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Application No. 1509

Date 01-10-14



RIGHT TO INFORMATION

STATE INFORMATION COMMISSION, HARYANA
SCO NO. 70-71, SECTOR 8-C, CHANDIGARH
APPEAL CASE NO. 5673 of 2014
RIGHT TO INFORMATION ACT-UNDER SECTION 19 (3)

Relevant facts emerging from the appeal:

Name of the appellant	Shri Umed Singh, s/o Sh. Bhala Ram, Vill. Kharkadi, Tehsil Loharu, Distt. Bhiwani.
Name of the Respondents	1. SPIO-cum-Deputy Director, Archives, Haryana, Panchkula. 2. FAA-cum-Director General, Archives, Haryana, Panchkula.
RTI-application filed on	27.11.2013
SPIO replied on	14.01.2014
First Appeal filed on	20.02.2014
First Appeal decided on	05.05.2014
Date of Second appeal	25.07.2014
Date of hearing	12.09.2014
Larger Bench consisted of	1. Shri Naresh Gulati, SCIC; 2. Shri Yoginder Paul Gupta, SIC; and 3. Shri Hemant Atri, SIC
Presence	1. Shri Umed Singh Appellant. 2. Dr. Rajwanti Mann, SPIO-cum-Deputy Director. 3. Dr. Ashok Khemka, IAS, Director General-cum-FAA.

Shri Umed Singh, the appellant filed an RTI application dated 27.11.2013 addressed to State Public Information Officer-cum-City Magistrate, Bhiwani to seek information on five points regarding imprisonment of Shri Roop Chand, Nambardar. He submitted that his RTI application was transferred to the SPIO-cum-District Revenue Officer, Bhiwani, Chairman, Haryana Swatantrata Sainik Samman Samiti, Assistant Director, Regional office of the Archives Department, Hisar and the SPIO-cum-Deputy Director, Archives Department, Haryana, Panchkula for furnishing the information. The SPIO-cum-Deputy Director, Archives Department, Haryana,

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Panchkula responded vide letter dated 14.01.2014 informing that no records and photographs relating to Shri Roop Chand, Nambardar S/o of Shri Nanak Chand are available in the office of the Public Authority or in Hisar Sub-Office. She also intimated him that the Department has displayed the photographs of the freedom fighters whose photographs were available within the department. Dissatisfied with the response, he preferred an appeal which the FAA-cum-Director General, Archives, Haryana. The appeal was disposed of on 05.05.2014. Since, the requisite information was awaited, he preferred an appeal dated 25.07.2014. Taking cognizance of the matter, the Commission entertained the request under Section 19 (3) of the Act by serving notice dated 14.08.2014 to the parties.

2. The Commission received a letter dated 02.09.2014 from the Director General, Archives, Haryana, wherein he raised the following issues:-

- (i) Whether archival or library records preserved and maintained by the Department of Archives come within the purview of the RTI Act?
- (ii) Whether an applicant can outsource the search from archival or library records to the SPIO under the RTI Act?

The Public Authority prayed to constitute a Larger Bench to decide the present appeal in view of the legal issues involved in the appeal. The request was considered and the Commission constituted a Larger Bench to hear the matter on 12.09.2014.

3. Dr. Ashok Khemka, the FAA-cum-Director General, Archives, Haryana, appeared before the Bench alongwith Dr. Rajwanti Mann, Deputy Director-cum-SPIO. The FAA submitted that no records and photographs relating to Shri Roop Chand, Nambardar S/o Shri Nanak Ram are available with the Department. Further, the



applicant cannot outsource the efforts required to search material from the Archives to the SPIO under the RTI Act. Hence, while disposing of the appellant's appeal vide order dated 05.05.2014 he advised the appellant to carry out the search of records sought in the State Repository at Panchkula or in the Regional Repository at Hisar at his own level to satisfy himself of the correctness of the search findings of the SPIO. The FAA also submitted that the Public Authority has adopted a Citizen's Charter mentioning the procedure for consulting Archives wherein it has been provided that any research scholar wishing to consult the record is required to apply to the Director General, Archives in the prescribed proforma on any working day and get the microfilm/Xerox copies of the required research material on payment prescribed therein.

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4. Shri Umed Singh, the appellant appeared before the Commission with the submission that the records pertain to the year 1935 of erstwhile Riyasat of Lahore for which he is seeking the information. He further submitted that on the creation of Bhiwani District in the year 2000, the record of Shri Roop Chand Nambardar was transferred from District Hisar to that District. Hence, he submitted that the information which he sought might be available in the office of Deputy Commissioner, Bhiwani for which he prayed for the issuance of directions to the SPIO of the office.

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Decision:

5. The Bench heard the submissions of the parties and perused the record available on case file and also submitted by the respondent during hearing. The pertinent issue for examination before the Bench is whether search of the records held by the public authority of the Archives Department, and obtaining information therefrom should be governed by the RTI Act, 2005 and the rules framed thereunder or by the Public Records Act, 1993 and the Rules framed thereunder. The Bench while examining the matter, perused



the pronouncements of the Hon'ble Supreme Court and the Delhi High court.

6. The Hon'ble Supreme Court in the case R.S. Raghunath Vs. State of Karnataka & Another, (1992) 3 SCC 335, has held that:

"A general later law does not abrogate an earlier special one by mere implication. Generalia specialibus non derogant, or, in other words, where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered, or derogate from merely by force of such general words, without any indication of a particular intention to do so. In such cases it is presumed to have only general cases in view, and particular cases which have been already otherwise provided for by the special Act."

7. While deciding the issue of interplay of the Section 610 of the Companies Act and the RTI Act in the case of Registrar of Companies & Ors. in WP (C) No. 11272/2009, Hon'ble Mr. Justice Vipin Sanghi of the Delhi High Court held that:

"34.....it appears that the expression "held by" or "under the control of any public authority", in relation to "information", means that information which is held by the public authority under its control to the exclusion of others. It cannot mean that information which the public authority has already "let go", i.e. shared generally with the citizens, and also that information, in respect of which there is a statutory mechanism evolved, (independent of the RTI Act) which obliges the public authority to share the same with the citizenry by following the prescribed procedure, and upon fulfillment of the prescribed conditions. This is so, because in respect of such information, which the public authority is statutorily obliged to disseminate, in cannot be said that the public authority "holds" or "controls" the same. There is no exclusivity in such holding or control. In fact, the control vests in the seeker of the information who has only to operate the statutorily prescribed mechanism to access the information. It is not this kind of

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information, which appears to fall within the meaning of the expression "right to information", as the information in relation to which the "right to information" is specifically conferred by the RTI Act is that information which "is held by or under the control of any public authority".

35. The mere prescription of a higher charge in the other statutory mechanism (in this case Section 610 of the Companies Act), than that prescribed under the RTI Act does not make any difference whatsoever.....

.....the said rules being statutory in nature and specific in their application, do not get overridden by the rules framed under the RTI Act with regard to prescription of fee for supply of information, which is general in nature, and apply to all kinds of applications made under the RTI Act to seek information".

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8. The Bench after careful consideration of the aforesaid decision accordingly holds that the earlier, special legislation or the special arrangement made by the public authority to obtain any document cannot be indirectly repealed, altered or derogated merely by force of such general words, without any indication of a particular intention to do so. The Bench hence decides that the rules prescribed by the Public Authority do not get overridden by the provisions of the RTI Act. The public authority viz the Archives Department has laid down the rules and prescribed the procedure and fee to access the archival records preserved by them. The citizen cannot resort to the Right to Information Act to seek such records. Accordingly the Bench holds that the appeal has no merit.

9. The Bench clarifies that the benefit of the decision extends to only archival records and not to establishment related and other matters on which the public authority shall be accountable to furnish information in accordance with the provision made in Right to Information Act, 2005 and the Haryana Right to Information Rules, 2009.

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10. The Bench recommends to the Deputy Commissioner, Bhiwani to assist the appellant in locating the record in the record room as and when he approaches him. The Bench also advises the appellant that he would be required to follow the prescribed mechanism to access the record.

The appeal is disposed of accordingly.

Announced to be communicated.

Place: Chandigarh
Date: 12.09.2014

(Hemant Atri)
State Information Commissioner

(Yoginder Paul Gupta)
State Information Commissioner.

(Naresh Gulati)
State Chief Information Commissioner

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