



Jammu and Kashmir State Information Commission
(Constituted under the Right to Information Act, 2009)
Wazarat Road, Jammu. Tel/Fax: 0191- 2520937
Old Assembly Complex, Srinagar. Tel/Fax No. 0194-2484269

No: SIC/K/comp/27/2011

In the matter of: Complaint under RTI Act, 2009 of Shri Nasrullah Shah, Shri Sampat Prakash and others

Complainant/s: Shri Syed Nasrullah Shah, Shri Sampat Prakash and others.

Respondent/s: Shri Abdul Karim Najar, Assistant Registrar (L)-cum-PIO, SKUAST, K.

19-08-2011

ORDER u/s 17 of the J&K Right to Information Act, 2009 in the above titled case:

The complainant namely Shri Nasrullah Shah , Shri Sampat Prakash and others had filed a complaint before this Commission against the PIO of Sheri Kashmir University of Agricultural Sciences and Technology (SKUAST), Kashmir complaining therein that the complainant had filed an RTI application under Section 6 of the J&K State RTI Act, 2009 on 28-05-2010 which was received in the office of Registrar, SKUAST (K) on 31.5.2010. Therefore, the Registrar being FAA himself had forwarded the application to Shri Abdul Karim Najar who is the PIO of SKUAST (K). Though during the proceedings before the Commission on 13-05-2011, the PIO initially did not confirm the actual date of receipt but the complainants produced evidence which confirmed that the application was received on 31.05-2010. The PIO during the proceedings did confirm that the information was to be provided or denied to the applicant/information seekers by 30-06-2010 which the PIO claims to have been given on 10th of May, 2011 which is thus causing the inordinate delay in passing an order u/s 7 of the Act, therefore, penalty proceedings under Section 17 of J&K RTI Act, 2009 were initiated during the proceedings under section 15 of the Act and the PIO was given reasonable opportunity to explain why penalty may not be imposed for delaying the information.

The PIO, SKUAST (k) Shri Abdul Karim Najar vide his communication No.AU/Adm/RTI-459/3203-41 dated: 26-05-2011 has submitted that the Information Seeker had submitted application to the Registrar, SKUAST (K) dated: 28-05-2010 instead of addressing the same to the PIO. The PIO has tried to explain his default by submitting as under:

".....that immediately after submission of application by the information seekers, the valley faced turmoil for about 04 months w.e.f. June 2, 2010;

that information for about 09 years was to be retrieved from various stations/Units of the University;

that SKUAST-K is a multi-campus university with stations/units at far flung areas like Gurez, Kargil, Leh Pombay Kulgam, Kupwara, Bandipora, Balpora Shopian, Khudwani Anantnag,Wadoora Sopora and Mansbal. Therefore, the information for the period of 09 years was to be retrieved by the University from these units and then compiled for sending to the applicants. Kargil, Leh, Gurez units remain cut off during winter months from the Headquarter of the University, the information could not be received, as no fax facilities was available at these offices. In the meanwhile, the information which became available was sent to the applicants on 10-05-2011. A copy of postal office receipt is enclosed for ready reference.

that efforts were made by the PIO to retrieve the remaining information from these units and accordingly rest of the information after its receipt from the units was sent to the applicant through speed post vide No. Au/Adm./RTI-459/2840-44 dated: 23-05-2011, with a copy for information of Assistant Registrar, State Information Commission, Srinagar;

that another communication by the applicants dated: 22-02-2011 was addressed directly to the PIO and received in the office of PIO on 27-02-2011. The information was to be collected from the Shalimar Campus of the University and as such the PIO got the information obtained from the Comptroller and Head, Library Services of the University and sent the

same to the applicants vide No. Au/Adm./RTI-459/7076-78 dated: 17-03-2011. A copy of postal receipt is enclosed as Annexure-III;

in view of the magnitude of the information asked for by the applicants for about 09 years from 01-01-2002 to 31-03-2010 involving information from different stations/units and the turmoil faced in the valley, there has been no deliberate intention to delay the submission of the information to the applicants..."

After going through this explanation of the PIO, this Commission addressed another communication to Shri Abdul Karim Najar, PIO vide No. SIC-J/Comp/16/2011/694 dated: 14-06-2011 vide which he was asked to substantiate his assertions that information was to be collated and collected from associate concerns. It would be relevant to reproduce the relevant paras of this communication:

"You are required to state the date/dates on which you asked for the information from your subordinate field offices under your control, with documentary proofs and also the date/dates on which you received the desired information from such various units so that the case is processed for further proceedings in the mater."

In response to this letter, the PIO Shri Abdul Karim Najar has submitted that information was collected from various stations/units/Divisions on different dates from time to time and after sorting out and compiling/consolidating the same was sent to the concerned information seekers. The information which was received from other sections suffered with certain discrepancies, therefore, were returned back for rechecking the same (reference shown as annexure B but is not found on the file).

I have gone through the relevant papers as attached by the PIO with his explanation dated: 26-05-2011. I could not find any Annexure B as referred by the PIO. Letter referred by the PIO which is on record is dated: 10-06-2010 vide which it is intimated to various associated concerns that the information which was earlier requisitioned has not be received. In this letter the circular

which is referred for obtaining information is dated 24-04-2010 this obviously is not connected with the request of the information seekers dated: 28-05-2010. Secondly, even if for argument sake it is admitted that it was the forwarding letter sent by PIO on various associated concerns to provide the information it is seen that the PIO has failed to adhere to the provisions of the State RTI Act, 2009. As per Section 5(5) of the Act, it is the PIO who is to "seek assistance of any other officer as he or she considers it necessary for the proper discharge of his or her duties." The letters which are being produced as a proof to show that the PIO made an effort to collect the information from other associated concerns does not bear the signature of the PIO Mr. Abdul Karim Najar. As per the Act, obtaining assistance from any other officer for providing information to the information seeker/s is the duty of the PIO which under no circumstances can be delegated to any other authority. Even if for argument sake it is admitted that an effort was made by the PIO, it is seen that he did not ensure that information and assistance so called for is provided to him immediately. There is nothing on record to show that he acted in accordance with the provision of Section 5(5) of the Act which make it obligatory for the PIO to identify these defaulting assistants so that they will be treated as deemed PIOs as provided under the provisions of Section 5(5) of the Act. Excepting this single communication of 10-06-2010 which is not signed by the PIO himself and which is not relevant to the information seeker's request, there is nothing on record that he pursued the matter with various associate concerns of his organization to provide the information to the information seekers within the prescribed maximum time of 30 days. The second reminder is being sent not by the PIO but by his Assistants after a gap of 8 to 9 months (see the reminders dated: 24-12-2010, 18-01-2011, 9-12-2010, 8-12,2010, 16-12-2010, 20-12-2010, 21-12,2010, 13-12-2011, 21-01-2011, 22-01-2011, 24-01-2011, 27-01-2011, 07-02-2011). Similarly the plea that some information was to be collected from Kargil, Gurez and other snow bound areas hence delay, even this plea is devoid of merit. The Information Seeker had sought information in the month of May, 2010. This is the period when these areas are cleared from snow and communication is restored. The Information is given in May 2011 that is after a year and that also when the Commission takes cognizance of the complaint.

Hence this explanation is nothing but an attempt to obfuscate the failure or the PIO to comply with the statutory duties cast on him under the State Right to Information Act, 2009.

The information seekers having thus failed to receive the information as asked by them within the maximum statutory period of 30 days approached this Commission vide their complaint dated 27-04-2011 stating therein as under:

"that the complainant submitted an application before the respondents on 28-05-2010 requesting to furnish the requisite information.

that despite the laps of statutory period, the respondents have not furnished the requisite information to the complainants;

that the complainant personally approached several times not only to the PIO but also to the higher authorities for furnishing the information. But neither the PIO nor any of the higher authorities bothered to furnish the information to the complainant;

that the respondent is guilty of suppressing the information sought for and as such penalty is to be imposed on the PIO and also compensation is to be awarded to the complainant.

It is therefore prayed as under;-

1. that the respondent be directed to furnish the requisite information to the complainant forthwith.

2. that penalty will be imposed upon the respondent for not furnish the information to the complainant.

3. That suitable compensation be awarded to the complainant recoverable from the respondent.

This Commission vide letter dated 28-04-2011 did seek the comments of the PIO on the complaint which was enclosed. From the records it appears that this communication from the Commission was not replied. Accordingly, vide this Commission's Notice dated: 12-05-2011, the Commission sought personal attendance of the PIO. The PIO and the complainant did attend the proceedings on 13-05-2011. During hearing the PIO confirmed that information was to be provided to the information seeker by 30-06-2010 which

was not given on that date. The Commission was informed that the information was given on 10-05-2011 which the complainant contested. The PIO was directed to furnish evidence in support of his claim that information was given on 10-05-2011. It was revealed on the date of hearing that obviously the information was not provided even when the Commission had sought the comments of the PIO. During the hearing it was admitted that only 40% information was complete which was handed over to the information seekers. It is seen that the complainants had again filed another application dated 22-02-2011. Again, the PIO failed to provide any evidence that information even on subsequent application referred above was given within the maximum period of 30 days as required under the Act.

Accordingly the Commission initiated penalty proceedings as provided under Section 17 of the Act. The intension of the Legislature and mandate of the Act by providing that information should be given as expeditiously as possible but not later than 30 days, in other words means that a maximum period for providing information is 30 days even if information has to be collected from any far flung areas or from multiple sources. The Legislature has placed a cap for the maximum time limitation i.e. 30 days. Therefore, no PIO can take the plea that information was to be collected from various branches of the University, hence the delay. The information seekers have informed this Commission that even till date the 100% information has not been provided and whatever information has been given even that suffers with discrepancies. They have informed the Commission that they are intending to file another complaint under Section 15 of the State RTI Act, 2009, for providing part information which is not correct and complete. It is seen that the PIO has dealt with the matter in a purely technical and administrative manner and not in a statutory manner as provided under Section 5, 6 and 7 of the Act. i.e. he has failed to act as a quasi-judicial authority.

Hence above mentioned reasons forwarded for not being penalized are dismissed. The PIO i.e. the defaulting authority, however, has raised another defense for not being penalized. It is submitted that because of the civil disturbances, law and order problems and shut downs during the relevant period,

information has been delayed. I have considered this submission. Even this is partly correct. The civil disturbances last year started from mid June and continued till end of September, 2010. The situation after September last year had returned to complete normalcy. Even in extreme days of disturbances, officers at senior level did work. However, even if this period is condoned and excluded, still the default continues from ending September till today. Section 17 of the State RTI Act, 2009 has made it quite clear that if the delay is without any reasonable cause, the Commission is duty bound to impose a penalty of Rs.250/- per day from the first day of delay till the date information is provided. In the provisions of the above section, nowhere it is state that it should be conscious or deliberate default on the part of the PIO and only then penalty can be imposed. The 2nd proviso of Section 17 of the Act has laid down that the burden of proving that the PIO acted reasonably and diligently shall be on PIO.

Having found no reason not to talk of a reasonable cause for the PIO not to provide information from 1st October, 2010 till date, I hereby hold the PIO Mr. Abdul Karim Najar who is Assistant Registrar (L) in SKUAST-K to be in default in terms of Section 17 of the State RTI Act, 2009. It has been one of the rare cases where PIO has not provided information even after Commission was seized with the matter after having received the complaint of the information seekers. The PIO is thus guilty of showing scant respect and total disregard to the provision of the Act which is mandated for bringing transparency in the system and society. If erring and defaulting officers are not brought under the net of provision of Section 17 of the State RTI Act, 2009, the undersigned would be failing in his duty to uphold and safeguard the mandate of the State Legislature and ensure that the writ of law is established.

Accordingly,excluding the period from 01-07-2010 to 30th September 2010 which is considered as disturbance period in Kashmir Valley, a penalty of Rs. 25000/- (Rupees twenty five thousand only) is imposed which is calculated as under:

- a. No. of days in default w.e.f. 01-10-2010 to 19-08-2011 = 323 days
- b. Penalty to be imposed for each day = Rs.250/-
- c. Therefore, the imposition of penalty is restricted to 100 days only which means 100 days x Rs.250/- per day= Rs.25000/-

The defaulting PIO may file a review petition before this Commission for review of this order as provided under Rule 36 Clause (4) of J&K State RTI Rules, 2010.

The Drawing and Disbursing Officer of SKUAST-K will ensure deduction of this amount from the Salary of Shri Abdul Karim Najar, AR-cum-PIO, SKUAST (K) and remit it to Government Account with an intimation to this Commission. In case of any default committed by DDO, he will be personally liable for making the payment. This order has to be complied within 15 days from its receipt.

The complainants have also claimed compensation as provided under section 16 (9) (b) of State Right to Information Act, 2009. The complainants are required to prove to how the delay in furnishing information to them has caused any loss or other detriment suffered by them and the public authority i.e. the Vice Chancellor, SKUAST (K) is also required to explain why compensation so provided under the Act may not be awarded. Submission, if any, in this regard be furnished to this Commission within one month from the date of receipt of this order by both the parties.

Sd/-

(G. R. Sufi)

Chief Information Commissioner, J&K