

केन्द्रीय सूचना आयोग
Central Information Commission
बाबा गंगनाथ मार्ग, मुनिरका
Baba Gangnath Marg, Munirka
नई दिल्ली, New Delhi – 110067

द्वितीय अपील संख्या/Second Appeal Nos. CIC/CCSTM/A/2018/154576
CIC/CCSTK/A/2018/154579,
CIC/CCEDL/A/2018/154580 &
CIC/CCSTC/A/2018/154581

R. K. Jain

... अपीलकर्ता/Appellant

VERSUS

बनाम

CPIO(s), M/o. Finance, O/o. Customs,
Central Excise & Service Tax Settlement
Commission, Mumbai/Kolkata/New
Delhi/Chennai.

...प्रतिवादीगण/Respondents

Relevant dates emerging from the appeal:

RTI(s) : 07-05-2018	FA(s) : 20-06-2018, 25-05-2018, 30-06-2018 & 20-06-2018	SA(s) : 06-09-2018
CPIO(s) : 04-06-2018, 15-05-2018, 25-05-2018 & 06-06-2018	FAO(s) : 24-07-2018, 23-07-2018, 08-08-2018 & 23-07-2018	Hearing: 22-06-2020

ORDER

1. The appellant filed an application under the Right to Information Act, 2005 (RTI Act) before the Central Public Information Officer (CPIO), M/o. Finance, O/o. Customs, Central Excise & Service Tax Settlement Commission, Mumbai/Kolkata/New Delhi/Chennai seeking following information:-

“(A) The Customs & Central Excise Settlement Commission is not uploading the orders on its website as required under section 4 of the RTI Act. The applicant is therefore compelled to make the present application.

(i) Please provide the total number of orders passed by the Settlement Commission, Mumbai/Kolkata/New Delhi/Chennai from 01-01-2018 till 05-05-2018. Please also provide list of the orders passed.

(ii) Please provide copies of the orders passed by the Settlement Commission, Mumbai/Kolkata/New Delhi/Chennai from 01-01-2018 till 04-05-2018 in digital form in CD/DVD for which the applicant is ready to pay the requisite fees.

(iii) Please provide copies of the orders passed by the Settlement Commission, Mumbai/Kolkata/New Delhi/Chennai from 01-07-2014 till 30-09-2014 in digital form in CD/DVD for which the applicant is ready to pay the requisite fees.

B) Please provide the total number of Settlement cases pending before your benches at Mumbai/Kolkata/New Delhi/Chennai. Please also provide a list of the pending cases.

C) Please provide the month-wise number of settlement cases heard by the Settlement Commission at Mumbai from January 2017 till April 2018.”

2. The CPIO(s) responded on 04-06-2018, 15-05-2018, 25-05-2018 & 06-06-2018 respectively. The appellant filed the first appeal(s) dated 20-06-2018, 25-05-2018, 30-06-2018 & 20-06-2018 which were disposed of by the first appellate authority on 24-07-2018, 23-07-2018, 08-08-2018 & 23-07-2018 respectively. Thereafter, he filed the second appeal(s) u/Section 19(3) of the RTI Act before the Commission requesting to take appropriate legal action against the CPIO u/Section 20 of the RTI Act, 2005 and also to direct him to provide the sought for information.

Hearing:

3. The appellant, Mr. R. K. Jain attended the hearing through video conferencing. Smt. Sandra Ann Peres, CPIO/Mumbai, Mr. Prasenjit Nath, CPIO/Kolkata, Mr. Munish Yadav, Superintendent/New Delhi and Mr. G. Chinnappa Reddy, Assistant Commissioner participated in the hearing representing the respondent(s) through video conferencing. They agreed to hearing of these identical second appeals together and therefore, these are being clubbed and disposed of by way of this common order. The written submissions are taken on record.

4. The appellant submitted as follows:-

“(1) This Appeal is in relation to denial of information for point A (ii) & (iii) of the RTI application.

(2) The orders of the CPIO and the First Appellate Authority have denied the aforesaid information by wrongly relying on CIC order dated 23-04-2018 (See Annexure 1) as if it was decided against the appellant. The said CIC order merely adjourned the matter without

deciding the issue, as it is evident from the last Para of the order as quoted below:-

“DECISION

Keeping in view the facts of the case and the submissions made by both the parties and in view of the foregoing the matter is adjourned sine-die with a direction that it would be open to the Appellant to agitate the matter before the Commission again after final pronouncement by the Supreme Court, if he so desires.”

Thus, neither the CPIO nor the First Appellate Authority have applied their mind to the facts of the case and decision of the CIC, thus their order is liable to be set aside.

(3) That in the meantime, the Hon’ble Supreme Court of India has decided the case of Paras Jain - CA No. 5665/2014 (Copy enclosed as Annexure-2) in favour of the Appellant by holding that when there are two avenues available to the citizen, one under the RTI and other under another Enactment, it is the option of the information-seeker to choose either of the way and if he chooses the provision of the RTI Act, then the fee is payable under the RTI Rules. The Hon’ble Supreme Court in this respect has held as under:-

“10. Thus it is clear that the avenue for seeking certified copies as well as inspection is provided both in the Right to Information Act as well as the statutory guidelines of the appellant.”

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“12.....The Right to Information (Regulation of Fees and Cost) Rules, 2005 which also entitles the candidates to seek inspection and certified copies of their answer scripts. In our opinion, the existence of these two avenues is not mutually exclusive and it is up to the candidate to choose either of the routes. Thus, if a candidate seeks information under the provisions of the Right to Information, then payment has to be sought under the Rules therein, however, if the information is sought under the Guidelines of the appellant, then the appellant is at liberty to charge the candidates as per its guidelines.”

The appellant has sought the information in question under the RTI Act by moving the RTI Application dated 07-05-2018 and paying the RTI fees of Rs. 10/-, therefore, as per the aforesaid Supreme Court decision, the appellant is entitled to information under the RTI Act by

paying the fee prescribed under the RTI Rules. Thus, the order of the First Appellate Authority is liable to be set aside with the direction to provide the information within time bound frame.

(4) The orders of the Settlement Commission are required to be proactively disclosed as per Section 4 of the RTI Act and even the website of the Settlement Commission (Annexure-E of the 2nd Appeal - Page 22) also contains window for uploading the order of the Settlement Commission under the heading CASE LAW but no orders are uploaded in violation of the RTI Act, thus, the public authority may be directed to upload the orders on its website to bring transparency in its working and decisions.

(5) That the CPIO and the First Appellate Authority are taking contradictory stand in as much as the First Appellate Authority by order dated 20-12-2019 (Annexue-3) has held that the order of the Settlement Commission are the information under the RTI Act, hence, it is to be provided under the RTI Act on payment of Rs.2/- per page. This exhibits the malafide on the part of the respondents and they may be cautioned not to deliberately obstruct the information.”

5. The appellant also submitted as follows:-

(i) That the First Appellate Authority has erred in holding that the information sought in Point (A) (ii) & (iii) of the RTI Application cannot be denied in view of Delhi High Court decision in the case of Registrar, Supreme Court v. R. S. Misra, as the Public Notice No. 1/2017 itself provides copies of the orders of the settlement commission on payment of fee of Rs. 2/- per page. The First Appellate Authority has also erred in not appreciating that RTI Act provides for a fee of Rs.2/- per page for supplying the copies of the documents and by adopting the said fee for Rs. 2/- in Public Notice No. 1/2017, the provisions of RTI Act has also been made applicable to the supply of the copies of orders of the Settlement Commission. Neither the Settlement Commission Procedure Rules nor the aforesaid Public Notice No.1/2017 bar or exclude the applicability of the RTI Act, to the supply of the orders of the Settlement Commission. However, in the past copies of orders of the Settlement Commission have been provided by the Settlement Commission to the appellant under RTI Act. Moreover, the facts in the aforesaid case of R. S. Misra, are different than the facts of the present case, hence, the said decision of Hon'ble Delhi High Court is not applicable to the present matter. Therefore, the order of the First Appellate Authority in this respect is incorrect, illegal and liable to be set aside and the CPIO be directed to provide the information in time bound frame.

(ii) That the First Appellate Authority has erred in not appreciating that the CPIO has wrongly applied the CIC decision dated 23-04-2018 to the present case as the appellant has merely sought copies of few orders and the fee of Rs. 2/- per page, as prescribed under the RTI is applicable to the supply of stray orders, even under Public Notice No 1/2017. Moreover, as per Section 22 of the RTI Act, the provisions of RTI Act and Rules are having overriding effect on all other existing laws. Therefore, the order of the FAA is liable to be set aside with direction to provide point-wise information to the appellant within time bound frame.

(iii) That the First Appellate Authority has erred in not appreciating that the decision in the case of ICSI v. Paras Jain has no applicability because an university is a competent authority under the RTI Act, having been created under the Act of Legislature and can prescribe different RTI fees whereas the Settlement Commission has no such power to prescribe different RTI fees. Therefore, the order of the FAA is liable to be set aside with direction to provide point-wise information to the appellant within time bound frame. That the First Appellate Authority has failed to appreciate that the CIC decision in Appeal No. CIC/CEXCH/A/2017/106908-BJ dated 23-04-2018, is per incuriam and has no precedential value, as it has been passed ignoring the provisions of RTI Act, particularly section 2, 4, 27 & 28 of the RTI Act and the binding court decisions. Therefore, the order of the First Appellate Authority in this respect is incorrect, illegal and liable to be set aside and the CPIO be directed to provide the information in time bound frame.”

6. The respondent(s) submitted as follows:-

(i) They are not denying the information on point nos. A(ii) and A(iii) per se, provided the appellant obtains the requisite copies of the orders of the settlement commission as per the public notice dated 21-05-2018, as issuing copies of the orders of the settlement commission is governed by their public notice dated 21-05-2018. Rule 15 of the Customs and Excise Settlement Commission Procedure 2007 empowers the Settlement Commission to release orders for publication on such terms and conditions as the Commission may lay down. Only in exercise of this power, the Settlement Commission had regulated the supply of orders for publication on payment of Rs. 2/- per page of the order passed by a Bench vide public notice no. 1/2017 dated 11-05-2017 which is legal and has no infirmity.

(ii) If the appellant resorts to the provision of Rule 4 of the RTI Rules, 2012 which prescribes a fee of Rs. 50/- for supply of information in digital form in CD/DVD, the spirit and purpose of the

public notices 1/2017 dated 11-05-2017 and 2/2017 dated 26-05-2017 issued by the Principal Bench, Settlement Commission, New Delhi would stand virtually defeated. In this regard, reference is made to para 25 of the decision of the Hon'ble Kerala High Court in Treesa Irish v. CPIO, WP(C).No. 6532 of 2006 dated 30-08-2018 wherein it was held that the public authority can insist on reasonable fees for supply of the information as per rules prescribed for the same.

(iii) It is also submitted that for a similar issue raised by the appellant, where copies of orders for the years 2015 and 2016 were sought in CD/DVD on payment of Rs. 50/-, the Hon'ble CIC vide its order dated 23-04-2018 in appeal no. CIC/CEXCH/A/2017/106908-BJ had adjourned the matter sine die with a direction that it would be open to the appellant to agitate the matter before the Commission again after final pronouncement of the judgment by the Hon'ble Supreme Court of India in ICSI v. Paras Jain, CA No. 5665/2014.

(iv) Due to technical glitches, Case Law section has not been updated.

(v) Reference is also made to Order dated 21-11-2017 passed by the Hon'ble High Court of Delhi in the matter of The Registrar, Supreme Court of India v R. S. Misra in WP (C) 3550/2011, wherein the Hon'ble High Court has ruled that if a mechanism is in place in public domain to access the information, resort to RTI cannot be taken.

(vi) It is further submitted that Shri R. K. Jain is one of the Directors of Centex Publications Pvt Ltd. The copies of orders of the Settlement Commission sought as information under RTI Act are not for personal use of the applicant or in public interest. It appears that the information about the orders is used for commercial purposes and for furtherance of his own business of publishing books on Customs and Central Excise Laws. The name of Shri R. K. Jain appears on all books relating to Customs and Central Excise Laws. Covers of books published by Centex Publication state R. K. Jain's Customs Law Manuals. The department has made separate provisions for publishers and for individuals in its Public Notice(s). Mr. R. K. Jain has sought the information under RTI Act to subvert the provisions of Public Notice for publishers.”

Decision:

7. The appellant submitted that as per Section 2(j)(iv) of the RTI Act, 2005, his right to obtain copies of orders of the settlement commission in the form of CD/DVD cannot be curtailed or whittled down by dint of the public notices 1/2017 dated 11-05-2017 and 2/2017 dated 26-05-2017 issued by the Principal Bench, Settlement Commission, New Delhi. Section 2(j)(iv) of the RTI Act, 2005 entitles

him for seeking information in electronic mode on admissible fee and therefore, expecting him to obtain hard copies of the orders of the Settlement Commission @ Rs. 2/- per page is not appropriate. Section 22 of the RTI Act specifically provides that the provisions of the RTI Act will have an overriding effect over other laws for the time being in force and hence, the information sought under the RTI Act, 2005 should be provided as per the RTI Act, 2005. The appellant submitted that there is inconsistency between the RTI Act, 2005 and the public notices 1/2017 dated 11-05-2017 and 2/2017 dated 26-05-2017 issued under Rule 15 of the Customs and Excise Settlement Commission Procedure 2007 which is contrary to the provisions of Sections 2, 4, 27 & 28 of the RTI Act, 2005.

8. The respondent(s) contended that in consonance with Rule 15 of the Customs and Excise Settlement Commission Procedure 2007, the Settlement Commission regulates the supply of orders for the purpose of publication on payment of Rs. 2/- per page and therefore, they did not provide the information to the appellant in the CD/DVD format. The respondent also argued to have denied the information in CD/DVD format taking into consideration similar facts forming part of the CIC's order dated 23-04-2018 in appeal no. CIC/CEXCH/A/2017/106908-BJ which was adjourned sine die with a direction to the appellant to agitate the matter before the CIC after final pronouncement of the judgment by the Hon'ble Supreme Court of India in ICSI v. Paras Jain, CA No. 5665/2014. The appellant apprised the Commission that the website of the Settlement Commission contains window for uploading the order of the Settlement Commission under the heading 'CASE LAW' but no orders are uploaded therein and therefore, the public authority may be directed to upload the orders on its website to bring transparency in its working and decisions in view of suo motu disclosure u/Section 4(2) of the RTI Act, 2005.

9. At this juncture, the legal issue to be decided herein is whether the appellant is entitled to seek information in CD/DVD format under the RTI Act, 2005 irrespective of the public notices 1/2017 dated 11-05-2017 and 2/2017 dated 26-05-2017 which do not stipulate for any such mode except Rs. 2/- per page. It is to be noted that Section 2(j)(iv) of the RTI Act, 2005 specifically recognizes the right to information in electronic mode and therefore, not permitting the readily accessible information in the CD/DVD format is not justified. Even Rule 4(d) of the RTI Rules, 2012, prescribes a fee of Rs. 50/- per diskette/floppy for providing information and therefore, blanket denial of information through electronic mode is not envisaged under RTI Act, 2005. In view of this, the respondent(s) are directed

to provide the information which is electronically accessible in the CD/DVD format to the appellant on the admissible charges with reference to the RTI application on point nos. A(ii) and A(iii), within a period of 15 working days from the date of receipt of this order. Since the appellant herein has sought information under the RTI Act, 2005, the respondent is expected to provide the information as per the provisions of the RTI Act, 2005. In this regard, it is apt to refer to the decision dated 11-04-2019 rendered by the **Hon'ble Supreme Court of India in ICSI v. Paras Jain**, CA No.5665/2014, wherein, it was observed as under:-

“10. Thus it is clear that the avenue for seeking certified copies as well as inspection is provided both in the Right to Information Act as well as the statutory guidelines of the appellant.”

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“12.....The Right to Information (Regulation of Fees and Cost) Rules, 2005 which also entitles the candidates to seek inspection and certified copies of their answer scripts. In our opinion, the existence of these two avenues is not mutually exclusive and it is up to the candidate to choose either of the routes. Thus, if a candidate seeks information under the provisions of the Right to Information, then payment has to be sought under the Rules therein, however, if the information is sought under the Guidelines of the appellant, then the appellant is at liberty to charge the candidates as per its guidelines.”

10. From the foregoing, it appears that the Settlement Commission has been receiving large no. of RTI requests seeking copies of its orders. As such, if orders of the Settlement Commission which otherwise are being provided to the RTI applicants without claiming any exemptions under the RTI Act, are placed in the public domain, it would not only reduce the burden of the public authority but also serve the genuine cause of persons involved in academics, research etc. If the orders are made available on their website, the general public would have minimum resort to the use of the RTI Act to obtain information. Insofar as suo motu disclosure of the orders of the Settlement Commission is concerned, this Commission refers to the decision dated 04-03-2020 rendered by the **Hon'ble Supreme Court of India in Chief Information Commissioner v. High Court of Gujarat and Another** in Civil Appeal No(S). 1966-1967 of 2020, wherein, it was held as under:-

“33. Sub-section (2) of Section 4 of the RTI Act provides that every public authority to take steps to provide as much

information suo motu to the public at regular intervals through various means of communications including internet, so that the public have minimum resort to the use of the RTI Act to obtain information. Suo motu disclosure of information on important aspects of working of a public authority is therefore, an essential component of information regime. The judgments and orders passed by the High Courts are all available in the website of the respective High Courts and any person can have access to these judgments and orders. Likewise, the status of the pending cases and the orders passed by the High Courts in exercise of its power under Section 235 of the Constitution of India i.e. control over the subordinate courts like transfers, postings and promotions are also made available in the website. In order to maintain the confidentiality of the documents and other information pertaining to the litigants to the proceedings and to maintain proper balance, Rules of the High Court insist upon the third party to file an application/affidavit to obtain information/certified copies of the documents, lest such application 28 would reach unmanageable proportions apart from the misuse of such information.”

11. In light of the factual matrix of the case and the aforesaid case-laws, this Commission upon hearing the parties at great length comes to the conclusion that ‘right to information’ under the RTI Act, 2005 also includes right to obtain accessible information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device. Therefore, denial of accessible information in the CD/DVD format under the RTI Act, 2005 cannot be upheld.
12. With the above observations, these appeals are disposed of.
13. Copy of the decision be provided free of cost to the parties.

Neeraj Kumar Gupta (नीरज कुमार गुप्ता)
Information Commissioner (सूचना आयुक्त)

दिनांक / Date: 22-06-2020

Authenticated true copy
(अभिप्रमाणित सत्यापित प्रति)

S. C. Sharma (एस. सी. शर्मा),
Dy. Registrar (उप-पंजीयक), (011-26105682)

Addresses of the parties:

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5. Mr. R.K. Jain