

**CENTRAL INFORMATION COMMISSION**  
**Club Building, Opposite Ber Sarai Market,**  
**Old JNU Campus, New Delhi - 110067.**  
**Tel: + 91 11 26161796**

**Decision No. CIC/SG/A/2009/001997/6358**  
**Appeal No. CIC/SG/A/2009/001997**

**Relevant Facts emerging from the Appeal:**

Appellant : Mr. Vijay Kumar  
S/o Shri Chhotey Lal,  
R/o House No. 2174,  
Gali Ravi Dass, Telewara,  
Sadar Bazar, Delhi-110006.

Respondent : Mr. K.S. Rawat  
PIO & Office Superintendent  
**District Sessions Judge, Delhi**  
Administration Branch-I,  
Tis Hazari Courts, Delhi.

Superintendent (Vigilance Branch)  
o/o District Judge I & Sessions Judge,  
Tiz Hazari Courts, Delhi 110054

RTI application filed on : 04/05/2009  
PIO replied : 02/06/2009  
First appeal filed on : Not given  
First Appellate Authority order : 22/07/2009  
Second Appeal filed on : 19/08/2009

**Information sought:**

Copy of fact finding inquiry report,- date not known,- conducted by Ms. Sangeeta Dhingra Sehgal, the then Ld. CMM, Tis Hazari Courts, Delhi on the basis of which a regular charge sheet was issued to the Appellant vide file no. F.903/Vig/02. The said report is lying in the Vigilance Branch.

**Reply of PIO:**

“After obtaining the report from the Superintendent, Vigilance Branch, Tis Hazari Court, Delhi u/s 5 (4) of RTI Act, 2005 is being forwarded to you which is self explanatory.”

The deemed PIO, Superintendent Vigilance replied “The matter was before Ld. District Judge-I & Sessions Judge (Officiating), Delhi and vide order dated 25.05.09 request of the applicant has been declined as supply of copy of fact finding inquiry is not permissible and the same is prohibited under CCS (CCA) Rules, 1965 Right to Information Act, 2005 that overrides other enactments, but the same has to be read harmoniously along with CCS (CCA) Rules. To take any other view would amount to defeating the CCS (CCA) Rules which has not repealed. Similar

view has been taken by the Hon'ble High Court vide order dated 27.04.2009 in Writ Petition (C) 8517/2009 titled as "District and Sessions Judge and Anr. V. N. Venkatesan and Anr. while granting relief."

On receiving this reply, the Appellant requested the PIO vide letter dated 03/06/2009 to provide copy of the relevant Rules. The PIO forwarded this letter to the Superintendent Vigilance Delhi u/S 5(4) of the RTI Act. Information was provided by the Supt. Vigilance in form of extracts of a book on disciplinary proceedings.

**Grounds for First Appeal:**

The reply of PIO, is malafide and completely erroneous. The information sought is available with the concerned branch and has to be made available to the Appellant since RTI Act overrides any other enactments in this regard. The CCS (CCA) Rules cannot override a statutory enactment. Rules are subservient to law and not above it. A clear unambiguous provision in law cannot be downplayed under the guise of a rule.

**The First Appellate Authority order:**

"The Appellant is aggrieved by the information provided by PIO viz the requisite information could not be provided as not permissible being prohibited under CCS-CCA Rules 1965 and in view of the judgment dated 27/04/2009 in Writ Petition (C) 8517/09 passed by the Hon'ble High Court. The Appellant states that he is very much entitled to a copy of Fact Finding Inquiry. The Appellant has been informed that under the rule 7 (xii) of Delhi District Court. (Right to Information Rules) 2008, the information cannot be disclosed/provided to him.

**Grounds for Second Appeal:**

Unsatisfactory response received from the FAA.

**Relevant Facts emerging during Hearing held on 7 October 2009:**

The following were present:

**Appellant:** Mr. Vijay Kumar

**Respondent:** Mr. K.S. Rawat, PIO & Superintendent and Mr. Hukam Chand on behalf of deemed PIO Mr. Jeet Kumar Vaid;

The PIO has refused to give a copy of the fact finding enquiry report based on Rule 7 (xii) of the Delhi District Courts (Right to Information) Rules 2008 ('Rules' hereinafter) made by the Hon'ble High Court of Delhi which states that, "the information asked for relates to vigilance enquiry, except for the final result of the enquiry" is exempt from disclosure. The PIO has placed the Rules before the Commission. These Rules have been notified in Delhi Gazette in 06 May 2009. From a cursory look at Rule 7 it appeared that it is creating exemptions not provided for in the RTI Act 2005 passed by the Parliament of India. The Commission decided to seek a response from the High Court of Delhi on this matter before deciding the Appeal.

The Commission issued a letter dated 15/10/2009 to the Registrar General of the Delhi High Court raising concerns about the validity of the Delhi District Courts (Right to Information) Rules 2008 ('Rules' hereinafter). The Commission raised two broad issues in its letter. Firstly, that the Competent Authority to frame rules under Section 28 of the RTI Act for the District Courts was not the High Court. The High Court had jurisdiction to frame rules for itself only. Secondly,-even assuming the Delhi High Court had the power to make these Rules,- the Commission observed that the exemptions included in Rule 7 go beyond the exemptions under

Section 8 and 9 of the RTI Act. The Commission stated in its letter that High Court should respond to these concerns before 30 November 2009 and if the Commission did not receive any response before 30 November 2009, the Commission would decide on the pending Appeal based on the provisions of the RTI Act.

The Commission has not received any communication from the High Court till date.

### **Decision announced on 11 January 2010:**

Since no response has been received from the High Court, it is presumed, it does not wish to state anything in this matter. Hence the Commission decides the matter on the basis of the RTI Act.

Rules framed by a competent authority cannot go beyond the exemptions provided in Section 8 and 9 of the RTI Act. The Supreme Court as well as various High Courts have categorically held that that subordinate legislations or rules cannot go beyond the letter of the delegating legislation. The Supreme Court in *Addl. District Magistrate (Rev.) Delhi Admn. v Shri Siri Ram* AIR 2000 SC 2143 held-

*“It is well recognised principle of interpretation of a statute that conferment of rule making power by an Act does not enable the rule making authority to make rule which travels beyond the scope of the enabling Act or which is inconsistent therewith or repugnant thereto.”*

The Supreme Court has also observed in *Hukam Chand v Union of India* AIR 1972 SC 2427 that:

*“The underlying principle is that unlike Sovereign Legislature which has power to enact laws with retrospective operation, authority vested with the power of making subordinate legislation has to act within the limits of its power and cannot transgress the same. The initial difference between subordinate legislation and the statute laws lies in the fact that a subordinate law making body is bound by the terms of its delegated or derived authority...”*

The RTI Act was enacted with the spirit of ensuring transparency and access to information giving citizens the right to information. Hence, as observed by the Delhi High Court in *CPIO, Supreme Court of India v. S.C. Agarwal*, WP (C) No. 188/2009, the RTI Act is premised on disclosure being the norm, and refusal, the exception. According to the RTI Act, information may be exempted from disclosure in accordance with Section 8 and 9 only and no other exemptions can be claimed while rejecting a demand for disclosure.

The High Court of Delhi in *Bhagat Singh v. CIC*, WP(C) No. 3114/2007 has held that exemptions in the RTI should be strictly construed. It has held –

*“Access to information, under Section 3 of the Act, is the rule and exemptions under Section 8, the exception. Section 8 being a restriction on this fundamental right, must therefore is to be strictly construed. It should not be interpreted in manner as to shadow the very right itself.”*

As per the provisions of the RTI Act, information may be exempted from disclosure in accordance with Section 8 and 9 **only** and **no other exemptions can be claimed** while rejecting a demand for disclosure. Therefore, further exemptions can neither be claimed under this Act nor

be provided for in subordinate legislations. As discussed above in the case of *Addl. District Magistrate (Rev.) Delhi Admn. v Shri Siri Ram* AIR 2000 SC 2143, the Supreme Court of India has held that a rule which is inconsistent or goes beyond the scope of the enabling Act would not be valid.

The information sought by the Appellant, was denied on the basis of Rule 7(xii) of Rules. Rule 7(xii) which falls under the chapter on “Exemptions to disclosure of information” of the Rules made by the Delhi High Court provides-

7(xii) “*The information asked for relates to a vigilance enquiry, except for the final result of the inquiry.*”

**The first issue that needs to be decided is whether Rule 7(xii) is consistent with the provisions of the Right to Information Act, 2005.**

Rule 7(xii) provides that if the information sought relates to a vigilance enquiry, except for the final result of the enquiry, it will not be provided to the Applicant. This provision provides for a much wider exemption than provided in Section 8 (1)(h) of the RTI Act. Unless the disclosure of information would impede the process of investigation or apprehension or prosecution of offenders, the same cannot be exempted from disclosure. Therefore, it is clear that Rule 7(xii) cannot be invoked to deny information under the RTI Act, as it goes beyond the scope of the exemptions provided in the RTI Act. Rule 7(xii), if implemented it would defeat the purpose of the RTI Act and reading it as valid would tantamount to adding exemptions to the RTI Act, which were not envisaged by Parliament which enacted this Act. Hence, it can be stated that Rule 7(xii) which has been framed by the Delhi High Court under section 28(1) of the RTI Act goes beyond the scope of the RTI Act. No exemptions other than those provided in the Act can be created by a rule making authority.

**The second issue that needs to be decided is whether the deemed PIO is justified in denying information by invoking the CCS (CCA) Rules, 1965.**

The Respondent has stated that supply of copy of the fact finding inquiry is not permissible because it is prohibited under Para 7(8) to Chapter 10 of the Swamy’s Compilation of CCS (CCA) Rules, 1965. The Respondent argues that the CCS (CCA) Rules, 1965 should be read harmoniously along with the RTI Act. This contention cannot be accepted as Section 22 of the RTI clearly provides that the RTI Act would have an overriding effect over any law for the time being in force which is inconsistent with it.

Section 22 provides-

*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.*

Justice Sanjeev Khanna of the High Court of Delhi has held in *Union of India v Central Information Commission* WP (C) 8396/2009, 16907/2006, 4788/2008, 9914/2009, 6085/2008, 7304/2007, 7930/2009 and 3607/2007:

*“49. It was urged by Mr.A.S. Chandhiok, learned Additional Solicitor General of India that Section 8(1) of the RTI Act is not the complete code or the grounds under which information can be refused and public information officers/appellate authorities can deny information for other justifiable reasons and grounds not*

*mentioned. It is not possible to accept the said contention. Section 22 of the RTI Act gives supremacy to the said Act and stipulates that the provisions of the RTI Act will override notwithstanding anything to the contrary contained in the Official Secrets Act or any other enactment for the time being in force. This non-obstante clause has to be given full effect to, in compliance with the legislative intent. Wherever there is a conflict between the provisions of the RTI Act and another enactment already in force on the date when the RTI Act was enacted, the provisions of the RTI Act will prevail. It is a different matter in case RTI Act itself protects a third enactment, in which case there is no conflict. Once an applicant seeks information as defined in Section 2(f) of the RTI Act, the same cannot be denied to the information seeker except on any of the grounds mentioned in Sections 8 or 9 of the RTI Act. The Public Information Officer or the appellate authorities cannot add and introduced new reasons or grounds for rejecting furnishing of information. It is a different matter in case what is asked for by the applicant is not 'information' as defined in Section 2(f) of the RTI Act." (emphasis added)*

In view of the above, denial of information can only be done on the basis of the exemptions provided for in the RTI Act. Thus, any rule, the application of which would result in denial of information under the RTI Act would be inconsistent with the RTI Act and cannot be read harmoniously. Thus, CCS (CCA) Rules, 1965 cannot be invoked as exemptions to deny information which otherwise can be obtained under the RTI Act.

### **Appeal is allowed.**

In view of the above, the Commission finds that information cannot be denied to the Appellant and therefore directs the deemed PIO, Superintendent (Vigilance Branch), o/o District Judge I & Sessions Judge, Delhi to provide the information to the Appellant **before 31 January 2010**.

Section 25(5) of the RTI Act provides:

*"If it appears to the Central Information Commission or State Information Commission, as the case may be, that the **practice** of a public authority in relation to the exercise of its functions under this Act **does not conform with the provisions or spirit of this Act**, it may give to the authority a **recommendation** specifying the steps which ought in its opinion to be taken for promoting such conformity."* (emphasis added)

In exercise of the power in Section 25(5) quoted above, the Commission recommends to the High Court of Delhi to withdraw the Rules made by it for the District Courts due to lack of jurisdiction and the fact that certain sub-rules of Rule 7 are beyond the exemptions provided in Section 8 and 9 of the RTI Act. Other sub-rules under Rule 7 of the Rules, *inter alia*, which go beyond the ambit of the RTI Act:

1. Rule 7(i) exempts information from disclosure if it is covered by Section 8, 9, 11 or 24 of the Act. As stated above only Section 8 and 9 provide exemptions to disclosure of information. Section 11 does not exempt disclosure of information but provides the procedure to be followed by the Public Information Officer (PIO) in case information sought relates to or has been supplied by a third party. Section 24 is not an exemption provision but an exclusion provision as it excludes the application of the Act to certain organisations which have been listed in the Second Schedule of the Act.

2. Rule 7(vi) provides that the PIO will not give information which relates to a judicial proceeding, or judicial functions or the matters incidental or ancillary thereto. This provision provides for a much wider exemption than provided in Section 8 (1) (b) of the RTI Act. According to Section 8(1)(b), unless the disclosure of information has been expressly forbidden from being published by the Court of law or tribunal or it may constitute contempt of Court, the same cannot be exempted from disclosure.
3. Rule 7(xiii) appears to give a blanket option to the PIO to refuse information for any other reason which may justify the denial of information to the applicant. The RTI Act does not give such a 'residuary power' to the PIO as it could lead to gross injustice. Therefore, the Rules cannot create such a residuary power.

Before parting with the matter, the Commission would like to stress that since Right to Information is a fundamental right of Citizens, any move which constricts it should be avoided. Even Parliament is very wary of the restrictions it can place on the fundamental right of the Citizen, and hence competent authorities would be well advised to ensure that they do not create any exemptions which the lawmakers did not provide.

This decision is announced in open chamber.

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**  
**11 January 2010**

*(In any correspondence on this decision, mentioned the complete decision number.)*

(AK)

CC:  
Registrar General  
High Court of Delhi  
Sher Shah Road  
New Delhi 110003