



Jammu and Kashmir State Information Commission

(Constituted under Right to Information Act 2009)

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File No: SIC/CO/Comp/67/2013

Decision No: SIC/CO/Comp/67/2013/544

Title:- Gh. Hassan Khan

V/s

PIO Power Development Corporation

Jammu

03.12.2013

This is a complaint filed by Shri Gh. Hassan Khan, a resident of the state before this Commission seeking a direction for disclosing the information which was sought vide RTI application dated: 23.3.2013. Shri I.A. Kakroo, Executive Engineer-cum-PIO, Power Development Corporation attended.

2. Brief facts of the complaint are that the complainant had filed an RTI application on 23.3.2013 seeking certain information listed in his RTI application. The PIO vide his communication dated: 3.4.2013 had asked "sufficient justification about the intended use" of the information sought. The complainant replied the

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queries vide his letter dated 14.5.2013. The Commission has gone through the detailed reply given by the information seeker to the PIO. It has rightly been stated by the information seeker that PIO is to justify both logically and legally the refusal of information treating it within the ambit of classified information particularly in the perspective:

(a) that the IWT is in public domain (all related documents being available on internet, free for one and all and (b) that you have

already contemplated, rather proceeded far ahead, to outsource the job of quantifying the losses inflicted onto the State due to the IWT to a non-subject/non-Indian Agency into whose basket all and all eggs you will be putting layer by layer; whereas you are denying (read hiding) the sought information to us---- the bonafide state subjects directly and intimately plus intensely concerned therewith---- on manipulated grounds wrongly and wrongfully; totally ignoring the set norms and rules governing 'classification' of documents, which we suppose you to be knowing well otherwise. Allow us to remind you that the sought information is in no way prejudicial to security of the State/Country/Govt./ and/or an apprehensible cause to create law and order problem, lead to treason/ rebellion against the country or infringement to its integrity, or may cause a dent in state secrecy system or may cause any other damage to any individual or a group/section of society. (These are the main grounds for lawful classification of documents/information as restricted/deniable when considered for providing to a seeker)---. We assure you of otherwise, honesty and quite prudently, in this regard. And this is what you could make us undertake at the most on your self-set criterion of over-satisfaction, if any needed at all"

It was also brought to the notice of PIO that he may visit the website of the NGO and apprise himself about the activities which are focused by the NGO. The information seeker had also furnished a copy of note recently put up to the State Water Resources Regulatory Authority by the NGO which as per the information seeker's claim brings home the necessity of the information sought. After receipt of these detailed reasons, the PIO has provided part of information vide his order dated: 28.5.2013. Not being satisfied with this information, the information seeker has preferred first appeal to the Executive Director-cum-FAA of Power Development Corporation. The fact of filing first appeal was not authenticated by the information seeker by attaching copy of first appeal which was needed to ensure the complainant's of the documents. This was received by the FAA on 3.6.2013. As this fact was not brought to the notice of Commission by the information seeker by attaching the proof of filing a copy of first appeal and the copy of decision therein, therefore, the Commission's Registry treated it as a complaint filed under Section 15 of the State RTI Act. As not being satisfied with the FAA's order, the information seeker informed this Commission vide his letter dated: 22.8.2013 that information was denied to him under the pretext of "so called restricted information and only an argument of information sought". The Commission accordingly was requested to intervene. The Commission has heard

the PIO. The PIO's attention has been brought to the provisions of Section 6(2) of the State RTI Act which debars the PIO from seeking any reason for requesting the information. It would be appropriate if the provisions of law are reproduced hereunder for ready reference:-

“Section 6(2) reads that an applicant making request for information shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him”.

Thus, his query dated: 3.4.2013 to the information seeker is without any legal justification and is quashed. The provisions of law are clear that PIO need not to seek any reason or justification for any information which is disclosable under the provisions of the State RTI Act . What the PIO is empowered and authorized under the law is to deny the information if it falls under any clause of restricted provisions of Section 8 and 9. For that also PIO has to pass a speaking order and has to justify his refusal in view of legal provisions of the Act. The information seeker should have also informed the PIO that under law he was stopped from seeking any reason or justification from the information seeker before disclosing any information.

3. Once the matter reached to the stage of FAA, the law envisages that FAA being a senior authority than the PIO will act judiciously and decide the appeal as per the norms set in the Act and other laws. One of the basic elements of adjudication of appeal is that there are two parties to the dispute and the prime party is the appellant. It is established legal principle that in order to fulfill the requirements of natural justice, the FAA has to adjudicate the appeal after hearing both the parties to the dispute. Not only is the appellate order passed by the FAA beyond the time limit laid down in Section 16 of the State RTI Act it is also devoid of legal merit as the opportunity of being heard has been denied to the appellant. The FAA is advised that he should in future fulfill the legal requirements laid down in Section 16 of the State RTI Act before adjudicating an appeal. The FAA has also ignored the provisions of Section 6(2) of the State RTI Act and has justified the information of PIO in seeking the justification and reasons for sharing the information. The FAA and PIO have also not met the arguments made by the appellant in his reply on 14.5.2013 which was in response to PIO's earlier notice dated: 3.4.2013. Nowhere any attempt either by the FAA or PIO has been made to rebut quite weighty arguments for justifying the disclosure of information, though the information seeker was not under any legal obligation to give such reasons in

view of Section 6(2) of the State RTI Act. The Commission after considering all the facts and provisions of law is of the considered opinion that both the orders passed by PIO and FAA are erroneous and without any legal justification. Therefore, it would be appropriate to restore back the first appeal to the FAA with the direction to dispose of the appeal keeping in view Section 6(2) and the appellant's letter dated: 14.5.2013. Before adjudicating the appeal the appellant has to be given an opportunity of being heard personally or through authorized representative or through any written reply. If the appellant chooses not to respond to FAA's notices in this regard, again this is not to be only reason for rejecting the appeal. The FAA has to act as a quasi-judicial authority and decide the appeal in accordance with law. His decision may even go against his junior officer i.e the PIO that is the essence of being a quasi judicial authority. The FAA has to clearly keep in mind the restrictions provided under Section 8 of the State RTI Act and has to justify refusal for sharing the information through a speaking order. However, if he FAA finds that under no provision of section 8 the information sought falls then he has to order for the disclosure of the entire information. He should particularly keep in view the information seeker's claim that the said information is already in public domain through internet. The information cannot be denied to the information seeker by saying that if it is available on internet then there is no need for the information seeker to get this information authenticated from the public authorities who hold and possess such information. FAA's attention is also invited to provisions of Section 19 of the Act which gives overriding effect to the provisions of the Act. It would be again helpful for the guidance of FAA and PIO to appreciate the provisions of Section 19 which are as under:-

“Act to have overriding effect:- The provisions of the Act shall have effect notwithstanding anything inconsistent therewith contained in the State Official Secrets Act Samvat 1977, and any other law for the time being in force or in any instrument having effect by virtue of any law other than the Act”.

Accordingly, the FAA's order dated: 12.08.2013 is set aside with the direction to pass fresh order within 15 days from the date of pronouncement of this order i.e today as enough time has already elapsed for discharging the statutory duties assigned to FAA and PIO. The FAA's attention is also invited to the fact that the purpose and rationale of said RTI Act is to bring transparency and accountability in the working of every public authority as laid down in the preamble of the Act. The first ingredient for bringing transparency and accountability is that the public

authorities higher or lower have to identify themselves by writing their names above their signatures in any official orders, circulars, notifications, letters and even office notings. Even before the RTI Act was enacted in this State, Government vide its Circular No: GAD of 2004 dated: 14.7.20014 followed by further circulars and latest being Circular No: 20-GAD of 2013 dated: 10.9.2013 had made all the officers incumbent to indicate their names and designation below their signatures while initiating or endorsing any noting/proposal for consideration of the competent authorities and also on the communications exchanged with different departments. Not only the officers are to mention their names but they have been advised to mention their telephone numbers and e-mails on letters/letter heads/correspondence etc; to make communication specific and easier. Unfortunately all these circulars so far are not being presently followed. The Registrar of this Commission is directed to attach a copy of latest circular of the Government with this order.

The complaint is accordingly disposed of.

Sd/-
(G.R. Sufi)

J&K State Chief Information Commissioner

Copy to:-

1. First Appellate Authority, Power Development Corporation
2. Public Information Officer, Power Development Corporation
3. Shri Gh. Hassan Khan C/o Ehsas Foundation, C/o PB 174 GPO Srinagar
4. Private Secretary o Chief Information Commissioner
5. Guard file.

(G.Q. Bhat)
Registrar

State Information Commission