CENTRAL INFORMATION COMMISSION

'B' Wing, August Kranti Bhawan

New Delhi 110066

Complaint No.CIC/WB/C/2007/00943 along with

Appeal No. CIC/MA/A/2008/01085

Dated 30.10. 2009

Name of the Appellants:

1) Shri Subodh Jain
B-320, M.I.G. Flats
East Loni Road
Delhi-110 003.

2) Shri K.K. Kishore
69/147, Sector-3,
R.K. Ashram Marg
New Delhi-110 001.

Respondent Public Authorities:

1) Deputy Commissioner of Police (DCP)
West District, New Delhi.

2) Institute of Company Secretaries of India,
ICSI House
22, Institutional Area, Lodi Road,
New Delhi110003.

Date of Hearing: **23.09.2009**

Date of Decision: **30.10.2009**

FACTS OF THE CASE:

1. Complainant Shri Subodh Jain submitted four applications to Public Information Officer of the Delhi Police Headquarters under the Right to Information Act (`RTI' for short) dated 9.10.2007, 14.10.2007 and 16.10.2007. PIOs of the Police Headquarters transferred these RTI applications to concerned PIOs under Section 6(3) of the RTI Act. However, as alleged by the complainant, PIOs of various Delhi Police Districts directed the complainant to deposit certain amounts of fee for the information sought as under:

1. For the RTI application dated 9.10.2007—

i) DCP West vide letter dated 8.11.2007 directed the complainant to deposit an amount of Rs.13, 949/-;

ii) DCP East on 16.11.2007 directed deposit of an amount of Rs.13.939;

2) For the RTI application dated 14.10.2007 —

i) DCP, IGI Airport directed deposit of Rs.90, 965;

3) For the RTI application dated 16.10.2007 —

i) DCP West on 8.11.2007 directed deposit of Rs.13,949;

ii) DCP East on 16.11.2007 directed deposit of Rs.13,939;

iii) DCP IGI Airport directed deposit of Rs.6,724;

4) For RTI Application dated 16.10.2007 —

i) DCP Traffic on 13.11.2007 directed deposit of Rs.5,146.

2. The complainant was furnished the scale of calculation on the basis of which the above amount was charged. The complainant was informed that apart from the above charges, he will also be charged copying charges of the information, which will be calculated after preparation of the report and charged at the time of supply of the information.

3. Aggrieved by the heavy cost being charged by the PIOs of the Delhi Police, the complainant on 24.11.2007 filed a complaint before the Commission alleging, *inter-alia*, that the DCP of various Delhi Districts are trying to malign the basic principles of the RTI Act by interpreting it in their own style. They are interpreting Sections 7(1), 7(2) and 7(3) according to their convenience, which is completely unjustified. This only shows that the Delhi Police is not willing to adopt the object of the Act to bring about transparency in its working. He, therefore, demanded action against all such Public Information Officers.

4. The complaint was listed for hearing on 19.6.2009. The following were present:

Appellant
Shri Subodh Jain and Shri Sailendra Chaudhary

Respondents
1. S/Shri Rajneesh Gupta, ADCP, Outer District
2. Madan Lal, SI, Outer District
3. Dalip Shukla, SI, Outer District

4. Prithvi Singh, ACP, DIU, Outer District
5. Jag Dev Singh, ACP, HQ, West District
6. OP Mishra, Ad.DCP, East
7. Mohan Singh Bais, ACP, HQ(C&T)
8. Sanjay Kumar, DCP, IGIA

5. It was found that the substance of the complaint stems from a response sent to the RTI request of 9.10.2007 submitted to Public Relations Officer PHQ in which he has sought the following information:

(1) From where the handcuffs are purchased by Delhi Police and what procedure is adopted?
(2) At present what is the shortage of handcuffs in which District/Branch?
(3) When did police buy handcuffs for the last time? What was the quantity and rate of purchase and what was the weight of each handcuff?
(4) What is the distribution system, what quantity of handcuffs issued and where it was issued?
(5) Is any scheme existing for purchase of handcuffs at present?
(6) If yes, please let us know how much budget has been provided for this and what will be the design, quantity and weight of these handcuffs?

6. PIO West District Police, Shri Robin Hibu, IPS in his response dated 5/8.11.2007 informed the complainant that the point-wise information asked by him was lengthy and time-consuming to compile and to provide this information would take additional 30 days from the date of deposit of requisite fees. PIO also informed that since considerable strength of manpower of the office of the PIO as well as of all Police Stations will be utilized to compile this information, therefore, the PIO has considered the appellant's request to provide the requisite information on payment of fee as per provisions laid down under Sections 7(1), 7(2) and 7(3) of the Right to Information Act, 2005. Complainant was, therefore, requested to deposit the requisite amount in advance so that the information so asked is provided to the complainant either by cash or Demand Draft in favour of DCP/West District, Delhi. PIO also informed that the complainant would have to bear the cost of copying charges which would be calculated after preparation of the report and the same would be paid at the time of supply of information.

7. In response to RTI applications dated 14.10.2007 and 16.10.2007, PIO, Shri Rajneesh Gupta, Outer District, Delhi Police in his comments dated 15.6.2009 submitted before the Commission that report/comments were obtained from all ACPs/Sub-Division of Outer District and it was found that no separate record was maintained regarding the persons arrested through sketch. In outer District, there were 11 Police Stations at that time and from 01.1.2004 to 13.11.2007, total number of 32640 cases has been registered in those police stations. To collect, collate and find out some of the information sought by the complainant, records of all those case files had to be read and scrutinized. It was a time consuming process and a considerable manpower was supposed to be utilized/diverted to discern that information. Therefore, in view of the provisions laid down under Sections 7(1), 7(2) and 7(3) of the Right to Information Act, 2005, Notification of GNCT of Delhi No.6/71/98HP-Estt/4257 dated 16.7.2007 and relying on orders of the Central Information Commission in Shri S.R. Hussain Vs. Shri Ashoka Kumar CPIO, National Projects Construction Corporation Limited, Faridabad dated 8th July, 2007 and Shri S.P. Goyal Vs. V.K. Singhal, CIT-XII dated 15.10.2007, the expenditure to be incurred on collecting this information would come to a total of Rs.90,695/-.

It was also informed to the Commission that all the requisite information available in their office was provided to the complaint by PIO, Outer District Delhi in response to RTI applications dated 14.10.2007 and 16.10.2007. The complainant has not mentioned any thing adverse against or expressed any grievance with the Outer District Police. The complaint is, therefore, not maintainable and deserved to be dismissed.

7. In the course of hearing of the complaint, it was found that similar issue is already the subject of scrutiny before the Full Bench of the Commission, which is scheduled to be heard on 23.9.2009. The Commission, therefore, by interim decision directed the complaint to be clubbed and placed before the Full Bench for final decision. Parties were accordingly informed of the date of hearing by Notice dated 26.8.2009.

8. Appellant Shri K.K. Kishore applied for information through his five applications each dated 9.4.2008. He asked for numerous items of information each pertaining to the Institute of Company Secretaries of India and requested the Public Authority to furnish true, accurate and complete information as per their official records.

9. CPIO by his replies each dated 8th May, 2008 furnished the available information within the time prescribed.

10. The appellant was not satisfied with the information provided and filed his first appeal on 12.5.2008. He was aggrieved because all his five requests were allotted the same case number contrary to the guidelines of the Central Information Commission. He stated that he is forced to file this "common appeal" because of the blunder committed by the PIO. Secondly, on his query No.1 of request No.1 as to whether any starred or unstarred questions pertaining to the affairs of the Institute had been raised in the Lok Sabha or not, the reply given by the PIO was "absurd, preposterous and irresponsible" since the PIO said that it pertained to the Lok Sabha Secretariat. In short, the appellant submitted that replies given by the PIO many of his requests were incorrect. He, therefore, requested the Appellate Authority —

(i) to re-allot separate numbers to each of his Five requests;
(ii) PIO should not give distorted replies;
(iii) Appellate Authority should call for the records etc and check the correctness of the replies given by the PIO;

11. The 1st Appellate Authority, Shri S. Kumar by his order dated 17th June, 2008 decided the appeal after considering the appeal of the appellant as well as written statement of the PIO. The Appellate Authority came to the conclusion that the appellant did not file his rejoinder despite being given two opportunities. Appellate Authority held that allotment of single number to all the appellant's requests does not amount to denial of information. Appellate Authority found that the PIO has already provided the other information and directed that the appellant may inspect the purchase manual after due notice to the PIO.

12. The appellant submitted two other RTI applications each dated 7.5.2008. Appellant further submitted two other applications each dated 19.5.2008. He also submitted two more RTI applications dated 2.6.2008 and 3.6.2008.

13, CPIO in his reply dated 7.6.2008, 20.6.2008, **30.6.2008** and 2.7.2009 required the appellant to remit additional fees in accordance with Section 7(3) of the RTI Act towards "further cost" for providing information which included cost of effort expended on collecting, collating and transmitting requisite information. The replies were accompanied with details of calculation showing how the amount demanded had been arrived at. The amount required to be remitted varied between Rs.3,398 and Rs.18,271.

14. The appellant Shri Kishore was not satisfied with the appellate order and came before the Commission in 2nd appeal under Section 19(3) of the Right to Information Act, 2005 ("Act" for short). The appellant in his 2nd appeal dated 21.6.2008 reiterated his grievances and sought relief on the following grounds:

(i) The Appellate Authority has failed to give his findings on all grounds urged by the appellant;
(ii) Appellate Authority acted in a very mechanical and routine manner while disposing off the appeal of the appellant;
(iii) The orders passed by the Appellate Authority is without application of mind and has not been passed on merits;
(iv) It was the duty of the PIO to allot as many numbers as were the requests, which the PIO did not do. This was intended to show less number of requests for statistical purposes.
(v) The reply given by the PIO is incorrect, misconceived and malafide.
(vi) PIO and the concerned officers of the respondent Institute have neglected their statutory duty to collect the requested information from "Purchase Manual" and furnish the same to the appellant.
(vii) The officers of the respondent Institute themselves admitted and accepted that past Presidents were being invited to attend the National Convention as published at page 304 in February 2008 issue of the journal of the Institute "Chartered Secretary". Therefore, PIO and the Appellate Authority, both denied the information to the appellant malafidely.

(viii) The action of the PIO and Appellate Authority thus amounts to giving of incorrect or misleading information and/or obstructing in any manner in furnishing the information within the meaning, scope and ambit of Section 20 of the Act.

The appellant Shri Kishore, therefore, requested the Commission to direct the respondents to furnish the information and impose penalties as provided under the Act. He also prayed for grant of cost in his favour and appropriate directions to the President on the conduct of the Appellate Authority. The appellant also submitted an application under Section 18(3) of the RTI Act praying for a direction to the respondents to produce all records and documents pertaining to the invitation of past Presidents to the National Convention since the year 2000.

15. The Commission by notice dated 13.8.2008 directed the parties to be present before the Commission on 8.9.2008 for a hearing. CPIO was directed to submit his comments before the Commission with a copy endorsed to the appellant.

16 The Appellate Authority Shri S Kumar in his comments dated 5th September, 2008 denied the contents of the appeal except those that are matters of record as misconceived and wrong. The Appellate Authority ("AA" for short) submitted before the Commission as under:

(i) The Appellate Authority denied that it has failed or neglected to give his findings on each of the 12 grounds raised by the appellant or that it lack the basic skills and competence.

(ii) The appellant was given opportunity to file rejoinder to the written statement of the PIO but the appellant chose not file the same. The appellant was also given opportunity of being heard in person but the appellant did not avail this opportunity.

(iii) The order of the Appellate Authority is a speaking order and has been passed after applying his mind and after taking into consideration the material on record.

(iv) PIO had already provided the required information. Hence no appellate interference was called for except in regard to two issues, i.e. first being allotment of single number to the appellant's requests and the 2nd being provision of a copy of Purchase Manual which was an

internal document for use and guidance of the officers of the Institute. The appellant was, however, given opportunity to inspect the same with due notice to the PIO.

(v) As regards the allotment of single number to five requests of the appellant, the Appellate Authority submitted that the appellant himself had sent a single covering letter with single fees. Nevertheless, each of the five requests was provided unique and distinct number by the PIO in order to distinguish the issue. It was just a procedural requirement and no prejudice was caused to the appellant.

(vi) To the allegation of the appellant that the Appellate Authority has been habitually and persistently acting in unison and collusion with the PIO, the Appellate Authority submitted that the appellant has been indulging in personal vilification and character assassinations of the officers of the Institute with ulterior motives and without any evidence to substantiate his allegations.

Appellate Authority Shri S Kumar therefore, prayed that the appellant be directed not to indulge in such practices in future. It also prayed the Commission to dismiss the appeal as not being maintainable and award cost against the appellant.

17. The Commission after hearing the parties on 8th September, 2008 passed the following order:

"8. As agreed between the parties, the CPIO would allow inspection of the relevant records and files so as to enable the appellant to identify and specify the information required by him. The appellant would be free to inspect the documents relating to purchases made by the respondent through the process of tenders and any other methods. He would also have access to the purchase manual of the respondent and the relevant details relating to expenses incurred by the respondent on participation of the past Presidents in National Conventions.

9. Both the parties should mutually decide a convenient date and time for inspection of the documents to identify and specify the required documents, within 15 working days from the date of issue of this decision.

10. The identified documents should be furnished as per the provisions of the Act. Since a considerable period has lapsed since the appellant asked for the information, the CPIO is directed to provide at least 50 pages of the

specified documents free of cost. For the remaining documents, if desired, by the appellant, he should be charged @ Rs.2/- per page.

11. As explained to the parties, a public authority holds information on behalf of the citizens. There is, therefore, no justification for collecting money from the information seekers for providing the information, which already exists with the information provider. This is an important step towards promotion of open government."

18. Respondent Institute submitted an application seeking review/modification of the aforesaid order of the Commission. The appellant in his review application dated 1.10.2008 raised the following the grounds:

(i) The decisions of the Commission in CIC/MA/A/2008/01085, CIC/MA/C/2008/00371 and CIC/MA/C/2008/00409 holding that there is no justification for collecting money from the information seekers for providing information which already exists with the information provides are contrary to the provisions of Section 7(3) of the RTI Act.

(ii) The applicant Shri K.K. Kishore had been making several applications seeking multiple information, the collection of which requires additional cost in terms of efforts, time and money.

(iii) The Institute asked the appellant to pay further fees in order to meet a part of the cost to be expended by the Institute in collecting, collating and transmitting the requisite information. The details of the cost and its computation were, therefore, conveyed to the applicant.

(iv) The other coordinate Benches of the Central Information Commission in several of its decisions have upheld the demands for further cost in terms of Section 7(3) of the RTI Act, such as —
CIC/WB/A/2007/00217 dated 27.2.2007
CIC/OK/A/2007/01430 dt. 30.4.2008
27/ICPB/2006 dated 7.6.2006
CIC/WB/C/2007/00224 dated 26.3.2008
CIC/AT/A/2007/00751 dated 14.12.2007
CIC/AT/C/2007/00282 dated 15.10.2007
CIC/AT/A/2007/00467, 468, 469, 470, 471 and 472 dated 9.7.2007

(v) The observations of the Commission in para 11 of the aforesaid order dated 8.9.2008 are contrary to the provisions of the law as also the decision s rendered by

various coordinate Benches of the CIC, particularly the judgment dated 27.7.2007 of the Chief Information Commissioner.

19. The respondent submitted that since the matter involves interpretation of an important question of law relating to provision of Section 7(3) of the RTI Act, it is necessary that the matter be reviewed and, if considered necessary, be placed before a larger Bench of the Commission for an authoritative ruling.

20. On a consideration of the above request of the respondent, the Commission appreciated that a full understanding of the elements of Section 7(3) will emerge only after all stake-holders comprising important public authorities, commercial as well as Government representatives of Civil Society organizations and lawyers are consulted before a decision regarding giving effect to Section 7(3) is taken by the Commission. It was, therefore, decided that since the issue involves determination of a point of law and will be of concern to a large number of Public Authorities and the public in general, it is necessary that representatives from DoPT, Ministry of Law & Justice and Delhi Government be invited and requested to make their written submissions so as to assist the Commission in arriving at a decision. It is also necessary to place a General Notification on the Commission's website inviting written submissions from other interested individuals and organizations.

21. Accordingly, the Commission by Public Notice dated 27th October, 2008 informed the public and interested stakeholders that they may, if they so desire, file written submissions before 2nd December, 2008 so that the same be of assistance to this Commission in deciding the matter in Full Bench of

the Commission. The other invitees included Secretary, Ministry of Personnel, PG & Pensions, Department of Personnel & Training, North Block, New Delhi and Secretary, Ministry of Law & Justice. S/Shri Sarbajit Roy and Shri Venkatesh Nayak, Commonwealth Human Rights Initiative, B-117, Sarvodaya Enclave, New Delhi were also the invitees. The matter was fixed for 24th February, 2009 to be head by Full Bench of the Commission and parties were accordingly informed by Notice of the Commission dated 23.12.2008.

22. The Full Bench of the Commission heard the matter on 24.2.2009. The appellant opted not to attend the hearing. Learned Counsel for the respondents and those from some Non-Governmental Organizations, S/Shri Venkatesh Nayak, Rakesh Gupta and Er. Sarbajit Roy attended the hearing. Learned Counsel for the respondent Institute, Shri Makheeja contended that if this multitude of information of the kind sought by appellant Shri K.K. Kishore in the present case is sought by general members of the public, the Institute, a small compact organization, will require to engage additional staff solely for this purpose, which will result in escalation of costs.

23. The Full Bench of the Commission after hearing the matter on 24.2.2009, by order dated 27.2.2009 reserved a further decision for a week till receipt of written response of the respondent public authority.

24. The next date fixed for hearing was 8th June, 2009 and parties were informed by notice of the Commission dated 4th May, 2009. In the meantime,

various adjournments were sought. The matter was finally fixed for hearing on 23rd September, 2009.

25. Department of Personnel and Training in their comments dated 5th June, 2009 made their submitted as under on the issue regarding the ambit and scope of Section 7(3) of the RTI Act:

(i) Section 7(1) of the Act provides that appropriate Government can prescribe fee in addition to application fee for supply of information;

(ii) Section 7(5) of the RTI Act also enables the appropriate Government to prescribe fee in addition to application fee.

(iii) The Central Government has prescribed fee by way of Right to Information (Regulation of Fee & Cost) Rules, 2005.

(iv) Section 7(3) provides the procedure to be followed by the CPIO to realize fee as prescribed by the Rules from the applicant.

(v) Thus, while Sections 7(1) and 7(5) enable the Appropriate Government to prescr4ibe additional fee, Section 7(3) gives the procedure[1] of realizing the fee.

26. Shri D. Bhardwaj, Additional Legal Adviser, Ministry of Law and Justice, Department of Legal Affairs by Note dated 19.6.2009 informed the Commission the views of the Ministry as under:

(i) A combined reading of Sections 6(1), 7(1), 7(3) and 7(5) of the RTI Act indicates that the Act makes a distinction between the fee payable under Section 6(1), 7(1) and 7(5) on one hand and fee payable under Section 7(3) on the other. The omission of Section 7(3) in Section 27 of the Act which is a rule making provision is a conscious decision of the legislature because such cost is incapable of being anticipated and cannot be prescribed **and left to the discretion of the PIO.**[2] The decision of the PIO in this respect has been made appealable.

[1] Underlined by us for reference
[2] Emphasised by us

(ii) It can, therefore, be stated that the Act contemplates that an applicant seeking information has to pay the fee prescribed under Section 7(1) in accordance with the rules made under Section 27 of the Act. In addition, the applicant may also be required to pay further fee representing the cost of information as determined by the PIO, if the facts and circumstances of a case so necessitate.

27. The Full Bench of the Commission heard the matter on 23rd September, 2009. The following attended the hearing:

Appellants

Not present.

Respondents:

Institute of Company Secretaries of India:

1) S/Shri R. D Makheeja, Advocate
2) S. Kumar, Sr. _____, ICSI
3) Sanjay Gupta, Jt. Director
4) Gaurav Mehta

Delhi Police

5) S/S B.K. Singh, Addl. DCP
6) Mohan Singh Bais, ACP/HQ/PHQ
7) Attar Singh, ACP/HQ
8) Jagdev Singh, ACP/HQ, West Delhi
9) Madan Lal, SI
10) Prabhat Kumar, SI

Representatives from Other Public Authorities

1) S/Shri Rakesh Sharma, Sr. Manager, ICSI
2) Suresh Kumar, DGM(MIS) & CPIO, BSNL
3) A.K. Jain, GMN & CPIO, ONGC
4) Representative of IOCL
5) Saurabh Dhawan, Project Officer, CMRI
6) Michelle Gurung, Project Officer, CHRI
7) Vrinda Choraria, Sr. Assistant, CHRI
8) Sonchitra Bakshi, Sr. Officer, CHRI
9) O.P. Khorwal, GM(CP), NTPC
10) Shreysi Singh, Legal Executive, BHEL
11) S. Satish Rao, Sr. DGM, BHEL
12) Rakesh Bhartiya, Director, Dep't. of Public Enterprises
13) Madan Mohan, Dy7. Director, Dep't. of Public Enterprises
14) Jaikant Singh, Director, Ministry of Corporate Affairs
15) Sandeep Jain, Section Officer, Ministry of Corporation Affairs
16) Abhisek Shukla, Sr. Correspondent, Press Trust of India

17) Priyanka Yadav, Law Officer, IOC
18) Ashok Sharma, MMTC ____
19) AGM/APIO, SAIL
20) S.B. Mitra, CPIO/DGM(Law), GAIL India
21) H.C. Lohumi, Sr. Manager (Law)/RTI, GAIL India
22) Sunil Narang, Manager (RTI), GAIL India
23) Surender Kumar, CPIO/CGM, STC

Members of Public (including NGOs)

1) Er Sarbajit Roy, Tattwa Soochna Sabha and as member of public
2) S/Shri Rakesh Kumar Gupta
3) Binu Peter,
4) Venkatesh Nayak, CHRI

28. In the course of hearing, the parties made their respective submission as under:

(i) Mr. R.D Makheeja, advocate appearing as counsel for Institute of Company Secretaries of India (ICSI) submitted that in pursuance of powers conferred by RTI Act, the Government has issued Right to Information (Regulation of Fee and Cost) Rules both under Sections 7(1) and Section 7(5). But there are no rules as yet framed by the Government to decide what should be the quantum of fees as `further fee' as provided for under Sub-Section (3) of Section 7 of the RTI Act. He submitted that Section 7(1) does not regulate Section 7(3). He avers that `further fee' mentioned under Section 7(3) only refers to cost of providing information but the method of calculating such fee is not provided either in the rules or in the Act. Therefore, they have themselves calculated this fee for providing information.

(ii) Shri Makheeja contended that rules so far provided by the Government only concerns Sections 7(1) and 7(5) but not Section 7(3) of the RTI Act. He submitted that the word "prescribed" is occurring in Section 7(1) and 7(5) but not in Section 7(3). The word "prescribed" means prescribed by rules made under the Act by the Appropriate Government or the

Competent Authority. Therefore, as per rules of interpretation since fees under Section 7(3) of the RTI Act is not "prescribed", therefore, the Central Government has not prescribed any fees that could be chargeable as `further fee' under Section 7(3) of the RTI Act. Therefore, it could mean that the Legislator has left it to the discretion of the PIO to determine what fee should be charged by way of `further fee'.

(iii) Shri Makheeja also made his submissions on the provision of Section 7(9) of the RTI Act. He reiterated that Section 7(3) is not controlled by Section 7(1) and said that if it had not been the legislative intent to provide for any fee under the Act, then Section 7 of the RTI Act as a whole would have been rendered redundant. He referred to G.P. Singh's book on Rule of Interpretation and said that if two sections of an Act cannot be reconciled because of absolute contradiction, the last one must win. If Section 7(3) has no meaning, then why should it be there. He submitted that Section 7(1) is concerned with normal fee but Section 7(3) is concerned with further fee.

(iv) Shri Makheeja submitted that ROC is not charging for giving information under the RTI Act. ROC is charging in a different context. The mention of ROC in these proceedings is not relevant at all. The issue is whether one can legally charge fee under Section 7(3).

29. During the course of hearing, it was brought to the notice of the Commission that the order of the Hon'ble High Court of Delhi passed in **Writ Petition (Civil) No.8010 of 2009** titled Sunita Kalra Vs. Central Information Commission & another" was not against charging of fee under Section 7(3) of the RTI Act but that the interference of The High Court is not called for so long as it is not the grievance of the petitioner that the fee charged under Section 7(3) is unreasonable. In this WP the Hon'ble High Court passed the following order:

> "As far as the grievance concerning charging of extra or additional fee is concerned, the petitioner has nowhere indicated the amount sought to be charged and whether such fee is unreasonable. The CIC had permitted the respondent authority to charge fee, having regard to the volume of information sought. **In the circumstances, the Court does not discern any unreasonable or arbitrary approach of CIC in this respect**.[3]"

30. The petitioner in the writ petition (W.P. No.8010 of 2009) also went in appeal before a Division Bench of the High Court by filing L.P.A. No.200 of 2009 in the which the Hon'ble High Court by order dated 14th July, 2009 refused to interfere with the fee charged under section 7(3) of the RTI Act and disposed of the petition directing that if the petitioner feels that the fee charged are highly excessive, then the petitioner can approach the CIC to agitate the question about the fees and if such an application is made by the appellant, CIC shall pass appropriate orders/directions on that application in accordance with law.

31. Submission made by the Delhi police was that fee under Section 7(3) of the RTI Act should be charged in line with the Delhi Police Act. In this connection, he referred to Section 40 of the Delhi Police Act and submitted that GNCT of Delhi in exercise of the powers conferred by Section 40(2) of the Delhi Police Act, 1978 and in supercession of this Government Notification dated 24.8.2099, the LG of the GNCT of Delhi has been pleased to direct the scales of charges in respect of additional police on payment to private persons, commercial establishments and for other duties of the nature as provided in Section 39 and 40 of the said Act.

[3] Emphasis added

32. On the matter being opened to argument Er. Sarabjit Roy submitted as under:

(i) Most NGOs are not in favour of further fee as there is no concept of `further fee' under the Act.

(ii) Countering submissions of Delhi Police relating to rule made under Section 40 of the Delhi Police Act, Shri Roy said that although LG is competent authority under the RTI Act but if he has to notify any such rule to carry out the provisions of the RTI Act, he must notify it under Section 28 of the Act. Delhi Police citing Section 40 of the Delhi Police Act has nothing to do with the RTI Act.

(iii) Under Fee and Cost Rule, fee chargeable are already provided. There is no justification for charging any non-prescribed fee in the garb of Section 7(3) of the Act.

Er Roy went on to question the validity of the hearing by the Full Bench

33. Shri Venkatesh Naya of the Commonwealth Human Rights Initiative submitted as under:

(i) The requirement of Section 7(1) of the Act is that all fees charged must be reasonable and no fee is chargeable form people living below the poverty line. There is no provision to charge fee at whims and fancy of the Public Authority. With that intent, Section 7(9) has been put in. If the objection of the Act is kept in mind, i.e. to provide information to the citizens, then the Public Authorities would not burden the information seekers with unnecessary fee.

(ii) Fee can be charged for the information severed as provided for under Section 10 of the Act. But what is the fee to be charged is nowhere prescribed. This is left to the discretion of the Public Authority. This discretionary power invested with the Public Authority can lead to lot of misuse. He submitted that when an application for information is made under the RTI Act, then it is the Act and the Rules framed there under

which alone are material for the purpose of dealing with the information request and not under any other law. He referred to guidelines of DOPT, which says that only certain kinds of fees are chargeable under the Act, i.e. the application fee as provided under Section 6(1) and the fees as provided under Sections 7(1) and 7(5). There is no description at all allowing discretion to PIOs.

(iii) Section 7(9) is linked to Section 7(3). Section 7(9) says that information shall ordinarily be provided in the form it is sought unless it disproportionately diverts resources of a Public Authority, in which case, the discretion of the PIO does not extend to charging of fee but give inspection or give photo copies thereof as already prescribed.

34. Shri Rakesh Gupta submitted as under:

(i) If only the records are maintained in proper order, the Public Authority can give information in 2 minutes. What can be given in 2 minutes, he asked why the Public Authorities are taking so much time in parting with information. He said that Section 4(1) of the Act has not so far been implemented. It is only because of non-implementation of the provisions of Section 4(1) that citizens have to suffer.

(ii) If PIO is given discretion under Section 7(3), the result will be disastrous. He attempted to define cost and said it is debatable. For example, some says 35 paise for one photocopy, some say one rupee. He queried as to who is to fix a standard cost including the cost of collection. He said that the Government has allowed Rs.2, which is understood to include the cost of collection also. Cost should not be fixed for profiteering or to burden the information seeker.

35. **ISSUE FOR DETERMINATION:**

I. Whether Section 7(3) of the Right to Information Act, 2005 provides for charging of fees in addition to the fees already prescribed under Sections 7(1) and 7(5) of the RTI Act, or is this, as contended by DoPT (reference underlined by us) only a procedural clause?

II. If further fee is allowed, with whom vests the discretion to charge such fee and what should be the scale at which the fee should be charged and for what specific matters?

DECISION & REASONS:

36. We first take up the matter regarding the imposition of cost by the respondents on the applicant under section 7 (3) of the Act. As stated in paragraphs 1 & 15 above, amounts have been charged as costs for supplying information requested by the appellants vide their RTI applications. The Government has already provided for what it deems reasonable cost under Rules 3, 4 and 5 of the Right to Information (Regulation of Fee and Cost) Rules, 2005. The provision as contained in Section 4(1) of the Act also provides for maximum disclosure of all disclosable information on the web sites of respective Public Authorities so that the information seekers do not have to incur expenses to get information.

37. We have examined this matter from the point of view of the reasonableness of the estimated cost imposed, over and above the fee charged to the applicant as prescribed by DoPT under the Rules. In our view, given the type and the nature of the information requested by the applicant, there is no room for forcing them to pay any cost other than the usual fees u/s 7 (1) of the Act read with the Rules. Cost is not admissible in these circumstances. We therefore direct that the information requested by the appellants shall be disclosed to them within 2 weeks time from the date of receipt of this order on payment by them of the usual fees as prescribed by DoPT. **No further fee representing the cost shall be charged**. We have pronounced this decision without prejudice to the determination of the scope of section 7.3 of the Act, which is the subject discussed in the following paragraphs.

37. The question that arises is whether any public authority under sub-section (3) of Section 7 can charge “further fee representing the cost of providing information” in addition to what is already prescribed under Section

7(1) and 7(5) of the Act and, if so, at what scale. Let us examine what Section 7(3) of the Act says:

> ***"Section 7(3)****: Where a decision is taken to provide the information on payment of any further fee representing the cost of providing the information, the Central Public Information Officer or State Public Information Officer, as the case may be, shall send an intimation to the person making the request, giving—*
>
> *(a) the details of further fees representing the cost of providing the information as determined by him, together with the calculations made to arrive at the amount in accordance with fee prescribed under sub-section (1), requesting him to deposit that fees, and the period intervening between the dispatch of the said intimation and payment of fees shall be excluded for the purpose of calculating the period of thirty days referred to in that sub-section;*
>
> *(b) information concerning his or her right with respect to review the decision as to the amount of fees charged or the form of access provided, including the particulars of the appellate authority, time limit, process and any other forms."*

38. It is also pertinent to reproduce Sections 6(1), 7(1) and 7(5) of the Act as under:

> ***"Section 6(1)****: A person, who desires to obtain any information under this Act, shall make a request in writing or through electronic means in English or Hindi or in the official language of the area in which the application is being made, accompanying such fee as may be prescribed.*
>
> *"**Section 7(1):** Subject to the proviso to sub-section (2) of section 5 or the proviso to sub-section (3) of section 6, the Central Public Information Officer or State Public Information Officer, as the case may be, on receipt of a request under section 6 shall, as expeditiously as possible, and in any case within thirty days of the receipt of the request, either provide the information on payment of such fee as may be prescribed or reject the request for any of the reasons specified in sections 8 and 9:*
>
> *Provided that where the information sought for concerns the life or liberty of a person, the same shall be provided within forty-eight hours of the receipt of the request."*
>
> ***Section 7(5)****: Where access to information is to be provided in the printed or in any electronic format, the applicant shall, subject to the provisions of sub-section (6), pay such fee as may be prescribed:*
>
> *Provided that the fee prescribed under sub-section (1) of section 6 and sub-sections (1) and (5) of section 7 shall be reasonable and no such fee shall be charged from the persons who are of below poverty line as may be determined by the appropriate Government."*

39. The Act under proviso to sub-section (5) of Section 7 also provides that fee prescribed under sub-sections (1) and (5) of section 7 shall be reasonable and no such fee shall be charged from the persons who are below poverty line as may be determined by the Appropriate Government. The Government has already prescribed fees as deemed reasonable mandated under Sections 7(1) and 7(5) of the Act and in the view of the Commission, there is no provision for any further fee apart from the one already prescribed under Sections 7(1) and 7(5) of the Act.

39. The Commission has also perused the orders of Hon'ble High Court of Delhi dated 6.4.2009 and 14th July, 2009 of both Single and Division Bench, passed in **Writ Petition (Civil) No.8010 of 2009** and **L.P. No.200 of 2009** respectively in cases entitled "Sunita Kalra Vs. Central Information Commission & Anr". The Hon'ble Single Bench of the High Court has held that so long as it is not indicated that the amount sought to be charged under Section 7(3) is unreasonable, the Court does not discern any unreasonable or arbitrary approach of the CIC in this respect. The Hon'ble Division Bench of the High Court has held that if the petitioner finds that the further fee charged is unreasonable or arbitrary, he can approach the Central Information Commission (CIC) to agitate the question about the fees and if such an application is made by the appellant, CIC shall pass appropriate orders/directions in accordance with law.

40. Thus, there is provision for charging of fee only under Section 6(1) which is the application fee; Section 7(1) which is the fee charged for photocopying etc and Section 7(5) which is for getting information in printed or electronic format. But there is no provision for any further fee and if any further fee is being charged by the Public Authorities in addition to what is already prescribed under Sections 6(1), 7(1) and 7(5) of the Act, the same would be in contravention of the Right to Information Act. The "further fee" mentioned in Section 7(3) only refers to the procedure in availing of the further fee already prescribed under 7(5) of the RTI Act, which is "further" in terms of

the basic fee of Rs 10/-. Section 7(3), therefore, provides for procedure for realizing the fees so prescribed.

41. Even assuming that there is provision for charging additional fee u/s 7(3) as learned Additional Legal Adviser Shri D. Bhardwaj would have us believe, the very fact that the legislature has not made any provision for applicants who are below poverty line as is made under proviso to Section 7(5) makes the legislative intent clear that fee mentioned in Section 7(3) only refers to the fee prescribed under Sections 7(1) and 7(5).

42. It would be worthwhile to go through what the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel & Training) has prescribed in the Right to Information (Regulation of Fee and Cost) Rules, 2005. Rules 3, 4 and 5 of the said Rules prescribing rates at which fee can be charged under Sections 7(1) and 7(5) of the RTI Act is reproduced below:

> *"3. A request for obtaining information under sub-section (1) of Section 6 shall be accompanied by an application fee of rupees ten by way of cash against proper receipt or by demand draft or bankers cheque payable to the Accounts Officer of the public authority.*
>
> *4. For providing the information under sub-section (I) of Section (7), the fee shall be charged by way of cash against proper receipt or by demand draft or bankers cheque payable to the Accounts Officer of the public authority at the following rates: -*
>
> *(a) Rupees two for each page (in.A-4 or A-3 size paper) created or copied:*
>
> *(b) actual charge or cost price of a copy in larger size paper;*
>
> *(c) actual cost or price for samples or models; and*
>
> *(d) for inspection of records, no fee for the first hour; and a fee of rupees five for each fifteen minutes (or fraction thereof) thereafter.*
>
> *5. For providing the information under sub-section (5) of Section 7, the fee shall be charged by way of cash against proper receipt or by demand draft or bankers cheque payable to the Accounts Officer of the public authority at the following rates: -*
>
> *(i) for information provided in diskette or floppy Rupees fifty per diskette or floppy; and*
>
> *(ii) for information provided in printed form at the price fixed for such publication or rupees two per page of photocopy* for extracts from the publication."

43. The Rules too have prescribed charging of actual cost in specific instances alongside the fee u/s 7.1. From this, it can well be seen that reasonableness or otherwise of the fee charged by a CPIO can only be in respect of the fee provided for under clause (c) of Rule 4 of the above Rules. We must then conclude that the provision to review the decision as to the amount of fees charged as contained in clause (b) of Section 7(3) is not in respect of any new or further fee but in respect of the fee provided for under Section 7(1) and Section 7(5) of the RTI Act. The legislative intent as reflected in Section 7(3)(b) is —

(i) right with respect to review the decision as to the amount of fee charged; and

(ii) right with respect to review the decision as to the form of access provided.

44. The argument that `further fee' is another class of fee which can be charged by the information provider is then, as per present Rules, fallacious because legislative intent can on no account be such as to give unbridled discretionary powers to the information provider without laying any guidelines as to the reasonableness of `further fees' or to give a right to the information seekers, which would then become notional, to obtain a review of decision with respect to `further fee' or reasonableness of `further fee'. Hence we must conclude that the 'further fee' is as prescribed under Section 7(1) and Section 7(5) of the Act.

45. We have, nevertheless carefully considered the averments on both sides. The applicants have largely based their arguments on the possibility of misuse of the provisions of Section 7(3) by public authorities and the CPIOs if unlimited powers are given to them for costing the information to be provided to an applicant. The net-result of such unfettered powers to determine cost in the hands of the CPIO would indeed constrict the free flow of information under the Act. This will go counter to the spirit of the legislation.

49. On the other hand, respondents have presented a more structuralised argument contending that a plain reading of the words of Section 7(3) could leave no-doubt that while further-fee representing the cost of information to be provided is to be determined by the CPIO, fees under Sections 7(1) and 7(5) are to be prescribed by the competent authority under section 27 of the Act. In their view, the competent authority is authorized only to prescribe fees under the latter two Sections and not under Sec 7(3) for the reason that cost of disclosure of any set of information cannot be predetermined and hence cannot be prescribed. They have therefore contended that by its very nature, cost is to be the actual of what a public authority is required to expend to provide the information to an applicant. It has to be a variable cost different for different occasions and types of information. They have further based their argument on the impact of a response to RTI applications seeking voluminous and complex information placing unwarranted demand on the resources of the public authority, especially commercial organizations. They argued that these responses may consume sizeable resources and may adversely affect the organization's commercial health.

50. We are conscious of the fact that there is merit in both these sets of arguments 44. However, the apprehension of unwarranted demand has been addressed in Sec 7(9). And be that as it may in the above judgments and orders of the Hon'ble High Court of Delhi passed in "**Sunita Kalra Vs. Central Information Commission**" the petitioner therein was directed to approach the Commission to agitate the matter relating to unreasonableness or arbitrariness of the fees charged under Section 7(3) of the Act <u>are the fees as prescribed under Section 7(1) or Section 7(5) of the Act.</u> Had it been otherwise, as discussed, it would have required to have been so specified. But in so concluding it might be noted that charging of legal fee for obtaining of a copy in larger size paper; such as certified copies u/s 76 of India Evidence Act, stands covered by Rule 4 (b) Right to Information (Regulation

of Fee and Cost) Rules, 2005. as "*actual charge or **cost price**[4] of a copy in larger size paper*"

51. Nevertheless, in light of our conclusion in Para 43 above that the provision to review the decision as to the amount of fees charged as contained in clause (b) of Section 7(3) is not in respect of any new or further fee but in respect of the fee provided for under Section 7(1) and Section 7(5) of the RTI Act, it is our view that norms should be laid-down for public authorities and CPIOs regarding when to charge costs in cases where costs are predetermined.

52. It is not possible to exhaustively list these specific situations but some reference to two possible situations is in order; as below:

i) Where information sought to be provided by the public authority includes books, maps plans, documents, samples, and models etc that are priced.

ii) Postal / courier charge for mailing information, when in excess of minimum slab prescribed by Dep't. of Posts.

53. Apart from the above, it needs to be clarified that, as argued by the appellants, the issue regarding charging cost of deployment of manpower on the basis of man-days is not admissible under the Act.

54. This then could constitute the substance of any decision on "*payment of any further fee representing the cost of providing the information*" to be taken u/s 7 (3). The objective of the Act is to provide "*certain information to citizens who wish to have it"*, which surely implies that this be provided in a cost effective manner. We, therefore, under the authority vested in us u/s 25 (5) recommend to the Department of Personnel and Training to provide in the Rules, the rules for a public authority to determine cost of disclosure of information under Section 7(3), including in "the cost" for which Rules are expected to be drawn up under Sec 27 (2) (a) by the appropriate govt. and under Sec. 28 (2) (i) by the competent authority such costs as may arise in a

[4] Emphasised by us to identify relevance

situation as illustrated in Para 52 above. The reasonableness of any further-fee/cost shall as a matter of course be subject to scrutiny by the Commission under Section 18 as well as Sec 19 (3) and by the appellate authority u/s 19 (1). A copy of this order may be marked to Secretary, Department of Personnel & Training for further action.

55. The orders demanding further fees purportedly u/s 7 (3) having been set aside as per orders at Para 37 above, both this complaint and appeal are allowed. Since no fees have been paid thus far there will be no costs.

56. Announced on this the 30th day of October 2009. Notice of this decision be given free of cost to the parties including Secretary Ministry of Personnel, Public Grievances & Pensions.

(Wajahat Habibullah)
Chief Information Commissioner

(Prof. M.M. Ansari)
Information Commissioner

(Satyananda Mishra)
Information Commissioner

(Shailesh Gandhi)
Information Commissioner

30.10.'09

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.

(Aakash Deep)
Additional Registrar