State RTI Act. RTI application was filed on 5.3.2011 and he informs the information seeker vide his letter No: MC/BPR/RTI/11/971 dated: 15.10.2011 to deposit the copying charges i.e after a gap of seven months. He has not acted as per the provisions of Section 7 of the State RTI Act which provides that information seeker is to be informed about the depositing of copying charges within 30 days and information has to be provided free of charges if requisition for depositing charges is made after 30 days from the date of receipt of application as provided under Section 7(6) of the State RTI Act 2009. Hence this plea of delaying information is devoid of any legal merit and mischievous. This brazen violation of the Act tantamount to the intention of not giving information which is vital to be public domain in order to ensure transparency in Government appointments which is the rationale of the transparency law.

3. The Commission to be more fair and just with the erring PIO before imposing penalty again sought his reasons for not imposing penalty vide Registrars Notice under No: SIC/K/Comp/153/2011/4390 dated: 23.10.2013

bringing to his notice **“that information has not been provided to the information seeker though claimed to be ready with you as on 17.10.2011 for want of depositing fee by the information seeker. In pursuance of subsection (6) of Section 7 of J&K RTI Act 2009, the information which is not provided within the statutory period of 30 days counted from the date of RTI application is to be provided free of cost. Insisting on payment of cost from the information seeker was not as per the provisions of the Act, therefore, it will tantamount to refusal of information. The penalty proceedings initiated vide above referred Commission’s order continue to be live in the existing case and accordingly final notice is served to you to explain as to why the penalty may not be imposed on the PIO for his default. The reply in this regard should reach the Commission within 15 days positively failing which the Commission will proceed ex parte”**.

4. The PIO i.e Executive Officer, Municipal Committee Bandipore responded to this notice and stated that “information was ready to be delivered to information seeker but the information seeker has not turned up in the office of Executive Officer to receive the information”. There is no obligation on the part of the information seeker to go and receive the information in the office of PIO.

5. The plea that the PIO wanted the information seeker to visit his office and collect information speaks a lot about the intentions of the PIO. There is no obligation on the part of the information seeker to go and receive the information in the office of PIO. The PIO is duty bound to ensure delivery of information to the information seeker within 30 days as provided under Section 7 of the State RTI Act which reads as under:-

“The PIO on receipt of a request under section 6 shall, as expeditiously as possible, and in any case within thirty days of the receipt of the request, either provide the information on payment of such fee as may be prescribed or reject the request for any of the reasons specified in sections 8 and 9”.

The above mandate of the Act has not thus been complied. The purpose of the RTI Act is that information seeker should not be made to visit government offices off and on and thus give rise to the allegations of corruption and loitering in the corridors of Government offices has to be discouraged. It is the famous maxim that justice must be delivered at the door steps of deserving. Therefore, the PIO has shown his intentions obviously in disregard of the legal obligation.

Even requesting the information seeker to collect the information has not been proved by production of any evidence before the Commission. Rather Commission is in possession of information through a conversation with the information seeker by the Private Secretary on Telephone No: 9419427180 on 27.11.2013 at 12.30 p.m that information was till date not received.

6. Denying the claim of PIO, the information seeker asserts that till date he has not received any information despite of visiting the office of PIO twice and also requesting the PIO verbally to provide him the required information by post.

7. The Commission has gone through the explanation of the PIO which was received in this Commission on 2.12.2011 and perused the records and has also given due thought to the mandate given to the PIO under Section 7 of the State RTI Act to provide information to the residents of the State which is held by the public authorities in order to bring transparency and accountability in the working of public authority in the State. There is no denying the fact that application was received on 05.3.2011 and the PIO was thus under statutory obligation to pass an order on or before 30 days i.e the outer date of passing order was 5.4.2011. But till date, the PIO has not provided the information to the information seeker.

8. The reluctance of the PIO not to disclose information and his consequent brazen refusal to comply with the requirements of law is evident from the fact that there was an order passed by the Commission on 12.10.2011 for providing information within 8 days from the receipt of order as Commission had found that the requisite information was not covered under the prohibitive provisions of Section 8 and 9 of the State RTI Act. The Commission finds the brazen display of non-compliance of the PIO without any reasonable cause and the period of default is reckoned from the due date of providing information i.e 30 days within the period of receipt of application till the date of information not having been provided i.e today. The Commission, therefore, in accordance with the powers vested in it under Section 17 of the State RTI Act holds Shri Abdul Rashid, ex-Executive Officer-cum-PIO, Municipal Committee Bandipore to be in default and hereby imposes penalty on him which is calculated as under:

1.	No of days of default	960 days
2.	Penalty to be imposed for each day	
	From the date of receipt of application	Rs.250/-
	i.e 5.3.2011 to the date of passing order	
	i.e 02.12.2013 i.e 32 months	

4. Penalty thus worked out

Rs.25000/-

Section 17 of the State RTI Act provides that “where the State Information Commission at the time of deciding any complaint, appeal or reference is of the opinion that the Public Information Officer has, without any reasonable cause, refused to receive an application for information or has not furnished information within the time specified under the sub-section (1) of Section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall impose a penalty of two hundred and fifty rupees each day till application is received or information is furnished, so however, the total amount of such penalty shall not exceed twenty five thousand rupees”. So keeping in view the provisions of Section 17 of the State RTI Act, penalty of Rupees twenty five thousand only is imposed on Shri Abdul Rashid, Ex- Executive Officer, Municipal Committee Bandipore. The present Executive Officer is directed to serve a copy of this order on Shri Abdul Rashid ex-Executive officer during whose tenure this default has occurred. The drawing and disbursing officer of Municipal Committee Bandipore will ensure deduction of penalty amount of Rs25000/- from the salary of Shri Abdul Rashid in two Instalments from the month of December 2013 and January 2014 and remit same to the Government Account Head “0070-other administrative services” with an intimation to this Commission. The DDO is further directed to submit a compliance report alongwith a copy of deduction certificate/challan with TV No and date to this Commission within 5 days of the compliance.

Sd/-

(G.R.Sufi)

J&K State Chief Information Commissioner

Copy to:-

1. Commr/Secretary to Government, Housing & Urban Dev. Department
2. Shri Abdul Rashid, Ex-Executive Officer, Municipal Committee, Bandipore
3. Shri Mushtaq Ahmed, Executive Officer, Municipal Committee, Bandipore
4. Shri Mehraj-ud-Din Bhat, S/o Abdul Samad Bhat, R/o Safa Kadal, Srinagar
5. Private Secretary to Chief Information Commissioner
6. Guard file

(G.Q. Bhat)

Registrar

State Information Commission