



In the Pakistan Information Commission, Islamabad

Appeal No 662-10/20

Sheikh Fayyaz Ahmed

(Appellant)

Vs.

Ministry of Kashmir Affairs and Gilgit Baltistan

(Respondent)

ORDER

Date: January 14, 2022

Mohammad Azam: Chief Information Commissioner

A. The Appeal

1. The Appellant filed Appeal in October 2020, to the Commission, stating that he had submitted information requests to Secretary, Ministry of Kashmir Affairs and Gilgit Baltistan on Novem 28, 2019 under the Right of Access to Information Act 2017 but did not received any response from the public body.
2. The information sought by the Appellant is as follows:

گزارش ہے کہ چھٹی نمبر

Delay was condoned, in general under the orders of Government of Pakistan, works and

Rehabilitation Division, Islamabad vide their letter No. F2(i)/74-JK dated 17.4.1974

to the address of all the claims Commissioners in Pakistan.

جو کہ مقدمہ نمبر 57/NGO/RWP/AJK/1979 رجسٹریشن نمبر 19977 اے کے کلیم نمبر 655710 فیصلہ بعد الت جناب ملک نثار احمد کلیمرز آفیسر جموں اینڈ کشمیر مہاجرین راولپنڈی کی کمپ آفس نمبر 4 گجرانوالہ نے استعمال کر کے فیصلہ کیا ہے۔ جسکی فوٹوکاپی لف ہے۔ درخواست استدعا ہے کہ رائٹ ٹوانفارمیشن قانون 2013 اور رولز 2014 کے تحت 14 یوم کے اندر اسکی مصدقہ فوٹوکاپی مہیا کی جائے۔

B. Proceedings

3. Through a notice dated November 02, 2020, sent to Deputy Secretary (K&GB) / Public Information Officer, Ministry of Kashmir Affairs and Gilgit Baltistan the Commission stated that “Under Section 14 of the Right of Access to Information Act 2017, each federal public body is bound to respond to a request as soon as possible and in any case within ten working days of receipt of the request. You are directed to provide reasons in writing within

7 working days of the receipt of this notice as to why the requested information has not been provided to the applicant”.

4. The Respondent through a letter vide No. 5/1/2019-RRO dated October 28, 2020 its response which is as under:

“I am directed to refer to your application dated NIL and to inform that the instant orders were issued by the Works and Rehabilitation Division and the delay was condoned for a specific period to entertain more A&K Refugees as well as the Office of Claim Officer which does not exist anymore. For that reason, the Organization cannot issue certified copy of the said orders.”

5. The Respondent through another letter vide No. 5/1/2019-RRO dated November 11, 2020 submitted another response which is as under:

“I am directed to refer to your letter Appeal No. 662-10/20 dated 2.11.2020 and to inform that Sheikh Fayez Ahmed r/o 2-S-47, Usman Street. Ahmed Munir Shaheed Road, Rehman Pura. Lahore vide letter of even number dated 28-10-2002 (copy enclosed) has already been replied that the instant orders were issued by Works and Rehabilitation division and the delay was condoned for a specific period to entertain more and more J&K Refugees as well as the office of Claim Officer which does not exist anymore.

Furthermore, the Hon’ble Lahore High Court, Lahore also dismissed the same application (Copy enclosed) Extract of the same orders are reproduced.

“After hearing learned counsel of the petitioner at this preliminary stage. I am of the view that the petitioner is bearing about the bush now and has missed the train due to deep slumber from 1955 till date. It is important to mention that the last letter she received from the Chief Settlement commissioner is dated 16.1.2007 in which the respondent department showed its inability to remove the grievance of the petitioner on account of fact that the said department was no more in existence after repeal of Settlement of Laws in 1975. the law helps those who are vigilant and not the indolent at this stage, it can edveniently be said that the petitioner is beating dead horse. It can further be said that there is no use crying over spilt milk. The instant writ petition is without merit and is, therefore, dismissed in limine.”

6. Responses submitted by the Respondent were shared with the Appellant on December 7, 2020.

7. The Appellant on December 11, 2020 submitted rejoinder to the responses of the public body which is as under:

۔۔۔ پبلک باڈی اپنے دفتر میں اسکو محفوظ رکھنے کی ذمہ داری ہے اور اسکی تصدیق کرنے / فوٹو کاپی جاری کرنے کے پابند ہیں۔ یہ نوٹیفیکیشن حکومت پاکستان کا ہے جو کبھی بھی کسی حالت میں ضائع نہیں ہو سکتا، اس کو ختم کرنے یا پابندی لگانے کے لئے بھی نوٹیفیکیشن کر کے اسکی تریسیل بھی تمام کلیمز کمشنریٹ کو بھجوائی جانی ضروری ہوتا ہے۔ جبکہ ضابطہ کے مطابق تمام نوٹیفیکیشن کی کاپیوں کو جلد کروائی ہر سال متعلقہ محکمہ کے ریگولیشن ونگ کی لائبریری میں محفوظ رکھا جاتا ہے۔"

8. Through a notice dated December 16, 2020, this Commission directed the Respondent to respond to the queries of the appellant within 10 working days.

9. The Appeal was fixed for hearing on February 02, 2021 and both parties were informed through notices sent on January 18, 2021.

10. The Appeal was adjourned for February 16, 2021. Mr. Nasir Hayat, Section Officer, RRO, Ministry of Kashmir Affairs and Gilgit Baltistan attended the hearing as submitted response which is as under:
“Kindly refers to Pakistan Information Commission’s hearing Summon appeal no. 662-10/2021 and to state that following is the reply from office of J&K RRO:-
- It is evident through a newspaper notice appeared in Daily Newspapers of Jang Rawalpindi, Nawa-e-Waqt, Rawalpindi Lahore, Mashrqa, Lahore, Insaf, Rawalpindi Jihad Sialkot, Weekly Kashmir Rawalpindi and Weekly Tanzeem Gujrat that the J&K Refugees of 1946 were given time barred claimants who has submitted their claims up to 31.3.1960 and these were sealed and they were allowed up to 7.11.1976 to redress their addresses and after that no extension will be given.*
2. *Furthermore, Hon’ble Lahore High Court, Lahore’s orders dated 24.7.2009 discussed under:-*
- *The petitioner missed the train due to deep slumber from 1955 till date.*
 - *The chief settlement commissioner showed its inability to remove the grievance of the petitioner on accent of fact the said department was no more in existence after repeal of settlement laws in 1975.*
 - *The law helps those, who are vigilant and not the indolent.*
 - *The petitioner is beating dead horse.*
 - *It can further be said that there is no use crying over spilt milk.*
3. *On perusal of the Newspaper Notice is clear that at that time the J&K RRO have fixed at date for re-addressing of their claims, therefore the requested document letter No.F.2(1)/74.4.1974 dated 17.4.1974, has lost its value.*
4. *It is therefore, this Secretariat cannot issue certified cop of above mentioned document.”*
11. Appeal was again fixed for hearing on March 02, 2021. No one appeared before the Commission to represent the Respondent in the hearing held on March 02, 2021.
12. Hearing was adjourned for March 17, 2021 and Respondent was directed to produce letter No. F2(1)/74-JK dated 17-4-1974 addressed to all claim Commissioners.
13. Mr. Nasir Hayat, Section Officer, RRO, Ministry of Kashmir Affairs and Gilgit Baltistan attended the hearing held on March 17, 2021 and requested for time to provide the requested documents. The appeal was adjourned for April 14, 2021.
14. Mr. Nasir Hayat, Section Officer, RRO, Ministry of Kashmir Affairs and Gilgit Baltistan during the hearing held on April 14, 2021 submitted the copies of the letters sent by the Ministry to Commissioners for submission of record/response in this matter. The hearing was adjourned for September 21, 2021. No one appeared before the Commission to represent the public body in the hearing held on September 21, 2021.
15. The appeal was against fixed for hearing on October 26, 2021 but no one appeared before the Commission to represent the public body in the hearing held on October 26, 2021.

C. Discussion and Commission’s View on Relevant Issues

7. The commission has to decide that

1. Whether the information requested by the citizens falls within the ambit of the public record and whether the public body has responded or not to the information request?
 2. What measures should be taken by the public body if the record is not traceable?
8. The information requested by the appellant belongs to the Section 5 (b) of the Right of Access to Information Act, 2017, hereafter referred to as the “Act”. Section 5(b) of the Act is as under:
- “b) Statutes, statutory rules, regulations, bye-laws, orders and notifications, etc. applicable to the public body disclosing the date of their respective commencement or effect.”*
9. The Respondent in letter vide No. 5/1/2019-RRO dated 15th February, 2021 stated that “... on perusal of the news papers notice is clear that at that time the J&K RRO have fixed last dated for re-addressing of their claimers, therefore the requested document letter No. F.2(1)/74-JK dated 17-4-1974 has lost its value.”
10. This Commission observes that even if the matter is decided still the citizen has the right to avail the public documents/record from any public body to check whether the matter is decided on the merit or not. Moreover, the public bodies are bound to keep such record safe as the Secretariat Instruction 2004 and provide to the citizen on their request.
11. This Commission also maintain that the mere stating the record is not traceable is not a justification, According to Section 4 (1) of the principal officer of each public body shall ensure that the record held by that body is properly maintained, so as to enable it to comply with its obligation under this Act.
11. Section 4(1) of the Act is as under:
- “(1) Subject to the provisions of this Act and rules made there under, the principal officer of each public body shall ensure that the record held by that body is properly maintained, so as to enable it to comply with its obligation under this Act,”*
12. Section 4(2) states,
- “(2) Each public body shall bring its record management practices in line with the secretariat instruction, 2004 or any other instructions of the Federal Government.”*
13. The Respondent has to determine and explain who is/was responsible for the indexing and maintenance of the record and what measures taken by the department for the reproduction of the requested documents.
14. This commission has observed that the public bodies are reluctant to share the basic information to the citizen which should be available on their website under the Section 5 of the Act, the citizens have to approach the commission for information due to the the wilful delay or denial by the public which causes undue cost to citizens and the commission.
15. This Commission maintains that the information proactively published under Section 5 of the Right of Access to Information Act 2017 should be ‘accessible’ for all citizens, including the blind, low-vision, physically disabled, speech and hearing impaired and people with other disabilities. Apart from the interpretation of ‘accessible’ in section 5 of the Act, section 15 (5) of the ICT Rights of Persons with Disabilities Act 2020 requires federal public bodies to ensure accessibility of web sites to the special needs of persons with disabilities and it is as under:

“The government shall ensure that all websites hosted by Pakistani website service providers are accessible for persons with disabilities”.

D. Order

16. Appeal is allowed. Deputy Secretary (K&GB) / Public Information Officer, Ministry of Kashmir Affairs and Gilgit Baltistan is directed to provide complete information mentioned in para 2 of this Order to the Appellant, at the earliest but not later than 7 working days of the receipt of this Order, with intimation to this office.
18. The Respondent is directed to conduct enquiry to determine the responsibility for the misplacement of the requested records and submit compliance report to the commission within one month of the receipt of this Order.
17. Deputy Secretary (K&GB) / Public Information Officer, Ministry of Kashmir Affairs and Gilgit Baltistan is also directed to take immediate steps to proactively share through the web site all categories of information mentioned in Section 5 of the Right of Access to Information Act 2017 and submit the compliance report to the commission in the Template for the Compliance Report-Proactive Disclosure of Information under Section 5 of the Right of Access to Information Act 2017'. This template is available under 'Information Desk' category at the web site of the commission www.rti.gov.pk. The compliance report be submitted to this commission within 30 days of the receipt of this Order.
18. Copies of this order be sent to the Secretary, Ministry of Kashmir Affairs and Gilgit Baltistan, Deputy Secretary (K&GB) / Public Information Officer, Ministry of Kashmir Affairs and Gilgit Baltistan and the Appellant for information and necessary action.

Mohammad Azam

Chief Information Commissioner

Fawad Malik

Information Commissioner

Zahid Abdullah

Information Commissioner

Announced on: January 14, 2022

This order consists of 5 (five) pages, each page has been read and signed.