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CENTRAL INFORMATION COMMISSION

Appeal No. CIC/PA/C/2009/000010 dated 31-12-2009

Right to Information Act 2005 – Section 19

Appellant: Shri Sarvesh Sharma,

Respondent: Allahabad High Court

Heard & Decision announced 23.9.2010

FACTS

By an application of 19-1-09 Shri Sarvesh Sharma of Vasant Kunj, New Delhi applied to the Registrar & PIO, Allahabad High Court seeking the following information:

> "Kindly provide me with copies of the latest returns submitted by all the district courts under your jurisdiction in respect of different categories of cases pending before them. These copies may be sent to me on CD or as hard Copy (photocopies) as available."

In his response of 16-2-2009 CPIO, Shri S. Farid Raza, Jt. Registrar (E) informed Shri Sarvesh Sharma as follows:

> "With reference to your application dated 17/01/2009, it is to inform you that your Demand Draft No. 148487 of Rs. 500/- favouring Registrar (Establishment) Allahabad High Court can not be accepted, because as per the Rule 3 and 4 of the Allahabad High Court (Right to Information) Rules 2006, the draft/ pay order / postal order should be in favour of the REGISTRAR GENERAL, HIGH COURT payable at Allahabad, hence it is returned to you.
> You are requested to send the fee as per the Rule 3 and 4 of Allahabad High Court (Right to Information) Rules, 2006 which re quoted below:"

CPIO then quoted Rules 3 and 4 of the relevant Allahabad High Court Rules. Thereafter, in a further response of 26-11-09 issued after the receipt of the complaint from complainant Shri Sarvesh Sharma before us CPIO & Jt. Registrar (E) of the High Court of Allahabad provided a consolidated statement with the following information:

> "Institution, Disposal and Pendency of Criminal Cases in Sessions Court in the state/ Territory of Uttar Pradesh for the half year ending 30th June 2008."

In the meantime Shri Sarvesh Sharma had moved a complaint before us with regard to several High Courts and what he described as problem areas in disposal of RTI applications and rules framed by the High Courts there under. With regard to Allahabad High Court Shri Sarvesh Sharma submitted as follows:

1. "Allahabad High Court demands a positive assertion that motive for seeking information is proper (whatever that may mean). All these requirements are in violation of Section 6(2) of the RTI Act.
2. Delhi and Allahabad High Courts have set application fee at Rs. 500/-. Additionally, Allahabad High Court states," every application shall be made for one particular item of information only". Rajasthan High court has specified an application fee of Rs. 100/ while Gujarat, Madras, Madhya Pradesh and Patna High Courts specify an application fee of Rs. 50/-. All these fees are very high, and are designed to discourage citizens from using the RTI Act, and are inconsistent with Section 7(5) of the RTI Act. The Central Information Commission, in its order No. *CIC/OK/C/2006/00103 dated 4th October, 2006 in the matter of Shri Gopal Havelia vs. National Small Industries Corporation Limited* directed that the 'fee structure in Para 3 of the internal procedure for processing requests made by public under the RTI Act 2005 should be modified on the lines of the Central Government Fee rules within 15days of the issue of this order....'

   High Courts of Allahabad, Bombay, Himachal Pradesh, Jharkhand and Punjab & Haryana have specified photocopying charges of Rs. 10/- or Rs. 15/- per page. These charges are extortionate, to say the least. Delhi, Patna and Punjab & Haryana High Courts have also specified fees for appeal, which is not provided for in the RTI Act.
3. Allahabad High Court rules state that "Central Public Information Officer shall not be liable to provide any information, which can be obtained under the provision of the Allahabad High Court Rules, 1952 in case of High Court and under General Rule (Civil/ criminal) in case of subordinate Courts. Such information may be obtained by adhering to the prescribed procedure and payment of fees prescribed in the Allahabad High Court Rules, 1952, or General Rules (Civil /Criminal), as the case may be." Other High Courts also have similar rules. Such provisions violate Section 22 of the RTI Act, 2005 and are illegal in nature.

All rules made under the RTI Act must subserve the Act and aim to achieve it s objective and not hinder it. It is a basic tenet of jurisprudence that the *Acts of Parliament must be construed according to their object and intent'."*

On being asked by this Commission to submit separate complaints for separate High Courts, Shri Sarvesh Sharma in a complaint of 4-8-09 has submitted as follows:

> ***"The High Court, Allahabad has set an application fee of Rs 500/- which is very high and seems to be designed to discourage citizens from using the RTI Act and are inconsistent with Section 7(5) of the RTI Act. Besides this exorbitant application fee, the said High Court has also specified photocopying charges of Rs. 15/- per page. Rules 3 and 4 of the said High Court state that 'Every application shall be made for one particular item of information only' and 'each application shall be accompanied by cash or draft or pay order of Rs 500/-.....'***
>
> ***I request you to kindly have the RTI rules framed by High Court, Allahabad, examined with a view to rectifying the deviation from the letter and spirit of the RTI Act, 2005. You may also like to ensure that the High Court proactively provide information under section 4 of the RTI Act, 2005 on matters of public interest such as mounting backlog of cases in the Courts with the objective that public have minimum resort to the use of RTI act to obtain information."***

In response to our appeal notice and with reference to the letter of 26-11-09 Jt. Registrar (E) High Court of Allahabad has submitted as follows:

> "It is humbly submitted that the desired information has already been provided to the applicant / appellant vide letter no. I.C. 6611 dated 26/11/2009; however a copy of the said letter is enclosed herewith for your kind reference."

The complaint was heard through videoconference on 23-9-2010. The following are present.

Appellant: (at CIC chambers – New Delhi)
Shri Sarvesh Sharma;
Respondents: (at NIC Studio- Allahabad)
Shri P. K. Srivastava, Allahabad High Court

In presenting the details of the complaint of Shri Sarvesh Sharma, Shri K.K. Jaiswal assisting the appellant submitted a copy of the Allahabad High Court (Right to Information} Rules 2009. Of these he has highlighted Rules 3,

4, 5 and part of Rule 20 together with Rules 25, 26 and 27. These rules read as follows:

> (3) Every application shall be made for one particular item of information only.
> (4) Each application shall be accompanied by cash or draft or pay order of Rs. 500/- drawn in favour of the Registrar General, High Court, Allahabad...
> (5) If the application is permitted, the applicant shall be entitled to the information only after he makes payment in cash at the rate of Rs. 15/- per page of information to be supplied to him.
> (20) Notwithstanding anything contained anywhere else in these Rules, the applicant will be furnished with the information requested for, if and only if (a) the furnishing of such information is
> (i) requested for with a positive assertion that the motive for obtaining such information is proper and legal;
> (v) or practice prevailing in the material regard;
>
> (25) Central Public Information Officer shall not be liable to provide any information, which can be obtained under the provision of the Allahabad High Court Rules, 1952.
> (26) Central Public Information Officer will not entertain any application from any citizen for providing any information relating to matters, which are pending adjudication before the High Court or Courts subordinate thereto. The information relating to judicial matters may be obtained as per the procedure prescribed in the Allahabad High court rules 1952 and General Rules (Civil/ Criminal)
> (27) Central Public Information Officer will not entertain any application from any citizen for inspecting of any record which can be inspected under the Allahabad High Court Rules 1952 and General Rules (Civil/ Criminal) as the case may be.

Upon this respondent Shri P.K. Srivastava of Allahabad High Court submitted that in accordance with an earlier decision of the Central Information Commission the question of reviewing the entry against Rule 20 of the Rules is already engaging the attention of Chief Justice of Allahabad High Court.

DECISION NOTICE

From the objections raised on each of the items in the rules of the Allahabad High Court (Right to Information Rules) 2009 the following is our decision with regard to each:

On Rule 3, Section 6 (1) of the Act is already clear. This has been expanded upon in our decision in **Rajinder Singh Vs. CB**" in case No. **CIC/WB/C/2007/00967** decided on 19-6-2009, in which we have held as follows:

> "The issue hinges around the application required to be made for obtaining information u/s 7 (1). Under this clause a CPIO. on receipt of 'a request' is expected to deal with it expeditiously when with accompanied with a fee. It is, therefore not open to the applicant under the RTI Act to bundle a series of requests into one application unless these requests are treated separately and paid for accordingly.
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> In our experience in disposing of appeals that in fact many such have been treated as one application even though they contain a multiplicity of requests. However, we concede that a request may be comprised of a question with several clarificatory or supporting questions stemming from the information sought. Such an application will indeed be treated as a single request and charged for accordingly. In the present case, however, of all the questions remaining to be answered as described above one set of questions does refer to a single request regarding Shri S. K. Sharma's functioning as DOP. These may be treated as a single request. Question No. 52, however, is indeed a separate request. Whereas, therefore, we would agree that each question need not be treated as a separate request for information, as could be construed even though not specifically stated by CPIO Shri Manohar Lal in his letter of 19.11.2007, there is no doubt that this amounts to two requests for information as distinct from the remaining requests for information addressed to Shri Ashwani Kumar in the application of 25.10.'07, for which CPIO Shri Ashwani Kumar has accepted payment.
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> It is, therefore, now directed that the appellant Shri Rajendra Singh will pay Rs. 20/- i.e. Rs. 10/- for each request to CPIO Shri Manohar Lal and the CPIO will respond to his request within 20 working days of the date of receipt of fee."

Similarly, with regard to Rules 4 and 5 the authority to provide for fee payable under the Act vests with the competitive authority u/s 28 (2), which is, in this case, the High Court of Allahabad. Nevertheless I would invite the attention of the High Court to the submission to this Commission by the Delhi High Court in Complaint No. **CIC/WB/C/2006/00275; Manish Khanna vs. Delhi High Court in** which CPIO has informed the Commission as follows:

"Shri A.K. Mahajan, Jt. Registrar and PIO referred to the high

regard in which Hon'ble Delhi High Court hold the views of the Central Information Commission and in this context presented an extract from the minutes of the meeting of the Committee constituted to frame the Delhi High Court Right to Information Rules 2006 held on 16th January in the chamber of Hon'ble Mr. Justice Mukul Mudgil in which the relevant extracts and agenda in the minutes is as under:

> AGENDA
> To consider letter dated 22-12- 2006 received from Shri Wajahat Habibullah, Chief Information Commissioner, Central Information Commission.
> MINUTES
> After deliberations, the Committee recommends that in cases of those applications which were received prior to the promulgation of the Rules on 11th August, 2006, the same may be considered as a special case without insisting on the payment of the prescribed application fee.

In a written statement received by us on 5-6-2007 Shri Rajiv Bansal nominated counsel for the High Court has further expatiated on this as follows:

> It is submitted that the main grievance raised in the petition about the fees of Rs. 500/- etc. has become infructuous in view of the fact that the Full Court on 7th March, 2007 has already approved the amendment in the rules reducing the said fees to Rs.50/- (the final notification is awaited)."

We, therefore, make the same recommendation to Hon'ble the Chief Justice of the High Court of Allahabad for his consideration, in light of the fact that although the Hon'ble High Court has indeed framed these rules as the "competent authority" in exercise of its power under Section 28 of the Act, the power which has been conferred by the Statute on this Commission us 25(5) is that where it finds that practice by a "public authority" in relation to the exercise of its functions under the Act does not conform with the provisions or spirit of this Act, it may give to the authority a recommendation specifying the steps, which in its opinion are to be taken for promoting such conformity. We would now, as we did then recommend that the fees be brought in conformity with the Proviso to Sec 7(5), which requires as follows:

> *Provided that the fee prescribed under sub-section (1) of Sec 6 and sub-sections (1) and (5) of Section 7* ***shall be reasonable***[1] *and no such fee will be charged from the persons who are of*

[1] Emphasis ours

below poverty line as may be determined by the appropriate Government"

On the other hand, Rules 25, 26 and 27 do not, in our view, violate the provisions of the RTI Act. This has been held by us in several cases. This issue has been discussed extensively in **Appeal No.CIC/WB/A/2006/00940 "Manish Kumar Khanna vs. Supreme Court of India"** announced on 6.11.'07. In this case we have held as follows:

> "Judicial files can be accessed with the leave of the court under Supreme Court Rules 1966. The issue for determination before us is therefore whether the RTI Act applies to a judicial proceeding and, if so, does it override the existing law concerning dissemination of information in respect of a judicial proceeding? The question may arise as to whether section 22 of the Act overrides any other provision concerning dissemination of information or giving certified copies or copies of documents and other records pertaining to a proceeding conducted by a court or a tribunal, deeming this to be inconsistent therewith. In this context, it is worthwhile to note that the Rules made by the Supreme Court in exercise of the powers conferred by the Constitution of India and the provisions of Right to Information Act overlap each other in certain areas. One view could be that RTI being a later legislation should prevail over an earlier legislation. The other view could be that insofar as the grant of copies of documents or records in a proceeding of a court or tribunal is a matter in respect of which the Right to Information Act has to be treated as a general law and the Rules made by the Supreme Court are to be treated as a special law.
>
> It is also noteworthy to take into account that section 22 of the Right to Information Act explicitly mentions the overriding effect of the Right to Information Act in respect of inconsistencies in the Official Secrets Act but, although it refers to any other law or any instrument having effect under that law (which would include Rules) for the time being in force, it does not make a specific mention of any other legislation. The non-obstante clause of the Right to Information Act does not, therefore, mean an implied repeal of the Supreme Court Rules and orders framed there under, but only an override of RTI in case of 'inconsistency'. In this context, the following observations of the Hon'ble Apex Court in R.S. Raghunath vs. State of Karnataka – AIR 1992 SC 81 are pertinent:
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> "The general Rule to be followed in case of conflict between the two statutes is that the latter abrogates the earlier one. In other words, two following conditions are satisfied.
>
> i) The two are inconsistent with each other.
> ii) There is some express reference in the later to the earlier enactment.

If either of these two conditions is fulfilled, the later law, even though general, would prevail."

A special enactment or Rule, therefore, cannot be held to be overridden by a later general enactment or simply because the latter opens up with a non-obstante clause unless there is clear inconsistency between the two legislations – one which is later in order of time and the other which is a special enactment. This issue came again for consideration before the Hon'ble Apex Court in Chandra Prakash Tiwari vs. Shakuntala Shukla – AIR 2002 SC 2322 and the Hon'ble Supreme Court quoted with approval the Broom's Legal Maxim in reference to two Latin Maxims in the following words:

> "It is then, an elementary Rule that an earlier Act must give place to a later, if the two cannot be reconciled - ***lex posterior derogat priori - non est novum ut priores leges ad posteriors trahantur*** (Emphasis supplied) - and one Act may repeal another by express words or by implication; for it is enough if there be words which by necessary implication repeal it. But repeal by implication is never to be favoured, and must not be imputed to the legislature without necessity, or strong reason, to be shown by the party imputing it. It is only effected where the provisions of the later enactment are so inconsistent with, or repugnant to, those of the earlier that the two cannot stand together; unless the two Acts are so plainly repugnant to each other that effect cannot be given to both at the same time a repeal cannot be implied; and special Acts are not repealed by general Acts unless there be some express reference to the previous legislation, or a necessary inconsistency in the two Acts standing together, which prevents the maxim generalia specialibus non derogant (Emphasis supplied) from being applied. For where there are general words in a later Act capable of reasonable application without being extended to subjects specially dealt with by earlier legislation, then, in the absence of an indication of a particular intention to that effect, the presumption is that the general words were not intended to repeal the earlier and special legislation, or to take away a particular privilege of a particular class of persons."

In the aforesaid case, the Hon'ble Apex Court also cited with approval an earlier decision in Maharaja Pratap Singh Bahadur v. Thakur Manmohan Dey - MANU/SC/0202/1966, in which it was indicated that an earlier special law cannot be held to have been abrogated by mere implication. That being so, the argument regarding implied repeal has to be rejected for both the reasons set out above.

The differences between the Right to Information Act and the procedure as prescribed by the Supreme Court for conduct of its own practice and procedure have to be looked into from another angle also as to whether there is a direct inconsistency between the two. In this context, it may be mentioned that neither provision prohibits or forbids dissemination of information or grant of copies of records. The difference is only insofar as the practice or payments of fees etc. is concerned. There is, therefore, no inherent inconsistency between the two provisions.

Over and above, the Supreme Court Rules are particular or special law dealing with a particular phase of the subject covered by the Right to Information Act and, therefore, consistency is possible. It is a sound principle of all jurisprudence that a prior particular law is not easily to be held to be abrogated by a posterior law expressed in general terms. The said principle was accepted by the Hon'ble Supreme Court and expressed by Justice Mudholkar in the following words:

> "A general statute applies to all persons and localities within its jurisdiction and scope as distinguished from a special one which in its operation is confined to a particular locality and, therefore, where it is doubtful whether the special statute was intended to be repealed by the general statute the court should try to give effect to both the enactments as far as possible."

U/s 22 of the RTI Act the provisions of the RTI Act have effect notwithstanding anything inconsistent therewith contained in any other law for time being enforced or instrument having effect by virtue in law other than this Act. However, since both the Act and Order XII of the Supreme Court Rules provide for disclosure of information of the kind sought in the present case we find that there is nothing inconsistent in the rules. It is only that Supreme Court Rules 1966 through Order XII, Rule 2 prescribe the procedure for obtaining the information. This procedure together with fees is in the province of the prescribed authority u/s 28 of the RTI Act."

Accordingly this issue is also disposed of in the present case. In sum, therefore, we find that it is only Rule 20 which in both sub clauses quoted by complainant Shri Sarvesh Sharma in the present case runs contrary to the RTI Act, Rule 20 sub-clause (i) being in direct violation of Section 6 (2) and sub clause (v) of Rule 20, which we have already struck down in accordance with Section 19 (8) (a). Both these rules being in violation of the RTI Act the High Court of Allahabad is directed u/s 19 (8) (a) to take such steps as may be necessary to bring Rule 20 in direct compliance with the provisions of the

RTI Act 2005. With these directions this complaint is allowed in part. There will be no cost.

Announced in the hearing. Notice of this decision be given free of cost to the parties.

(Wajahat Habibullah)
Chief Information Commissioner
23-9-2010

Authenticated true copy. Additional copies of orders shall be supplied against application and payment of the charges prescribed under the Act to the CPIO of this Commission.

(Pankaj K.P. Shreyaskar)
Joint Registrar
23-9-2010