

CENTRAL INFORMATION COMMISSION

Appeal No. CIC/WB/A/2009/000015 dated 4.2.2009

Right to Information Act 2005 – Section 19

Appellant - Shri Mahesh Yadav

Respondent - Central Information Commission

Decision announced: 8.3.2010

Facts:

By an application of 23.4.05 Shri Mahesh Yadav of Panipat, Haryana, applied to the CPIO, Central Information Commission seeking the following information:

- “1. Whether the Right to Information Act, 2005 is applicable all over India. If not, names the States where it is not applicable.
2. If this is applicable in a State, whether the State can charge higher/lower fee for providing information under the RTI Act, 2005?
3. While providing information under the above Act, Offices of the Haryana Government charge Rs. 50/- for information and Rs. 10/- per page for supplying photo copy of the information, whereas under the RTI Act 2005, it is Rs. 10/- for seeking information and Rs. 2/- per page for supply of photo copy. Moreover, those below poverty line are provided these free of charge.

Please intimate whether under RTI Act 2005 State Govt. can charge fee at its own discretion. If not, please intimate the reasons why Haryana Govt. is charging so high fee. Is it to deny the citizens in providing information?

4. Whether charging such a high fees by Haryana Govt. is covered under the yardstick laid down by the Commission.
5. Whether Central Information Commission can impress upon State Govt. to charge lower fee or not. If not, please clarify the reasons in detail.”

In his pointwise reply of 22.5.08, CPIO Shri Tarun Kumar, Jt. Secretary informed appellant Shri Mahesh Yadav, as follows:

1. As per Right to Information Act, 2005, this Act is applicable in whole of India except the State of Jammu & Kashmir.
2. Under Sec. 6(1) of this Act, you can seek information from different State Govts. If so desired, you can also seek legal opinion on this subject.
3. This information can be sought from Haryana Govt. under Sec. 6(1) of Right to Information Act.
4. This information can be sought from Haryana Govt. under Sec. 6(1) of Right to Information Act.
5. It is the responsibility of the appropriate Government to ensure applicability of Right to Information Act, 2005 in toto. However, Central Information Commission can forward the appeal/complaint received by it to the concerned Govt. u/s 25(5).”

Not satisfied, however, Shri Mahesh Yadav moved an appeal on 28.5.08 before the First Appellate Authority, Central Information Commission, pleading as follows:

“With regard to information sought by appellant, a reply has been received from the Central Public Information Officer dated 22.5.08. Instead of providing information, the CPIO has advised to approach Haryana Government for the same. When Central Information Commission is a Central Agency to implement the Right to Information Act, 2005, then the CIC is competent to direct the State Govt. to implement the same.

It is, therefore prayed that information sought vide letter dated 23.4.08 may kindly be provided.”

Upon this Shri Mohammed Haleem Khan, Secretary, CIC in his order of 23.6.08 directed as follows:

- “1) As the CIC has no authority over the State Government, it cannot handle complaints against State matters.
- 2) Since the appellant’s case relates to the State Government, the Central Information Commission cannot intervene in the matter.
- 3) There is no rule making power under the RTI Act with the Centre in respect of State Government.

Appellate Authority Shri Haleem Khan also appreciated Shri Yadav's effort in participating in the first appeal and informed him that in case he is not satisfied with the decision, he has the legal right under Sec. 19(3) of the RTI Act to file second appeal before the CIC. This has brought Shri Mahesh Yadav in his second appeal before us with the following prayer:

- “1. Action under relevant rules be taken against the CPIO for providing incomplete information.**
- 2. I may be provided information asked by me immediately and simultaneously action be taken against Haryana Govt. u/s 25(5) for charging excess fee.”**

The appeal was heard by videoconference on 8.3.2010. The following are present:

Appellant at NIC Studio, Panipat
Shri Mahesh Yadav
Respondents at CIC Studio, New Delhi.
Smt. Anita Gupta, Addl. Secy. / Appellate Authority

Appellant Shri Yadav submitted that whereas the CPIO has in response to Q. No. 5 acknowledged that the Commission may take suitable action u/s 25(5), no such action actually has been taken despite subsequent applications to the DOPT, to the Governor of Haryana and to the State Government of Haryana.

DECISION NOTICE

We find that we have already announced a Decision on 15.1.'10. in **Appeal No. CIC/WB/A/2008/01205** dated 10-7-2008, which is in fact a duplicate of the present. The Decision of 15.1.'10 was as follows

“Appellant Shri Mahesh Yadav is, therefore, advised to apply to the PIO of the Public Authority from whom he seeks the information sought and on failure to receive the same, follow the procedure laid down in Section 19 of the Act. On the question of fees, however, the attention of appellant Shri Mahesh Yadav is invited to Section 27 (1) of the RTI Act which empowers the appropriate Government, in his case as described above the Government of Haryana to make rules to carry out the provisions of this Act which includes, under sub Section (2) of Section 27, the following:

- (a) *the cost of the medium or print cost price of the materials to be disseminated under sub-section (4) of section 4);*
- (b) *the fee payable under sub-section (1) of section 6;*
- (c) *the fee payable under sub-sections (1) and (5) of section 7;*
- (d) *the salaries and allowances payable to and the terms and conditions of service of the officers and other employees under sub-section (6) of section 13 and sub-section (6) of section 16;*
- (e) *the procedure to be adopted by the Central Information Commission or State Information Commission, as the case may be, in deciding the appeals under sub-section (10) of section 19; and*
- (f) *any other matter which is required to be, or may be, prescribed.*

On the basis of the above information appellant Shri Yadav is free to approach the appropriate public authority for obtaining the information he seeks. The present appeal is however, without substance and is hereby dismissed.

Besides the above, for the information of appellant, Sec. 25(5) of the RTI Act, 2005 reads as follows:

Sec. 25(5)

If it appears to the Central Information Commission or State Information Commission, as the case may be, that the practice of a public authority in relation to the exercise of its functions under this Act does not conform with the provisions or spirit of this Act, it may give to the authority a recommendation specifying the steps which ought in its opinion to be taken for promoting such conformity

It has in fact appeared to this Commission for sometime that although the Act provides u/s 27(1) & (2) (a), (b) & (c) for the fee payable, the fact that different State Govts. have been charging different fees, which is the matter that has engaged the concern of appellant Shri Mahesh Yadav, is indeed in conformity with the provisions of the Act. However, the fact that these differences in fees charged by different organizations, which could be functioning in the same town in a State, because these may be functioning under the control

of the State Government or the Central Government, can lead to considerable confusion, since it is not only the amount of fees but method of payment, which is in many cases varied. For this reason, such a practice could under certain circumstances be deemed in violation of the spirit of the Act and it is for this reason that we recommend to both appropriate Governments in the present case i.e. the Central Government through the Ministry of Personnel, Public Grievances & Pensions, Govt. of India, New Delhi and the Chief Secretary, Government of Haryana, Chandigarh that the issue of bringing uniformity in levy of fees and costs may be considered so that these are uniform throughout the country. This will be of particular relevance to the State Govt. of Haryana, which adjoins the Union territory of the National Capital Territory of Delhi and, therefore, shares a number of Central Government Offices, branches of which are located in the towns of Gurgaon and Faridabad, which serve as adjunct to this National Capital Territory.

On the question of information to be provided, however, we find that the appeal being a duplicate stands already dismissed and the present file will follow suit. Notice of this decision be given free of cost to the parties.

(Wajahat Habibullah)
Chief Information Commissioner
8.3.2010

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
8.3.2010