

To

03.11.11

Hon'ble Mr. Justice Syed Rafat Alam,  
Chief Justice, Allahabad High Court  
1, Lal Bahadur Shastri Marg,  
Allahabad,  
Uttar Pradesh

**Subject- Conformity of Allahabad High Court (Right to Information) Rules, 2006, with RTI Act, 2005**

Sir,

I have the honour to submit the following petition on behalf of Common Cause, a civil society organisation campaigning for governance reforms and redress of the problems of the common man.

The legitimacy of a state is founded on its capacity to uphold the rule of law and provide speedy, affordable and substantial justice to all its residents. The Indian state, unfortunately, falls woefully short of these standards of governance. Our judicial system is agonisingly slow and ruinously expensive for the vast majority of litigants. These shortcomings have given rise to an environment in which the rule of law is fast losing ground to the rule of the jungle.

Concerned with this state of affairs, Common Cause and certain like-minded entities jointly filed a PIL in the Supreme Court in March 2008, offering a multi-pronged strategy to expedite the dispensation of justice and reverse the trend of a mounting backlog of court cases.

In this context, we exercised our right to information and sought information on the status of pendency of cases in various jurisdictions in January, 2009.

In the process of securing access to the desired information, we found that the RTI rules framed by several High Courts, including the Allahabad High Court, deviated from the letter and spirit of the RTI Act. Such rules seemed to be designed to discourage the citizens from using the RTI Act.

Eventually, we filed a complaint under Section 18(f) of the Right to Information Act, 2005, before the Central Information Commission (Annexure A) with a view to bringing the rules framed by various High Courts in conformity with the spirit of the RTI Act. Some of the points made by us found favour with the Commission.

The significant deviations in the Allahabad High Court (Right to Information) Rules, 2006, with reference to the RTI Act and the recommendations of the Central Information Commission in respect of these rules contained in its decisions of July 26, 2010 and September 23, 2010 (Annexures B & C) are presented below:

**(a) Rule 3: Every application shall be made for one particular item of information only.**

With regard to this rule, the Commission reiterated its earlier decision in *Rajinder Singh Vs. CB* in case No. *CIC/WB/C/2007/00967* dated July 16, 2009, in which it had held that while it was 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, a request could consist of a question with several clarificatory or supporting questions stemming from the information sought. Such an application should be treated as a single request and charged for accordingly.

Hence, it is requested that Rule 3 may be suitably amended to clarify that the clarificatory or supporting questions stemming from the information sought in an application are to be treated as a single request and charged for accordingly.

**(b) Rule 4: Each application shall be accompanied by cash or draft or pay order of Rs. 500/-.....**

In the humble opinion of Common Cause, this rule was inconsistent with Section 7(5) of the RTI Act and had the effect of impeding the common man's access to information. With regard to this rule, the Commission made the following recommendation to Hon'ble the Chief Justice of the High Court of Allahabad:

*".. 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 u/s 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) & (5) of Section 7 shall be reasonable and no such fee will be charged from the persons who are of below poverty line as may be determined by the appropriate Government.”*

This recommendation of the Central Information Commission has not been acted upon by the High Court of Allahabad. It may be mentioned here that acting on a similar recommendation of the CIC, the Delhi High Court has reduced the prescribed application fee from Rs 500/- to Rs 50/-.

It is therefore requested that the Hon'ble High Court may bring the application fees prescribed in the aforesaid rule in conformity with the provisions and spirit of the RTI Act.

**(c) Rule 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.**

The aforesaid rule bears no relation to the cost of the medium or print cost price of the materials to be disseminated.

Though there was no specific recommendation from the CIC in respect of Rule 5, it is submitted that the prescribed photocopying charges are exorbitant. Evidently, provision of information under the RTI Act should not be made a revenue generating enterprise. Clause 28 (2)(i) of the RTI Act is specific in this regard when it states that the rules framed by competent authority should provide for “*the cost of the medium or print cost price of the materials to be disseminated.*”

**(d) Rule 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**

**(i) is requested for with a positive assertion that the motive for obtaining such information is proper and legal.**

**(v) not otherwise against any law or practice prevailing in the material regard;**

Sub clause (i) is clearly in contravention of Section 6 (2) of the RTI Act and this has been affirmed by the Commission in the following recommendation to the High Court of Allahabad: “ *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 under 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.”*

This recommendation of the CIC, too has been ignored by the Allahabad High Court. It is requested that sub clause (i) and sub clause (v) of Rule 20 may be deleted.

- (e) **Rule 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 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.”**
- (f) **Rule 26: “Central 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) respectively.”**
- (g) **Rule 27: “Central Public information Officer will not entertain any application from any citizen for inspection of any record which can be inspected under the Allahabad High Court Rules 1952 and General Rules (Civil/Criminal) as the case may be.”**

In so far as Rules 25, 26 & 27 are concerned, Common Cause had argued that these rules violate Section 22 of the RTI Act, 2005 and are therefore illegal. Though this contention has not been upheld by the Commission, it is urged that Rules 25 and 27 may suitably be amended to allow in parallel access to information on matters of public interest under the RTI Act, 2005.

In an earlier decision in the same complaint filed by Common Cause, the Commission had stated on July 26, 2010, *“Consequently, the other issue regarding proactively disclosure of pending cases in various courts under Jurisdiction of High Court of Allahabad, the Commission in light of the provision u/s 25(5) of the Act, hereby recommends the Registrar, High Court of Allahabad to envisage a system by which such information should be proactively disclosed in public interest.”*

A copy of this order is attached at Annexure C.

No action has been taken till date by the Allahabad High Court on this recommendation by the CIC.

It is respectfully submitted that all rules made under the RTI Act must subserve the Act and aim to achieve its 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. Rather than look for ways of creating disincentives for citizens who wish to exercise their right to information, rules framed under the RTI Act by the competent authorities should aim to facilitate the access to information. Therefore, it is urged that the RTI rules, which do not accord with the spirit of the RTI Act, may be re-formulated in the light of the recommendations of the CIC and in the larger interest of operationalising the fundamental right to the freedom of speech and expression, of which, right to information is an intrinsic and inalienable part.

Common Cause would also request you to ensure that the rules so revised are uploaded on the High Court's web site.

Yours faithfully,

Kamal Kant Jaswal

Director & Chief Executive

**Enclosures:**

1. Letter of Complaint to the CIC under Sec 18(f) of RTI Act, 2005 (Annexure A)
2. Recommendation of CIC in its decision of July 26, 2010 (Annexure B)
3. Recommendation of CIC in its decision of September 23, 2010 (Annexure C)