
(2014) 10 MP CK 0115
In the Madhya Pradesh High Court
Case No : Writ Petition No. 15594/2014

Ravindra Nath Tripathi

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 28-10-2014

Acts Referred:

Right to Information Act, 2005 — Section 22, 27, 4(1)(a), 4(4), 6

Citation : (2015) 1 MPJR 212

Hon'ble Judges : Rajendra Menon, J;C.V. Sirpurkar, J.

Bench : Division Bench

Advocate : Rahul Jain, Dy. Advocate General, for the Respondent

Final Decision : Dismissed

Judgement

1. Challenge in this writ petition is made to Rule 5(7) of the M.P. Right to Information (Fees and Appeal), Rules 2005 (hereinafter referred to as "Rules of 2005") on the ground that it is inconsistent with the provisions of Section 22, Section 4(1)(a) and Section 4(4) of the Right to Information Act. It is the case of the petitioner that for getting certain information with regard to grant of permits and orders passed by the Transport Authorities, in the matter of granting permits in more than 36 routes as are indicated in Annexure P/2 dated 24.7.2012, petitioner filed an application under the Right to Information Act before the Transport Commissioner, M.P., Gwalior and vide communication Annexure P/2 dated 24.7.2012 the Transport Commissioner has informed the petitioner that he has to deposit certain fees as is indicated in the communication Annexure P/2. The fees is being claimed by the Transport Authorities under Rule 144 read with Rule 145 of the M.P. Motor Vehicles Rules, 1994.

2. It is the case of the petitioner that even though he has sought the information under the Right to Information Act, the aforesaid communication is made and the fees under the Motor Vehicles Rules are being claimed in view of the amendment brought into force by the State of Madhya Pradesh to the Rules of 2005 w.e.f. 10th March, 2008, whereby under Rule 5 sub rule (7) it is contemplated that if

any information is sought for under the Right to Information Act and if any other Act or Rule provides for a separate fee to be paid for such information or document, then the applicant seeking the information has to pay such fees as may be provided under the corresponding Act or Rules under the information is available or action has been taken.

3. For the sake of brevity sub rule (7) of Rule 5 which is under challenge in this writ petition reads as under:-

"Rule 5(7):

(7) if under Right to Information Act, 2005 the applicant asks for such Information, where some other Act/Rules provides for separate fee for such Information, then the applicant has to pay such fees as provided under the corresponding Act/Rules."

(Emphasis Supplied)

4. It is the case of the petitioner that Section 22 of the Right to Information Act gives over-riding effect to any law or act which is inconsistent to the provisions of Right to Information Act. It is said that by virtue of provisions of Section 22 the Rule impugned in this writ petition being inconsistent to Section 22 be declared as "ultra Vires". Further placing reliance on the provisions of Rule 4(1)(a) and Rule 4(4), it is said that no fees over and above the fees prescribed under the Right to Information Act or the rules framed thereunder can be demanded on the basis of some other enactment or statutory provisions. Accordingly, the petitioner who appears in person, took us through the provisions of Section 22, Section 4(1)(a) and Section 4(4) of the Right to Information Act, to say that the provisions of Rule 5(7) of the Rules of 2005 which permits the State Government or its Officers to demand fees over and above the one provided under the Right to Information Act, is inconsistent to the aims and objects of the Right to Information Act, in particular Section 22 and therefore, the same be declared as "ultra vires".

5. Shri Rahul Jain, learned Dy. Advocate General and Shri R.S. Siddiqui, learned Assistant Solicitor General refuted the aforesaid and invited our attention to Section 6 and Section 7 of the Right to Information Act, 2005, so also Section 27 thereof and argued that for obtaining any information under the Right to Information Act, an application has to be submitted in accordance to the provisions contemplated under Section 6, sub-section 1 of Section 6 contemplates that an application has to accompany such fee as may be prescribed. Similar provisions are contained in the procedure contemplated under Section 7 for disposal of an application filed under the Act. It is said that statutory powers are available to the Information Commissioner to demand fees as may be prescribed and further by virtue of the powers conferred on the competent State Government under Section 27, appropriate Rules prescribing the fees payable for any information sought for can be formulated, learned counsel argued that the Rules in question have been framed under these

provision and as the Right to Information Act empowers the appropriate Government to prescribe appropriate fees for grant of information and when the Rules in question namely, sub rule (7) of Rule 5 has been formulated in accordance to the powers conferred under Section 27 of the Right to Information Act, the same is tenable. They argue that Section 22 of the Right to Information Act does not prohibit or restrict the power of the State Government to prescribe any fees in accordance to the powers conferred under Section 27 and there being nothing in the act of the State Government in prescribing a fee as contemplated under Rule 5(7), which is inconsistent to Section 22 or Rule 4(1)(a) or Rule 4(4), this petition is unsustainable. It is argued that Section 22 of the Right to Information act is in the nature of non obstante clause and it has to be interpreted in a manner so as to ensure that the intention of the legislature is carried forward and is not restricted. It is argued that Section 22 of the Right to Information Act cannot be read in isolation, it has to be read along with the provisions of Section 6, Section 7 and Section 27 of the Right to Information Act which gives wide power to the State Government to prescribe such fee as may be required for the purpose of giving information or material such as documents etc. under the Right to Information Act.

6. Accordingly, learned counsel for the respondents argue that there is no substance in the submissions made by the petitioner and the same be dismissed.

7. We have heard learned counsel for the parties at length and perused the record. Section 22 of the Right to Information Act is in the nature of non obstante clause and it provides that the provisions of the Right to Information Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923, or any other law for the time being in force.

8. Section 27 of the Right to Information Act provides for prescribing the Rules to carry forward the intention of the Right to Information Act, 2005 and the power to make Rule under this Section is conferred on the appropriate Government. Sub rule 2(b) and (c) of Section 27 contemplates that the appropriate Government is entitled to make rules with regard to fees payable for information sought under sub-section (1) of Section 6 and for payment of fee with regard to enforcement of provisions of Section 7(1) and (5) of the Information Act. That apart, Section 6 and 7 also contemplates that for grant of information, the application filed shall accompany such fees as may be prescribed. If the provisions contemplated under Section 27, Section 6 and Section 7 giving powers to the appropriate Government for prescribing fees is analyzed, it would be seen that there is no restriction in prescribing the fees and discretion is given to the State Government in the matter of prescribing the fees. It is by virtue of these powers that the impugned Rule i.e. Rule 5(7) has been formulated by the State Government. The contention of the petitioner is that Rule 22 has overriding effect to the Right to Information Act and therefore, anything inconsistent to this section is unsustainable and ultra vires of the Right to Information Act.

9. We are unable to accept the aforesaid contention. Section 22 is in the nature

of a non obstante clause. In the case of Central Bank of India Vs. State of Kerala and Others, while considering the principle governing the interpretation of non obstante clause, the Supreme Court held that "a non obstante clause is generally incorporated in a statute to give overriding effect to a particular Section or the statute as a whole. It is laid down by the Supreme Court that while interpreting such a clause, the Court is required to find out the extent to which the legislature intended to restrict the effect of a provision and the context in which the non obstante clause is used.

10. Similarly, in the case of State of West Bengal Vs. Union of India, , it has been held that while interpreting a non obstante clause the Court must ascertain the intention of the legislature by directing the Court's attention not merely to the clauses to be construed but to the entire statute. The Court is required to compare the clause with the other parts of the law and the setting, thereafter, the interpretation has to be given. Similar principles are laid down by the Supreme Court in the case of H.H. Maharajadhiraja Madhav Rao Jivaji Rao Scindia Bahadur of Gwalior and Others Vs. Union of India and Another, , it has been held in the aforesaid case that the non obstante clause is no doubt a very potent clause which is incorporated to exclude every consideration arising from other provisions of the same statute or other statutes but for that reason alone the scope of the non obstante clause cannot be determined. It is held that when a non obstante clause does not refer to any particular provisions which it intends to override but refers to the provisions of the statute generally, it is not permissible to hold that it excludes the whole Act and stands all alone by itself. The Supreme Court lays down in the aforesaid case that a search has to be made with a view to determining which provisions are to be left out. Similar principles have been laid down by the Supreme Court in various cases and the law now contemplates that when a non obstante clause is incorporated into a statutory provision providing for an overriding effect, the Court has to examine the words of the enactment and if words are clear and are capable of a clear interpretation then the plain and grammatical construction of the words has to be given.

11. In the case of A.G. Varadarajulu and Another Vs. The State of Tamilnadu and Others, , it has been held by the Supreme Court that while dealing with a non obstante clause by which legislature wants to give overriding effect to a provision, the Court must try to find out the extent to which the legislature had intended to give one provision overriding effect over another provision. It is cardinal principle of law that overriding effect can be given only after ascertaining the intention of the legislature. If the aforesaid principles are applied to the present case, it would be seen that for the purpose of prescribing fees for granting information, Section 6, Section 7 and Section 27 of the Right to Information Act gives unlimited power to the appropriate Government to prescribe such fees as may be required. There is no restriction in prescribing a fees either by applying the fees applicable in any other enactment under which the information is sought or by prescribing separate fees under the RTI itself by providing a Rule. If this is the intention of the legislature which is clear on a

complete reading of all the aforesaid Sections, we see no reason to interfere in the matter. As far as prescribing a fees for giving the information under the Right to Information Act is concerned, the restrictions and the overriding effect contemplated under Section 22 will not be applicable. Section 22 has to be given a wider interpretation in this regard and if the intention of the legislature in the matter of prescribing fees for getting the information is evaluated in the backdrop of the provisions of Section 6, Section 7 and Section 27, it is clear that wide power is given to the appropriate Government to prescribe fees. If the State Government thought it appropriate to preserve the provisions contemplated in any other statute prescribing a separate fees payable for certain purpose, we see no inconsistency in the act of the State Government in doing so. Under the M.P. Motor Vehicles Rules of 1994 Section 144 contemplates a provision for inspection of record and supplying copies of various documents maintained by the State Transport Authorities and Section 145 of the said Rules prescribe the fees to be paid for grant of the documents or information. Mere than 35 items are included for which fees are prescribed to be paid under the M.P. Motor Vehicles Rules. In this case the petitioner wanted information with regard to the orders passed and the proceeding held for grant of permit in 36 routes as are indicated in Annexure P/2 and for giving the information or orders, the State Government in the Department of Transport Authorities sought for payment of fees as contemplated under Rule 145 of the M.P. Motor Vehicles Act, we see no error in the same warranting consideration. The provisions of sub rule 7 of Rule 5 of the Rules of 2005 is in accordance to the powers conferred on the State Government for prescribing the fees for grant of information and as the act of the State Government is found to be in accordance to the requirement of law, we see no inconsistency or breach of any constitutional provision in the matter. The provisions of Rule 22 has to be interpreted in a manner to carry forward the legislative intention and if the provision for prescribing the fees is analyzed in the backdrop of the aforesaid legislative intention along with principles laid down by the Supreme Court in the various cases, discussed by us herein above, we see no reason to hold that Rules in question impugned to be inconsistent to the provisions of Section 22 or any other provisions of the Right to Information Act. The claim of the petitioner and the objections raised are clearly unsustainable and finding no ground, we dismiss this writ petition without any order so as to costs.