CENTRAL INFORMATION COMMISSION
Club Building (Near Post Office)
Old JNU Campus, New Delhi - 110067
Tel: +91-11-26161796

Decision No. CIC/SM/A/2011/000237/SG/12351
Appeal No. CIC/SM/A/2011/000237/SG

Relevant Facts emerging from the Appeal:

Appellant	:	Mr. R. S. Misra, S- 93, New Palam Vihar, Phase- I, Gurgaon- 122017
Respondent	:	Mrs. Smita Vats Sharma, CPIO, Supreme Court of India, New Delhi

RTI application filed on	:	20/04/2010
PIO replied on	:	07/05/2010
First Appeal filed on	:	23/05/2010
First Appellate Authority Order of	:	18/06/2010
Second Appeal filed before Commission	:	05/02/2011

Information Sought:
The Appellant has sought information on nine queries pertaining to *inter alia* action taken/ status report on certain letters, reasons for judicial decisions, etc.

Information provided by Public Information Officer (PIO):
Queries 1 to 7: The PIO mentioned that the Appellant was represented by Ms. Rachna Gupta, Advocate in Petition for Special Leave to Appeal (Civil) Nos. 8219-8220 of 2010. Inspection can be done and information/certified copies of the judicial records /judgments of the Supreme Court of India ("**Supreme Court**") can be obtained by moving an application to the Registrar (Copying), Supreme Court under Order XII, Supreme Court Rules, 1966 (the "**SC Rules**") on payment of prescribed fees and charges.

Query 9: Under the RTI Act, it is beyond the scope and jurisdiction of the PIO to interpret the law, judgments of the Supreme Court or of any other Court, opine, comment or advise on matters. The information sought was not covered under Section 2(f) of the RTI Act.

Grounds for First Appeal:
Unsatisfactory reply provided by the PIO.

Order of the First Appellate Authority (FAA):
The FAA observed that the Appellant had addressed certain letters to the judges in relation to his SLP No. 8219- 8220/ 2010 and sought information about the action taken on the same. The Appellant was represented by a counsel in the said case. The inspection of the documents and information relating to judicial records can be done only under Order XII, SC Rules. Under query 9, the Appellant had sought the opinion of the PIO, does not fall within Section 2(f) of the RTI Act. Hence, the First Appeal was dismissed.

Ground for Second Appeal:
Information was wrongly denied to the Appellant.
Relevant Facts emerging during Hearing held on May 6, 2011:
The following were present:
Appellant: Mr. R. S. Misra;
Respondent: Mrs. Smita Vats Sharma, CPIO & Additional Registrar and Ms. Priyanka S. Telang, Advocate.

The Appellant stated that he was seeking information about the action taken on/ status report of his letters, which must be provided to him as per the provisions of the RTI Act.

The Respondent did not produce any written submissions before the Commission. The Respondent relied on certain decisions (and the judgments quoted therein) of the Commission in *Manish Kumar Khanna v. Supreme Court of India* CIC/WB/A/2006/00940 dated 07/12/2007, *Rakesh Kumar Gupta v. Supreme Court of India* CIC/WB/A/2009/000553 dated 05/05/2009 and *R. K. Pandey v. Supreme Court of India* CIC/WB/A/2008/00777 dated 24/04/2008 and CIC/WB/A/2009/00150 dated 20/02/2009. The main contention of the Respondent was that as per Section 22 of the RTI Act, the RTI Act shall have an overriding effect only when any other law was inconsistent with the provisions of the RTI Act. In this regard, the Respondent directed the attention of the Commission to specific portions of the decisions mentioned above (which have been quoted below).

Further, the Commission enquired of the Respondent whether she would like to furnish arguments in addition to the decisions cited above. The Respondent stated that she did not wish to furnish any further arguments and submitted that the Supreme Court already had a specific provision to furnish information under Order XII of the SC Rules and therefore, information relating to judicial matters may be provided only under the said provision. The Respondent further argued that since the then Chief Information Commissioner had upheld this contention in the decisions cited above, their arguments before this Commission were already covered under the said decisions.

The Commission enquired of the Respondent that where multiple routes were available to a citizen for obtaining information, was the citizen required to seek information only in accordance with the SC Rules. The Respondent stated that there were a number of queries under RTI applications, which were answered by the Supreme Court. However, to facilitate access to records pertaining to judicial proceedings/ matters, the applicants were apprised of the SC Rules, which laid down the procedure for obtaining the information in this regard.

The relevant portions marked by the Respondent in the decision of *Manish Kumar Khanna v. Supreme Court of India* CIC/WB/A/2006/00940 dated 07/12/2007 were:

> "*… 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 thereunder, 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:*
>
> > *"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, a prior special law would yield to a later general law, if either of the two following conditions is 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."

… This issue came again for consideration before the ***Hon'ble Apex Court in Chandra Prakash Tiwari vs. Shakuntala Shukla — A1R2002 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 lages ad posteriores 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, to take away a particular privilege of a particular class of persons."*

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." "

Based on the same, the then Chief Information concluded:

"*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. ***This issue is disposed of accordingly***."

The Respondent also relied on certain portions of the decision in *R. K. Pandey v. Supreme Court of India* CIC/WB/A/2008/00777 dated 24/04/2008 and CIC/WB/A/2009/00150 dated 20/02/2009, which was marked as 1 and 2 by the Respondent, and is reproduced as follows:

"*…We have, however, indeed found that Order No. XII of the Supreme Court Rules 1965 is not inconsistent with the RTI Act. Section 22 of the RTI Act is overriding only in that it requires that the provisions of the RTI Act "shall have the effect notwithstanding anything inconsistent therewith contained in any other law* [1] *for the time being in force", including the Official Secret Act, 1923.*

Therefore, any law or Rule not inconsistent with the RTI Act is a law or rule which must stand notwithstanding coming into force the RTI Act. Appellant Shri R.K. Pandey expressed the apprehension that if this is the case every department will have its own rules and laws and the majesty of the RTI Act will be totally eroded. This, of course, is not so because it is not every public authority which has a right to frame rules. Under Sections 27 and 28 of the RTI Act this authority is only given either to the appropriate Government or to the competent authority'. The competent authority is clearly defined in Section 2 (e) of the RTI Act."

The Commission reserved the order during the hearing held on 06/05/2011.

Decision announced on May 11, 2011:

The Appellant has sought information about the action taken on/ status report of certain letters. In relation to queries 1 to 7, the PIO replied that inspection may be done and information/certified copies of the judicial records /judgments of the Supreme Court may be obtained by moving an application under Order XII of the SC Rules on payment of the prescribed fees. As regards query 9, the PIO stated that the information sought did not come within the ambit of Section 2(f) of the RTI Act. The information so provided by the PIO was accepted by the FAA. Dissatisfied with the same, the Appellant filed a Second Appeal before the Commission. At the outset, the Commission would like to state that it will not delve into the merits of the information sought by the Appellant. Further, the Commission is satisfied with the reply of the PIO provided in relation to query 9.

Based on the contentions of the Respondent and the decisions cited, the main issue which arises for determination before the Commission is *where there were methods of obtaining information from a public authority in existence before the RTI Act, can a citizen insist on obtaining the information under the RTI Act*.

The right to information is a fundamental right of the citizens of India. This has been clearly recognised by the Supreme Court in several decisions and subsequently, codified by the Parliament in 2005. The RTI Act was enacted with the spirit of ensuring transparency and access to information giving citizens the right to information. It lays down the substantive right to information of the citizens and the practical mechanism to enforce the said right. Section 3 of the RTI Act lays down that subject to the provisions of the RTI Act, all citizens shall have the right to information. The RTI Act is a crisp legislation comprising of 31 Sections, which confer upon citizens, the right to information accessible under the RTI Act, which is held by or under the control of a public authority. The scheme of the RTI Act stipulates *inter alia* that information sought shall be provided within the prescribed period, formulation of a proper appellate mechanism and invoking of stringent penalty where the PIO fails to

[1] *Underlined by us for reference.*

provide the information within the mandated period without reasonable cause. The RTI Act is premised on disclosure being the norm, and refusal, the exception. It is legally established that information requested for under the RTI Act may be exempted from disclosure in accordance with Sections 8 and 9 only and no other exemptions can be claimed while rejecting a demand for disclosure.

Further, Section 22 of the RTI Act expressly provides that the provisions of the RTI 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 the RTI Act. In other words, where there is any inconsistency in a law as regards furnishing of information, such law shall be superseded by the RTI Act. Insertion of a *non- obstante* clause in Section 22 of the RTI Act was a conscious choice of the Parliament to safeguard the citizens' fundamental right to information from convoluted interpretations of other laws adopted by public authorities to deny information. The presence of Section 22 of the RTI Act simplifies the process of implementing the right to information both for citizens as well the PIO; citizens may seek to enforce their fundamental right to information by simply invoking the provisions of the RTI Act.

Given the above, two scenarios may be envisaged:

1. **An earlier law/ rule whose provisions pertain to furnishing of information and is consistent with the RTI Act:** Since there is no inconsistency between the law/ rule and the provisions of the RTI Act, the citizen is at liberty to choose whether she will seek information in accordance with the said law/ rule or under the RTI Act. If the PIO has received a request for information under the RTI Act, the information shall be provided to the citizen as per the provisions of the RTI Act and any denial of the same must be in accordance with Sections 8 and 9 of the RTI Act only; and

2. **An earlier law/ rule whose provisions pertain to furnishing of information but is inconsistent with the RTI Act:** Where there is inconsistency between the law/ rule and the RTI Act in terms of access to information, then Section 22 of the RTI Act shall override the said law/ rule and the PIO would be required to furnish the information as per the RTI Act only.

The Commission has perused the decisions cited by the Respondent and noted that the then Chief Information Commissioner has delved into the semantics of interpretations of statutes. This Commission agrees with the observations and the judgments quoted therein which discuss the overriding effect of a later general law over an earlier special law. Based on these observations, this Commission agrees that the RTI Act does not abrogate or repeal the SC Rules. This Commission also agrees with the observations of Mudholkar J., that "*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*".

The SC Rules as well as the RTI Act coexist and therefore, it is for the citizen to determine which route she would prefer for obtaining the information. The right to information available to the citizens under the RTI Act cannot be denied where such citizen chooses to exercise such right, as has been done by the PIO in the instant case. The Commission would like to highlight that just as the SC Rules put in place by the Supreme Court are not abrogated, the RTI Act passed by the Parliament also cannot be suspended. If the PIO has received a request for information under the RTI Act, the information shall be provided to the applicant as per the provisions of the RTI Act and any denial of the same must be in accordance with Sections 8 and 9 of the RTI Act only. In view of the same, this Commission respectfully differs with the decisions of the then Chief Information Commissioner when he concluded that since the SC Rules were not inconsistent with the RTI Act, the citizen shall be required to obtain the information under Order XII of the SC Rules.

In the instant case, the PIO had stated that there was a separate procedure under Order XII of the SC Rules for obtaining information and that the Appellant could obtain the same only by following the

mechanism mentioned in Order XII of the SC Rules. In other words, it appears that the Appellant would not be able to enforce the right to information available to her under the RTI Act and have to necessarily follow the procedure mentioned in the SC Rules. Moreover, even where the Parliament has guaranteed every citizen the right to information under the RTI Act, the PIO, in the instant case, has abrogated the same by directing the Appellant to obtain the information in accordance with Order XII of the SC Rules.

The Commission has noted that the PIO has rejected the request for information under the RTI Act without taking recourse to Sections 8 and 9 of the RTI Act, which is clearly against the statutory mandate. If the reply provided by the PIO is to be accepted, it would negate the citizen's right to information under the RTI Act and frustrate the implementation of the latter. The RTI Act is a reflection of the will of the citizens of India that has been codified by the Parliament, and accepting the reply of the PIO furnished in the instant case would render the RTI Act redundant. Merely because Order XII of the SC Rules provide for a mechanism by which certain information may be obtained by the applicant, does not mean that the citizen cannot exercise her right to obtain the same information by taking recourse to the RTI Act (subject always to the provisions of Sections 8 and 9 of the RTI Act).

In view of the aforesaid arguments, this Commission holds that it is the citizen's prerogative to decide under which mechanism i.e. either Order XII of the SC Rules or the RTI Act, she would like to obtain information. If the PIO has received a request for information under the RTI Act, the information shall be provided to the applicant as per the provisions of the RTI Act and any denial of the same must be in accordance with Sections 8 and 9 of the RTI Act only; the applicant cannot be forced to obtain the information as per Order XII of the SC Rules.

At this juncture, the Commission would like to mention certain decisions of the Supreme Court in *CIT v. A. Raman & Co*. [1968] 67 ITR 11 (SC), which was upheld in *CIT v. Calcutta Discount Co. Ltd*. [1973] 91 ITR 8 (SC) and subsequently in *UOI v. Azadi Bachao Andolan* [2003] 263 ITR 706 (SC), where Shah J., observed as follows:

> *"…* ***Avoiding of tax liability by so arranging commercial affairs that charge of tax is distributed is not prohibited. A tax payer may resort to a device to divert the income before it accrues or arises to him. Effectiveness of the device depends not upon considerations of morality, but on the operation of the Income Tax Act****. Legislative injunction in taxing statutes may not, except on peril of penalty, be violated, but it may be lawfully circumvented..."* (Emphasis Added)

Therefore, even when the State may lose revenue, the Supreme Court has ruled that an individual tax payer has the liberty to arrange her commercial affairs in order to reduce her tax liability, so long as such arrangement is within the operation of tax legislation(s). Drawing an analogy, it certainly stands to reason that a citizen should be able to decide on the method most convenient and expedient by which she would obtain information.

Having laid down the above, *this Commission would now additionally examine whether there is any inconsistency between the RTI Act and Order XII of the SC Rules, and if so, whether Section 22 of the RTI Act shall override the provisions of the SC Rules*. As discussed above, Section 22 of the RTI Act expressly provides that the provisions of the RTI 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 the RTI Act. Section 22 of the RTI Act, in no uncertain terms, lays down that the RTI Act shall override anything inconsistent contained in any other law. Order XII of the SC Rules provides *inter alia*:

"1. Subject to the provisions of these rules, a party to any cause, appeal or matter who has appeared shall be allowed to search, inspect or get copies of all pleadings and other documents or records in the case, on payment of the prescribed fees and charges.

2. The Court, on the application of a person who is not a party to the case, appeal or matter, may on good cause shown, allow such person such search or inspection or to obtain such copies as is or are mentioned in the last preceding rule, on payment of the prescribed fees and charges." (Emphasis added)

On a plain reading of Rules 1 and 2, it appears that citizens shall have the right to access information pertaining only to judicial matters i.e. documents/ records in a case. Rule 1 allows only a party to any cause, appeal or matter who has appeared to inspect and/ or obtain copies of information pertaining to judicial matters. However, Rule 2 allows a person who is not a party to the case, appeal or matter to inspect and/ or obtain information relating to judicial matters where 'good cause' is shown. In other words, where a person is not a party to a case, appeal or matter, she would be required to demonstrate 'good cause' before the Court before being allowed to inspect and/ or obtain copies of the information sought.

As per Section 6(2) of the RTI Act, an applicant making a request for information under the RTI Act shall not give any reasons for requesting the information. Under Rule 2, in order to determine what is 'good cause', it is necessary to enquire into the purpose/ reasons for which an applicant is seeking information. This is clearly violative of the statutory mandate of Section 6(2) of the RTI Act. Moreover, from the use of the word "may" in Rule 2, there appears to be a certain discretion conferred upon the Court to determine what amounts to 'good cause', and even where 'good cause' has been shown, whether such information shall be provided or not. This is a clear embargo on the enforcement of the fundamental right to information of citizens. Citizens would have to justify any request for information by demonstrating 'good cause' under Rule 2 and the ultimate decision whether information should be provided or not would lie with the Court. Rule 2 appears to create an exemption in providing the information, which is not envisaged in Sections 8 and 9 of the RTI Act. At this juncture, it would not be out of place to mention that the SC Rules neither provide for a specific time within which information shall be furnished, any appeal procedure, nor any penalty provisions where information is not provided.

Therefore, this Commission respectfully disagrees with the observations of the then Chief Information Commissioner and holds that Rule 2, Order XII of the SC Rules appears to impose a restriction on access to information held by or under the control of a public authority, which is *prima facie* inconsistent with the RTI Act. Therefore, in accordance with Section 22 of the RTI Act, the provisions of the RTI Act shall override the SC Rules.

Further, as per the reply provided by the PIO, information can be accessed by the Appellant on the Supreme Court's website. As per Section 7(9) of the RTI Act, information shall ordinarily be provided in the form in which it is sought unless it would disproportionately divert the resources of the public authority or would be detrimental to the safety or preservation of the record in question. The RTI Act mandates that information shall ordinarily be provided in the form in which it is sought or requested for. It may not be out of place to mention that more than 90% of our country's population does not have access to computers and even where they do, may not understand how to access the same. Therefore, there is a duty cast upon the PIO to ensure that information sought by an applicant is provided in hard copy or in the manner requested by the applicant. Where no specific mention is made as regards the manner in which information must be furnished, it may be presumed that the citizen is seeking information in the form of hard copy. Moreover, even where the PIO has indicated that the information may be accessed from the website, the complete link/ web address at which the requisite information is available, must be furnished.

Before parting with the instant matter, this Commission has noted that the Supreme Court, on various occasions, has ruled that it is incumbent on public sector institutions to be model employers following all laws in letter and spirit. This Commission humbly submits that the Supreme Court should become a role model in implementation of the provisions of the Right to Information Act, 2005 in its true letter and spirit and inspire all public authorities to follow its lead in transparency. This would certainly enable better delivery of the citizen's fundamental right to information.

In view of the foregoing arguments, this Commission respectfully disagrees with the decision of the then Chief Information Commissioner that the PIO, Supreme Court may choose to deny the information sought under the RTI Act and ask an applicant to apply for information under Order XII of the SC Rules.

This Bench further rules that all citizens have the right to access information under Section 3 of the RTI Act and PIOs shall provide the information sought to the citizens, subject always to the provisions of the RTI Act only.

Where there are methods of giving information by any public authority which were in existence before the advent of the RTI Act, the citizen may insist on invoking the provisions of the RTI Act to obtain the information. It is the citizen's prerogative to decide under which mechanism i.e. under the method prescribed by the public authority or the RTI Act, she would like to obtain the information.

The Appeal is allowed. The PIO is directed to provide the complete information as available on record in relation to queries 1 to 7 to the Appellant **before June 5, 2011**.

Notice of this decision be given free of cost to the parties.
Any information in compliance with this Order will be provided free of cost as per Section 7(6) of RTI Act.

Shailesh Gandhi
Information Commissioner
May 11, 2011

(In any correspondence on this decision, mention the complete decision number.)(SRG)