

OPEN DECISIONS

THE RIGHT TO INFORMATION ACT 2005

LANDMARK DECISIONS OF THE CENTRAL INFORMATION COMMISSION AND STATE INFORMATION COMMISSIONS AND JUDGMENTS OF THE COURTS

Decisions that provide guidance on future similar cases and reduce the need of appeals

Sections 21-31

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21 **Protection of action taken in good faith:–**
No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act or any rule made thereunder.

22 **Act to have overriding effect:–**
The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923, and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

The Full Bench in *G.R. Rawal v Director General of Income Tax (Investigation)*
¹provided guidelines on disclosure of income tax payments:

Sub-Section (1) (b) of Section 138 of the Income tax Act deals with a case where a person makes an application seeking information concerning an assessee. The said sub-section empowers the Income Tax Chief Commissioner or the Commissioner to decide as to whether it is in public interest to provide information or not. It also provides that the decision of the Commissioner in this behalf would be final and shall not be called in question in any court of law. The provisions of Section 138(1) (b) are reproduced below:

Section 138:

(1)(b) Where a person makes an application to the Chief Commissioner or Commissioner in the prescribed form for any information relating to any assessee received or obtained by any income-tax authority in the performance of his functions under this Act, the Chief Commissioner or Commissioner may, if he is satisfied that it is in the public interest so to do, furnish or cause to be furnished the information asked for and his decision in this behalf shall be final and shall not be called in question in any court of law.

14. The respondents have also submitted that the provisions of Section 138 of the Income Tax Act have also been given an overriding effect and the Sub-Section (2) of Section 138 reads as under:

Notwithstanding anything contained in sub-section (1) or any other law for the time being in force, the Central Government may, having regard to the practices and usages customary or any other relevant factors, by order notified in the Official Gazette, direct that no information or document shall be furnished or produced by a public servant in respect of such matters relating to such class of assessee or except

¹ CIC/AT/A/2007/00490, 5 March 2008]

to such authorities as may be specified in the order.

15. Thus, both the Right to Information Act, 2005 and Section 138 of the Income Tax Act, 1961 deal with disclosure of information. While Right to Information Act is a general law concerning the disclosure of information by the public authorities, Section 138 of the Income Tax Act is a special legislation dealing with disclosure of information concerning the assesses. This Commission in “Rakesh Kumar Gupta Vs. ITAT, decided on 18th September, 2007 decided by a Full Bench, has dealt with the issue of applicability of special law to the exclusion of the general law.

The Commission has relied upon the Hon’ble Apex Court’s decision in “Chandra Prakash Tiwari Vs. Shakuntala Shukla – AIR 2002 SC 2322”. The following two paragraphs from the said decision of the Commission are pertinent and quoted below:

“A special enactment or Rule, therefore, cannot be held to be overridden by a later general enactment or simply because the latter opens up with a nonobstante clause unless there is clear inconsistency between the two legislations – one which is later in order of time and the other which is a special enactment. This issue came again for consideration before the Hon’ble Apex Court in Chandra Prakash Tiwari Vs. Shakuntala Shukla – AIR 2002 SC 2322 and the Hon’ble Supreme Court quoted with approval the Broom's Legal Maxim in reference to two Latin Maxims in the following words:

"It is then, an elementary Rule that an earlier Act must give place to a later, if the two cannot be reconciled - *lex posterior derogate priori* - *non est novum ut priores leges ad posteriors trahantur* (Emphasis supplied) - and one Act may repeal another by express words or by implication; for it is enough if there be words which by necessary implication repeal it. But repeal by implication is never to be favoured, and must not be imputed to the legislature without necessity, or strong reason, to be shown by the party imputing it. It is only effected where the provisions of the later enactment are so inconsistent with, or repugnant to, those of the earlier that the two cannot stand together; unless the two Acts are so plainly repugnant to each other that effect cannot be given to both at the same time a repeal cannot be implied; and special Acts are not repealed by general Acts unless there be some express reference to the previous legislation, or a necessary inconsistency in the two Acts standing together, which prevents the maxim *generalalia specialibus non derogant* (Emphasis supplied) from being applied. For where there are general words in a later Act capable of reasonable application without being extended to subjects specially dealt with by earlier legislation, then, in the absence of an indication of a particular intention to that effect, the presumption is that the general words were not intended to repeal the earlier and special legislation, or to take away a particular privilege of a particular class of persons." In the aforesaid case, the Hon’ble Apex Court also

cited with approval an earlier decision in *Maharaja Pratap Singh Bahadur v. Thakur Manmohan Dey* - MANU/SC/0202/1966, in which it was indicated that an earlier special law cannot be held to have been abrogated by mere implication. That being so, the argument regarding implied repeal has to be rejected for both the reasons set out above.”

The assessment details if disclosed may result in an undue invasion to the privacy of an individual. Disclosure of such details, therefore, cannot be permitted unless there is an overriding public interest justifying disclosure. But in the instant case, what has been asked for by the appellant in his RTI application is as follows:

“Tax payable as per the decision of the Settlement Commission in the case of Winprolene Plastics and tax paid by said company.”

Mere disclosure of the amount determined to be payable by a quasi judicial authority and the amount of tax paid by an assessee as a result of such decision even if it may be categorized as “personal information”, cannot be said to be unrelated to a public activity or interest. Public Authority may, therefore, withhold other assessment details but should disclose the amount of tax determined by the Settlement Commission and the amount actually paid by the assessee company.

[The appellant was informer for the search and wanted to know what amount of tax has been recovered from the tax evader so that he could calculate the amount of reward which is at the rate of 10% under the CBDT guidelines.]

The question of inconsistency whether drafts of judgments can be disclosed was considered by the Full Bench of CIC in *Rakesh Kumar Gupta v Income Tax Appellate Tribunal (ITAT)* opined that in the absence of inconsistency, the RTI Act does not override other laws.“34. The power of the High Court, therefore, extends to making of general Rules for regulating the practice and proceedings of all courts and tribunals. However, Rules so made by the High Court shall not be inconsistent with the provision of any law for the time being in force and shall require the previous approval of the Governor. Accordingly, Rules have been made by all High Courts concerning grant of copies of documents and the fees have also accordingly been prescribed under the Rules so made by the High Court. The Right to Information Act which has been enacted in the year 2005, therefore, is a legislation in pari materia and section 22 of the Act declares that it will have an overriding effect over any other provisions which is found to be inconsistent therewith. It will not be out of context to refer the said section which reads as under:

“Sec.22: The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923, and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.”

35. The question may, therefore, arise as to whether section 22 of the Act overrides any other provision concerning dissemination of information or giving certified copies or copies of documents and other records pertaining to a proceeding conducted by a court or a tribunal, deeming this to be inconsistent therewith. In this context, it is worthwhile to note that the Rules made by the High Court in exercise of the powers conferred by Article 227 of the Constitution and the provisions of Right to Information Act overlap each other in certain areas. One view could be that RTI being a later legislation should prevail over an earlier legislation. The other view could be that insofar as the grant of copies of documents or records in a proceeding of a court or tribunal is a matter in respect of which the Right to Information Act has to be treated as a general law and the Rules made by the High Court are to be treated as a special law.

36. It is also noteworthy to take into account that section 22 of the Right to Information Act explicitly mentions the overriding effect of the Right to Information

Act in respect of inconsistencies in the Official Secrets Act but, although it refers to any other law or any instrument having effect under any other law (which would include Rules) for the time being in force, it does not make a specific mention of any other legislation. The non-obstante clause of the Right to Information Act does not, therefore, mean an implied repeal of the High Court Rules and orders framed under Article 227 of the Constitution of India, but only an override of RTI in case of 'inconsistency'. In this context, the following observations of the Hon'ble Apex Court in *R.S. Raghunath Vs. State of Karnataka* – AIR 1992 SC 81 are pertinent:

“The general Rule to be followed in case of conflict between the two statutes is that the latter abrogates the earlier one. In other words, a prior special law would yield to a later general law, if either of the two following conditions is satisfied.

- (i) The two are inconsistent with each other.
- (ii) There is some express reference in the later to the earlier enactment.

If either of these two conditions is fulfilled, the later law, even though general, would prevail.”

37. A special enactment or Rule, therefore, cannot be held to be overridden by a later general enactment or simply because the latter opens up with a nonobstante

clause unless there is clear inconsistency between the two legislations – one which is later in order of time and the other which is a special enactment.

This issue came again for consideration before the Hon'ble Apex Court in *Chandra Prakash Tiwari Vs. Shakuntala Shukla* – AIR 2002 SC 2322 and the Hon'ble Supreme Court quoted with approval the Broom's Legal Maxim in

reference to two Latin Maxims in the following words:

"It is then, an elementary Rule that an earlier Act must give place to a later, if the two cannot be reconciled - *lex posterior derogat priori - non est novum ut priores leges ad posteriores trahantur* (Emphasis supplied) - and one Act may repeal another by express words or by implication; for it is enough if there be words which by necessary implication repeal it. But a repeal by implication is never to be favoured, and must not be imputed to the legislature without necessity, or strong reason, to be shown by the party imputing it. It is only effected where the provisions of the later enactment are so inconsistent with, or repugnant to, those of the earlier that the two cannot stand together²; unless the two Acts are so plainly repugnant to each other that effect cannot be given to both at the same time a repeal cannot be implied; and special Acts are not repealed by general Acts unless there be some express reference to the previous legislation, or a necessary inconsistency in the two Acts standing together, which prevents the maxim *generalia specialibus non derogant* (Emphasis supplied) from being applied. For where there are general words in a later Act capable of reasonable application without being extended to subjects specially dealt with by earlier legislation, then, in the absence of an indication of a particular intention to that effect, the presumption is that the general words were not intended to repeal the earlier and special legislation, or to take away a particular privilege of a particular class of persons."

38. In the aforesaid case, the Hon'ble Apex Court also cited with approval an earlier decision in *Maharaja Pratap Singh Bahadur v. Thakur Manmohan Dey* - MANU/SC/0202/1966, in which it was indicated that an earlier special law cannot be held to have been abrogated by mere implication. That being so, the argument regarding implied repeal has to be rejected for both the reasons set out above.

39. The differences between the Right to Information Act and the procedure as prescribed by the High Court or by a tribunal for conduct of its own practice and procedure have to be looked into from another angle also as to whether there is a direct inconsistency between the two. In this context, it may be mentioned that neither provision prohibits or forbids dissemination of information or grant of copies of records. The difference is only insofar as the practice or payments of fees etc. is concerned. There is, therefore, no inherent inconsistency between the two provisions.

40. Over and above, the High Court Rules and the Rules of the tribunal are particular or special law dealing with a particular phase of the subject covered by

the Right to Information Act and, therefore, consistency is possible. It is a sound principle of all jurisprudence that a prior particular law is not easily to be held to be abrogated by a posterior law expressed in general terms. The said principle was accepted by the Hon'ble Supreme Court and expressed by Justice Mudholkar in the following words:

“A general statute applies to all persons and localities within its jurisdiction and scope as distinguished from a special one which in its operation is confined to a particular locality and, therefore, where it is doubtful whether the special statute was intended to be repealed by the general statute the court should try to give effect to both the enactments as far as possible.”

41. In view of this, it may be very well inferred that the RTI Act does not repeal or substitute any pre-existing law including the provisions of the Income Tax Act concerning dissemination of information.”²

23 Bar of jurisdiction of Courts:–

No court shall entertain any suit, application or other proceeding in respect of any order made under this Act and no such order shall be called in question otherwise than by way of an appeal under this Act.

24 Act not to apply to certain organisations:–

- (1) Nothing contained in this Act shall apply to the intelligence and security organisations specified in the Second Schedule, being organisations established by the Central Government or any information furnished by such organisations to that Government:**

Provided that the information pertaining to the allegations of corruption and human rights violations shall not be excluded under this sub-section:

Provided further that in the case of information sought for is in respect of allegations of violation of human rights, the information shall only be provided after the approval of the Central Information Commission, and notwithstanding anything contained in section 7, such information shall be provided within forty-five days from the date of the receipt of request.

Schedule II organizations

Sanjay kumar requested from intelligence Bureau- information regarding one of

² [CIC/AT/A/2006/00586, 18 Sep. 2007]

their doctors. He lost his new born son allegedly due to medical negligence of that doctor. He contested :

- requested information was not sensitive; It has public interest implication because its disclosure was meant to open the illegal medical practice of an unqualified doctor;
- Exemption provided to the organizations listed in the Second Schedule of the RTI Act was not absolute and, they had an obligation to disclose information pertaining to allegations of corruption and human rights violation.

CIC held :

- Exemption provided to the organizations listed in the second schedule is absolute in nature.
- There is no scope for disclosure of the information maintained by a schedule II organization- whether or not it is classified as sensitive or non-sensitive.
- We would urge the high offices of the I.B. to consider if they could volunteer to supply the information requested, if it did not any way compromise the functioning of I.B.³

- (2) **The Central Government may, by notification in the Official Gazette, amend the Schedule by including therein any other intelligence or security organisation established by that Government or omitting there from any organisation already specified therein and on the publication of such notification, such organisation shall be deemed to be included in or, as the case may be, omitted from the Schedule.**
- (3) **Every notification issued under sub-section (2) shall be laid before each House of Parliament.**
- (4) **Nothing contained in this Act shall apply to such intelligence and security organisation being organisations established by the State Government, as that**

³ CIC/AT/A/2006/00055 - 27 April,2006

Government may, from time to time, by notification in the Official Gazette, specify:

Provided that the information pertaining to the allegations of corruption and human rights violations shall not be excluded under this sub-section:

Provided further that in the case of information sought for is in respect of allegations of violation of human rights, the information shall only be provided after the approval of the State Information Commission and, notwithstanding anything contained in section 7, such information shall be provided within forty-five days from the date of the receipt of request.

- (5) Every notification issued under sub-section (4) shall be laid before the State Legislature.

25 **Monitoring and reporting:—**

- (1) The Central Information Commission or State Information Commission, as the case may be, shall, as soon as practicable after the end of each year, prepare a report on the implementation of the provisions of this Act during that year and forward a copy thereof to the appropriate Government.
- (2) Each Ministry or Department shall, in relation to the public authorities within their jurisdiction, collect and provide such information to the Central Information Commission or State Information Commission, as the case may be, as is required to prepare the report under this section and comply with the requirements concerning the furnishing of that information and keeping of records for the purposes of this section.
- (3) Each report shall state in respect of the year to which the report relates,—
- (a) the number of requests made to each public authority;
 - (b) the number of decisions where applicants were not entitled to access to the documents pursuant to the requests, the provisions of this Act under which these decisions were made and the number of times such provisions were invoked;
 - (c) the number of appeals referred to the Central Information Commission or State Information Commission, as the case may be, for review, the nature of the appeals and the outcome of the appeals;
 - (d) particulars of any disciplinary action taken against any officer in respect of the administration of this Act;
 - (e) the amount of charges collected by each public authority under this Act;
 - (f) any facts which indicate an effort by the public authorities to administer and implement the spirit and intention of this Act;
 - (g) recommendations for reform, including recommendations in respect of the

particular public authorities, for the development, improvement, modernisation, reform or amendment to this Act or other legislation or common law or any other matter relevant for operationalising the right to access information.

- (4) The Central Government or the State Government, as the case may be, may, as soon as practicable after the end of each year, cause a copy of the report of the Central Information Commission or the State Information Commission, as the case may be, referred to in sub-section (1) to be laid before each House of Parliament or, as the case may be, before each House of the State Legislature, where there are two Houses, and where there is one House of the State Legislature before that House.
- (5) If it appears to the Central Information Commission or State Information Commission, as the case may be, that the practice of a public authority in relation to the exercise of its functions under this Act does not conform with the provisions or spirit of this Act, it may give to the authority a recommendation specifying the steps which ought in its opinion to be taken for promoting such conformity.

26 Appropriate Government to prepare programmes:—

- (1) The appropriate Government may, to the extent of availability of financial and other resources,—
- (a) develop and organise educational programmes to advance the understanding of the public, in particular of disadvantaged communities as to how to exercise the rights contemplated under this Act;
 - (b) encourage public authorities to participate in the development and organisation of programmes referred to in clause (a) and to undertake such programmes themselves;
 - (c) promote timely and effective dissemination of accurate information by public authorities about their activities; and
 - (d) train Central Public Information Officers or State Public Information Officers, as the case may be, of public authorities and produce relevant training materials for use by the public authorities themselves.
- (2) The appropriate Government shall, within eighteen months from the commencement of this Act, compile in its official language a guide containing such information, in an easily comprehensible form and manner, as may reasonably be required by a person who wishes to exercise any right specified in this Act.

- (3) **The appropriate Government shall, if necessary, update and publish the guidelines referred to in sub-section (2) at regular intervals which shall, in particular and without prejudice to the generality of sub-section (2), include—**
- (a) **the objects of this Act;**
 - (b) **the postal and street address, the phone and fax number and, if available, electronic mail address of the Central Public Information Officer or State Public Information Officer, as the case may be, of every public authority appointed under sub-section (1) of section 5;**
 - (c) **the manner and the form in which request for access to an information shall be made to a Central Public Information Officer or State Public Information Officer, as the case may be;**
 - (d) **the assistance available from and the duties of the Central Public Information Officer or State Public Information Officer, as the case may be, of a public authority under this Act;**
 - (e) **the assistance available from the Central Information Commission or State Information Commission, as the case may be;**
 - (f) **all remedies in law available regarding an act or failure to act in respect of a right or duty conferred or imposed by this Act including the manner of filing an appeal to the Commission;**
 - (g) **the provisions providing for the voluntary disclosure of categories of records in accordance with section 4;**
 - (h) **the notices regarding fees to be paid in relation to requests for access to an information; and**
 - (i) **any additional regulations or circulars made or issued in relation to obtaining access to an information in accordance with this Act.**
- (4) **The appropriate Government must, if necessary, update and publish the guidelines at regular intervals.**

27 Power to make rules by appropriate Government:—

- (1) **The appropriate Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.**
- (2) **In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—**
 - (a) **the cost of the medium or print cost price of the materials to be disseminated under sub-section (4) of section 4;**
 - (b) **the fee payable under sub-section (1) of section 6;**

- (c) the fee payable under sub-sections (1) and (5) of section 7;
- (d) the salaries and allowances payable to and the terms and conditions of service of the officers and other employees under sub-section (6) of section 13 and sub-section (6) of section 16;
- (e) the procedure to be adopted by the Central Information Commission or State Information Commission, as the case may be, in deciding the appeals under sub-section (10) of section 19; and
- (f) any other matter which is required to be, or may be, prescribed.

28 Power to make rules by competent authority:—

- (1) The competent authority may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.
- (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—
 - (i) the cost of the medium or print cost price of the materials to be disseminated under sub-section (4) of section 4;
 - (ii) the fee payable under sub-section (1) of section 6;
 - (iii) the fee payable under sub-section (1) of section 7; and
 - (iv) any other matter which is required to be, or may be, prescribed.

29 Laying of rules:—

- (1) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.
- (2) Every rule made under this Act by a State Government shall be laid, as soon as may be after it is notified, before the State Legislature.

30 Power to remove difficulties:—

- (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as appear to it to be

necessary or expedient for removal of the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date of the commencement of this Act.

- (2) **Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.**

31 **Repeal:—**

The Freedom of Information Act, 2002 is hereby repealed.

THE FIRST SCHEDULE

[See sections 13(3) and 16(3)]

Form of oath or affirmation to be made by the Chief Information Commissioner/the Information Commissioner/the State Chief Information Commissioner/the State Information Commissioner

"I,, having been appointed Chief Information Commissioner/Information Commissioner/State Chief Information Commissioner/State Information Commissioner swear in the name of God solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established, that I will uphold the sovereignty and integrity of India, that I will duly and faithfully and to the best of my ability, knowledge and judgment perform the duties of my office without fear or favour, affection or ill-will and that I will uphold the Constitution and the laws."

THE SECOND SCHEDULE
(See section 24)

Intelligence and security organisation established by the Central Government

1. Intelligence Bureau.
2. Research and Analysis Wing of the Cabinet Secretariat.
3. Directorate of Revenue Intelligence.
4. Central Economic Intelligence Bureau.
5. Directorate of Enforcement.
6. Narcotics Control Bureau.
7. Aviation Research Centre.
8. Special Frontier Force.
9. Border Security Force.
10. Central Reserve Police Force.
11. Indo-Tibetan Border Police.
12. Central Industrial Security Force.
13. National Security Guards.
14. Assam Rifles.
15. Sashastra Seema Bal.
16. Directorate General of Income-tax (Investigation).
17. National Technical Research Organisation.
18. Financial Intelligence Unit, India.



19. Special Protection Group.

20. Defence Research and Development Organisation.

21. Border Road Development Board.