

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 4678 of 2009**

1. Public Information Officer, High Court of Chhattisgarh at Bilaspur,
Tahsil and District – Bilaspur (CG)

---- Petitioner**Versus**

1. Daulat Ram Sonkar, R/o Chainganj Gunderdehi, Ward No. 13, Tahsil
Gunderdehi, District Durg CG
2. State Information Commission, Nirmal Chhaya Bhawan, Meera Datar
Road, Shankar Nagar, Raipur, CG

----- Respondents

For Petitioner.	-	Shri Prafulla Bharat, Advocate.
For Respondent No.1.	-	Shri VRS Parihar, Advocate.
For Respondent No.2	-	None

Hon'ble Shri Justice Pritinker Diwaker**Order On Board****17/09/2015**

On 20.8.2007 an application (Annexure P-2) was filed by respondent No.1 before the petitioner (Public Information Officer, High Court of CG) seeking certain information under the Right to Information Act. In the said application it has been pleaded by respondent No.1 that he lived below poverty line and to substantiate this he had also attached copy of the ration card with his application. On 23.8.2007 the application filed by respondent No.1 was rejected by the petitioner vide Annexure P-3 assigning the reason that as per Rule 14 of Chhattisgarh High Court, Right to Information Rules, 2005 (for short the "High Court RTI Rules 2005") the requisite fee of Rs. 12/- was not affixed with the same. Against this rejection order, respondent No.1 preferred a complaint Annexure P-4 before the State Information

Commission, Raipur stating therein that as per Section 7 (6) the respondent No.1 was not required to pay any fee as he was living below poverty line. Complaint further mentions that as he (respondent No.1) is unable to understand English, the order dated 23.8.2007 passed by the petitioner being in English could not be followed by him properly.

2. Reply to the above complaint was submitted by the petitioner before the State Information Commission giving reference of Rule 14 of High Court RTI Rules 2005 and pleading therein that respondent No.1 was required to affix the court fee of Rs. 12 and as the same has not been done, his application has rightly been rejected. The reply of the petitioner further states that against the order dated 23.8.2007 the appeal lies to the Registrar General of the High Court and as no such appeal has been preferred by respondent No.1, malice on his part is apparent.

3. By impugned order dated 29.12.2007 passed by the State Information Officer it has been held that Rules made by the High Court of Chhattisgarh making the fee acceptable from everyone is not in accordance with law and thus it violates the very spirit of Right to Information Act, 2005. State Information Commission has further directed the petitioner to consider an amendment in its rules and also to furnish the entire information sought for by the people living below poverty line within 30 days without charging any fee. The State Commission has also held that as on account of the delay caused by the petitioner, respondent No.1 has suffered mental agony and financial loss, the petitioner is required to pay Rs. 250/- to him. It is this order which is under assail in this petition.

4. Counsel for the petitioner submits that Section 28 of the Right to Information Act, 2005 (for short the "RTI Act") gives power to the High Court to make rules particularly with respect to fee payable under sections 6(1) and 7(1) and exercising this power the rules have been framed by it known as Chhattisgarh High Court, Right to Information Rules, 2005 and rule 14 thereof

provides for affixing the fee of Rs. 12/- in the application submitted before the Public Information Officer and as in the present case the requisite fee was not affixed, the petitioner was fully justified in passing the order dated 23.8.2007 rejecting the application of respondent No.1. Counsel for the petitioner further submits that the complaint filed before the State Commission by respondent No.1 under Section 18 of the RTI Act 2005 was not maintainable as he had not preferred any statutory appeal as provided under Section 19 of the said Act and rule 12 of the High Court RTI Rules. According to the counsel for the petitioner, the State Commission should have rejected the complaint of respondent No.1 at the threshold directing him to file an alternative statutory appeal as provided under Rule 12 of the High Court RTI Rules. According to him, the State Commission has no authority to declare the rule of the High Court as against the law and then directing the High Court to consider for an amendment in its rules as unless the rules are challenged before competent Court, the State Commission could not have passed the order like this by exceeding jurisdiction vested in it.

5. On the other hand supporting the order impugned it has been argued by respondent No.1 that the same is strictly in accordance with law and there is no infirmity in the same. He submits that once there is a provision in the Act of 2005 exempting from payment of fee from the persons living below poverty line, the High Court RTI rules will not prevail over the Act and the petitioner was bound to give entire information to respondent No.1, without charging any fee. According to the counsel for respondent No.1 the complaint filed by the respondent No.1 directly before the State Information Commission was very much maintainable and it was the choice of the respondent No.1 either to prefer appeal before the Registrar General of High Court or to file complaint before the Commission, as has been done in this case. Counsel for respondent No.1 further submits that though Section 28 of the Act empowers

the competent authority to make rules but it has to be without prejudice to the generality of the provisions of the Act.

6. Heard counsel for the parties and perused the documents on record.
7. Before advertng to the factual aspect of the case, relevant provisions of law deserve reference which read as under:

Section 28 of Right to Information Act, 2005 - Power to make rules by competent authority.—

- (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.”

Exercising the powers under Section 28 of the Act of 2005, the High Court of Chhattisgarh has framed its Rules known as CG High Court RTI Rules, and **rule 14** thereof reads as under:

“14. The applicant shall affix court fee stamp of Rs. 12/- on the application submitted to the Public Information Officer for obtaining information under Right to Information Act....”

8. A bare perusal of the above rule would reveal that while making any application the applicant is required to affix the court fee stamp of Rs. 12/- on it. Thus the petitioner was justified in rejecting the application filed by respondent No.1 without affixing the requisite stamp towards fee. Respondent No.2 has further erred in law in ignoring the fact that there was an alternative statutory remedy available to respondent No.1 under Section

19 of the Act and Rule 12 of the High Court RTI Rules. Once it was brought to the knowledge of respondent No.2 that respondent No.1 had statutory remedy of filing appeal before the Registrar General, it apparently erred in law in entertaining the complaint preferred by respondent No.1. In all fairness respondent No.2 should have rejected the application of respondent No.1 on this ground alone.

9. This Court finds enough substance in the argument of the petitioner that respondent No.2 had no business to say that if in the High Court RTI rules there is no provision for a person living below poverty line, then the said rule is against the law and the High Court should consider to change its rules, because the rule framed once can be amended only after it is challenged before the competent court of law. Thus considering the totality of the facts, the order imposing compensation on the petitioner cannot not be allowed to stand and it is accordingly set aside.

10. As has been informed by the parties, the High Court has already supplied the necessary information to respondent No.1. Being so, no further order is required to be passed.

11. Petition succeeds.

Sd/-
(Pritinker Diwaker)
Judge