

**STATE INFORMATION COMMISSION, HARYANA  
SCO NO. 70-71, SECTOR 8-C, CHANDIGARH  
COMPLAINT CASE NO. 800 OF 2021 AND  
EMERGING APPEAL CASE NO. 8028 OF 2021  
RIGHT TO INFORMATION ACT-UNDER SECTION 19**

**Relevant facts emerging from the appeal and complaint:**

Name of the appellant/ complainant	Dr. S. Garg, # 458, Sethni Street, Devi Bhawan Bazar, Jagadhri, Distt. Yamunanagar.
Name of the Respondents	1. SPIO of the office of Director General, Technical Education, Haryana, Panchkula. 2. FAA-cum-Additional Director (RTI) O/o Director General Technical Education Haryana Panchkula.
RTI-application filed on	30.07.2021
Respondent-SPIO replied on	30.07.2021
First Appeal filed on	31.08.2021
FAA decided the appeal on	Not decided
Complaint/2 <sup>nd</sup> appeal filed on	08.10.2021
Date of hearing	<b>17.12.2021</b>
Chief Information Commissioner	<b>Shri Yash Pal Singal</b>
Present:	1. Dr. S. Garg, complainant/appellant; 2. Shri Narender Pal, SPIO-cum-Dy. Director, and Smt. Usha Rani, Assistant O/o Technical Education Department.

This matter has come up before the Commission in pursuance of interim order passed after detailed discussions with the parties on 29.11.2021. The issue before the Commission remained undecided was whether decision taken by Hon'ble High Court of Punjab & Haryana at Chandigarh on 2<sup>nd</sup> November, 2012, in CWP No. 4787 of 2011 (O&M) titled Fruit & Merchant Union Vs Chief Information Commissioner and others on the basis of which State Government has issued notification dated 12.04.2021 called Haryana Right to Information (Amendment) Rules, 2021 are maintainable or not. The Commission while passing interim order dated 29.11.2021, requested the complainant/appellant to place decision of Hon'ble Supreme Court of India or Division Bench of

Hon'ble High Court of Punjab and Haryana at Chandigarh which is in variance with the single judge judgement of High Court of Punjab and Haryana at Chandigarh cited above, if available with him. To take final decision, the hearing of the case was adjourned to 17.12.2021.

3. Dr. S. Garg, the appellant, present in person, submitted written arguments, vide letter dated 17.12.2021, which has been taken on record. The appellant submitted that any demand of identity proof sought by the SPIO amounts to breach of fundamental rights of a citizen. As per Section 6 (2) of the Right to Information Act, 2005 (hereinafter referred as the Act) and Article 19 of the Constitution of India the applicant making request for information shall not be required to give any other personal details except those that may be necessary for contacting him. He further submitted that it is the duty of the Commission to protect the rights of the information seekers. Denial of information due to not submitting identity proof is a serious breach of the right of a citizen as guaranteed by the Act which causes unnecessary harassment to the information seeker. The appellant urged that this Commission while disposing of Appeal Case No. 1587 of 2020, decided on August 18, 2021 after allowing an appeal, directed the SPIO to furnish information without obtaining proof of identity from the applicant. Similar view has also been taken by other Bench of this Commission on 29.06.2021 while deciding complaint case no. 536 of 2021.

4. The appellant while arguing the case, has also cited decision of a Division Bench of Hon'ble High Court of Judicature at Bombay in Public

Interest Litigation No. 20 of 2012 decided on December 03, 2019 wherein it has been held that it is known to everybody that Right to Information is implicit and inbuilt in the right and freedom guaranteed to a citizen under Article 19 (1) (a) of Constitution of India. The right to free speech and expression includes within it the right to obtain information. The Commission on 29.11.2021 has intimated the appellant that the Government has arrived at the decision to obtain proof of identity from the information seekers in view of the decision taken by the Hon'ble High Court of Punjab & Haryana at Chandigarh on CWP No. 4787 of 2011 (O&M) titled as Fruit & Merchant Union Vs. Chief Information Commissioner and others. The appellant also submitted that the State Government vide notification dated 12.04.2021 has nowhere made it mandatory to provide identity proof with the RTI application as the Modal Form 'A' appended with the notified rules is a preferable performa as per rule 3 (1) of Haryana Right to Information Rules, 2009. This Model Form has been replaced by Haryana Right to Information (Amendment) Rules, 2021, which stipulates that "a person who desires to obtain any information admissible under the Act, shall make an application, preferably in Model Form 'A' to the State Public Information Officer and in his absence to State Assistant Public Information Officer alongwith fee as specific in sub-rule (1) of rule 5 of these rules". The appellant further argued that the appropriate Government is even not empowered to frame rules making it mandatory for information seekers to submit his identity proof with the RTI application as Section 6 (2) of the Act provides that

applicant is not required to give any reason for requesting information or any other personal details except those that may be necessary for contacting him. Further, none of the State Government is empowered to amend any of the provision existed in the Act except through the process of Parliament.

5. The appellant also emphasized that RTI rules cannot go against the provisions of the main Act as in the case titled as Common Cause Vs. High Court of Allahabad & Anr. under Writ Petition (Civil) No.194 of 2012 wherein it has been held by the Double Bench of Hon'ble Supreme Court of India in the decision, dated March 20, 2018 that RTI rules should mandate the R.T.I. Act. The Act under Section 6 (1), provides that "a person who desires to obtain any information under the Act, shall make a request in writing or through electronic means in English or Hindi or in the official language of the area in which the application is being made, accompanying such fee as may be prescribed". This provision does not prescribe any form to obtain information. The appellant agitates that Haryana Right to Information (Amendment), Rules does not substantiate that seeking proof of identity from information seekers has been made in view of decision of Hon'ble High Court dated November 2, 2012. Moreover, neither the State of Haryana nor the State Information Commission, Haryana were parties in the Civil Writ Petition No. 4787 of 2011. It is a cardinal principle of judicial process that no one shall be directed to act in a manner required until such party is heard, except when such directions must be issued in the interests of delivering justice

in a situation of urgency as in Habeas Corpus Writ Petitions. The appellant further strengthened his submissions with office memorandum issued by the Department of Personnel & Training, New Delhi dated 08.01.2014 vide which a copy of the double bench order dated 20.11.2013 passed on Writ Petition (W) No. 33290 of 2013 by Hon'ble High Court of Kolkata wherein it has been held that while addressing RTI application an information seeker needs not to disclose any personal details, except those that may be necessary for contacting him. Similar decision was also taken by Hon'ble Bombay High Court in Writ Petition (L) No. 2678 of 2020 titled Saket S. Gokhale Vs Union of India. The appellant further referred Para 43, 46 and 59 of the Hon'ble Apex Court Judgement in Civil Appeal No. 10044 of 2010 titled as CPIO, Supreme Court of India Vs. Subhash Chandra Agarwal wherein it has held that privacy and confidentiality encompass a bundle of right including the right to protect identity and anonymity and thus decided not to disclose information which is personal including name and address etc. He also refer Para 28 of decision taken by Hon'ble Supreme Court in Civil Appeal No. 6454 of 2011 title as C.B.S.E and Anr. Vs. Aditya Bandopadhyaya and Others wherein it was decided not to disclose the identity of examiner. Referring to Article 141 of the Constitution of India, the appellant stressed that the law declared by Hon'ble Supreme Court shall be binding on all the Courts within the territory of India.

6. The appellant cited another judgement of Hon'ble Delhi High Court delivered in WP (C) 12714 of 2009 titled Delhi Development Authority Vs

Central Information Commission & another and submitted that State Information Commission cannot use the power to make rules and regulations to enlarge the powers beyond the scope intended by the Legislature. Agitating the decision taken in Complaint Case No. 854 of 2021, the appellant submitted that concerned Bench has pronounced the decision of the case in his favour. However, the announced decision was changed and the order refraining himself to pass an order on the issue of notification dated 12.04.2021 was uploaded on the website of the Commission. The Bench in his decision also gave reference that O.S.D. Judicial (Listing) by order of Hon'ble Chief Justice of the High Court of Punjab & Haryana on 16.11.2021 has passed directions for compliance of all the Advocates/Litigants/General Public to attach their identity card alongwith the fresh petitions/appeals/applications. The appellant is of the view that these orders are not applicable on a person who is seeking information under the provisions of the Act. Citing some other judgements of Hon'ble High Courts of other States and including the Central Information Commission, the appellant submitted that no authority can force the RTI applicant to disclose his identity. He/she has to share only that information which is sufficient to contact the information seeker conveniently. RTI applicant is completely free to seek the information/documents under the provisions of the Act in the format convenient to him without attaching his/her identity card. The appellant thus prayed to allow the second appeal by giving relief sought by awarding compensation on account of the illegal conduct of the First

Appellate Authority who kept the first appeal of the appellant pending for hearing and subsequent adjudication, till date.

7. The Commission has carefully considered the matter and perused the written submissions dated 17.12.2021 of the appellant. On 29.11.2021, the Commission simply requested the appellant to place any decision of Hon'ble Supreme Court of India or division bench of the Hon'ble High Court of Punjab and Haryana at Chandigarh which is in variance with the single judge judgement of Punjab & Haryana High Court at Chandigarh in CWP No. 4787 of 2011 (O&M) titled Fruit & Merchant Union Vs Chief Information Commissioner and others passed on November 2, 2012. Instead of placing the sought judgement, the appellant has placed copy of judgement dated 20.11.2013 of Hon'ble Kolkata High Court communicated by the Department of Personnel & Training, New Delhi vide Office Memorandum No. 1/31/2013-IR dated 8<sup>th</sup> January 2014. It substantiates that the appellant has no judgement wherey single bench judgement dated November 2, 2012 was challenged before the Division Bench of Hon'ble High Court of Punjab & Haryana at Chandigarh or before the Hon'ble Supreme Court of India. General principles of precedents stipulates that the High Courts in India are bound by the law declared by the Supreme Court. Decisions of the Supreme Court are binding only so long as they have not been overruled by the Supreme Court. The decisions of a High Court are binding on all the courts below it within its jurisdiction. The judgment of a particular High Court, is not binding on other High Courts. The High Courts are the courts of co-ordinate

jurisdiction. Therefore, the decision of one High Court is only of persuasive value for other High Courts. The decisions of a larger bench of a High Court on a smaller bench. A bench is not bound by the decisions of another bench of equal authority.

8. The Commission principally agrees with the appellant that Right to Information is implicit and inbuilt in the right and freedom guaranteed to a citizen under Article 19 (1) (a) of Constitution of India. The right to free speech and expression includes within it the right to obtain information. The Commission, in this regard has perused Section 27 of the Act which reads as under:-

27. (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.



9. Section 27 of the Act, empowers the appropriate Government to make rules to decide appeals. Since, the inception of the State Information Commission, only the State Government has notified Haryana Right to Information Rules and amendment thereof. The rules are never framed/notified by the State Information Commission, Haryana as agitated by the appellant. The Commission also agrees that Model Form 'A' has been appended with the notified Rules to facilitate the information seeker to draft its RTI application. But the information mentioned in the Model Form 'A' is vital and it should be the part of the RTI application though the RTI application may not be strictly as per Model Form 'A' appended in RTI Rules.

10. The Commission has perused para 23 and 26 of the judgement dated 2<sup>nd</sup> November, 2012 of the Hon'ble High Court of Punjab and Haryana at Chandigarh passed in CWP No. 4787 of 2011 (O&M) titled as Fruit & Merchant Union Vs. Chief Information Commissioner and others which reads as under:-

23. *Further, in all complaints before the Public Information Officer, the appeal before the first appellate authority or any proceedings before the Commission, it should be ensured that the applicant files his proof of identity along with the application. It is for the reason that in some cases, it has come to the notice of this court that the applicants were not identifiable. It would ensure that only the genuine persons file applications.*

26. *A copy of the order be sent to Central Information Commission, New Delhi, State Information Commission, Haryana and Home Secretary, Union Territory, Chandigarh, for compliance.*

11. Therefore, in accordance with aforesaid decision of Hon'ble High Court of Punjab and Haryana at Chandigarh and Haryana Right to Information (Amendment) Rules, 2021, the information seeker will have to provide any identity proof which is the part of the information incorporated in the Model Form 'A'. Thus, the Commission is obliged to dispose of the matters received under the Act in accordance with the judgment of Hon'ble High Court of Punjab and Haryana at Chandigarh and Rules notified by the State Government under Section 27 of the Act.

12. The Commission respects the judgement passed in Writ Petition (W) No. 33290 of 2013 by Hon'ble High Court of Kolkata but cannot ignore the judgement passed by the Hon'ble High Court of Punjab & Haryana at Chandigarh whereby specific directions have been given to seek identity proof from the information seekers and this judgement has never been challenged. So far as the judgement of Hon'ble Apex Court in Civil Appeal No. 10044 of 2010 titled as CPIO, Supreme Court of India Vs. Subhash Chandra Agarwal is concerned, some parameters have been laid down by defining the relation between the employee and the employer as ordinarily these aspects are governed by the service rules which fall under the expression "personal information". However, in case of larger public interest established even information pointed out in Para 59 of the aforesaid judgement can be shared with the information seeker. This judgement does not bar to seek identity proof from the information seeker. Similarly, judgement of Hon'ble Supreme Court in Civil Appeal No. 6454 of 2011 title as CBSE and Anr. Vs. Aditya Bandopadhyaya and Others

states that identity of examiner, if disclosed, would endanger the life or physical safety of any person. A citizen who exercises the right to information in obtaining information containing corruption from the public authorities, may have to appear before the First Appellate Authority and the Second Appellate Authority. The identity of the applicant should be identifiable as observed by the Hon'ble High Court in its judgement dated 2<sup>nd</sup> November, 2012.

13. In view of the above, the Commission observes that Haryana Right to Information (Amendment) Rules, 2021 notified in exercise of power conferred in Section 27 of the Act, needs to be complied with till the decision of the Hon'ble High Court of Punjab and Haryana at Chandigarh is overruled by an appropriate court/amendments made in the Act/Rules.

14. The appeal is disposed of accordingly.

**Heard. Order kept reserved on 17.12.2021. Pronounced on 30<sup>th</sup> day of December, 2021. To be communicated.**

15. With this order complaint case nos. 582 of 2021, 583 of 2021, 584 of 2021, 585 of 2021, 586 of 2021, 587 of 2021, 632 of 2021 and appeal case no. 7207 of 2021 heard alongwith the present case being similar matter are disposed of accordingly.

16. The Commission's Secretariat is directed to retain a copy of the order in all the case files and communicate it to the concerned parties.

Sd/-

**(Yash Pal Singal)**

**Chief Information Commissioner,  
Haryana.**

**Place : Chandigarh.  
Dated : 30.12.2021.**