

CENTRAL INFORMATION COMMISSION

.....

F.No.CIC/SM/A/2009/001883-AT

Dated, the 11th November, 2010.

Appellant : Shri Deepak Agnihotri

Respondent : State Bank of India, New Delhi

s

This matter came up for hearing on 30.09.2010 in the presence of the appellant and the respondents represented by Shri Anil Kumar Baheti, Manager.

2. Appellant had requested certified copy of the cheque issued by him in favour of Postmaster GPO, New Delhi. CPIO, through his letter dated 07.07.2009, requested appellant to collect the desired information directly from the Branch after payment of the Bank's prescribe charges for obtaining old records. Appellate Authority, in his order dated 14.09.2009 held that appellant was to pay Rs.100/- towards receiving the requested information as per the Bank's own rules. The operating portion of Appellate Authority's order read as follows:-

"The charges claimed by the Branch towards furnishing copy of paid cheque, etc., derived from old records is in accordance with the scale of charges prescribed by the Bank. The relationship of the Bank with its customer is governed by mutual contract and any enquiries relating to the account / old record shall have to be in consonance with the requirement of the payment of Bank's charges and the provisions of the RTI Act are not meant to circumvent the contractual obligations and seek information upon payment of fee prescribed under the RTI (Regulation of Fee &

Cost) Rules 2005. Therefore, after examining the grounds of the appeal, I find decision of the CPIO free from any error and as such does not warrant any indulgence from the undersigned. The Appeal being devoid of any merits, deserves dismissal. I order accordingly.”

3. Appellant has challenged this order citing Section 22 of the RTI Act — to the extent of inconsistency the RTI Act supersedes other laws — and Commission’s decision No.CIC/SG/A/2008/00043/SG/1288 dated 27.01.2009 in that regard.

4. The point for decision is whether in the face of the presence of the RTI Act and the Rules, a public authority is estopped from having its own Rules for giving out information to a requester.

5. My views in this regard have already been expressed in decision in *K. Lall Vs. M/o Company Affairs; Appeal No. CIC/AT/A/2007/00112; Date of Decision: 12.4.2007.*

6. Section 22 of the RTI Act read as follows:-

“The provisions of this 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.”

7. A plain reading of this text shows that RTI Act shall have effect should there be anything ‘inconsistent’ in any other Act. In other words, RTI Act takes precedence in case it is established that similar provision in any other Act was inconsistent with the provision of the RTI Act.

8. In the RTI Act, Section 27 provides the authority to the appropriate government to frame rules for charging fees for disclosure of information

by a public authority to an applicant. Accordingly, the Department of Personnel and Training have framed RTI (Regulation of Fee & Cost) Rules 2005.

9. While it is so, several departments and public authorities had their own rules regarding disclosure of various categories of information held by them.

10. The question is whether in the presence of the above-mentioned RTI Act provision and the Rules, the latter provisions in other Acts or Rules be considered inconsistent with the RTI Act provisions.

11. It is my view that RTI Act does not preclude other departments and public authorities from laying down the fee structure or the price of information which it holds in its control. The reason for this has been spelt-out in my above-cited decision in K.Lall case as follows:-

*“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 extent, 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, exist."*

12. In my understanding, it would be entirely facetious to hold that because of the presence of the RTI Act and the Rules, public authorities are completely barred from fixing the charge at which they would try to sell or disclose information. RTI Act enjoins that public authority could progressively bring more and more information into the public domain and authorize their disclosure. RTI Act does not, at any place, say that such public authorities would be barred from placing any fee or price or a charge on the disclosure of the information brought by them into the public domain. Section 2(j) of the RTI Act speaks about information 'held' or 'under the control of' the public authority. It means that it is that variety

of information which the public authority has not offered voluntarily to be sold either through a pre-determined price or fees. The moment a public authority classifies the document for disclosure through a pre-determined price or free, that information cannot any more be said to be in the control of the public authority or held by it. Section 2(j), therefore, will become inapplicable. Section 2(j), read with provisions of Section 4(1), makes it comprehensively clear that RTI Act envisions two classes of information — one, which public authority holds and, has not yet offered to disclose either free or through a certain level of price and, second, information in regard to which the previous action has not been taken. RTI Act applies only to the latter category and not to the former.

13. RTI Act Section 4(2) mentions that the transparency levels in the public authorities would be such that a citizen would not need to use the RTI Act to gain access to that information. It doesn't mean that government or the public authorities shall be obligated never to price their document or to charge a different set of fees for disclosing them. Even if a different set of fees is charged or a price determined for making available information by public authorities, that would amount to meeting the requirements of Section 4(4) and information would qualify to have been brought out into the public domain voluntarily. In that event, Section 2(j) will not apply to this class of information and the rules as framed by the public authority for making available information would hold.

14. As the action of the public authority shall be entirely congruent with the requirement under Section 4(4) and Section 2(j) of the RTI Act these could not be said to be inconsistent with the provisions under Section 22 of the RTI Act read with the Rules.

15. I, therefore, uphold the decision of the Appellate Authority that the information requested by the appellant will have to be collected under the provisions of the Rules as framed by the public authority, viz.SBI, for making this information available to the public.

16. Appeal closed.

17. Copy of this direction be sent to the parties.

(A.N. TIWARI)
CHIEF INFORMATION COMMISSIONER