

Illegality of Rule 7 in J&K RTI Rules in light of CIC's decision on additional fees under Central RTI Act

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Dear friends,

Many of you are enthusiastically working for the implementation of the *Jammu and Kashmir right to Information Act, 2009* (JKRTIA). I would like to share with you an important development that has happened recently in connection with the *Central Right to Information Act, 2005* (CRTIA). This development has a bearing on Rule 7 of the J&K RTI Rules, 2009 read with section 7(3) of JKRTIA.

What is in section 7(3) of JKRTIA?

Before we discuss what is in section 7(3) we must understand the scheme regards fees laid down by the JKRTIA. The fee-related provisions in sections 6 and 7 of the JKRTIA almost replicate sections 6 and 7 of CRTIA. The only difference is that references to the Central Public Information Officer (PIO) and State PIO are replaced with a singular reference to the PIO in JKRTIA. Section 6(1) of JKRTIA states that every application for information must be submitted along with a fee. This is generally known as application fee. Section 7(1) states that the PIO will either reject the application for any of the reasons mentioned in sections 8 and 9 or give the information on payment of fees as may be prescribed. This is generally known as additional fee. Section 7(5) of JKRTIA states that the government may prescribe a fee for providing information in the printed or any electronic format. This is also generally understood to be part of the same additional fee.

In addition to the above there is a section 7(3) in JKRTIA which reads as follows:

"(3) Where a decision is taken to provide the information on payment of any further fee representing the cost of providing the information, the Public Information Officer 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 despatch 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."

This sub-section is very similar to its corresponding section in CRTIA. Many PIOs in Central Government and in the States have misinterpreted section 7(3) of CRTIA to mean that it is a provision for imposing a third kind of fee on the applicant in the name of 'costs'. So some PIOs have charged their wages as well as for other officials involved in searching the documents, compilation and collation charges and the like. The RTI Fee and Cost Rules issued by the Central Government do not contain any Rule regards section 7(3). So these PIOs argued that they can charge manpower and other costs at their discretion and this is how Parliament wanted it to be.

What is wrong with this interpretation of section 7(3)?

For some time until November 2008 there were contradictory decisions emerging from the CIC. Some Commissioners held that section 7(3) was not a separate provision and only two kinds of fees could be charged. A few others held that the PIO could charge manpower costs and such other costs at his/her discretion. In some of the States PIOs charged several thousand rupees for giving information using this provision. In some cases the figure crossed

a lakh also. So this matter was referred to a full bench of the Central Information Commission (CIC). In November 2008 the CIC constituted a full bench and invited people to send their views on the ambit and scope of section 7(3) of CRTIA.

CHRI submitted a detailed analysis of section 7 showing how section 7(3) is not a separate provision for levying a third fee on the applicant. CHRI argued that 7(3) only explained section 7(1) in detail and was only a procedural provision. For the full text of our analysis and submission click on or copy paste the URL in your browser's address box: [http://www.humanrightsinitiative.org/programs/ai/rti/india/national/2009/email_alerts/interpreting_the_scope_of_section_7\(3\)_of_rti_act_cic's_larger_bench_to_rehear_the_matter_on_23-09-09_at_istm_old_jnu_campus_11sep09.pdf](http://www.humanrightsinitiative.org/programs/ai/rti/india/national/2009/email_alerts/interpreting_the_scope_of_section_7(3)_of_rti_act_cic's_larger_bench_to_rehear_the_matter_on_23-09-09_at_istm_old_jnu_campus_11sep09.pdf)

A few other activists sent their submissions as well. A three-member bench heard this matter first in February 2009. Later the CIC thought it fit to constitute a larger bench to consider the matter. A four member bench heard the matter on 23rd September and gave its decision on 30th October. The CIC stated that section 7(3) is only a procedural provision and cannot be misinterpreted by the PIO to demand costs such as salary of officers etc. from applicants. To access the text of the decision click on <http://cic.gov.in/CIC-Orders/FB-30102009-01.pdf> or copy paste this URL in the address box of your browser. I have also attached a copy to this email.

Excerpts from this decision are given below:

"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]

How is this pertinent to Rule 7 of JKRTI Rules?

J&K RTI Rules 2009 were notified by the J&K Government to give effect to the provisions of JKRTIA. Rule 7 in Chapter III of this document reads as follows:

"Notwithstanding anything contained in these rules elsewhere the fee/cost /charges for providing information shall be reasonable. Further fee representing cost of providing information under section 7(3) shall be determined by the Chief Public Information Officer- where considered necessary- on the basis of estimate of cost which shall be realistically drawn up and intimate to the applicant together with estimate of fee under section 7(1) and section 7(5) of the Act."

[To access the text of the JK RTI Rules click on: http://www.humanrightsinitiative.org/programs/ai/rti/india/states/jk/jk_rti_rules_2009.pdf or copy paste this URL in the address box of your browser.]

The JKRTI Rules were notified when the CIC was still seized of this case. Rule 7 takes the same regressive line that separate costs may be charged under section 7(3) of JKRTIA in addition to additional fees prescribed under section 7(1) and 7(5). The PIO has been given the discretion to charge any cost that he/she thinks is reasonable under section 7(3) in addition to photocopying or CD writing charges. So for information of 50 pages that should cost Rs. 500/- only (this itself is exorbitant at Rs. 10 per page unlike CRTIA where it is Rs. 2 per page) the PIO could add wages of officers involved in searching and compiling the information and bring the total up to say Rs. 5,000 or even Rs. 50,000. Para #1 of the CIC's order mentioned above shows how much excess cost Delhi Police demanded from an applicant. In one case Rs. 90,000 was demanded from the applicant. Thankfully the CIC's decision sets aside such demands because no such costs can be legitimately charged under section 7(3) of CRTIA.

Now that it has been decided that section 7(3) of CRTIA is only a procedural provision Rule 7 becomes *ultra vires* of JKRTIA. The PIO does not have any discretion to charge fees over and above the application and additional fees.

However the CIC's ruling does not automatically invalidate Rule 7. It must be challenged in the J&K High Court with a prayer to strike it down. A better option would be for CSO and media reps in J&K to write to the J&K Government to withdraw Rule 7 in light of the CIC's latest decision. Retaining it on the rule book will result in its misuse by PIOs. Unscrupulous PIOs are likely to impose high costs on applicants in order to discourage them from seeking information. As a result of this a huge burden is likely to fall on the proposed JK State Information Commission in the form of appeals and complaints against exorbitant costs. I hope RTI advocators will take up this issue with the J&K Government immediately.

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Thanks

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