

CENTRAL INFORMATION COMMISSION

Complaint No. CIC/WB/C/2006/00275 on 2.12.'06

Right to Information Act 2005 – Section 18

Complainant: Shri Manish Kumar Khanna, Advocate.
Respondent: Delhi High Court

Date of hearing: 24.4.'07

Date of Announcement of Decision: 7.6.'07

FACTS:

Shri Manish Kumar Khanna, Advocate, Delhi, made a complaint before us u/s 18 (1) (d) and (f) of the RTI Act 2005 complaining as follows regarding the conduct of the Delhi High Court:

- a) They were very late in implementation of the RTI Act.
- b) They have put Rs.500/- as application price which is the highest as compared to Tis Hazari Court and Hon'ble Supreme Court which are charging Rs.10/-.
- c) They are charging Rs. 50/- for appeal while the Hon'ble Supreme Court and Tis Hazari court are not charging anything.
- d) That they are the people whose understanding of law is the best in the country but they appear to have made rules which are illegal in the face of the Act. E.g. 4 (i), 4 (iii), 4 (iv), 5 (a) 5 (e), 10."

He, therefore, pleaded for the following:

- “1. Strike down the illegal provisions in the Hon'ble High Court rules.
2. Ask the Hon'ble High Court to repay the extra money charged from everyone.
3. Get the compensation for all the proceedings.
4. Pass any other order as deemed fit.”

In response to our complaint notice the respondent PIO, Hon'ble Delhi High Court through his nominee counsel Shri Rajiv Bansal has submitted a detailed response dated 19-4-07 of which the essence is as follows:

“a) That while investigating the complaint under Section 18 (d) & (f) of the RTI Act or otherwise, the Central Information Commission has no jurisdiction to go into the question of validity of the Rules framed under the Act by the High Court. The Commission being a creature of the Statute does not have the jurisdiction, according to the mandate of the Act, to question the validity of the Rules. Such

exercise of judicial review, is a constitutional power not vested in the Central Information Commission.

b) Without prejudice to the preliminary objection stated hereinabove, 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). Thus, the principal grievance of the complainant now stands redressed.”

Accordingly the complaint was heard on 26-4-2007 at 12.30 p.m. The following were present:

Appellant:

Shri Manish Kumar Khanna, Advocate.

Respondents:

1. Shri A.K. Mahajan, Jt. Registrar/PIO, Delhi High Court
2. Shri R. Gopalan, Asstt. Registrar/ APIO, Delhi High Court
3. Shri Rajiv Bansal, Advocate, nominated counsel for Delhi High Court

During the hearing complainant Shri Manish Kumar Khanna presented written arguments dated 26-4-07. In this background he has raised the following legal points:

“i) That the non-objecting to payment of fee at the time of moving an application and appeal are not reasons for estoppel as estoppel is a rule of equity which is applicable when a party has taken adverse position. Further whom should I complain to? CPIO cannot to help me in this regard. Complaint for sake of complaint is a futile exercise. Further can my exercising the right under S.18 prejudice the Hon’ble High Court?

ii) Why shouldn’t these rules be read down as that the rules being against the act the Hon’ble Commission is not bound by them especially in face of the word “duty” occurring in S.18?

iii) Why shouldn’t the Hon’ble Commission give an extensive meaning to S.18 (f) as that it can look into every matter which interferes into enquiring and accessing of records? Don’t faulty rules interfere with access to records or in enquiring for them? Even the Hon’ble High Court has said the act doesn’t empower the Hon’ble Commission in this regard in its objections filed? Why can’t this section be used as answer?

iv) Why shouldn't the Hon'ble Commission itself challenge the rules as being derogatory to its powers especially u/s 18 of the Act?

v) Why shouldn't the Hon'ble Commission send a report of the actions of Hon'ble High Court as in violation of the provisions and spirit of RTI Act as provided in S.25 (1) and S.25 (3) (g) of RTI Act to central government which can put it before the parliament? It be noticed we live in parliamentary democracy and not judicial democracy.

vi) Why shouldn't the Hon'ble Commission at least write in its order at least that the rules of the Hon'ble High Court are in the spirit of the Act or in accordance with the Act or not? This it is submitted is the duty of Hon'ble Commission u/s 25 (5) of the RTI Act report and thus at least support the complainant in his fight for protection of the RTI Act which in fact is the duty of the Hon'ble Commission as protector of the RTI Act.

vii) Why shouldn't the Hon'ble Commission at least write to the Hon'ble Delhi High Court that its rules are not in conformity with the Act's spirit as provided by S.25 (5) of the Act?

viii) Why shouldn't these rules be read as not being rules under RTI Act although so called but merely personal internal rules although made in the garb of RTI Act as having no sanctity under the Act as in that the authority had no delegated legislation to make these rules? Especially seeing that these rules don't fall in spirit of S.28 of the Act and unlike the central government rules are not to be put to before the parliament.

ix) That under what provision is the Hon'ble High Court empowered to make these rules? The act empowers u/s 28 to make rules to carry out the provisions of the Act and not to take the Hon'ble High Court out of the purview of the Act, as shown above.

x) That the Hon'ble Commission has noticed that the DOPT has without authority introduced the confusion relating to file noting and refused to go by it as stated in the Hon'ble Commissions ruling of "Shri D.C. Dinkar vs. Ministry of Social Justice and Empowerment" in CIC/OK/A/2006/0059.

xi) That the Hon'ble Commission has struck down the form by Ministry of Environment and Forest which is Central Government then why can't it strike down a competent authority's rules? The

case relied upon is CIC/WB/A/C/2006/00228 titled Shri Biswajit Mohanty, Cuttack vs. Ministry of Environment and Forest.

xii) That the Hon'ble Commission has where it has found that the working of the Act is not being implemented in accordance with the provisions of the Act reported the matter to the authority looking after the formulation of the Rules as in Appeal No. CIC/WB/A/2006/00127."

In response 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:

S.No.	AGENDA	MINUTES
2.	To consider letter dated 22-12-2006 received from Shri Wajahat Habibullah, Chief Information Commissioner, Central Information Commission.	After deliberations, the Committee recommends that in cases of those applications which were received prior to the promulgation of the Rules on 11 th August, 2006, the same may be considered as a special case without insisting on the payment of the prescribed application fee.

On the substance of the complaint, while reiterating his arguments in response to the complaint notice, he also emphasized that while it was not open to the Commission to issue any directions regarding the rules that have been drawn up by the Hon'ble High Court, it may at best make a recommendation u/s 25 (5) of the RTI Act 2005.

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 Act does not confer any power on this Hon’ble Commission to strike down any rule framed by the “competent authority” in exercise of its power under Section 28 of the Act. The only power which has been conferred by the Statute on this Hon’ble Commission is only, 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 to be taken for promoting such conformity.**¹ Therefore, it is abundantly clear that the role of Hon’ble Commission qua the rules framed by the “competent authority” in exercise of the power conferred under Section 28 of the Act is only recommendatory in nature.

There is yet another aspect of the matter. In the present case the “competent authority” is a Constitutional Authority whereas the Hon’ble Commission has been created under a statute. It would be wholly unconstitutional to confer a power on an authority created under a statute to rule on validity or otherwise of rules framed by a constitutional authority. This Hon’ble Commission does not have any authority to hold that any rule framed by the “competent authority” to be invalid in exercise of its power under the Act.

It is further submitted that the fee was charged in accordance with the provisions contained in Rule 10 of the Delhi High Court (Right to Information) now estopped from raising the plea that excessive fee is being charged by the Delhi High Court under Section 18 (d) of the Act as he has always deposited fee prescribed under the Rules, be it Rs. 50/- or Rs. 500/-.

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).”

DECISION NOTICE:

Complainant has argued that Section 28 (2) does not authorize the competent authority to make rules that would overrule the substance of the Act. In this case he had argued that u/s 6 (1) of the RTI Act proviso to Section 7 (5) fee prescribed under sub-Section (1) of Section 6 shall be ‘reasonable’. He has

¹ Emphasis ours

also cited certain decisions of this Commission noted below In support of his arguments that Rules made by various Public authorities have been set aside by the Central Information Commission:

- i) D.C. Dinkar vs. Ministry of Social Justice and Empowerment dated 12-4-2007 -- No.CIC/OK/A/2006/00519
- ii) Biswajit Mohanty vs. Ministry of Environment & Forests dated 30-11-2006 -- No. CIC/WB/C/2006/00228;
- iii) Rakesh Agarwal vs. Delhi Jal Board dated 12-5-2006 – No. CIC/WB/A/2006/00127

Having heard the arguments on both sides and perused the file together with the law we agree with Shri Mahajan, Jt. Registrar that the competent authority for formulating rules has been clearly laid down in Section 2 (c) read with Section 2 (g). In Section 2 (e) (iii) a competent authority is the Chief Justice of the High Court in the case of High Court whereas in the case of Government of India, it is the President. Section 28 provides the powers to make rules to the competent authority. Section 28 (2) is only illustrative.

Also the examples cited by the complainant with regard to the Commission having set aside forms and orders of a particular authority do not concern the rules made by the 'competent authority', which in the case of Government departments is the President of India working through the Ministry of Personnel, Public Grievances & Pensions in the Department of Personnel & Training (DoPT). Whereas rules made by a public authority are therefore subject to complaint or appeal before us, this Commission, a creature of the Act does not have the authority to question the competence of a competent authority as prescribed under the Act, in formulation and framing of Rules as prescribed under this Act. Nor has this Commission ventured to do so. A point to note in this matter is that whereas rules made by the President or the Governor as competent authority require to be placed before Parliament or the State assembly, in the case of the Supreme Court and High Court these do not require the sanction of any other authority.

However, we find that there is agreement between the parties with regard to application of Sec 25 (5). As argued by Jt. Registrar & PIO, Delhi High Court, in the case of fees, a recommendation made by the Central Information Commission has been deemed to be recommendation under this Section and accordingly fees were waived as per such recommendation as demonstrated in respondent's opening arguments, and rules revised which revision is likely to be announced soon. Appellant has raised the issue of fees having been prescribed by the rules of the competent authority, in this case the Hon'ble High Court, even where these have not been mandated by the Act. Thus the rules of the High Court mandate a penal provision at the level of the first appellate authority @ Rs. 250/- per day for which there is no provision in the Act. As discussed above, Delhi High Court has the full authority to prescribe in the rules , formulated by them what has been mandated by the law and also any further rules which in its view are in the best interest of servicing the Act that are not in contradiction to any of the provisions of the law, and the **authority of the Commission would be restricted to making recommendations only in this regard.**

Since the issue before us in this hearing was whether the rules prescribed by the High Court which is the competent authority in this case, are subject to directions from this Commission which we have decided to be definitely not the case, since it has been agreed by all parties that the Commission may make recommendations on the subject u/s 25 (5) of the Act, we will now separately examine, after wider consultation, the question of specific rules which have been found unsuitable by appellant and make recommendations, if any, accordingly.

The complaint is disposed of accordingly. Announced on 7.6.2007. Notice of this decision be given free of cost to the parties.

(Wajahat Habibullah)
Chief Information Commissioner
7-6-2007

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.

(L.C.Singhi)
Addl. Registrar
7-6-2007