



Jammu and Kashmir State information Commission
(Constituted under the Right to Information Act, 2009)
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No. SIC-K/01/2011

Decision No: 147-SIC/K/Comp/2011

Dated :- 21-09-2011

2nd APPEAL

Title:- Dr. Raja Muzaffar Bhat V/S 1st Appellate Authority, General Administration Department.

Present before the SCIC:

1. Shri G. S. Chib - 1st Appellate Authority
Spl. Secy. GAD
2. Dr. Raja Muzaffar Bhat, - Appellant

Dr. Raja Muzaffar Bhat, a resident of the State had sought information from the PIO General Adm. Department (GAD) J&K vide his application dated 23rd April, 2010. The information so sought is as under:-

1. Details of Annual Property Statement of IAS/KAS officers.
2. How many IAS/KAS officers have been submitting their annual property statements regularly (annually) with details of officers for the last 10 years.
3. How many IAS/KAS officers have not submitted their annual property statements since last 10 years – with details why ? The reasons thereof.

The PIO General Adm. Department passed an order on 23rd June, 2010 refusing the information by invoking Section (f) and (i) of the State RTI Act 2009. The information seeker filed 1st Appeal on 04.01.2011

before the Commr./Secretary to Government, General Adm. Department challenging the reasoning of the PIO for withholding the information. The 1st Appellate Authority also rejected the 1st Appeal of the appellant contending therein that Section 8 (f) and (i) were involved and held that declaring of the information with regard to the annual property statements of IAS and KAS officers would cause un-warranted invasion of privacy of the individual besides the disclosure of the information to the appellant shall not serve larger public interest and also has no relationship to the public activity.

After the 1st Appeal having been rejected, the complainant/appellant approached this Commission that with 2nd Appeal under Section 16 (4) of State RTI Act, 2009 on 17th March, 2011 which was received in this commission 15.4.2011. During the hearing, S/Shri Syed Nassarulla, Raja Mohammad Amin and Mohd. Shafi Rangrez were allowed to act as interveners and the case was heard on 08.06.2011. The Commission after considering various issues and the respondent's submissions, held that in this case Section 11 was found to be applicable. Accordingly, after taking all facts into consideration, the order passed by the 1st Appellate Authority on 10.02.2011 was remanded to the 1st Appellate Authority to fulfill the requirements laid down in Section 11 of the Act. The 1st Appellate Authority was given the following directions:

"The Commission further observed that Section 11 of the State RTI Act is involved in this case and entire information which is requested to be disclosed pertains to third party/parties. Hence the mater is remanded to the 1st Appellate Authority to fulfill the requirements laid down in Section Section 11 of the State RTI Act 2009. The objections, if any, from any third party/parties have to be sought within the time limit provided under Section 11(2). The 1st Appellate Authority is further directed to weigh the objections, if any, raised by the third party/parties and decide whether public

interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party/parties. The 1st Appellate Authority is directed to issue fresh order within 30 days from the pronouncement of the order as mutually agreed by the parties.”

This was done precisely because there are three parties involved in this case: 1st the information giver(s) regarding properties held by him/them; 2nd the retainer of the information i.e. the Government agencies who use these immovable property statements for their use for administrative and sometimes for vigilance matters and the 3rd is the parties who now seek the details of such information under Section 6 of the State RTI Act 2009. Had the Commission not done this, the Commission's orders if any passed, on the adjudication of the 1st Appellate Authority might have suffered with serious legal infirmity.

The 1st Appellate Authority has complied with the directions given vide this Commission's order dated 08.06.2011. The 1st Appellate Authority did ask for the objections, if any from all the IAS/KAS officers of the State through two leading newspapers each of Jammu and Srinagar administrative Divisions of the State, besides, through the departmental website of GAD on 24.08.2011. The objections were called orally and in writing. As per the 1st Appellate Authority only some of the KAS/IAS officers gave objections within the prescribed time. It is important to note that the 1st Appellate Authority has confirmed that some officers have not raised any objections for any such disclosure. The 1st Appellate Authority has agreed with few officers who have objected to the disclosure of information on the plea that it will tantamount to invasion of the privacy of the individual and shall expose the officers to all sorts of risks by endangering their lives. Besides, the disclosure of information is not going to serve the larger public interest and has no relation to public activity. On this finding the 1st Appellate Authority has rejected the appeal of the

appellants holding that there was no reason and ground to interfere with the decision dated 10.02.2011 already taken in the appeal. In brief the 1st Appellate Authority has confirmed the findings of the PIO not to disclose the information to the information seekers.

The appellant has appealed against this Commission's order dated 08.06.2011. This Commission has considered the 1st Appellate Authority's order dated 12.08.2011. The sample of objections given by a few officers has been gone through. Section 8 (i) is to be reproduced to understand and comprehend the situations in which the information has to be disclosed even if prima facie the said information is personal information, the disclosure of which has no relation with public activity and the interest or such disclosure would cause an unwarranted invasion of the privacy of the individuals. The clause (i) of Section 8 of the State RTI Act 2009 is 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 above clause further provides that the information which cannot be denied to the Parliament or the State Legislature shall not be denied to any person. This proviso has to be read in consonance with clause (i) of Section 8 and not in isolation. Of course, the first limb of Section 8 (i) read with Section 11 of the State RTI Act 2009 is that if third party objects then if 1st Appellate Authority finds that the disclosure of information will not serve any public purpose not to talk of larger public

purpose then information has not to be disclosed. Here in this case it is an open fact that number of KAS officers have not at all objected to the disclosure of any information. IAS officers are already under directions/instructions from Department of Personnel and Training, Govt. of India that all their immovable Returns will be hoisted on the official website of the department. This has been reiterated by even J&K Government vide its circular issued under No. 18-GAD of 2011 dated 11.05.2011 dated 11.05.2011.

As per the reports most of the officers have complied with the instructions and it can be safely held that such officers have made compliance with the instructions in letter and spirit of the RTI Act, the aim of which is to bring transparency in the system. A debate could be there whether a particular information seeker has any absolute right under the provisions of the Section 8 read with Section 11 of the State RTI Act 2009 to ask such information in his individual capacity from any Government officer who has already complied with the directions of his Government and has hoisted his details of immovable property on the website which is known to everyone. Therefore, this commission is unable to understand the rationale of objections given by a minuscule number of State KAS officers before the 1st Appellate Authority for not disclosing the APRs. It would have been relevant had they qualified the disclosure by referring to the Government of India instructions. Only five officers have objected and the reasoning of their objections is as under:

"....that the appellant, Dr. Raja Muzaffar Bhat has not mentioned any specific reason or purpose for which such personal information is required.

That under the RTI Act, personal information cannot be sought by the third party unless it is required for the public purpose;

That we are the field officers and due to prevailing law and order situation our property at times becomes targets for attach. Sharing such information with third party without any cogent

reason or specific purpose is against the mandate of Law and purpose of the Act. Once this information is shared with any third party, then there is every apprehension that the properties of the undersigned will get targeted due to law and order problem, which will adversely affect the property and inmates of the said property.

SECURITY:

So in this perspective, it is requested that such personal information which rests with General Adm. Deptt. and Vigilance Organization should not be shared with third party especially due to prevailing law and order situation. There are instances where in the past, properties of officers have been targeted by the mob and in our case who deal with execution of J&K Public Safety Act and other law and order issues such vulnerability is much more.

....there have been quite good number of cases in the country where the children of some high profile private sector executives have been kidnapped for ransom. Even some private sector employees drawing huge salaries also expressed their reservations to media regarding disclosure of their income as it has security implications. As per media reports some huge money have been demanded and recovered from the private section executives as their income was known to criminal elements, so the honest disclosure of the property will amount to security risk to the family members of the employees.

The security situation in Jammu and Kashmir continues to be fragile and majority of the employees do not have the security cover especially to their families so the sharing of this information can become a big threat from criminals to the employees and their family members. These aspects may be taken into consideration before a decision is taken regarding sharing the information disclosed in the property statement of the employees including the undersigned in the public domain.

.....It has been seen such RTI applications seeking this information is sought in order to be used as tool to harass people. In one similar case a family dispute has arisen in case of one of our lady officer in whose case the father-in-law has been asking for information regarding her pay, emoluments, leave, etc. The same has been rejected on the ground of exemption provision available in the Act.

Since the third party has chosen to seek information totally private to individuals even though public servants, it would be in

the fitness of things if he would first declare his assets and the manner in which the same have been acquired before seeking similar information viz-a-viz other citizens and give cogent reasons that compel him as a citizen to seek such information.”

This reasoning has not been mandated as per the State RTI Act 2009 under Section 6 (2), which is reproduced as under, which has expressly provided for non-furnishing of any reason by the information seeker:

"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."

With regard to the 1st Appellate Authority's contention that the supply of information would not serve the larger public interest, the Commission is of the considered opinion that this contention is not correct. The very concept of public servant implies that the Government servant has to serve in and for the interest of public at large in a system that we have under the constitution of India and the constitution of the State. The Government is nothing but a representative of the people and the agents of the Government through which the Government is run are Government servants. Hence if the assets acquired and obtained by the public servants out of their own funds which flow from Government exchequer, the Government exchequer being nothing but a contribution of people, then an argument is rightly made that the public have interest to know the details of assets which are acquired through the public funds. The concept of the disclosure, if any, has gathered strength and popularity with the introduction of State RTI Act 2009. This concept has been elaborately discussed by the Hon'ble High Court Madras in its judgment in the case titled The Tamil Nadu Information Commission v/s Secretary, Public Department, Government of Tamil Nadu Writ Petition No. W.A No. 551 of

2010. It is worth to quote some relevant observations of the Hon'ble High Court Madras's in the above mentioned judgment:

"....it is now widely recognized that openness and accessibility by the people to information is a vital component of democracy."

With regard to the objections raised by some worthy IAS/KAS officers as referred to above particularly the objection that the details of assets held by them will fall in the category of personal information which is protected by Section 8 (1) (i) of the State RTI Act 2009, the Hon'ble High Court Madras in the above referred to judgment has held that if a Government servant furnishes the assets details to the Government and if he is accountable to file such assets details as required under the relevant rules, such information relevant to assets cannot be considered to be public information which are inaccessible by the Government. Hence "the information relating to assets declaration of IAS officers cannot be said to be information which cannot be accessed by the public authority. As those informations are either not more confidential or private informations." The Hon'ble High Court Madras has in detail discussed the applicability or otherwise of Section 8 (j) of the Central Information Commission Act which is verbatim reproduced in Section 8 (1)(i) of the State RTI Act 2009. The Hon'ble Madras High Court has correctly held that even if personal information is protected which has not to be said to be intrusion of privacy nevertheless it has been held that even in case of personal information in the event the authorities are satisfied that the larger public interest justifies the disclosure of such information, the information sought cannot be denied.

The Hon'ble High Court, Madras has however noted that as the details of assets of worthy IAS officers have been hoisted on the website therefore privacy clause no more holds good. Similarly the Hon'ble High

Court, Madras has not agreed with the view that the State holds such declaration of assets in confidence. Therefore, the right of the information seekers to know the details of assets of the public servants cannot be thus denied. On the same corollary and analogy, the KAS officers cannot take the plea that they are covered under Section 8 (1) (i) of the State RTI Act 2009. It is, however important to observe that the objections have been given only by a very few officers and majority of the officers have not objected at all. Therefore, it is implied that majority of the KAS officers are in favour of the transparency which, in principle is ordered by the Commission.

However, there are important objections raised by these officers and these are with regard to security scenario which is prevalent in the J&K State presently. But the Commission is constrained to observe that there is no express prohibition in the Act in this regard. The worthy IAS officers are at times performing more important functions and responsibilities with regard to law and order and security problems and they are obviously in senior positions than the KAS Officers. However, the Commission is also conscious of the fact that the IAS officers have hoisted only immovable property details on the website, which is in accordance with the Immovable Property Return of All India and Central Services Rules. On the principle of equity, same principle should be applied to the KAS officers. The Commission holds that they should hoist such immovable property details on government website which are owned and acquired by them out of their own sources of income and assets which are owned by their family members or spouses out of their own sources and Stree Dhan need not to be hoisted on the website because the IAS officers have not done the same. The Commission had already informed the FAA about this decision on the date when last hearing took place in this case. The decision is accordingly made public.

There is another limb in the application filed by Dr. Raja Muzaffar Bhat which is under:

- i. How many IAS/KAS officers have not submitted their Annual Property statements since last 10 years – with details – why ? the reasons thereof.*

It is surprising that even this information was denied by the PIO and FAA without any cogent and convincing reasons. In view of the detailed reasons given above the Commission holds that such information be also hoisted on the website of General Adm. Department. The compliance to this order be made within 15 days from the receipt of this order with the compliance report to this commission.

While concluding, an argument was made before this Commission to the effect that why to fix such responsibility only on worthy IAS/KAS officers for hoisting such information and why not to bring other gazette service and senior officers of other departments of the J&K Government under this ambit. The Commission is not competent under the State RTI Act 2009 to pass any judgment on this account. This is left to the wisdom and discretion of the State Government.

The 2nd Appeal is accordingly disposed of.

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

Copy to :

1. Shri G. S. Chib, Spl. Secy./1st Appellate Authority, GAD, J&K.
2. Dr. Raja Muzaffar Bhat, Appellant.
3. Guard File.

Sd/-
(M. A. Wani)
Joint Registrar
State Information Commission