

IN THE SUPREME COURT OF INDIA
(CIVIL ORIGINAL JURISDICTION)

Writ Petition (Civil) No. **194** of **2012**

PUBLIC INTEREST LITIGATION

IN THE MATTER OF:

1. COMMON CAUSE

THROUGH ITS DIRECTOR

5, INSTITUTIONAL AREA

NELSON MANDELA ROAD

VASANT KUNJ, NEW DELHI-110070

... THE PETITIONER

VERSUS

1. HIGH COURT OF ALLAHABAD

THROUGH ITS REGISTRAR

ALLAHABAD, UTTAR PRADESH

... RESPONDENT No. 1

2. THE CENTRAL INFORMATION COMMISSION

THROUGH ITS SECRETARY,

2ND FLOOR, AUGUST KRANTI BHAVAN

BHIKAJI CAMA PLACE

NEW DELHI-110066

... RESPONDENT No. 2

A WRIT PETITION IN PUBLIC INTEREST UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA CHALLENGING CERTAIN PROVISIONS OF THE RULES FRAMED BY THE HON'BLE HIGH COURT OF ALLAHABAD ON ITS ADMINISTRATIVE SIDE UNDER THE RTI ACT WHICH ARE NOT IN CONSONANCE WITH THE LETTER AND SPIRIT OF THE SAID ACT, AND WOULD VIOLATE ARTICLE 19(1)(A) OF THE CONSTITUTION OF INDIA

To,

THE HON'BLE CHIEF JUSTICE OF INDIA AND HIS COMPANION
JUDGES OF THE HON'BLE SUPREME COURT OF INDIA

The Humble Petition of the
Petitioner above-named

MOST RESPECTFULLY SHOWETH: -

- 1) That the petitioner is filing the instant writ petition in public interest challenging the Rules laid down by the Hon'ble High Court of Allahabad on its administrative side, in exercise of the rule making power granted under Section 28 of the Right to Information Act, 2005. The petition, if allowed, would help strengthen the core constitutional values of a democratic republic as envisaged by the legislature while enacting the RTI, 2005, by undoing the dilution of the citizens' right to information resulting from the repugnancy of several of the Allahabad High Court (Right to Information) Rules, 2006, to the parent Act. The said Rules clearly violate Article 19(1)(a) of the Constitution, which, as per the interpretation of this Hon'ble Court, guarantees to all Indian citizens the fundamental right to information. Respondent No. 2, the Central Information Commission, has repeatedly asked the Allahabad High Court to modify its RTI Rules, but its recommendations have been ignored. The said Rules are also applicable to the subordinate/district courts within the State of Uttar Pradesh. A copy of the impugned Rules is annexed as **Annexure P1**.

The petitioner herein is Common Cause, a registered society (Registration No. S/11017) founded in 1980 by late Shri H. D. Shourie for the express purpose of ventilating common problems of the people and securing their resolution. It has brought before this Hon'ble Court various Constitutional and other important issues and has established its reputation as a *bona fide* public

interest organization. Mr. Kamal Kant Jaswal, Director, Common Cause, is duly authorized to file this PIL. Memorandum and authorization letter are filed separately along with the Vakalatnama.

The petitioner wrote to the Hon'ble Chief Justice of Allahabad High Court on 03.11.2011 requesting him to amend the said Rules, but did not receive any response. A reminder letter dated 13.02.2012 evoked an evasive response from the office of the High Court on 16.04.2012. The said correspondence is enclosed as **Annexure P2 (Colly)**. No steps have been taken to amend the said Rules to bring them in conformity with the RTI Act.

- 2) This petition challenges the Allahabad High Court (Right to Information) Rules, 2006, as they are *ultra vires* the Right to Information Act, 2005, and have the effect of abridging and infringing the right to information, thus, subverting the very object of the Act. The right to information has been held to be inherent to the freedom of speech and expression guaranteed to all citizens under Article 19(1)(a) of the Constitution. It is rightly regarded as the harbinger of change, the instrument of empowerment of the common man. The Act has laid down revolutionary provisions to enable each citizen to demand answers to questions pertaining to public acts performed by the public functionaries.
- 3) Transparency and accountability in the functioning of the public authorities and institutions have been recognized as a *sine qua*

non of democracy. Putting undue and prohibitive restrictions on this right, especially by virtue of rules which bear no nexus with the object of the Act, amounts to negating the idea of a society, which can make informed choices and where every citizen, and not just some selected few, enjoys an equal right to information. This right cannot be allowed to be disturbed, especially by rules that are not backed by legislative sanction. In a large number of cases, like in Commissioner of Income Tax Bombay v Gwalior Rayon Silk Manufacturing Company Ltd., AIR 1992 SC 1782 this Hon'ble Court has held,

“The rules are meant only to carry out the provisions of the Act and cannot take away what is conferred by the Act or whittle down its effect.”

THE RESPONDENTS

- 4) By virtue of Section 28 of the RTI Act, 2005, Respondent No. 1 (Allahabad High Court) is a competent authority to make rules to carry out the provisions of the Act, and is vested with powers to make rules related to application fee, cost attributable to the medium or print cost, and incidental costs involved. These powers are granted to enable efficient dissemination of information. Hence, any rule made under Section 28 should be in conformity with the provisions of the Act and the guidelines issued by the Central Information Commission (CIC).
- 5) Respondent No. 2, the Central Information Commission, is a statutory body constituted under chapter III of the Right to

Information Act, 2005. Under Chapter V of the RTI Act, the CIC is authorized to receive and inquire into complaints enlisted in the said chapter. One of its primary functions is to interact with public authorities to ensure coordinated implementation of the RTI Act. It is assigned the duty of ensuring that this right is not abridged or abrogated, and that its implementation is uniform throughout its area of application. Hence the CIC acts as a guardian of the RTI Act, though it does not have the power to strike down the Rules framed by the competent authorities. The CIC has recommended several times to Respondent No. 1 to amend its Rules, but the same has not been done.

THE CASE IN BRIEF

- 6) Section 28 of the RTI Act, 2005 empowers the Competent Authorities to make rules to prescribe *inter alia*, the fees payable, the cost attributable to the medium or print cost of the material to be disseminated. Under section 2(e)(iii) of the RTI Act, the Chief Justice of High Court is the 'Competent Authority' so designated. Section 28 reads as follows –

“28. (1) The competent authority may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(i) the cost of the medium or print cost price of the materials to be disseminated under sub-section (4) of section 4;

(ii) the fee payable under sub-section (1) of section 6;
(iii) the fee payable under sub-section (1) of section 7; and
(iv) any other matter which is required to be, or may be, prescribed.”

7) In pursuance of the powers conferred by section 28, the Allahabad High Court has framed the Allahabad High Court (Right to Information) Rules, 2006 for processing applications received under RTI Act, 2005. However, several of these rules are in violation of, or deviate from the letter and spirit of the RTI Act, thus, subverting the very object of the Act and hindering the citizens' rightful access to information.

8) Rule 3 of the Allahabad High Court (Right to Information) Rules, 2006, reads as under –

“Every application shall be made for one particular item of information only.”

It is plain that the Rule is unduly restrictive as it limits the information that can be sought not only with respect to the subject, but also with respect to the number of questions or items. This causes great hardship to information seekers. Also, there is no such restriction in the RTI Act. An RTI application regarding some case in District Court, Ghaziabad and the CPIO's response to the same illustrate the hardship caused. Translated copy of the RTI application dated 13.11.2011 and the response of the CPIO dated 26.11.2011 are annexed as **Annexure P3 (Colly)**. The applicant therein had sought information with regard to a case pending

before the Ghaziabad Court. His queries numbered 1 to 8 enquired whether the statements of witnesses (eight of them) had been made available to the accused. Each 'item' pertained to a single witness. The CPIO informed that Rule 3 warranted eight such applications to be submitted along with the fee prescribed. This rule is clearly not in harmony with the object with which the RTI Act, was enacted, namely, "to ensure greater and more effective access to information by introducing more progressive, participatory and meaningful provisions."

- 9) The CIC's decision in *Rajendra Singh Vs. CBI* (Case No. *CIC/WB/C/2007/00967* decided on 19-06-2009) brings out the untenability of this rule. In that case, the CIC held that a request could consist of a question with several clarificatory or supporting questions stemming from the information sought. Such an application should be treated as a single request and charged for accordingly.
- 10) Rule 4 exemplifies how the present rules fail to carry out the purposes of the said Act, as also the extent to which they are in conflict with the parent Act.

"Each application shall be accompanied by cash or draft or pay order of Rs. 500/- drawn in favour of the Registrar General, High Court, Allahabad, or the District Judge of the concerned District Court as the case might be."

This rule is inconsistent with Section 7(5) of the RTI Act which reads –

“Where access to information is to be provided in the printed or in any electronic format, the applicant shall, subject to the provisions of sub-section (6), pay such fee as may be prescribed:

Provided that the fee prescribed under sub-section (1) of section 6 and sub-sections (1) and (5) of section 7 shall be reasonable and no such fee shall be charged from the persons who are of below poverty line as may be determined by the appropriate Government.”

According to Government figures, per capita income of an average person in the State of UP is about Rs 70 per day. A news report on the same is annexed as **Annexure P4**. This means that an average person would have to spend more than his week’s income to get a single query answered. There can be no doubt that such a high fee is unwarranted and cannot be considered to be “reasonable”.

- 11) Further, the Govt. of India, Ministry of personnel, PG & Pension, Department of Personnel & Training issued a notification No.F. 1/5/2011-IR dated April 26, 2011, with a view to attenuating the variance in fees prescribed by different appropriate Governments/Competent Authorities. A copy of the said notification is annexed as **Annexure P5**. The notification reiterated the 2nd Administrative Reforms Commission’s recommendation that *“the States should frame Rules regarding application fee in harmony with the Central Rules and ensure that the fee should not*

*become a disincentive for using the right to information.” All the States/Competent Authorities were asked to review their Fee Rules and to fix the application fee in consonance with the fee prescribed by the Government of India in the Right to Information (Regulation of Fee and Cost) Rules, 2005, wherein the application fee prescribed is Rs 10. A copy of the Rules framed by Central Government is annexed as **Annexure P6**. It is to be noted that this Hon’ble Court has also accepted the fee prescribed by the Government of India.*

- 12) With regard to the authority to prescribe such exorbitant fee in case of Delhi High Court, the CIC had in its decision in *S.C. Agrawal Vs. Delhi High Court (CIC/WB/C/2008/00871 dated July 10, 2009)* noted, *“However, this authority to make rules is qualified by the proviso to Section 7 (5), which states It is for this reason that this Commission had under the authority vested in us under sub-section 5 of Section 25 recommended to the Hon’ble High Court of Delhi that they might review the fee initially prescribed in their Rules, which had then been kept at Rs. 500/-. Accepting this recommendation the fee has now been brought to Rs. 50/-.”*

Whereas the advisory dated 22.12.2006 issued by the CIC to the Delhi High Court led to an amendment of the Delhi High Court (RTI) Rules by the Chief Justice of the High Court of Delhi vide notification dated 08.05.2007, repeated advisories to the Allahabad High Court have been in vain.

13) Section 25 (5) of the RTI Act provides that where the CIC finds that the practice by a “public authority” in relation to the exercise of its functions under the Act does not conform to the provisions or spirit of the Act, it may give to the authority a recommendation specifying the steps, which in its opinion are to be taken for bringing about such conformity. The CIC has repeatedly recommended to the Allahabad High Court that it should revisit its RTI rules, in particular those that violate the provisions of the parent act. In its decision of January 5, 2012 in a case (CIC/WB/C/2010/900077SM), where the complainant had argued that Rules 3, 4, 5, 6 & 20 of the AHC Rules were arbitrary and against the spirit and objectives of the RTI Act, the CIC held as follows:

“We carefully perused his complaint. We also considered his submissions. In exercise of the powers vested under Section 28 of the Right to Information (RTI) Act, the Chief Justice of the Allahabad High Court has framed these rules to carry out the provisions of the Act. The application fee of Rs 500 prescribed in Rule 4 is 50 times the fee prescribed by the Central Government and adopted by the Supreme Court of India. Similarly, the cost of information as prescribed in Rule 5 is more than seven times the cost prescribed by Central Government and adopted by the Supreme Court of India. Such high fee structure is surely very restrictive and can deter many potential information seekers from approaching the High Court.

Similarly, the Rule 20 also does not appear to be in consonance with the provisions of the Right to Information (RTI) Act. As per Rule 20(i), information will be furnished only if it is requested for with a positive assertion that the

motive for obtaining such information is proper and legal. On the other hand, subsection 2 of Section 6 of the Right to Information (RTI) Act clearly provides that an applicant making a request for information shall not be required to give any reason for requesting the information. Therefore, requiring a citizen to make a positive assertion about his motives in seeking a particular item of information as mandated in Rule 20(i) is, thus, directly contrary to the above provision of the Right to Information (RTI) Act. Similarly, listing of some other conditions in the same Rule as a precondition for disclosure of information does not seem to be in order as some of these are only restatement of some of the existing provisions of the Right to Information (RTI) Act. In the scheme of the Right to Information (RTI) Act, there are express provisions, as in Sections 8 and 9, for exempting certain classes of information from disclosure. Any rules framed for carrying out the Act cannot be more restrictive than the enactment itself.

All this shows that these rules need a relook. We understand that the Allahabad High Court is revisiting these Rules. We hope that modified/amended rules, less restrictive and fully in consonance with the letter and spirit of the Right to Information (RTI) Act, will be in place soon”.

- 14) In *CIC/WB/C/2010/000018SM* decision dated January 4, 2012, the CPIO had informed the complainant that the information could not be given because the application did not satisfy the conditions laid down in the rules framed by the Allahabad High Court. As per these rules, an application for information should be for only one item, it should be accompanied by Rs 500 by way of application fee and that the Appellant should pay Rs 15 for every page of information. In this case, since the applicant had not followed the

rules framed by the High Court, he could not be provided with any information. The CIC has held in its order

“...the fact remains that the rules framed by the High Court are quite different from the rules framed by the Central Government which have also been adopted by the Supreme Court of India for disclosing information to citizens. The amount of application fee prescribed by the Allahabad High Court is 50 times the fee prescribed by the Central Government. Similarly, the cost of one page of information is only Rs 2 as per the Central Government rules whereas it is Rs 15 as per the Allahabad High Court rules. Such stringent restrictive conditions including such high level of fees would surely deter citizens from freely seeking information from the Allahabad High Court, something not in conformity with the spirit of the Right to Information (RTI) Act. It would be a welcome move if the Allahabad High Court would revisit these rules and make it less restrictive and expensive for ordinary citizens to access information.”

However, these recommendations are yet to show any results.

- 15) Rule 5 of the Allahabad High Court Rules, which deals with the cost of the medium of the materials to be disseminated further impedes the common man's access to information. It states:

“If the application is permitted, the applicant shall be entitled to the information only after he makes payment in cash at the rate of Rs. 15/- per page of information to be supplied to him.”

The power of the Chief Justice of High Court of Allahabad to make rules pertaining to medium of materials disseminated stems from Section 28 (2) (i) which states the rules framed may provide for “the cost of the medium or print cost price of the materials to be disseminated under sub-section (4) of section 4”.

The use of the word “cost” instead of fee, amount etc. is evidence of the legislature’s intention not to let this provision be made into a revenue generating exercise. Moreover, the rates regulating the cost of the medium or print cost price of the materials in the Right to Information (Regulation of Fee and Cost) Rules, 2005, framed by the Central Government are as under-

- “(a) rupees two for each page (in A-4 or A-3 size paper) created or copied;*
- (b) actual charge or cost price of a copy in larger size paper;*
- (c) actual cost or price for samples or models; and*
- (d) for inspection of records, no fee for the first hour and a fee of Rs 5 for each 15 minutes (or fraction thereof) thereafter.”*

While the High Court of Allahabad may not be governed by the RTI (Regulation of Fee & Cost) Rules, 2005, the latter provide a good yardstick for comparison and are a model, which if not imitated, should at the very least be used as a frame of reference. Apart from the fact that the prescribed charges are unreasonably high, the insistence on payment being made only in cash is likely to cause undue inconvenience to the applicants, thereby deterring them from seeking information.

16) As per Section 6(2) of the RTI Act, an applicant making a request for information under the RTI Act shall not be asked to give any reasons for requesting the information. It states:

“An applicant making request for information shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him.”

But Rule 20 of the Allahabad High Court (RTI) Rules, 2006, reads:

“Notwithstanding anything contained anywhere else in these Rules, the applicant will be furnished with the information requested for if and only if

(a) the furnishing of such information -

(i) is requested for with a positive assertion that the motive for obtaining such information is proper and legal.

(v) not otherwise against any law or practice prevailing in the material regard;”

Under Rule 20, in order to determine what the ‘motive’ is, 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. It imposes an unwarranted constraint on the actualization of the citizens’ fundamental right to information.

17) In Appeal no. *CIC/PA/C/2009/000010 decided on 23.09.2010*, the CIC has held that sub -clause (i) of Rule 20 is in direct violation of Section 6(2) and sub clause (v) of rule 20, that already has been struck down by the CIC in accordance with Section 19 (8) (a). Both

these rules being in violation of the RTI Act, the High Court of Allahabad was directed by the CIC u/s 19 (8) (a) to take such steps as may be necessary to bring Rule 20 in direct compliance with the provisions of the RTI Act, 2005. A similar observation was made in case No. *CIC/WB/C/2010/900077SM* dated January 5, 2012, by the CIC in respect of rules 3,4,5,6 & 20 of the Allahabad High Court (RTI) Rules, 2006. In Case No. *CIC/PA/A/2009/000012* dated August 12, 2010, the CIC has held “Nevertheless, a simple reading of Rule 20 of the Allahabad High Court Right to Information Rules 2006, clarifies that information will be furnished if so furnishing it is not otherwise against any law. In this case disclosure of such information is not against the law. If, on the other hand, it has been the practice in the High Court of Allahabad not to disclose such information this practice is ultra vires of the RTI Act 2005 and, therefore, CPIO Shri G.K. Srivastava is directed u/s 19 (8) (a) (iv) in relation to the practice of managing such information to bring it into conformity with the RTI Act 2005.”

18) Also, second part of Rule 20 states:

“Notwithstanding anything contained anywhere else in these Rules, the applicant will be furnished with the information requested for, if and only if:

...

(b) after the processing of the application therefor, permission has been obtained in that behalf from Hon’ble the Chief Justice, or any of the other Hon’ble Judges of the High Court of Judicature of Allahabad, or its Lucknow Bench, who

might in that regard be, or have been, nominated by Hon'ble the Chief Justice."

The said Rule is clearly against the provisions of the RTI Act wherein the duty of giving the information or denying the same under Section 8 of the Act, has been cast upon the Public Information Officer (PIO). It is the PIO who has to suffer the penalty in case of wrongful denial or delay in the giving information. PIO can't be taking instructions from the Chief Justice as to whether a particular information that exists with the Registry or the Secretariat in some file or electronic form, should be made available to the RTI applicant. PIO has to be guided by law and not by his superiors.

- 19) Rules 25, 26 and 27 also are ultra-vires in view of the fact that they dilute the overriding effect of the RTI Act as laid down in Section 22 by virtually suspending the applicability of the Act where the requests for information pertain to matters that are also covered by Allahabad High Court Rules, 1952. Hence, it is necessary to consider to what extent Rules 25, 26 and 27 of the Allahabad High Court (RTI) Rules, 2006 militate against the purpose underlying Section 22 of the RTI Act.

Section 22 of the RTI Act reads:

"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.”

The relevant Rules of the High Court are reproduced below.

Rule 25:

“Central Public Information Officer shall not be liable to provide any information, which can be obtained under the provision of the Allahabad High Court Rules, 1952 in case of High Court and under General Rule (Civil/Criminal) in case of subordinate Courts. Such information may be obtained by adhering to the prescribed procedure and payment of fees prescribed in the Allahabad High Court Rules, 1952, or General Rules (Civil/Criminal), as the case may be.”

Rule 26:

“Central Information Officer will not entertain any application from any citizen for providing any information relating to matters, which are pending adjudication before the High court or Courts subordinate thereto. The information relating to judicial matters may be obtained as per the procedure prescribed in the Allahabad High Court Rules 1952 and General Rules (Civil/Criminal) respectively.”

Rule 27:

“Central Public information Officer will not entertain any application from any citizen for inspection of any record which can be inspected under the Allahabad High Court Rules 1952 and General Rules (Civil/Criminal) as the case may be.”

20) It may be submitted here that application of the provisions of the the RTI Act would not mean that a carte blanche is given to the applicants to access information regarding all court cases and administrative work. Section 8 provides for exemptions which are inter-alia as follows:

8 (1) *“Notwithstanding anything contained in this Act, there shall be no obligation to give to any citizen,-*

.....

b) information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;

.....

(d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure vof such information;

(e) information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;

h) information which would impede the process of investigation or apprehension or prosecution of offenders;

.....

(j) information further vrelaqtes to personal information the disclosure of which has no relationship to any public activity

or interest, or which would cause unwarranted invasion of the privacy of the individual...”

- 21) A citizen should be at liberty to choose whether he/she will seek information in accordance with the rule framed by the High Court or under the RTI Act. If the PIO has received a request for information under the RTI Act, the information should be provided to the citizen as per the provisions of the RTI Act and any denial of the same must be in accordance of the RTI Act only.

- 22) Rules 25, 26 and 27 create an exemption, 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 Allahabad High Court Rules and Subordinate Court Rules neither provide for any appeal procedure, nor have any penalty provisions for wrongful denial of information. Hence, Rules 25, 26 and 27, of the Allahabad High Court (RTI) Rules, 2006, appear 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 should override the said rules.

- 23) 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. The scheme of the RTI Act stipulates inter alia supply of the desired information within the period prescribed, institution of a proper appellate mechanism and imposition of stringent penalties 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 the said Act only and no other exemptions can be claimed while rejecting a demand for disclosure.

- 24) The object of Section 27 and 28 of the RTI Act is to simplify the operationalisation of the right to information both for citizens as well the public authorities; citizens may seek to enforce their fundamental right to information by simply invoking the provisions of the RTI Act.
- 25) The repeated recommendations by the Central Information Commission to the Hon'ble Allahabad High Court to modify its RTI Rules, have been ignored by the High Court. Three such CIC orders dated 23.09.2010, 08.08.2011 and 05.01.2012 are being annexed herein as **Annexure P7 (Colly)**.
- 26) The right to information is a fundamental right of the citizens of India. This has been clearly recognized 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. The scheme of the RTI Act stipulates *inter alia* supply of the desired information within the period prescribed, institution of a proper appellate mechanism and imposition of stringent penalties 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 the said Act only and no other exemptions can be claimed while rejecting a demand for disclosure.

27) The object of Section 27 and 28 of the RTI Act is to simplify the operationalization of the right to information both for citizens as well the public authorities; citizens may seek to enforce their fundamental right to information by simply invoking the provisions of the RTI Act. Also under Section 28, the competent authority can make only provisions for carrying out the purposes of the Act and not for denying information, the denial of which is not permitted by the Act.

28) The preamble to the Right to Information Act, 2005 reads:
“...*democracy requires an informed citizenry and transparency of*

information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed’.

- 29) The courts of the country have declared in a plethora of cases that the most important value for the functioning of a healthy and well informed democracy is transparency. In the matter of *State of UP v. Raj Narain, AIR 1975 SC 865*, a constitutional bench of the Hon’ble Supreme Court held that:

“[I]n a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, everything that is done in a public way, by their functionaries...” (Para 74)

- 30) In the case of *S.P. Gupta v. President of India and Ors, AIR 1982 SC 149*, a seven Judge Bench of the Hon’ble Supreme Court of India made the following observations regarding the right to information:

“There is also in every democracy a certain amount of public suspicion and distrust of government varying of course from time to time according to its performance, which prompts people to insist upon maximum exposure of its functioning... Now, if secrecy were to be observed in the functioning of government and the processes of government were to be kept hidden from public scrutiny, it would tend to promote and encourage oppression, corruption and misuse or abuse

of authority, for it would all be shrouded in the veil of secrecy without any public accountability. But if there is an open government with means, of information available to the public there would be greater exposure of the functioning of government and it would help to assure the people a better and more efficient administration.” (Para 65)

- 31) In the case of *Union of India v. Association for Democratic Reforms*, AIR 2002 SC 2112, while declaring that right to information is part of the fundamental right of citizens, under Article 19(1)(a), a 3 judge bench of the Hon'ble Supreme Court of India, held unequivocally that:

“The right to get information in a democracy is recognised all throughout and is a natural right flowing from the concept of democracy.” (Para 56)

- 32) If the rules drafted by the Allahabad High Court are allowed to stand, 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 rules repugnant to the provisions and object of the Act would render the RTI Act redundant.

- 33) It is humbly submitted that the Constitutional Courts like the Hon'ble Allahabad High Court should ideally be role models in implementation of the provisions of the RTI Act, in its true letter

and spirit and inspire all public authorities to follow their leader in transparency. This would certainly enable better delivery of the citizen's fundamental right to information. The petitioner herein drew the attention of the Chief Justice of Allahabad High Court to the *ultra vires* nature of the impugned Rules vide letter dated 03.11.2011 and 13.02.2012, but in vain. No steps have since been taken to modify the said Rules.

- 34) The petitioner has not filed any other petition with regard to the matter of dispute in this Hon'ble court or any other Court throughout the territory of India. The petitioner had only approached the Central Information Commission (Respondent No. 2, the CIC) highlighting the illegality of the impugned Rules. The relevant order of the CIC has been annexed above. The petitioner, now, has no better remedy available.

GROUNDS

- A. That the Allahabad High Court (RTI) Rules, 2006, contain provisions that are *ultra vires* the Right to Information Act, 2005, which provides a legal mechanism to enforce and implement the citizen's right to information guaranteed under Article 19(1)(a) of the Constitution of India.
- B. That rules 4 and 5 of the Allahabad High Court (RTI) Rules, 2006, made in pursuance of Section 28, RTI Act, 2005, prescribe an exorbitant application fee of Rs 500 and impose an inflated cost of Rs. 15 per page of information to be supplied, thus impeding the

access to information for the vast majority of the population that is not economically advanced. Rule 3 of the said Rules, which limits the number of questions to be asked to in an application to one, further aggravates this detrimental obstruction.

- C. The impugned rules are discordant with the fee prescribed by the Government of India in the Right to Information (Regulation of Fee and Cost) Rules, 2005 and have to be harmonized as recommended in Notification No. F. 1/5/2011 –IR dated April 26, 2011 issued by the Central Government. The Hon'ble Supreme Court of India has also adopted the Rules framed by the Central Government.
- D. Rule 20 (a) sub clause (i) is in direct violation of Section 6(2) of RTI Act, 2005 and sub clause (v) of the said rule. The CIC has already stated that such a Rule is not in accordance with the RTI Act.
- E. Rule 20 (b) is in direct violation of the RTI Act as it makes it mandatory for the Public Information Officer (PIO) to take prior permission from the Chief Justice before any information is disclosed. This is contrary to the basic scheme of the RTI Act wherein the responsibility is cast upon the PIO to give out or deny information of specific grounds to the applicant. It is the PIO who suffers penalty in case of delay or wrongful denial of information to the applicant.

- F. That rules 25, 26 and 27 of Allahabad High Court (RTI) Rules, 2006, 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 would override all the existing laws and Rules. The citizens have a right to access information under the RTI Act or the relevant Rules of the Allahabad High Court.
- G. That the CIC is the statutory body constituted under RTI to oversee the implementation of RTI Act. Despite recommendations of CIC to strike down or amend several of the said rules, the rules have not been re-examined or amended as obligated to further the object of the RTI Act and public interest.
- H. The impugned Rules nullify or whittle down the precious right that has been conferred by the RTI Act. In a large number of cases, like in *Commissioner of Income Tax Bombay v Gwalior Rayon Silk Manufacturing Company Ltd.*, AIR 1992 SC 1782 this Hon'ble Court has held, *"The rules are meant only to carry out the provisions of the Act and cannot take away what is conferred by the Act or whittle down its effect."*
- I. The petitioner has drawn the attention of the Hon'ble Chief Justice of Allahabad High Court to the ultra-vires nature of the impugned Rules, but no action has been taken. The right of the citizens guaranteed under Article 19(1)(a) of the Constitution of India is thus being severely violated.

PRAYERS

In view of the facts & circumstances stated above, it is most respectfully prayed that this Hon'ble Court in public interest may be pleased to: -

a. Issue appropriate writ quashing Rules 3, 4, 5, 20, 25, 26, 27 of the Allahabad High Court (Right to Information) Rules, 2006 (Annexure P1) as unconstitutional and/or ultra-vires the RTI Act 2005.

b. Issue appropriate writ directing the Hon'ble High Court of Allahabad and the subordinate courts within the jurisdiction of the Hon'ble High Court of Allahabad to follow the Right to Information (Regulation of Fee and Cost) Rules 2006 framed by the Central Government which are also being followed by this Hon'ble Court.

c. Issue or pass any writ, direction or order, which this Hon'ble court may deem fit and proper in the facts and circumstances of the case.

Petitioner
Through

PRASHANT BHUSHAN
Counsel for the Petitioner

Drawn By: Pranav Sachdeva

Drawn On: April 2012

Filed On: April 2012

New Delhi