

Central Information Commission

Mr. Onkar Sharma vs High Court on 11 August, 2010

CENTRAL INFORMATION COMMISSION

Appeal No. CIC/PA/A/2009/000011 dated 31-12-2009

Right to Information Act 2005 - Section 19

Appellant: Shri Onkar Sharma
Respondent: High Court of Allahabad

Appeal heard on 9.8.'10
Decision announced 11.8.'10

FACTS

By an application of 12-3-09 Shri Onkar Sharma of Dilshad Garden, Delhi applied to the CPIO, High Court of Allahabad seeking the following information:

"I have lodged complaint against the Civil Judge/ ASJ Smt. Veena Chaudhry vide my complaint dated 22.1.2009, a copy of which is enclosed. What the action has been taken so far may kindly be informed. Please also permit to give it to media."

To this he received a response from CPIO, Shri S. Farid Raza, Jt.

Registrar (E) High Court of Allahabad informing him as follows:

"Your application dated 14.3.2009, in which you have sought certain information under Right to Information Act, 2005, is not found in accordance with the Rule 20(a)(v) of Allahabad High Court (Right to Information) Rules, 2006 consequently it is rejected under the said Rule.

However, the Rule 20 (a) (v) of the Allahabad High Court (Right to Information) Rules, 2006 is stated as under: _ Rule 20: Notwithstanding anything contained anywhere in these Rules, the applicant will be furnished with the information requested for if and only if

(a) The furnishing of such information is:

(v) Not otherwise against any law or practice prevailing in the material regard."

Aggrieved Shri Onkar Sharma moved an appeal before Registrar General, High Court of Allahabad , with the following plea:

"I have to say that I have applied under RTI Act, 2005 and not under any rule framed by any agencies. Act supersedes all the rules under constitutional framework."

Upon this Shri Dinesh Gupta, Registrar General ordered as follows: "It is clear that Hon'ble The Chief Justice has full power to frame rules under Right to Information Act and, therefore, it is wrong to say that the Act supersedes all the rules under the

Constitutional frame work. The appellant has sought information about action taken against Smt. Beena Chaudhary, Civil Judge (ADJ Ghaziabad on the basis of his complaint dated 22.1.2008. It is against the provision of Rule 20 of the Allahabad High Court (Right to Information) Rules, 2006 to provide such information. Thus, the appeal carries no merit and therefore, Stands dismissed."

This has brought Shri Sharma in his second appeal before us with the following prayer:

"I request before you to pass an order directing the concerned Registrar General to supply the information about action taken on my complaint immediately. It will be in the interest of justice, mine and public. I am ready to appear in person also."

The appeal was heard through videoconference on 9-8-2010. The following are present.

Appellant Shri Onkar Sharma Respondent at NIC Studio Allahabad Shri G. K. Srivastava, Deputy Registrar, High Court Allahabad Respondent CPIO Shri Girish Kumar Srivastava, Dy. Registrar submitted that as per proviso to Section 8 (1) (f) information, which can be denied to Parliament or State Legislature, could be denied to any other person. In this context he cited Article 235 of the Constitution of India which vests in the High Court control over subordinate courts. He then submitted that Rule 20 (5) has been made in exercise of the power of Chief Justice under the Constitution. As such disclosure could be in violation of Article 235.

Shri Onkar Sharma on the other hand submitted that if the information had to be refused as per the Constitution he should have been told as much. He agreed that the Constitution has overriding effect. However, in his view, Section 20 (5) of the Allahabad High Court (Right to Information) Rules 2006 cannot override the law itself under which information can only be refused as per Section 8 (1). Shri Onkar Sharma also submitted that this argument of the Constitution has not been raised in refusing the information, he should now be given an opportunity to contest the argument allowing him two days for the purpose. We have accordingly received on 11.8.10 a fax letter from appellant dated 12.8.10. Shri Sharma has argued that should respondent now place reliance on Art 235 it is "CPIO and others who should approach the Constitution Bench, not I" Pleading that the CIC is not a forum to discuss constitutional issue citation of Art 235 was "irrelevant," and information should be supplied to him.

DECISION NOTICE Article 235 of the Constitution of India states as follows: "235. Control over subordinate courts The control over district courts and courts subordinate thereto including the posting and promotion of, and the grant of leave to, persons belonging to the judicial service of a State and holding any post inferior to the post of district judge shall be vested in the High Court, but nothing in this article shall be construed as taking away from any such person any right of appeal which he may under the law regulating the conditions of his service or as authorising the High Court to deal with him otherwise than in accordance with the conditions of his service prescribed under such law."

There is nothing in this Article that would militate against disclosure of action taken, if any, by the High Court. The Article allows only the High Court to deal with District Courts and courts subordinate thereto in accordance with the conditions of service prescribed under the law. The question then arises that, is the information sought disclosable also under the RTI Act simply because the authority to exercise the power of the Constitution of India is vested in the High Court? Respondent Shri Srivastava has quoted from DO No CV 1295/84 of 20.8.1984 addressed by the Vigilance Bureau to Govt of UP asserting the exclusive authority of the Court under Article 235 "to look into such complaints and take action as deemed proper by it." This stand cannot be disputed. A copy of the letter received by e-mail has been placed on file. However, it does not follow that information regarding any action taken in this regard is exempt from disclosure before Parliament or indeed to a citizen under the RTI Act. The RTI Act makes mandatory access to any information which is held by or under the control of a public authority [Sec 2(j)], of which a High Court is one, save those public authorities outside the pale of the Act as per Sec 24(1), and with the exception of that information that is exempted from disclosure u/s 8(1) and 9 of the Act. In this case, no such exemption has been cited which will apply, except the Proviso which is inapplicable.

If on the other hand the High Court has established a practice of refusing such information which would justify recourse to Rule 20 (v), this practice is clearly in violation of the law and the CPIO is hereby directed u/s 19 (8) (a) (iv) to ensure necessary changes in this practice to bring the management of such records into compliance with the RTI Act 2005. CPIO will now provide the information sought to appellant Shri Omkar Sharma within ten working days of the date of receipt of this Decision Notice, even if no action has in fact been taken on his complaint. The appeal is therefore allowed. However because we are satisfied that the information was refused in good faith as per CPO's understanding of the law, there will no costs Reserved in the hearing, this Decision is announced in open chamber on this eleventh day of July 2010. Notice of this Decision be given free of cost to the parties.

(Wajahat Habibullah) Chief Information Commissioner 11-8-2010 Authenticated true copy. Additional copies of orders shall be supplied against application and payment of the charges prescribed under the Act to the CPIO of this Commission.

(Pankaj K.P. Shreyaskar) Joint Registrar 11-8-2010