CENTRAL INFORMATION COMMISSION

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F.No.CIC/AT/A/2007/00112
Dated, the 12th April, 2007.

Appellant : Shri K. Lall, 90/88 Ground Floor, Malviya Nagar, New Delhi-17.

Respondents : Shri M.K. Bagri, Assistant Registrar of Companies & CPIO, NCT of Delhi & Haryana, Office of the Registrar of Companies, 4th Floor, IFCI Tower, Nehru Place, New Delhi-110 019.

Shri T.P. Shami, Appellate Authority, Office of the Registrar of Companies, 4th Floor, IFCI Tower, Nehru Place, New Delhi-110 019.

This appeal by Shri K. Lall is against the order dated 8.11.2006 of the Appellate Authority (AA). Through his RTI-request dated 28.8.2006, the appellant had asked for the following information:

> "M.J.M. PHARMA LTD.,R.O. AT UG F-10, INDIRA PRAKASH, BARA KHAMBA ROAD, NEW DELHI-110 001 IS COMPANY REGISTERED IN 1991. KINDLY GIVE ME THE STATUS OF THE COMPANY, NAME OF THE DIRECTORS AND IF ANY DEFAULT OR CASE PENDING IN COURT SINCE IT IS NOT AVAILABLE ON YOUR WEB SITE I.E. MCA-21. No Notice and Annual Accounts has been seen since 1992."

2. The AA rejected the first appeal of the appellant on the ground that the information requested by him was already in the public domain having been put on the website as a priced item. Besides that, rules also provide for access to any applicant to the same information held in the form of files by the Department on payment of certain predetermined charges. In the public authority's view,

> "The information already available in the public domain would not be treated as 'information held by or under the control of public authority' pursuant to Section 2(j) of the Right to Information Act, 2005. Therefore, the provisions of RTI Act, 2005 would not be applicable for providing copies of such documents / information to the public."

3. The present request of the appellant is for inspection of the records regarding which the CPIO had given him some information through his communication dated 4.9.2006.

4. The respondents have pointed out that they shall be only too happy to allow the inspection of the records and the documents corresponding to the information requested by the appellant in his RTI-request. The respondents have cited a Ministry of Company Affairs' circular dated 24.1.2006 which prescribed the "procedure to be followed by a person to get the relevant information, after paying the prescribed fee". The respondents have further pointed out that the CPIO through his letter dated 4.9.2006, had already informed the appellant that there was no case pending against the company- M/s. M.J.M. Pharma Limited.

5. The appellant's contention is that he had "not asked for any document, but only information such as documents that have been filed, name of the Directors, default if any. Instead of giving this information, he (the AA) has tried to teach me Companies Act in which I am not interested"

6. The appellant has urged that Section 22 of the RTI Act invests the Act with "overriding effect". Therefore, according to the appellant, "denial of information" is fully illegal and against the provisions of the RTI Act. He has further stated that the Companies Act, to which the respondents have made reference, had nothing to do with the Right to Information Act, 2005 as the former is only "for companies and its officials and not for the general public to access information"

7. The respondents have brought up the point that the information as requested by the appellant falls in two categories. There is a part which is about default by the firm, M/s. M.J.M. Limited. The other part is about the status of the company, name of the directors, filing of the accounts by the company since 1992 and other such details. According to the respondents, the CPIO and the AA have furnished the information in respect of the first part to the appellant. In their submission before the Commission, the respondents have stated "In this regard, it is further submitted that the office of the respondents have launched prosecution against M/s.M.J.M. Pharma Ltd. and its directors by filing 16 complaints with the Hon'ble Court of ACMM on 06.11.2006 and the same are pending." In regard to the second part, the respondents have submitted that they acted in terms of letter no.F.No.11/4/2005 CL.V dated 24.1.2006 issued by the Ministry of Company Affairs, which according to the respondents, they were "legally bound to follow".

8. The sum-total of the respondents' argument is that once they have put some information in the public domain and put a price on accessing that information, they cannot be said to hold control of that information in terms of Section 2(j) of the RTI Act. If any application is made under RTI Act to access such already disclosed information, it would suffice if the public authority informed the applicant where and how to access that information and also the fact that it was already in the public domain. They have pointed out that the pricing of access to such documents is equivalent to putting a price on a publication brought out by a public authority. Once an information is either placed in the public domain through a website or through a public announcement about the availability of that information in public domain on payment of a predetermined price, or by bringing out a priced publication, the information is automatically excluded from the purview of the RTI Act, at least in regard to the methodology and the fee for accessing that information.

9. It shall be interesting to examine this proposition. Section 2(j) of the RTI Act speaks of "the right to information accessible under this Act which is held by or under the control of any public authority……". The use of the words "accessible under this Act"; "held by" and "under the control of" are crucial in this regard. The inference from the text of this sub-section and, especially the three expressions quoted above, is that an information to which a citizen will have a right should be shown to be **a)** an information which is accessible under the RTI Act and **b)** that it is held or is under the control of a certain public authority. This should mean that unless an information is <u>exclusively</u> held and controlled by a public authority, that information cannot be said to be an information accessible under the RTI Act. Inferentially it would mean that once a certain information

is placed in the public domain accessible to the citizens either freely, or on payment of a pre-determined price, that information cannot be said to be 'held' or 'under the control of' the public authority and, thus would cease to be an information accessible under the RTI Act. This interpretation is further strengthened by the provisions of the RTI Act in Sections 4(2), 4(3) and 4(4), which oblige the public authority to constantly endeavour "to take steps in accordance with the requirement of clause b of subsection 1 *of the Section 4* to provide as much information suo-motu to the public at regular intervals through various means of communication including internet, so that the public have minimum resort to the use of this Act to obtain information." (Section 4 sub-section 2). This Section further elaborates the position. It states that "All materials shall be disseminated taking into consideration the cost effectiveness, local language and the most effective method of communication in that local area and the information should be easily accessible, to the extent possible in electronic format with the Central Public Information Officer or State Public Information Officer, as the case may be, available free or *at such cost of the medium or the print cost price as may be prescribed.*" The explanation to the subsection 4 section 4 goes on to further clarify that the word "disseminated" used in this Section would mean the medium of communicating the information to the public which include, among others, *the internet or any other means including inspection of office of any public authority*.

10. It is significant that the direction regarding dissemination of information through free or priced documents, or free or priced access to information stored on internet, electronic means, or held manually; free or on payment of predetermined cost for inspection of such documents or records held by public authorities, appear in a chapter on 'obligations of public authorities'. The inference from these sections is **a)** it is the obligation of the public authorities to voluntarily disseminate information so that "the public have minimum resort to the use of this Act to obtain information", **b)** once an information is voluntarily disseminated it is excluded from the purview of the RTI Act and, to that extant, contributes to minimizing the resort to the use of this Act, **c)** there is no obligation cast on the public authority to disseminate all such information free of cost. The Act authorizes the public authorities to disclose such information suo-motu "at such cost of a medium or the print cost price as may be prescribed", **d)** the RTI Act authorizes the public authority to price access to the information which it places in the public domain suo-motu.

11. These provisions are in consonance with the wording of the Section 2(j) which clearly demarcates the boundary between an information held or under the control of the public authority and, an information not so held, or under the control of that public authority who suo-motu places that information in public domain. It is only the former which shall be "accessible under this Act" **—** viz. the RTI Act and, not the latter. This latter category of information forms the burden of sub-section 2, 3 and 4 of Section 4 of this Act.

12. The RTI Act very clearly sets the course for the evolution of the RTI regime, which is that less and less information should be progressively held by public authorities, which would be accessed under the RTI Act and more and more of such held information should be brought into the public domain suo-motu by such public authority. Once the information is brought into the public domain it is excluded from the purview of the RTI Act and, the right to access this category of information shall be on the basis of whether the public authority discloses it free, or at such cost of the medium or the print cost price

"as may be prescribed". The Act therefore vests in the public authority the power and the right to prescribe the mode of access to voluntarily disclosed information, i.e. either free or at a prescribed cost / price.

13. The respondents are right therefore in arguing that since they had placed in the public domain a large part of the information requested by the appellant and prescribed the price of accessing that information either on the internet or through inspection of documents, the ground rules of accessing this information shall be determined by the decision of the public authority and not the RTI Act and the Rules. That is to say, such information shall not be covered by the provisions about fee and cost of supply of information as laid down in Section 7 of the RTI Act and the Rules thereof.

14. It is, therefore, my view that it should not only be the endeavour of every public authority, but its sacred duty, to suo-motu bring into public domain information held in its control. The public authority will have the power and the right to decide the price at which all such voluntarily disclosed information shall be allowed to be accessed.

15. There is one additional point which also needs to be considered in this matter. The appellant had brought up the issue of the overarching power of the RTI Act under Section 22. This Section of the Act states that the provisions of the Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923, and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act. In his view, the pricing of the access to the records and information by the public authority at a scale different from the rates / fees for accessing the information prescribed under the Act amounts to inconsistency. A closer look at the provision shows that this is not so. As has been explained in the preceding paragraphs, the fees prescribed for access to information under the RTI Act applies only to information 'held' or 'under the control of' the public authority. It does not apply inferentially to the information not held or not under the control of the public authority having been brought into the public domain suo-motu in terms of sub-section 3 of Section 4. The price and the cost of access of information determined by the public authority applies to the latter category. As such, there is no inconsistency between the two provisions which are actually parallel and independent of each other. I therefore hold that no ground to annul the provision of pricing the information which the public authority in this case has done, exists.

16. In my considered view, therefore, the CPIO and the AA were acting in consonance with the provision of this Act when they called upon the appellant to access the information requested and not otherwise supplied to him by the CPIO, by paying the price / cost as determined by the public authority.

17. The appeal is consequently rejected.

Sd/-
(A.N. TIWARI)
INFORMATION COMMISSIONER

Authenticated by –

Sd/-
(D.C. SINGH)
Under Secretary & Asst. Registrar

Address of parties:

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2. Shri M.K. Bagri, Assistant Registrar of Companies & CPIO, NCT of Delhi & Haryana, Office of the Registrar of Companies, 4th Floor, IFCI Tower, Nehru Place, New Delhi-110 019.

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