

(2017) 06 CHH CK 0004
In the Chhattisgarh High Court
Case No : 25 of 2014

Dinesh Kumar Soni

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 19-06-2017

Acts Referred:

Constitution of India, Article 19(1)(a) - Protection of certain rights regarding freedom of speech, etc
Right to Information Act, 2005, Section 28, Section 15(1), Section 2(e), Section 28(1)(2) - Power to make rules by competent authority - Constitution of State Information Commission - Definitions - Power to make rules by competent authority

Citation : (2017) 06 CHH CK 0004

Hon'ble Judges : Pritinker Diwaker, Sanjay K. Agrawal

Bench : Division Bench

Advocate : Vaibhav Goverdhan, A.S. Kachhawaha, Shyam Sunder Lal Tekchandani

Judgement

1. R.V. Raveendran, J in the matter of CBSE & another Vs. Aditya Bandhopadhyay, (2011) 8 SCC 497 speaking for the Supreme Court pertinently observed qua right to information as under: "The right to information is a cherished right. Information and right to information are intended to be formidable tools in the hands of responsible citizens to fight corruption and to bring in transparency and accountability. The provisions of Right to Information Act should be enforced strictly and all efforts should be made to bring to light under Clause (b) of Section 4(1) of the Act, which relates to securing transparency and accountability of working of public authorities and in discouraging corruption."

2. Feeling deprived of above-stated right to information by enhancement/prescription of fee as Rs. 500/- for submission of the application for getting information with a fee of Rs. 15/- per page by amending Rule 5 and Rule 6(1) of Chhattisgarh Vidhan Sabha Secretariat Right to Information (Regulation of Fees

and Costs) Rules, 2011 as amended (hereinafter referred to as "Rules, 2011"), the petitioner herein acting pro bono publico has filed this writ petition calling in question the constitutional validity of Rule 5 and Rule 6(1) of the Rules, 2011.

3. The essential facts, shorn of all paraphernalia to adjudicate challenge to the aforesaid constitutional validity of the Rules, 2011 are as under: 3.1 The petitioner, who is a practicing advocate and claims to be the RTI activist, showing concern with the interest of general public, has filed this petition questioning the constitutional validity of Rule 5 and Rule 6(1) of the Rules, 2011. Right to Information Act, 2005 (hereinafter called as "Act of 2005") has been promulgated by the assent of the President on 15.6.2005 with an object to provide for setting out the practical regime of right to information for citizen to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority. Under the said Act, the Central Information Commission and the State Information Commission have been constituted under sub-section (1) of Section 12 and sub-section (1) of Section 15 of the Act of 2005.

3.2. Under the Act of 2005, certain authorities have been classified as competent authority and in case of Legislative Assembly of the State, the competent authority is the Speaker. The competent authorities as defined in Section 2(e) of the Act of 2005 have been provided with the power to make rules under Section 28 of the Act of 2005 to carry out the provisions of the Act of 2005 for their respective institutions. The competent authority, may by notification in the official Gazette, make rules to carry out the provisions of this Act, including fee payable under sub-section (1) of Section 6. The Legislative Assembly of the State of Chhattisgarh in exercise of power conferred under Section 28 of the Act of 2005, framed Chhattisgarh Vidhan Sabha Secretariat Right to Information (Regulation of Fees and Costs) Rules, 2011. Rule 5 of the Rules, 2011 prescribes fee of Rs. 500/- for submission of application and Rule 6 prescribes for fee of Rs. 15/- per page for getting information under the Act of 2005. The petitioner herein has questioned the part of these rules prescribing fee for submission of application for information as well as fee for per page for getting information stating, inter alia, that the said rules are ultra vires to the provisions of the Act of 2005 and have the effect of abridging and infringing the right to information and thereby subverting the very object for which the Act of 2005 has been enacted. It has further been pleaded that the right to information has been held to be inherent to the freedom of speech and expression guaranteed to all citizen under Article 19(1)(a) of the Constitution of India and it has been regarded as the harbinger of change and instrument of empowerment of the common man. It has been pleaded that prior to enforcement of the Rules, 2011, the application fee was Rs. 10/- and by way of amendment in Rule 5, it has been enhanced to Rs. 500/- per application and the per page fee, which was earlier Rs. 2/- has also been enhanced to Rs. 15/-. This enhancement under Rules 5 and 6(1) is clearly violative of Article 19(1)(a) of the Constitution of India being unreasonable and without any basis. Thus, amendment in the said rules is in violation of and

deviation from the letter and spirit of the Act of 2005, it has been attempted to subvert the very object of the Act and hindering the citizen's rightful access to information.

3.3 During pendency of the writ petition, amendment was made in the Rules, 2011 and Rule 5 has been amended by the rule making authority and Rs. 500/- has been substituted by Rs. 300/- and thereafter, the writ petition has been amended and the amended rule dated 13th September, 2016 has been challenged in this writ petition.

4. Return has been filed on behalf of respondents No. 1 & 2. It has been pleaded that said Rule 5 and Rule 6(1) have been amended in exercise of rule making power conferred to the Hon'ble Speaker of the Legislative Assembly under Section 21 of the Act of 2005 and the rule so framed is strictly in accordance with law. It is neither in violation of the provisions of the Constitution nor it runs contrary to the provisions of the Act of 2005 and as such, the writ petition deserves to be dismissed.

5. Shri Vaibhav Goverdhan, learned counsel appearing for the petitioner, would submit that Rule 5 and Rule 6, enhancing the fee of the application to get the information is violative of the provisions contained in Article 19(1)(a) of the Constitution of India and the said rules are also not in consonance with the Act of 2005 and frustrate the object sought to be achieved. It is wholly unreasonable to enhance the said fee to the extent of Rs. 300/- in place of Rs. 10/- for submission of application for information and Rs. 15/- per page for information to the information seekers and it would cause great hardship to them. Therefore, it can be struck down for being contrary to the object and purpose for which the Act of 2005 was enacted. To buttress his submission, he brought to our notice the rules framed by the different rule making authorities under the Act of 2005 like; Rashtrapati Sachivalay Suchna Ka Adhikar (Fees Aur Lagat Viniyman) Niyamavali, 2007; Lok Sabha Sachivalay Suchna Ka Adhikar (Fees Aur Lagat Ka Viniyam) Niyam, 2005; Rajya Sabha Sachivalay Suchna Ka Adhikar (Fees Aur Lagat Ka Viniyam) Niyam, 2005; and C.G. Vidhan Sabha Sachivalay Suchna Ka Adhikar (Prakriya Fees Aur Lagat Ka Viniyaman) Niyam, 2010 and therefore, the impugned rules be declared unconstitutional.

6. Shri Kachhawaha, learned counsel appearing for respondents No. 1 & 2 would submit that the rule making authority in exercise of powers conferred under Rules 28 & 29 of the Act of 2005 have framed the Rules and the same is strictly in accordance with law. It is neither violative of the provisions of the Constitution nor it runs contrary to the provisions of the Act of 2005. He would submit that during pendency of the writ petition, considering the prayer of the petitioner, fee under Rule 5 has been reduced from 500/- to 300/-. The said rule cannot be said to be unreasonable or arbitrary requiring intervention by this Court. As such, the writ petition is liable to be dismissed.

7. We have heard learned counsel for the parties and also considered the rival

submissions made hereinabove elaborately and gone through the record with utmost circumspection.

8. Rules 5 and Rule 6A have been enacted by the rule making authority in exercise of power conferred under Section 28(1)(2) of the Act of 2005. The power of declaring an Act of the Legislature to be invalid can be derived from the theory in jurisprudence of the eminent jurist Kelsen. In every country there is a hierarchy of legal norms known as "ground-norms" (basic norms). In India, the ground-norms in the Indian Constitution in hierarchy is as under: (i) Constitution of India,

(ii) Statutory Law which may be either law made by Parliament or by the State Legislature;

(iii) Delegated legislation, which may be in the form of rules made under the Statute, regulation made under the Statute, etc;

(iv) Purely executive order not made under any Statute.

9. The first judgment laying down the principle that the Court has the power to declare a Statute unconstitutional was the well known decision of the US Supreme Court in *Marbury Vs. Madison*, 11 2 L Ed 60 : 5 US (I Cr) 137 (1803) The said principles have been followed thereafter in most countries including India.

10. The question that arises for consideration is how and when the power to declare the Statute/Rules/Regulation as unconstitutional/invalid/illegal should be exercised. The US Supreme Court in *West Virginia Vs. Barnette*, 15 87 L Ed 1628 : 319 US 624 (1943) held that since this power prevents the full play of the democratic process, it is vital that it should be exercised with rigorous self-restraint.

11. The US Supreme Court enunciated the principle that there is always a presumption in favour of the constitutionality of the Statute and the burden is always upon the person who attacks it to show that there has been a clear transgression of the constitutional provisions. The aforesaid principle has been adopted by the Constitution Bench of our Supreme Court in the matter of *Charanjit Lal Choudhary Vs. Union of India*, AIR 1951 SC 41 and it has been held as under: "10. Prima facie, the argument appears to be a plausible one, but it requires a careful examination, and, while examining it, two principles have to be borne in mind :--(1) that a law may be constitutional even though it relates to a single individual, in those cases where on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself; (2) that it is the accepted doctrine of the American courts, which I consider to be well-founded on principle, that the presumption is always in favour of the constitutionality of an enactment, and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles. A clear enunciation of this latter

doctrine is to be found in *Middleton v. Texas Power and Light Company* (248 U.S. 152 and 157), in which the relevant passage runs as follows :-- "It must be presumed that a legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based upon adequate grounds."

12. "*Ut res magis valeat quam pereat*" is a maxim which means it is better for a thing to have effect than for it to be made void. It is an application of this principle that Courts while pronouncing upon the constitutionality of a Statute starts with a presumption in favour of constitutionality and prefer a construction which keeps the Statute within the competence of Legislature.

13. The Constitution Bench of the Supreme Court in the matter of *Corporation of Calcutta Vs. Liberty Cinema*, AIR 1965 SC 1107 has held that a Statute has to be read so as to make it valid and if possible, an interpretation leading to a contrary position should be avoided, it has to be constructed *ut res magis valeat quam pereat*.

14. Similar is the proposition of law enunciated by the Supreme Court in the matter of *State of Gujarat Vs. R.A. Mehta*, (2013) 3 SCC 01 wherein it has been held that Statute must be constructed in such a manner so as to make it workable and bearing in mind the legal maxim "*ut res magis valeat quam pereat*" and it was observed as under: "98. The doctrine of purposive construction may be taken recourse to for the purpose of giving full effect to statutory provisions, and the courts must state what meaning the statute should bear, rather than rendering the statute a nullity, as statutes are meant to be operative and not inept. The courts must refrain from declaring a statute to be unworkable. The rules of interpretation require that construction which carries forward the objectives of the statute, protects interest of the parties and keeps the remedy alive, should be preferred looking into the text and context of the statute. Construction given by the court must promote the object of the statute and serve the purpose for which it has been enacted and not efface its very purpose. "The courts strongly lean against any construction which tends to reduce a statute to futility. The provision of the statute must be so construed as to make it effective and operative." The court must take a pragmatic view and must keep in mind the purpose for which the statute was enacted as the purpose of law itself provides good guidance to courts as they interpret the true meaning of the Act and thus legislative futility must be ruled out. A statute must be construed in such a manner so as to ensure that the Act itself does not become a dead letter and the obvious intention of the legislature does not stand defeated unless it leads to a case of absolute intractability in use. The court must adopt a construction which suppresses the mischief and advances the remedy and "to suppress subtle inventions and evasions for continuance of the mischief, and pro privato commodo, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, pro bono publico". The court must give effect to the purpose and object of the Act for the reason that legislature is

presumed to have enacted a reasonable statute."

15. A Statute is construed so as to make it effective and operative on the principle expressed in the maxim "*ut res magis valeat quam pereat*". Therefore, a presumption is there that Legislature does not have jurisdiction and burden of establishing that the Act is not within the competence of the Legislature or that it transgressed other constitutional mandates, such as those relating to fundamental rights, it is always upon the person who challenges the vires. (See Principles of Statutory Interpretation by Justice G.P. Singh, 12th Edition, page 592.)

16. It is a settled principle of law that the Statute enacted by the Parliament or State Legislature cannot be declared unconstitutional lightly. The Court must be able to hold beyond any iota of doubt that the violation of the constitutional provisions was so glaring that the legislative provisions under challenge cannot stand. In *State of A.P. Vs. McDowell and Co.*, (1996) 3 SCC 709 while considering the challenge to the central enactment, Their Lordships held as under: "43. A law made by the Parliament or the Legislature can be struck down by courts on two grounds and two grounds alone, viz., (1) lack of legislative competence and (2) violation of any of the fundamental rights guaranteed in Part-II of the Constitution or of any other constitutional provision. There is no third ground. We do not wish to enter into a discussion of the concepts of procedural unreasonableness and substantive unreasonableness - concepts inspired by the decisions of United States Supreme Court. Even in U.S.A., these concepts and in particular the concept of substantive due process have proved to be of unending controversy, the latest thinking tending towards a severe curtailment of this ground (substantive due process). The main criticism against the ground of substantive due process being that it seeks to set up the courts as arbiters of the wisdom of the Legislature in enacting the particular piece of legislation. It is enough for us to say that by whatever name it is characterized, the ground of invalidation must fall within the four corners of the two grounds mentioned above. In other words, say, if an enactment is challenged as violative of Article 14, it can be struck down only if it is found that it is violative of the equality clause/equal protection clause enshrined therein. Similarly, if an enactment is challenged as violative of any of the fundamental rights guaranteed by clauses (a) to (g) of Article 19(1), it can be struck down only if it is found not saved by any of the clauses (2) to (6) of Article 19 and so on. No enactment can be struck down by just saying that it is arbitrary** or unreasonable. Some or other constitutional infirmity has to be found before invalidating an Act. An enactment cannot be struck down on the ground that Court thinks it unjustified. The Parliament and the Legislatures, composed as they are of the representatives of the people, are supposed to know and be aware of the needs of the people and what is good and bad for them. The Court cannot sit in judgment over their wisdom."

17. The principles of law applicable to judge the constitutional validity of the

Statute are also applicable equally to test the constitutional validity of the Rules/ subordinate legislation framed under the said Statute. If the rules go beyond the rule making power conferred by the Statute, the same has to be declared ultra vires. If the rule supplants any provision for which power has not been conferred, it becomes ultra vires. Therefore, in order to determine the validity/legality of the rules, the basic test is to determine and consider the source of power which is relatable to the rule. Similarly, a rule must be in consonance with the parent statute as it cannot travel beyond it and for this, reference may profitably be made to the judgment of the Supreme Court in the matter of General Officer Commanding-in-Chief Vs. Subhash Chandra Yadav, (1988) 2 SCC 351 wherein it has been held as under: "14. ...But before a rule can have the effect of a statutory provision, two conditions must be fulfilled, namely (1) it must conform to the provisions of the statute under which it is framed; and (2) it must also come within the scope and purview of the rule making power of the authority framing the rule. If either of these two conditions is not fulfilled, the rule so framed would be void.

18. 1 Similarly, in Kunj Behari Lal Butail Vs. State of H.P.,(2000) 3 SCC 40 Their Lordships held as under: "13. It is very common for the legislature to provide for a general rule making power to carry out the purpose of the Act. When such a power is given, it may be permissible to find out the object of the enactment and then see if the rules framed satisfy the test of having been so framed as to fall within the scope of such general power conferred. If the rule making power is not expressed in such a usual general form then it shall have to be seen if the rules made are protected by the limits prescribed by the parent Act."

18. 2 In State of T.N. Vs. P. Krishnamurthy,(2006) 4 SCC 517 it has been held as under: "16. The court considering the validity of a subordinate Legislation, will have to consider the nature, object and scheme of the enabling Act, and also the area over which power has been delegated under the Act and then decide whether the subordinate Legislation conforms to the parent Statute. Where a Rule is directly inconsistent with a mandatory provision of the Statute, then, of course, the task of the court is simple and easy. But where the contention is that the inconsistency or non- conformity of the Rule is not with reference to any specific provision of the enabling Act, but with the object and scheme of the Parent Act, the court should proceed with caution before declaring invalidity.

18. 3 In Indian Express Newspapers (Bombay) Pvt. Ltd. Vs. Union of India, (1985) 1 SCC 641 the Supreme Court held that subordinate legislation does not carry the same degree of immunity which is enjoyed by the Statute passed by the competent legislature and referred to several grounds on which a subordinate legislation can be challenged as follows: "A piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent legislature. Subordinate legislation may be questioned on any of the grounds on which plenary legislation is questioned. In addition it may also be questioned on the ground that it does not conform to the

statute under which it is made. It may further be questioned on the ground that it is contrary to some other statute. That is because subordinate legislation must yield to plenary legislation. It may also be questioned on the ground that it is unreasonable, unreasonable not in the sense of not being reasonable, but in the sense that it is manifestly arbitrary."

18. 4 In *Shri Sitaram Sugar Co. Ltd. Vs. Union of India*, (1990) 3 SCC 223 a Constitution Bench of the Supreme Court reiterated the principle of law as under: "Power delegated by statute is limited by its terms and subordinate to its objects. The delegate must act in good faith, reasonably, intra vires the power granted, and on relevant consideration of material facts. All his decisions, whether characterized as legislative or administrative or quasi-judicial, must be in harmony with the Constitution and other laws of the land. They must be "reasonably related to the purposes of the enabling legislation". See *Leila Mourning v. Family Publications Service* [411 US 356]. If they are manifestly unjust or oppressive or outrageous or directed to an unauthorized end or do not tend in some degree to the accomplishment of the objects of delegation, court might well say, "Parliament never intended to give authority to make such rules; they are unreasonable and ultra vires": per Lord Russell of Killowen, C.J. in *Kruse v. Johnson* (1898) 2 QB 91."

18. 5 In the matter of *JK Industries Ltd. Vs. Union of India and others*, (2007) 13 SCC 673 Their Lordships of Supreme Court have held that Court while considering the constitutional validity of a rule, has to start with the presumption that the impugned rule is intra-vires and approach of the Court should be to save the rule from being declared ultra vires. It was laid down as under: 129. Apart from the grounds referred to by this Court in the above judgment in *Indian Express Newspapers*, it is important to bear in mind that where the validity of subordinate legislation is challenged, the question to be asked is whether the power given to the rule-making authority [in the present case the Central Government under Section 642(1) of the Companies Act] is exercised for the purpose for which it is given. Before reaching the conclusion that the rule is intra vires (we have to begin with the presumption that the rule is intra vires), the court has to examine the nature, object and the scheme of the legislation as a whole and in that context, the court has to consider what is the area over which powers are given by the section under which the rule-making authority is to act. However, the court has to start with the presumption that the impugned rule is intra vires. This approach means that the rule has to be read down only to save it from being declared ultra vires if the court finds in a given case that the above presumption stands rebutted."

18. 6 The afore-stated principle of law laid down in *JK Industries Ltd.* (supra) has been followed with approval by the Supreme Court in the matter of *Hindustan Zinc Ltd. Vs. Rajasthan Electricity Regulating Commission*, (2015) 12 SCC 611 .

18. 7 It is also well settled principle of law that the Court would lean in favour of constitutionality of a statute unless it is manifestly discriminatory. In the matter

of Municipal Corporation of the City of Ahmedabad and others Vs. Jan Mohammed Usmanbhai and another, AIR 1986 SC 1205 the Supreme Court held as under: 23. ... There is always a presumption in favour of constitutionality of an enactment and the burden is upon him, who attacks it, to show that there has been a clear violation of the constitutional principles. The courts must presume that the legislature understands and correctly appreciates the needs of its own people, that its laws are directed against problems made manifest by experience and that its discriminations are based on adequate grounds. It must be borne in mind that the legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest and finally that in order to sustain the presumption of constitutionality the court may take into consideration matters of common knowledge, matters of common rapport, the history of the times and may assume every state of facts which can be conceived to be existing at the time of legislation.

18. 8 The Constitution Bench of the Supreme Court in the matter of State of Bihar Vs. Sir Kameshvar Singh, AIR 1952 SC 252 declined to declare a statute unconstitutional on the ground of unreasonableness. It was pertinently held as under: "71. Mr. Raghav Saran who appeared in Cases Nos. 310, 311 and 329 of 1951, raised a novel point that the Act not being reasonable and just, the Supreme Court had jurisdiction to declare it void on that ground. He was unable to support his argument on any reasonable basis. The constitutionality of a statute passed by a competent legislature cannot be challenged on the ground that the law made is not reasonable or just."

19. Thus, from the above-stated principles of law enunciated by Their Lordships of the Supreme Court in the aforesaid judgments, the grounds which emerge to adjudge the constitutional validity of a subordinate legislation is (i) lack of legislative competence to make the subordinate legislation; (ii) violation of fundamental rights guaranteed under the Constitution of India; (iii) violation of any provision of the Constitution of India; (iv) failure to conform to the Statute under which it is made or exceeding the limits of authority conferred by the enabling Act; (v) repugnancy to the laws of the land, that is, any enactment; and (vi) manifest arbitrariness/unreasonableness. If the impugned Rule 5 and Rule 6(1) of the Rules, 2011 are put to test in light of the aforesaid principles of law enunciated by Their Lordships, it is quite vivid that the rule making authority i.e. Hon"ble Speaker of Chhattisgarh Vidhan Sabha, who is the competent authority to frame rules, has the requisite power and authority to frame rules for carrying out the objects contained in the Act of 2005 by virtue of provisions contained in Section 28 read with Section 2(ii)(iii) and has the power to prescribe fee for submission of application for information as well as for copying charges. As such, the power to prescribe fee for application for information as well as for copying charges is well within the jurisdiction of the rule making authority and it cannot be held that the impugned rule has been framed by the rule making authority in excess of power delegated by the Act of 2005 to the rule making authority. Thus, we hold that Rule 5 and Rule 6(1) of the Rules of 2011 are well within the

jurisdiction of the rule making authority and it is neither constitutionally invalid nor in excess of the power conferred upon the rule making authority under the Act of 2005.

20. The aforesaid determination would bring us to the next attack that prescription of the fee as Rs. 300/- per application for seeking information in the impugned rule is wholly unreasonable and arbitrary and therefore, it can be said to be violative of Article 14 of the Constitution of India and it be declared unconstitutional.

21. Before the impugned rule is put to test whether it is unreasonable or arbitrary it would be appropriate to notice the relevant judgments of the Supreme Court usefully as well as gainfully in which Their Lordships have considered the issue as to whether the rule can be struck down on the ground of unreasonableness or arbitrariness.

22. Way back in the year 1984, in the celebrated judgment in the matter of Maharashtra State Board of Secondary and Higher Secondary Education and another Vs. Paritosh Bhupesh Kumarsheth, AIR 1984 SC 1543 the Supreme Court has observed as under: "14. In our opinion, this approach made by the High Court was not correct or proper because the question whether a particular piece of delegated legislation whether a rule or regulation or other type of statutory instrument-is in excess of the power of subordinate legislation conferred on the delegate has to be determined with reference only to the specific provisions contained in the relevant statute conferring the power to make the rule, regulation, etc. and also the object and purpose of the Act as can be gathered from the various provisions of the enactment. It would be wholly wrong for the court to substitute its own opinion for that of the legislature or its delegate as to what principle or policy would best serve the objects and purposes of the Act and to sit in judgment over the wisdom and effectiveness or otherwise of the policy laid down by the regulation-making body and declare a regulation to be ultra vires merely on the ground that, in the view of the Court, the impugned provisions will not help to serve the object and purpose of the Act. So long as the body entrusted with the task of framing the rules or regulations acts within the scope of the authority conferred on it, in the sense that the rules or regulations made by it have a rational acts within the object and purpose of the Statute, the court should not concern itself with the wisdom or efficaciousness of such rules or regulations. It is exclusively within the province of the legislature and its delegate to determine, as a matter of policy, how the provisions of the Statute can best be implemented and what measures, substantive as well as procedural would have to be incorporated in the rules or regulations for the efficacious achievement of the objects and purposes of the Act. It is not for the Court to examine the merits or demerits of such a policy because its scrutiny has to be limited to the question as to whether the impugned regulations fall within the scope of the regulation-making power conferred on the delegated by the Statute.

21. The legal position is now well-established that even a bye-law cannot be

struck down by the Court on the ground of unreasonableness merely because the Court thinks that it goes further than "is necessary" or that it does not incorporate certain provisions which, in the opinion of the court, would have been fair and wholesome. The Court cannot say that a bye-law is unreasonable merely because the judges do not approve of it. Unless it can be said that a bye law is manifestly unjust, capricious, inequitable, or partial in its operation, it cannot be invalidated by the Court on the ground of unreasonableness. The responsible representative body entrusted with the power to make by laws must ordinarily be presumed to know what is necessary, reasonable, just and fair. In this connection we may usefully extract the following off-quoted observations of Lord Russell of Killowen in *Kruse v. Johnson*, (1898) 2 QB 91 : (1976) 1 SCR 721 (733) : (AIR 1975 SC 1935 at p. 1942). "When the Court is called upon to consider the byelaws of public representative bodies clothed with the ample authority which I have described, accompanied by the checks and safeguards which I have mentioned, I think the consideration of such byelaws ought to be approached from a different standpoint. They ought to be supported if possible. They ought to be, as has been said, "benevolently interpreted" and credit ought to be given to those who have to administer them that they will be reasonable administered." "The learned Chief Justice said further that there may be "cases in which it would be the duty of the court to condemn by-laws made under such authority as these were made (by a county council) as invalid be cause unreasonable. But unreasonable in what sense If for instance, they were found to be partial and unequal in their operation as between different classes; if they were manifestly unjust; if they disclosed bad faith; if they involved such oppressive or gratuitous interference with the rights of those subject to them as could find no justification in the minds of reasonable men, the court might well say, "Parliament never intended to give authority to make such rules; they are unreasonable and ultra vires." But it is in this and this sense only, as I conceive, that the question of reasonableness can unreasonableness can properly be regarded. A bye-law is not unreasonable merely because particular judges may think that it goes further than is prudent or necessary or convenient or because it is not accompanied by an exception which some judges may think ought to be there"." We may also refer with advantage to the well-known decision of the Privy Council in *Slattery v. Naylor* (1888) 13 AC 446 where it has been laid down that when considering whether a bye-law is reasonable or not, the Court would need a strong case to be made against it and would decline to determine whether it would have been wiser or more prudent to make the bye-law less absolute or will it hold the bye-law to be unreasonable because considerations which the court would itself have regarded in framing such a bye-law have been overlooked or reflected by its framers. The principles laid down as aforesaid in *Kruse v. Johnson* and *Slattery v. Naylor* have been cited with approval and applied by this Court in *Trustees of the Port of Madras v. Aminchand Pyarelal & Ors.*, (1976) 1 SCR 721 : (AIR 1975 SC 1935).

23. In *Kuldip Nayar Vs. Union of India*, (2006) 7 SCC 1 the Constitution Bench of

the Supreme Court has observed as under: "463. ...The legislative amendment cannot be struck down on the ground that a different or better view is possible. It is well settled that a challenge to legislation cannot be decided on the basis of there being another view which may be more reasonable or acceptable."

24. In yet another Constitution Bench decision, *K.T. Plantation (P) Ltd. Vs. State of Karnataka*, (2011) 9 SCC 1 it has been observed as under: "205 Plea of unreasonableness, arbitrariness, proportionality, etc. always raises an element of subjectivity on which a court cannot strike down a statute or a statutory provision. 206 xxx 207. Later, it is pertinent to note that a five-Judge Bench of this Court in *Ashok Kumar Thakur v. Union of India & Others* (2008) 6 SCC 1 : (AIR 2008 SC (Supp) 1 : 2008 AIR SCW 2899) while examining the validity of the Central Educational Institutions (Reservation in Admission) Act, 2006 held as follows: 219. A legislation passed by Parliament can be challenged only on constitutionally recognised grounds. Ordinarily, grounds of attack of a legislation is whether the legislature has legislative competence or whether the legislation is ultra vires the provisions of the Constitution. If any of the provisions of the legislation violates fundamental rights or any other provisions of the Constitution, it could certainly be a valid ground to set aside the legislation by invoking the power of judicial review. A legislation could also be challenged as unreasonable if it violates the principles of equality adumbrated in our Constitution or it unreasonably restricts the fundamental rights under Article 19 of the Constitution. A legislation cannot be challenged simply on the ground of unreasonableness because that by itself does not constitute a ground. The validity of a constitutional amendment and the validity of plenary legislation have to be decided purely as questions of constitutional law."

25. In the matter of *M/s Sharma Transport, Represented by D.P. Sharma Vs. Govt. of A.P. and others*, AIR 2002 SC 322 the Supreme Court has held that in order to strike down a legislation as arbitrary it has to be established that there is a manifest arbitrariness and observed as under: "23. ...The tests of arbitrary action applicable to executive action do not necessarily apply to delegated legislation. In order to strike down a delegated legislation as arbitrary it has to be established that there is manifest arbitrariness. In order to be described as arbitrary, it must be shown that it was not reasonable and manifestly arbitrary. The expression "arbitrarily" means: in an unreasonable manner, as fixed or done capriciously or at pleasure, without adequate determining principle, not founded in the nature of things, non-rational, not done or acting according to reason or judgment, depending on the will alone."

26. Thus, on the strength of well established principles emanating from the judgments of the Supreme Court noted hereinabove, the subordinate legislation or rule cannot be set at naught on the ground of arbitrariness or unreasonableness unless it is established that the impugned rule is manifestly arbitrary.

27. The meaning and true import of arbitrariness is more easily visualized than

precisely stated or defined. The question, whether an impugned act is arbitrary or not, is ultimately to be answered on the facts and in the circumstances of a given case. An obvious test to apply is to see whether there is any discernible principle emerging from the impugned act and if so, does it satisfy the test of reasonableness. {See Shri Lekha Vidyarthi (Kumari) Vs. State of U.P., AIR 1991 SC 537}.

28. The Supreme Court in the matter of State of Maharashtra Vs. Chandrabhan Tale, (1983) 3 SCC 387 has held that if any provision in any rule framed under Article 309 of the Constitution is illusory or unreasonable, it is certainly open to the civil servant concerned to seek the aid of the Court for declaring that provision to be void. Their Lordships further following that principle held the second proviso to Rule 151(1)(ii) of Bombay Civil Services Rules, 1959 to be unconstitutional which has the effect of reducing the normal subsistence allowance to the nominal sum of rupees per month on conviction of a civil servant on the ground that the second proviso to this rule is unreasonable and void. It was further held that a civil servant under suspension is entitled for normal subsistence allowance even after his conviction by the trial Court pending consideration of his appeal filed against his conviction.

29. In the matter of R. K. Garg Vs. Union of India and others, (1981) 4 SCC 675 the Constitution Bench of the Supreme Court has held that in adjudging the constitutionality, the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation. Gupta, J. in his minority opinion has held that terms like "reasonable", "just" or "fair" derive their significance from the existing social conditions. W. Friedmann in his Legal Theory (5th Edn., p. 80) points out that expression(s) like "a reasonable and fair price" or a "fair and equitable" restitution means nothing, except in conjunction with the social conditions of the time". Brandeis, J. in his opinion in Quaker City Cab Co. v. Commonwealth of Pennsylvania, 72 L Ed 927, explains when a classification shall be reasonable: "We call that action reasonable which an informed, intelligent, just-minded, civilized man could rationally favor."

30. Now the question would be whether Rule 5 and Rule 6(1) of the Rules, 2011 can be said to be manifestly arbitrary to hold the same as unconstitutional in light of the principles of law laid down by Their Lordships of the Supreme Court in the afore-stated judgments.

31. True it is that the rule making authority in his wisdom taking into account the present fact situation felt it necessary to enhance the fee for submission of the application for information by information seekers and accordingly enhanced the same from Rs. 10/- to Rs. 500/- and thereafter, reduced it to Rs. 300/- per application. The rule making authority considering the fact situation existing at the relevant time and particularly taking into account the number of frivolous and irrelevant applications being filed seeking irrelevant information and further

finding that the provisions of the Act of 2005 are being misused, thereby affecting the working of the legislature, decided to enhance the fee for submission of application for information and for copying charges and accordingly, enhanced the same in exercise of power conferred under Section 28 of the Act of 2005. Therefore, it cannot be held that exercise of such rule making power by the rule making authority i.e. Hon''ble Speaker of Chhattisgarh Vidhan Sabha by amending the rule enhancing the prescribed fee, is manifestly arbitrary or unreasonable warranting interference by this Court. As such, the petitioner has failed to make out a case that the impugned rule is manifestly arbitrary and therefore, is liable to be declared as unconstitutional.

32. This would bring us to the next and final submission of the petitioner that the application fee to get the information has been enhanced to 300/- per application and 15/- per page by the amended rule and it would cause great hardship to the information seekers and therefore, the impugned rule be declared unconstitutional on the ground that it would cause great hardship to the information seekers.

33. "Dura lex sed lex" is a legal maxim which means "the law is hard but it the law". Even if the statutory provision causes hardships to some people, the Court has to implement the same.

34. It is well settled law that hardship or inconvenience of a group of persons cannot be a ground for deciding the law as bad. (See Commissioner of Agricultural Income Vs. Keshav Chand, AIR 1950 SC 265 and D.D. Joshi Vs .Union of India, (1983) 2 SCC 235.)

35. In the matter of Bengal Immunity Co. Ltd. Vs. State of Bihar, AIR 1955 SC 661 seven-Judge Bench of the Supreme Court while dealing with the challenge to the unconstitutionality of the Statute on the ground of hardships held as under:
43. If there is any real hardship of the kind referred to, there is Parliament which is expressly invested with the power of lifting the ban under clause (2) either wholly or to the extent it thinks fit to do. Why should the Court be called upon to discard the cardinal rule of interpretation for mitigating a hardship, which after all may be entirely fanciful, when the Constitution itself has expressly provided for another authority more competent to evaluate the correct position to do the needful? Therefore, merely on the ground of hardship, the Statute cannot be declared invalid or unconstitutional.

36. In Mysore State Electricity Board Vs. Bangalore Wollen, Cotton and Silk Mills Ltd., AIR 1963 SC 1128 a Constitution Bench of the Supreme Court has held that "inconvenience is not" a decisive factor in such matters.

37. In Martin Burn Ltd. Vs. The Corporation of Calcutta, AIR 1966 SC 529 the Supreme Court while dealing with the similar issue held as under: "A result flowing from a statutory provision is never an evil, the Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation. A statute must, of course, be given effect to whether a Court likes the

result or not."

38. Similar proposition and similar view has been expressed by the Supreme Court in the matter of Commissioner of Income Tax, West Bengal Vs. Vegetables Product Ltd., AIR 1973 SC 927 and Prafulla Kumar Das Vs. State of Orissa, AIR 2003 SC 4506 .

39. In Popat Bahira Govardhan and others Vs. Special Land Acquisition Officer, (2013) 10 SCC 765 the Supreme Court while applying the maxim "dura lex sed lex" has held that inconvenience is not a decisive factor to be considered while interpreting a statute and held as under: 16. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim *dura lex sed lex* which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute. "A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation."

40. Taking note of the ground of challenge i.e. hardship and also having noticed the legal position as to whether the hardship of information seeker is a ground to challenge the constitutional validity of a subordinate legislation, coming back to the facts of the present case, it would appear that contention of the petitioner is that enhancement of the submission fee for information application to Rs. 300/- per application and Rs. 15/- per page as copying charges is causing great hardship to the information seekers and therefore, the said rule which has been brought in the Rules of 2011 by amending Rule 5 and Rule 6(1) be declared as unconstitutional. Hardship, if any, caused to the information seekers on the ground of fee being on the higher side, in getting requisite information from Chhattisgarh Vidhan Sabha, as held by Their Lordships in the afore-stated judgments, cannot furnish a ground to hold any rule unconstitutional. It is fairly well settled that mere hardship of group of persons would not be sufficient to hold any particular rule as unconstitutional. Therefore, the challenge to the rule on the ground of hardship of information seekers is not sustainable and hereby rejected.

41. There is an additional ground to reject the challenge to the constitutional validity of the rule. The petitioner by way of this public interest litigation has sought to invalidate Rule 5 and Rule 6(1) of the Rules, 2011 on the ground of it being contrary to law. The Supreme Court in the matter of Guruvayoor Devaswom Managing Committee and another Vs. CK Rajan and others, (2003) 7 SCC 546 cautioned the High Courts in entertaining challenge to the constitutional validity by way of Public Interest Litigation and observed as under: "(XI). Ordinarily, the High Court should not entertain a writ petition by way of public

interest litigation questioning the constitutionality or validity of a Statute or statutory rule."

42. The Supreme Court in the matter of Dattaraj Nathuji Thaware Vs. State of Maharashtra and others, (2005) 1 SCC 590 has deprecated the practice of invoking public interest jurisdiction of the Constitutional Court by member of legal profession. It was pertinently observed as under: - "20. It is a disturbing feature which needs immediate remedial measure by the Bar Councils and the Bar Associations to see that the process of law is not abused and polluted by its members. It is high time that the Bar Councils and the Bar Associations ensure that no member of the Bar becomes party as petitioner or in aiding and/or abetting files frivolous petitions carrying the attractive brand name of "public interest litigation". That will be keeping in line with the high traditions of the Bar. No one should be permitted to bring disgrace to the noble profession. We would have imposed exemplary cost in this regard but taking note of the fact that the High Court had already imposed costs of Rs.25,000/- we do not propose to impose any further cost."

43. It is well settled principle of law that one who invokes the power of the Court to declare an Act of legislature to be unconstitutional must be able to show not only that the statute is invalid but also he has to demonstrate that he has sustained or there is immediate danger of sustaining some direct injury as a result of the enforcement of the said rules as the Courts are extremely reluctant to invalidate the legislation when the petitioner's right is not proximate.

44. The Constitution Bench of the Supreme Court in the matter of Charanjit Lal Choudhary Vs. Union of India (supra) held that no one except whose rights are directly affected by the law, can raise the question of constitutionality of that law.

45. Similarly, in the matter of DK Nabhirajiah Vs. State of Mysore and others, AIR 1952 SC 339 relying upon the decision in Keshavan Madhawan Menon v. The State of Bombay, 1951 S. C. R. 228 has held that a citizen must be possessed of a fundamental right before he can ask the Court to declare a law which is inconsistent with it void; but if a citizen is not possessed of the right, he cannot claim this relief.

46. In another Constitution Bench decision in the matter of Bombay Dyeing and Manufacturing Company Ltd. Vs. State of Bombay, AIR 1958 SC 328 the Supreme Court held that the constitutional validity of an Act can be raised only by the person who is aggrieved by it.

47. The Division Bench of the Punjab and Haryana High Court in the matter of Isher Singh Grover Vs. Union of India and another, AIR 1956 Punjab 19 basing its decision on the decision of the US Supreme Court held that validity of a statute can be impugned only by a person whose rights have been or about to be prejudicially affected by the legislature or the enforcement of the statute. {See Fairchild Vs. Hughes, (1921) 258 US 126 (E); Red River Valley National Bank Vs. Graig, (1901) 181 US 548 (F); Darnell Vs. Indiana, (1912) 226 US 390 (G);

Standard Stock Food Company Vs .Wright, (1911) 225 US 540 (H), and Oliver Iron Min. Co. V. Lord, (1922) 268 US 172 at p.180(I)}.

48. Going by the principle of law laid down by Their Lordships of the Supreme Court in the above-mentioned judgments, it is quite vivid that the instant public interest litigation has been filed by the petitioner herein, who is an Advocate - member of the legal profession - questioning the constitutional validity of Rule 5 and Rule 6(1) of the Rules of 2011, as such the petitioner being an Advocate, PIL as framed and filed is not maintainable as held in Dattaraj Nathuji Thaware (supra), apart from the fact that the constitutional validity of rule cannot be questioned in public interest litigation as held in Guruvayoor Devaswom Managing Committee (supra). The petitioner has even not established as to how he is aggrieved by the impugned rule or has suffered any direct injury and as such, for the reasons mentioned hereinabove, failed to make out a ground to declare Rule 5 and Rule 6(1) of the Rules of 2011 as unconstitutional.

49. In view of the findings recorded hereinabove, we are of the considered opinion that the petitioner has failed to establish a case for declaring Rule 5 and Rule 6(1) of the Rules, 2011 as unconstitutional and void. As a fallout and consequence of the aforesaid discussions, the writ petition, as framed and filed, deserves to be dismissed and is, accordingly, dismissed. While dismissing the instant petition, we deprecate the practice of filing public interest litigation by member of legal profession and impose a cost of Rs.10,000/- (Rupees Ten Thousand Only).