

Interpreting the scope of Section 7(3) of RTI Act- no provision for charging wages of officers rules CIC

November 10, 2009

Dear friends,

The Central Information Commission (CIC) has ruled that section 7(3) is a procedural provision and does not give any discretionary power to the public information officer(PIO) for charging an applicant any cost other than what is prescribed under section 7(1). Readers will remember, in November 2008, the CIC had invited people to make submissions regards the scope and ambit of section 7(3) of the *Right to Information Act, 2005*. In the matter of *K K Kishore v Institute of Company Secretaries of India* the point of contention was about whether the PIO may demand wages, search and compilation charges from an applicant over and above the fee prescribed in the RTI Rules. Later, another matter where the PIO of the Delhi Police had demanded exorbitant sums from applicant Subodh Jain was clubbed along with this case. A four member bench of the CIC heard the matter on 23rd September, 2009. The full bench decision on both cases is contained in a single order. I have attached the text of the decision to this mail. If you do not find the attachment please click on or copy paste this URL in your browser's address box: <http://cic.gov.in/CIC-Orders/FB-30102009-01.pdf> to access the decision.

This decision has been cited on the CIC website as follows: *Decision No. CIC/WB/C/2007/00943 & CIC/MA/A/2008/01085 dated 30/10/2009 on Appeals/Complaints from Shri Subodh Jain & Shri K.K. Kishore Vs Deputy Commissioner of Police, West District, New Delhi & Institute of Company Secretaries of India*

Excerpts from the decision:

Given below are the relevant paras which explain the CIC's ruling:

"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).

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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." [emphasis supplied]

The CIC ruled that in both cases under adjudication the appellants must not be charged anything more than the fee in the RTI (Regulation of Fee and Cost) Rules, 2005.

Recommendation to DoPT for issuing guidelines on costs:

The CIC has also held that in certain cases some legitimate costs may be incurred by the public authority over and above the prescribed fees. For example, costs may be incurred on making copies of plans, maps and documents or for providing samples or for postal/courier charges. There are no guidelines for public authorities in this regard. So the CIC has recommended that the Department of Personnel and Training (DoPT) issue guidelines to public authorities on recovering legitimate costs of the kind mentioned above. However according to the CIC there is no scope in section 7 for charging the applicant, cost of deployment of manpower on the basis of mandays, under any circumstance. Even where costs are charged for maps, sample or postal transit and such others the PIO's decision is amenable for review before the CIC.

Our comments:

1) The CIC deserves to be congratulated for clarifying the scope and ambit of section 7(3) in a manner that is in tune with the spirit of the RTI Act.

2) Many of us have been critical of the DoPT on several interpretational and implementational issues regards the RTI Act. Intellectual honesty demands that the role of the DoPT in this matter be recognised and appreciated. According to the CIC, the DoPT submitted the following views on section 7(3):

"25. Department of Personnel and Training in their comments dated 5th June, 2009 made their submitted [sic] 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 prescribe [sic] additional fee, Section 7(3) gives the procedure of realizing the fee." [emphasis as in the original]

I believe the DoPT must be congratulated for explaining the meaning of section 7(3) true to the legislative intent. Readers may like to send the following congratulatory message to the DoPT:

"Dear sir,

I/We would like to congratulate you and your colleagues for submitting before the Central Information Commission an interpretation of the scope and ambit of section 7(3) of the RTI Act that is true to the legislative intent and the overall spirit of this landmark legislation.

Yours sincerely,

Name and address of the sender. Date: Place:"

I recommend that you send this email to:

1) Mr. Shantanu Consul, Secretary (P), Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions, Government of India.

Email: secy_mop@nic.in

2) Dr. S K Sarkar, Joint Secretary (AT&A), Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions, Government of India.

Email: sarkardk@ias.nic.in

And most important of all we would like to thank all members of the RTI fraternity who sent their submissions to the CIC arguing that section 7(3) should not be subjected to a regressive interpretation. Without your support these cases might have been decided only on the basis of submissions made by public authorities. During the full bench hearing in September the CIC acknowledged that they had received a large number of submissions from various people across the country. Thank you very much for sparing your time to write to the CIC on this matter. I would also like to thank all of you who highlighted this issue through the media.

However we need to be vigilant about challenges to this decision from public authorities. I have a nagging suspicion that this decision is likely to be challenged before one or more High Courts. We will have to be prepared to fight this out in the judicial sphere as well.

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Thanks,

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