

CENTRAL INFORMATION COMMISSION
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Decision No. CIC/SM/A/2010/001646/SG/14708
Appeal No. CIC/SM/A/2010/001646/SG

Relevant facts emerging from the Appeal:

Appellant : Mr. Madhav Balwant Karmarkar,
B - 6, Panchratna Housing Society,
13, Sheela Vihar Colony,
Pune - 411038

Respondent : Mr. K. R. Joshi,
PIO & Section Officer,
Debts Recovery Tribunal,
Ministry of Financial Services,
PMT Commercial Building - 1,
Shankarsheth Road, Swargate,
Pune - 411042

RTI application filed on : 24/03/2010
PIO replied on : 13/04/2010
First Appeal filed on : 14/08/2010
Order of FAA : Not enclosed
Second Appeal received on : 27/09/2010

Information sought:

1. *The daily board for the days 21.12.2009 to 23.12.2009.*
2. *The cases which were kept for hearing on 21.12.2009 to 23.12.2009 transferred to for hearing before DRT – II, Mumbai before when the charge was kept by in- charge Registrar, DRAT, Mumbai.*
3. *The number of cases which were on the Board of 21.12.2009 to 23.12.2009 but adjourned to dates subsequent to 21.12.2009, but not before 28.12.2009.*
4. *Number of cases from the Boards dated 21.12.2009 to 23.12.2009 transferred to DRT – II, Mumbai for hearing since charge was kept with DRT – II, Mumbai by in- charge, DRAT, Mumbai.*
5. *The number of summons issued for hearing on 21.12.2009 to 23.12.2009 for hearing before DRT – II, Mumbai with whom was charge was kept of DRT, Pune.*
6. *Order received from in- Charge Registrar, DRAT, Mumbai for DRT – II, Mumbai to attend Pune for hearings on 21.12.2009 to 23.12.2009.*
7. *Application of the party concerned for holding the hearing before DRT – II, Mumbai on 23.12.2009 vis-à-vis sanction of the said application.*
8. *The application of the party concerned for taking the matter on board on 21.12.2009 which matter was filed on 21.12.2009 itself.*
9. *The list of objections raised on the above concerned matter before it was registered.*
10. *Whether notice of hearing on 21.12.2009 of the interim application to be heard by in- charge DRT, Pune was served.*
11. *The authorisation issued by the Central Government in the name of PO, DRT, Pune authorizing hearing of the subject matter by another DRT i.e. DRT – II, Mumbai on 23.12.2009.*
12. *The orders issued by competent authority to delegate powers to a person other than the Registrar, DRT, Pune for issuance of notice dated 21.12.2009 for hearing the matter before DRT, Mumbai on 23.12.2009 when order of keeping charge with DRT, Mumbai was not issued at all on 21.12.2009 and*

when DRAT, Mumbai was on casual leave and that the letter of sanction of casual leave was issued by in-charge Registrar, DRAT, Mumbai with alleged oral instructions of Chairperson, DRAT, Mumbai.

13. The request/ application made by DRT, Pune for keeping charge with DRT, Mumbai prior to his proceeding on casual leave though casual leave is not a leave and is considered as duty.

14. Orders of competent authority in DRT, Pune permitting an employee to take the records and papers in the matter to DRT, Mumbai on 23.12.2009.

15. Date of return of papers and records by DRT – II, Mumbai to DRT, Pune.

16. Orders of transfer of matter to DRT, Mumbai with whom charge was kept vis-à-vis application of party for such transfer.

17. The reasons recorded for transfer of and hearing of solitary case by DRT – II, Mumbai sent/transferred by DRT, Pune that too for interim matter.

18. The oral instructions given by DRT, Pune for issuing notice for taking up the interim matter to DRT, Mumbai for hearing since DRT, Pune had left the HQ and gone to Kolhapur on casual leave or to DRAT, Mumbai who was also on casual leave.

19. This information seeker be also granted satisfactory inspection of all the relevant files in the matter on a convenient day with intimation in eight days in advance, and be permitted to take copies of the documents found necessary during inspection.”

Reply of Public Information Officer (PIO):

Given that there were three Boards in DRT, it was not clear in relation to which Daily Board was information required. Further, since DRT was a court, there was already a provision in law for taking inspection, asking certified copies, etc. The requisite information could be obtained by following due process of law. The Appellant was requested to apply under RDDBI Act for inspection and to obtain the required information.

Dissatisfied with the reply of the PIO, the Appellant filed a Complaint with the Commission under Section 18 of the RTI Act on 20/04/2010. However, the Commission, vide its letter dated 30/06/2010, advised the Appellant to file a First Appeal before the concerned public authority.

Grounds for First Appeal:

Dissatisfied with the reply of the PIO.

Order of the First Appellate Authority (FAA):

Not Enclosed.

However on perusal of the documents received by the Commission, it appears that the First Appeal was returned by the FAA vide letter dated 08/09/2010 on account of procedural inadequacies.

Grounds for Second Appeal:

Dissatisfied with the reply of the PIO and no order passed by the FAA.

Relevant Facts emerging during Hearing held on September 15, 2011:

The following were present:

Appellant: Mr. Madhav Balwant Karmakar via video conference from NIC Studio – Pune;

Respondent: Mr. K. R. Joshi, PIO & Section Officer via video conference from NIC Studio – Pune.

The PIO has denied the information on the basis that information must be sought under the DRT Rules. The PIO relied on the decision of the Commission in Ajay v. CPIO, Debts Recovery Tribunal CIC/SM/A/2009/000990+1506 dated 05/05/2010 in support of his contention. On the other hand, the Appellant has contended that as per the DRT Rules, only litigants can obtain information. Since he was not a litigant in the relevant matter, he would not be able to obtain the information. The Appellant relied on the Commission's decision in R. S. Misra v. CPIO, Supreme Court of India CIC/SM/A/2011/000237/SG/12351 dated 11/05/2011 in support of his argument. The PIO stated that even non- litigants can obtain information under the DRT Rules.

The order was reserved at the hearing held on 15/09/2011.

Decision announced on 20 September 2011:

Based on the contentions of the parties, the main issue which arises for determination before this Bench is where there are 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 of India 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 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 DRT 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 DRT Rules put in place by the relevant authority 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. 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. Moreover, it is pertinent to mention that the RTI Act, at no place, stipulates that in the event there is consistency between an earlier law/rule and the RTI Act, the citizen shall have to seek information under the former. In the absence of such a provision, there is no requirement to read in such an interpretation to the RTI Act.

At this juncture, the Commission would like to mention certain decisions of the Supreme Court of India 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 of India 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. In view of the reasons enumerated above, the decision cited by the PIO in *Ajay v. CPIO, Debts Recovery Tribunal CIC/SM/A/2009/000990+1506* dated 05/05/2010 is *per incuriam* inasmuch as it was rendered in ignorance of a rule having the force of law laid down by the Supreme Court of India and by reading in an interpretation to the RTI Act which was hitherto not stipulated by the Parliament. Given the same, the said decision is not binding on this Bench. It is also important to mention that no legal basis has been given by the Information Commissioner for arriving at his conclusion.

The Appeal is allowed. The PIO is directed to provide the complete information as per records to the Appellant **before 20 October 2011**, subject to the provisions of the RTI Act.

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
20 September 2011

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