HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

WPPIL No. 07/2013
CMA No. 473/2013

Date of decision:23.08.2014

Er B. R. Manhas Vs. State of J&K and ors.

Coram:

Hon'ble Mr. Justice Virender Singh, Judge
Hon'ble Mr. Justice Janak Raj Kotwal, Judge

Appearing counsel:

For appellant (s) : Mr. B. R. Manhas present in person.
For respondent(s) : Mr. Gagan Basotra, Sr. AAG for Nos. 1 to 3
Mr. S. K. Anand, Advocate for No. 4

i. Whether approved for reporting in Press/Media : Yes/No/Optional
ii. Whether to be reported in Digest/Journal : Yes/No

Per Kotwal-J:

1. Petitioner, Babu Ram Manhas, who is an advocate by profession, has filed this Writ Petition in Public Interest (PIL) under Article 226 of the Constitution of India read with section 103 of the Constitution of Jammu and Kashmir to assail the repeal of the Jammu and Kashmir Right to Information Rules, 2010 (for short the Rules of 2010) by the State Government by framing the Jammu and Kashmir Right to Information Rules, 2012 (for short the Rules of 2012).

2. Background facts are these, briefly:

2.1 Legislature of the State of Jammu and Kashmir enacted the Jammu and Kashmir Right to Information Act, 2009 (for short the Act) with the primary object of setting out the regime of Right to Information to the people of the State to secure access to information under the control of public authorities. Earlier the State Legislature had enacted the Jammu and Kashmir Right to Information Act, 2004 followed by Right to Information (Amendment) Act, 2008, which, however, came to be repealed by the Act of 2009. Right to information in rest of the country is similarly governed under the Right to Information Act, 2005 (for short the Central Act).

2.2 Section 24 of the Act, like section 27 of the Central Act, delegates power to the State Government to make rules for carrying out the provisions of the Act in general and regarding some matters in particular. Section 24 reads:

> **"24. Power to make rules by Government – (1) The Government may, by notification in the Government Gazette, make rules to carry out the provisions of the Act.**
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> **(2) In particular, and without prejudice to be generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-**
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> **(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 playable under sub-section (1) of section 6;**
>
> **(c) the fee payable under sub-sections (1) and (5) of section 7;**

(d) the salaries and allowance payable to and the terms and conditions of service of the officers and other employees under sub-section (6) of section 13;

(e) the procedure to be adopted by the State Information Commission in deciding the appeals under sub-section (11) of section 16; and

(f) any other matter which is required to be, or may be, prescribed."

3 In exercise of its delegated power under section 24 of the Act the State Government earlier framed rules called the Jammu and Kashmir Right to Information Rules, 2009, which were notified vide SRO 196 dated 29.07.2009. These Rules, however, were repealed and the State Government came out with the Rules of 2010 notified vide SRO No. 199 dated 29.04.2010. The Rules of 2010 and the Rules of 2009 were framed by the Government in exercise of its general rule making power conferred under sub-section (1) of section 24 of the Act. The Rules of 2010, however, also covered the specific areas referred to in sub-section (2).

4 Not much later than the Rules of 2010, Government in exercise of the power under sub-section (1) of section 24 of the Act framed the Rules of 2012 and thereby repealed the Rules of 2010.

5 The framing of the Rules of 2012 was initiated by the Secretary to the Government/ (Shiekh Mushtaq Ahmad, IAS) General Administration Department/respondent No. 2, by placing, with the

prior approval of the Chief Minister of the State, the 'revised draft J&K RTI Rules' accompanied with a 'memorandum' before the State Cabinet.

6 It was pointed out in the 'memorandum' submitted to the State Cabinet by respondent No. 2 that the Rules of 2010 were not modeled on the pattern of the Central Information Commission (Regulation of Fee and Costs) Rules and the Central Information Commission (appeal procedure) Rules. It was also stated in the 'memorandum' that while framing the Rules of 2010 'the mandate of the Act has been exceeded in respect of incorporating following provisions:

1. Establishment of some institutes/wings in the Commission.

2. Initiation of criminal proceedings by the Commission while conducting an inquiry.

3. Institution of a criminal case against the PIOs.

4. Preparation of annual reports/performance budget document and performance audit document by the Departments/Public Authorities.

5. Creation of Endowment Fund by the State Information Commission.

6. Summoning of Public Authorities.

7. Higher rates of fee for seeking information.'

7 It was also stated in the 'memorandum' that 'Hon'ble the Chief Minister while chairing a meeting on 07.06.2012, to review the implementation of the J&K

RTI Act, 2009, directed that the Jammu and Kashmir Right to Information Rules, 2010 may be revised so as to model these on the pattern of the Central Information Commission (Regulation of Fee and Cost) Rules and the Central Information Commission (appeal procedure) Rules, 2005.' Further it was stated in the 'memorandum' that 'the State Information Commission has also recommended reduction of fee for seeking information under the Jammu and Kashmir Right to Information Rules, 2010 on the pattern of Central Information Commission Rules' and further that 'the State Government has pledged before the Hon'ble High Court to reduce the fee structure under the J&K RTI Rules and that the revised draft RTI Rules as prepared on the pattern of the Central Information Commission Rules were forwarded to the Department of Law, Justice and Parliamentary Affairs for vetting. The Rules have been vetted by the LJPA Department and form annexure 'B' to this memorandum'.

8 Since the 'memorandum' refers to a 'pledge' said to have been made by the Government before this Court, we may refer to and reproduce the order passed by this Court dated 20.04.2012 while disposing of the earlier PIL filed by the petitioner in WPPIL No. 28/2011:

> " In the objections filed by the respondents, it is specifically stated that the State is inclined to have a re-look at the Rule 4, 5 and 6 of the Jammu and Kashmir Right to Information Rules, 2010.

> In view of the above, nothing survives in the instant Public Interest Litigation, however, with a hope that the State would complete this exercise expeditiously and preferably within three months."

9 By framing the Rules of 2012 and thereby repealing the Rules of 2010, the Government indeed brought, what may be called, drastic change in the Rule position under the Act. It suffice to point out in this regard that as against 51 rules comprised in the Rules of 2010, the Rules of 2012 comprise of 13 rules only. While reducing the fee and cost payable for obtaining information under the Act and retaining/framing brief rules (Rules 6-8) governing 'appeal procedure', entire Rules of 2010 have been repealed. It needs to be reiterated here the Rules of 2012 too have been framed in exercise of power conferred on the Government by sub section (1) of section 24 of the Act.

10 Petitioner, Babu Ram Manhas, claims to be an Engineer by vocation. He is a law graduate and practicing advocate of this Court. Feeling aggrieved by the repeal of the Rules of 2010 and framing of the Rules of 2012, the petitioner seems to have started a crusade. He collected lot of information using his right to information under the Act. He filed this writ petition (PIL) in public interest to assail the Rules of 2012. He seeks issue of a **writ of certiorari** to quash the Rules of 2012. He further seeks **command to**

declare the Rules of 2010 as validly framed and deemed to be in force notwithstanding their repeal by the Rules of 2012. Further he seeks a **command** to respondents to fulfill the commitment of the State made before this Court in WPPIL No. 28/2011 by reducing the fee as provided under the Rules of 2010.

11 Heard. We have perused the record.

12 Petitioner alleges that the Rules of 2010 have been repealed arbitrarily, unconstitutionally and without any justification. It is contended that Right to Information of the people of Jammu and Kashmir emanates from Fundamental Right under Article 19 of Constitution of India and such Right once given under the Act and crystallized by the Rules of 2010 cannot be taken away by the Government by framing the Rules of 2012. It is also contended that the Rules of 2010 framed in exercise of power under section 24 (1) of the Act were laid before and 'passed' by the State Legislature under section 26 and have, thus, acquired legislative character and the same force as the Act itself has so the State Government has no power or authority to repeal these rules. It is contended by the petitioner that vide the medium of the 'memorandum' the respondent No. 2 had misled the cabinet into believing that the Rules of 2010 were not mandated by the Act and that the competent authority got carried away by misplaced logic given by respondent No. 2 in the memorandum and repealed

the Rules of 2010 without application of mind. It is contended further that rule making power cannot be exercised to defeat the object of the enactment and that Government in repealing the Rules of 2010 has acted arbitrarily. Petitioner has contended that all the provisions of the Rules of 2010 have mandate in one or other provision of the Act and some of the provisions of the Rules were made for addressing the grey areas and has thus alleged that the 'memorandum' submitted by respondent No. 2, claiming that the Rules of 2010 were not mandated by the Act, was misleading, which calls for quashing of the Rules of 2012 by issue of a writ of certiorari. It is also contended that bureaucracy in the state from the very inception created hurdles in the implementation of the Act, they were in look out for an excuse to drastically change the rules and availed the opportunity under the garb of changing the fee structure after the Chief Secretary of the state was once called by the Chief Information Commissioner in connection with fulfillment of obligations by the public Authorities in the State under section 4 of the Act. We may, as it is worthwhile, reproduce paragraph 21 and 22 of the petition:

> "21. that as the information received by the applicant in RTI response, the Chief Secretary of the State was summoned by the Commission to appear before it after that the bells of danger for the J&K RTI law started ringing that very day and as a result of this a clear bias sprouted in the minds of the top bureaucrats, towards the J&K RTI Rules 2010 and they though of a plan to do away

> with such provisions of the RTI Rules 2010, as were to their liking.
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> 22. That in the guise of implementing the directions of the Hon'ble Court passed in PIL Petition No. 28/2011, but in fact to frustrate the object of the RTI Law in the State of J&K and to materialize their own agenda the top Bureaucracy in a very clever manner prepared a document what was named as 'MEMORANDUM FOR SUBMISSION TO THE CABINET' purportedly for 'Revision/Re-notification of the Jammu and Kashmir Right to Information Rules, 2010'and by this document the cabinet was misinformed on many aspects and facets of the transparency law."

13 Contentions which were urged before us by the petitioner are that the Rules of 2010 were placed before the State Legislature in terms of the section 26 of the Act and in that the Rules of 2010 had acquired legislative character, which, therefore, could not have been repealed by the Government. He would urge further that the respondent No. 2 had mislead the State Cabinet by stating in the 'memorandum' that the Rules of 2010 do not have mandate of the Act and were not modeled on the pattern of the Central Rule. In this behalf, Mr. Manhas sought to demonstrate that all the provisions of the Rules of 2010 have mandate in one or the other provision of the Act. He submitted that there was no point in comparing the Rules of 2010, which were framed in exercise of power sub-section (1) of section 24 of the Act, with the Central Rules, which have been framed under sub-section (2) of section 27 of the Central Act, which corresponds sub-section 2

of section 24 of the Act. Mr. Manhas urged vehemently that with the repeal of the Rules of 2010, the Act has been rendered impracticable and a paper tiger.

14 To say in brief, case demonstrated by the petitioner, firstly, is that the Government has no power to repeal the Rules of 2010 as these Rules have acquired legislative character under section 26 of the Act and secondly that Rules of 2012 have been framed with the object to defeat the Act, arbitrarily, without application of mind on the basis of a misleading 'memorandum' submitted by respondent No. 2, and in effect the object of the Act has been frustrated and defeated.

15 Respondent Nos. 1 to 3 vide objections filed by respondent No. 2 and adopted on behalf of respondent Nos. 1 and 3 have opposed the petition, whereas respondent No. 4/the J&K State Information Commission (for short the Commission) has supported the same.

16 It is contended by respondent Nos. 1 to 3 that the State Information Commissioner and some other organizations had been stressing for reduction in fee structure as provided under the Rules of 2010 and a PIL in this regard had been filed in this Court. Besides, it had come to fore that certain provisions of the

Rules of 2010 were not supported by the Act. This necessitated the framing of the Rules of 2012 having regard to the provisions of the Act and corresponding Central Law. Further it is contended that the rules framed by the Government are couched with the presumption of constitutionality and validity, whereas it is not alleged that the Rules of 2012 are ultra virus either to the Constitution or to the Act or violates any Fundamental Right. It is also contended that rules framed by the Government cannot be challenged on the ground of mala fides or arbitrariness and that the rules are not subject to judicial review by this Court as such a review violates the principle of separation of powers between different wings of administration. Respondents have denied that the Cabinet had been misled by the medium of the 'memorandum'. It is also contended that the Rules of 2012 are at par with the Central Rules.

17 Mr. Gagan Basotra, learned Sr. Additional Advocate General, appearing for the respondents 1 to 3 submitted that when Government or a competent authority is delegated with power to frame rules under an enactment of the legislature, that power inheres also power to repeal or amend the rules so made. Mr. Basotra submitted that rules framed by Delegatee are not subject to judicial review. Mr. Basotra, while taking us through various provisions of the Act, submitted that most of the provisions of the

Rules of 2010 were beyond the mandate of the Act so a note was rightly put by respondent No. 2 for consideration of the Cabinet, Rules of 2010 were rightly repealed and Rules of 2012, which are sufficient to give effect to the provisions of the Act, have been rightly framed. As regards section 26 of the Act, Mr. Basotra submitted that it simply provides for placing the rules before State Legislature to enable the legislature to make necessary modifications or even to reject whole or some of the rules but that would not create a bar in effecting amendment to or repeal the rules.

18 Stand of the respondent No. 4 is in line and consonance with that of the petitioner so need not be separately referred to. Suffice to say, according to respondent No. 4, by repealing the Rules of 2010, provisions of the Act have virtually been diluted and rendered ineffective.

19 We may state and in that we agree with the contention of learned Sr. Additional Advocate General that delegated power to make rules, regulations or bylaws under an Act inheres also the power to amend or repeal the rules, regulations or bylaws so made. We, however, are not inclined to agree nor do we know about a principle in law that delegated legislation is totally immune from judicial review.

20 Power of delegated legislation (also called as secondary legislation or subordinate legislation or subsidiary legislation) is conferred under the primary legislation by the legislature on the Government or an executive authority in order to implement and administer the requirements of that primary legislation. It is law made by a person or body other than the legislature but with the legislature's authority. It is seen as a normal practice that a legislature passes statutes that lay down the broader policy and set out broader outlines and principles and delegates authority to the executive, that is, Government or a competent authority to issue delegated legislation in the shape of the Rules, regulations or bylaws to provide the details and procedures for implementing the provisions of a statute. This power, however, is limited to making Rules, regulations, or byelaws that are incidental to administering the primary legislation. When questioned, court has to look for true intent of the empowering Act in the usual way. Delegated legislation cannot be extended to allow it to modify the empowering Act passed by the legislature. A 3-Judge Bench of the Supreme Court in St. Johns Teachers Training Institute v Regional Director, National Council for Teacher Education, (2003) 3 SCC 321, has in para 10 of the reporting referred to Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi (1995)1 SCC 421:

> "10. …. Rules and regulations are all comprised in delegated legislations. The power to make subordinate legislation is derived from the enabling Act and it is fundamental that the delegate on whom such a power is conferred has to act within the limits of authority conferred by the Act. Rules cannot be made to supplant the provisions of the enabling Act but to supplement it. What is permitted is the delegation of ancillary or subordinate legislative functions, or, what is fictionally called, a power to fill up details. The legislature may, after laying down the legislative policy confer discretion on an administrative agency as to the execution of the policy and leave it to the agency to work out the details within the framework of policy. The need for delegated legislation is that they are framed with care and minuteness when the statutory authority making the rule, after coming into force of the Act, is in a better position to adapt the Act to special circumstances. Delegated legislation permits utilization of experience and consultation with interests affected by the practical operation of statutes. Rules and regulations made by reason of the specific power conferred by the statutes to make rules and regulations establish the pattern of conduct to be followed. Regulations are in aid of enforcement of the provisions of the statute. The process of legislation by departmental regulations saves time and is intended to deal with local variations and the power to legislate by statutory instrument in the form of rules and regulations is conferred by Parliament. The main justification for delegated legislation is that the legislature being overburdened and the needs of the modern-day society are complex, it cannot possibly foresee every administrative difficulty that may arise after the statute has begun to operate. Delegated legislation fills those needs. The regulations made under power conferred by the statute are supporting legislation and have the force and effect, if validly made, as an Act passed by the competent legislature. (See *Sukhdev Singh* v. *Bhagatram Sardar Singh Raghuvanshi*)

21 The legal position as stated by Supreme Court in *Vasu Dev Singh and others v Union of India and others, (2006) 12 SCC 753* is that while considering the

validity of delegated legislation, the scope of judicial review is limited and effect thereof has to be considered having regard to nature and object thereof. Supreme Court after surveying law on the point has briefly concluded in para 26 of the reporting, which we quote:

> **"26. The law, which, therefore has been laid down is that if by a notification, the Act itself stands effected; the notification may be struck down. But that may not be the only factor"**

and has in one sentence held in para 34 of the reporting which we quote:

> "**34. Judicial review of delegated Legislation is, therefore, permissible**

22. We therefore, proceed on the premise that under sub section (1) of section 24 of the Act, Government is delegated with the power to make rules to carry out the provisions of the Act. These rules are to be framed in a manner so that they supplement the provisions of the Act but do not supplant the same. A rule is to be framed to provide for a provision without which a provision under the Act cannot be implemented or given effect to and rules must also be framed to fill up those grey areas without filling which the Act or a provision under the Act cannot be implemented. However, no rule should travel beyond the Act and should not make a provision which is not necessary to implement or supplement the Act. Power of the delegetee to make rules,

regulations or bylaws must be exercised within the four corners of the Act. In that view, we do not subscribe to the proposition propounded on behalf of the respondents that rules must have mandate under the Act. What is required is that a rule supplements the Act, is necessary for carrying out the purpose of the Act, does not defeat a provision of the Act and does not travel beyond the Act.

23. We proceed on a further premise that a delegated legislation, if it affects, dilutes or defeats the primary legislation or travels beyond the primary legislation is subject to judicial review and appropriate writ or direction can be issued to do away with the mischief. We proceed on yet another premise that principle of judicial review of a delegated legislation shall similarly apply to the repeal of delegated legislation as power of delegated legislation inheres the power to repeal a delegated legislation. If repeal of the rules or a rule dilutes or defeats the main Act, the same would be subject to judicial review.

24. Contention urged by the petitioner that by placing the Rules of 2010 before the State Legislature, they attained statutory character and could not have been repealed by the Government does not have substance. We may here reproduce section 26 of the Act in context of the contention of the petitioner:

> "26. Laying of rules.- every rule made by the Government under the Act shall be laid, as soon as

> may be after it is made, before each House of the State Legislature, 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 threreafter 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 lone under that rule."

25. Petitioner did not produce any authority to support his contention. Contextually, petitioner, however, referred to the observations of Their Lordships in Bhagatram Sardar Singh Raghuvanshi (supra) that 'subordinate legislation has, if validly made, the full force and effect of statute' whether or not the statute under which it is made provides expressly that it is to have effect as if enacted therein. Petitioner also referred to State of Karnataka v. Suvarna Malini, (2001) 1 SCC 728 where Their Lordships in reference to a similar statutory position under Karnataka State Civil Services Act has observed in para 4 of the judgment:

> "Section 8 is the rule making power of the State government to make rules to carry out the purposes of the Act. Under Sub-section (3) of Section 8, every rule made under the Act is required to be laid as soon as may be, after it is made before each House of the State Legislature, 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 any modification in the rule, as desired by the House, could be carried out or if both Houses agree that the rule should not be made, in which case the rule will not be

> effective and it is only when the House agrees with or without any modification, then the rules shall have the effect in such modified form. The absorption rules being the rules made in exercise of powers under Section 8 and the aforesaid requirement under sub-section (3) of Section 8, having been duly complied with, **the rule is legislative in character and would have the force, as it the State Legislature have framed the rules.**
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> **(Emphasis supplied)**

26. Legal position discernible from above two authorities is that rules validly framed in exercise of the rule making power under an Act would have the same force and enforceability as the provisions of the Act, under which they are framed, have. We, however, are not persuaded to agree with the contention that by placing of the rules framed under section 24 before each House of the State Legislature by virtue of section 26, the rules come out of the repealing or amending power of the Government. Such a view if taken will defeat the purpose of delegated legislation, which has to be flexible and easily amenable to meet the changing situations or additional requirements.

27. The object of placing the rules framed in exercise of delegated legislative power under an Act before the legislature, which enacted the main Act, is to enable the legislature, which is primary law making body, to hold control over delegated legislation and effect any modification as may be required or even not to agree with the rules so framed. We are thus of the view that delegetee always has a power to amend a rule, repeal the existing rules and come out with new rules.

Requirement however, would be that amendment or repeal is effected to supplement and strengthen the Act more and not to weaken or defeat the same.

28. It needs to be pointed out that even though the petitioner in this case seeks issue of **certiorari** to quash the Rules of 2012, nothing against the legality of its provisions is alleged or stated. Petitioner's grievance as a matter of fact is against repeal of the Rules of 2010 by virtue of section 13 of the Rules of 2012. The petitioner rather expects that this Court should issue a direction in the nature of **mandamus** directing the Government to restore the Rules of 2010. Such a prayer, however, we cannot allow while exercising the power of judicial review of this Court, because it is a settled principle of law that a writ of **mandamus** will not lie to compel legislature/Government to exercise a legislative function, primary or delegated, in a particular manner. Law in this regard is well settled by the Supreme Court in A. K. Roy v Union of India, AIR 1982 SC 710. We therefore, do not intend to accord consideration to the plea that we may direct the Government to restore the Rules of 2010. This Court, nonetheless, has the power to and must examine the administrative process leading to exercise of the power of delegated legislation under an Act and we hereafter, besides examining the administrative process leading to repeal of the Rules of 2010,

proceed to examine whether the repeal of the Rules of 2010, in fact, has supplemented or supplanted the provisions of the Act.

29. The case being demonstrated by the petitioner in its nitty-gritty is that the Rules of 2009 followed by the Rules of 2010 were framed by the Government to carry out the provisions of the Act and all the rules comprised in the Rules of 2010 are indispensable for effective implementation of the Act. With the repeal of the Rules of 2010, the very purpose of the Act has been defeated and the Act has been rendered a paper-tiger only. Petitioner's case is that respondent No. 2 by the medium of his memorandum had misrepresented to and misled the State Cabinet by projecting that, while framing the Rules of 2010, the mandate of the Act has been exceeded. It is alleged that while acting upon the misleading note the State Government repealed the Rules of 2010 arbitrarily without applicant of mind and without any justification.

30. We intend to keep the task for our consideration confined to exploring the question; whether to say that while framing the Rules of 2010 'the mandate of the Act has been exceeded' was a true statement and correct opinion rendered by respondent No. 2 to the State Cabinet. We, however, are not entertaining the question whether any deliberate misrepresentation was made by respondent No. 2 because we do not

find any material on the record before us to assume that respondent No. 2 had a reason to intentionally mislead the State Cabinet. It may be a case of correct opinion or incorrect opinion or a case of partially correct and partially incorrect opinion.

31. We may first refer, briefly, to the annexure-A to the memorandum whereby respondent No. 2 has sought to bring home his point that, while framing the Rules of 2010, 'mandate of the Act has been exceeded'. Statement at serial No. 1 of the annexure, which pertains to fee structure and was aimed at reducing the fee and cost of information to be obtained under the Act, is not disputed by the petitioner. Petitioner has no grievance against the repeal of the Rules of 2010 to the extent they prescribed the fee and cost involved in obtaining information under the Act and framing of Rules 3 to 5 comprised in Chapter-II of the Rules of 2012.

32. At serial No. 2 of the Annexure, respondent No. 2 has referred to sub-rules (3) and (4) of Rule 31, sub-rules (6) and (8) of Rule 36 and sub-rules (2) and (3) of Rule 45, which according to him are neither contained in Central Rules nor mandated by the Act. Respondent No. 2 likewise has referred to Rule 11, which provides for establishment of Secretariat of the Commission and to Rules 37, 38 and 39. Respondent No.2 has also pointed out Rule 44, which provides for annual roster for appearance of public authorities before the

Commission to enable it to discharge its obligation under sub-section (5) of section 22 of the Act.

33. While hearing this case, we took sufficient time to minutely go through the Rules of 2010 and with the able assistance rendered by the petitioner as well as by the Senior Additional Advocate General, Mr. Basotra, compared some important provisions under the Rules with important provisions under the Act, having regard to the points raised by respondent No. 2 in the memorandum submitted to the State Cabinet and having done so, we, for the reasons to appear hereafter, are persuaded to take a view that the opinion rendered by respondent No. 2 was not wholly correct. We therefore, are of the view that the State Cabinet, while taking up the exercise of making some amendments/changes in the Rules of 2010, should have gone beyond the memorandum/opinion of respondent No. 2 and undertaken the comparative analysis of the Act and the Rules and had that been done, we believe, State Cabinet might have been impressed with the necessity of retaining most of the provisions of the Rules of 2010.

34. In saying that Rules of 2010 were not modeled on the pattern of Central Information Commission (Regulation of Fee and Cost) Rules, 2005 and Central Information Commission (Appeal Procedure) Rules, 2005, respondent No. 2 had not advised the Cabinet well too and it can be said that this information was

not wholly logical. It needs to be pointed out in this regard that the above Rules framed under the Central Act pertain to two specific matters, namely, charging of fee and cost and procedure to be adopted in appeals. These two matters are covered under sub-section (2) of section 27 of the Central Act corresponding to sub- section (2) of section 24 of the Act. It is undisputed ground of both sides and as it is known, the Central Government has not framed any rules under sub-section (1) of section 27 of the Central Act (corresponding sub- section (1) of section 24 of the State Act). On the other hand, Rules of 2010 had been framed in exercise of power conferred by sub-section (1) of section 24 of the State Act and they also contain provisions relating to fee and cost and procedure in appeals. In such a situation it is not understandable as to how respondent No. 2 expected that Rules of 2010 should have been modelled on the pattern of the two Central Rules. We need to point out here with high appreciation that State Government in framing the Rules of 2010 had gone steps ahead from Central Government in making exhaustive provisions in exercise of its rule making power under sub-section 1 of section 24 of the Act and thereby making the act more pragmatic and effective.

35. We may now point out that section 5 of the Act provides for designation of some officer(s) as Public

Information Officer(s) in all administrative units or offices of the Government. Besides it provided for designation of Assistant Public Information Officers at lower levels. Rule 3 of the Rules of 2010, however, provided for designation of a Chief Public Information Officer without prejudice to generality of provisions of section 5. To designate a Chief Information Officer is a provision, which may have been accorded reconsideration to ascertain whether the same was beyond the ambit of the Act or the same has any utility to supplement the Act.

36. Section 12 of the Act empowers the Government to constitute a Body to be known as the Jammu and Kashmir State Information Commission to exercise the powers and to perform the functions under the Act. Whereas Section 12 also lays down the composition of the State Information Commission, Section 13(6) makes provision for providing the Commission officers and employees as may be necessary and prescribe their condition of service. Section 13(6) reads:

> "13(6). The Government shall provide the State Chief Information Commissioner and the State Information Commissioners with such officers and employees as may be necessary for the efficient performance of their functions under the Act, and the salaries and allowances payable to and the terms and conditions of service of the officers and other employees appointed for the purpose of the Act shall be such as may be prescribed.

Rules 9 to 18 of the Rules of 2010, therefore, aptly made provisions inter alia for appointment of secretary of the Commission, creating Secretariat/Registry and legal cell of the Commission and working strength of the Commission. Rule 19 laid down the working hours, sitting and vacations etc. Rule 46 authorized the Government to allot monetary grants to the Commission to be utilized for the purpose of carrying out its functions under the Act and Rule 47 provided for maintenance of the accounts by the Commission and their audit. All these provisions formulated under the Rules of 2010 are essential rather indispensible for carrying out the functioning of the Information Commission which is the backbone of the entire regime under the Act. In making such provisions in the Rules of 2010 the State Government had rather discharged its obligation under the Act. It is not understandable as to what prevailed upon respondent No. 2 to opine that Rule 11 of the Rules of 2010 goes beyond mandate of the Act. It is equally beyond understanding as to how the Commission is expected to function if the State Government by en masse repeal of the Rules of 2010 has even divested itself of the power to provide requisite man power and allot monetary grants to the Commission. The State Government, therefore, before en masse repeal of the Rules of 2010 without making corresponding provisions under the Rules of 2012 should have pondered over the effect of

consequential dismantle of the entire machinery and mechanism of the Commission.

37. Section 4 of the Act casts obligation on all public authorities to maintain and publish records of their offices. Rule 37(a) of the Rules of 2010 authorized the Information Commission to proactively engage with the stakeholders to develop and lay down standards for record management and rule 37 (b) authorized the Commission to promote maximum routinization of processes to ensure maximum transparency. Contextually Rule 38 authorized the Commission to engage with the stake holders to develop and lay down standards for rating public authorities on the basis of a transparency index based on standardization of data, record management, practice and computerization, voluntary disclosure of information etc.

38. Section 22 (1) of the Act requires the Commission to prepare its annual report on the implementation of the provisions of the Act to be forwarded to the Government and section 22 (2) requires the public authorities to provide such information to the Commission as is required to prepare the annual report. Contextually, Rule 39 of the Rules of 2010 provided for including in the report to be submitted by public authorities one chapter on implementation of the provisions of the Act which inter alia shall indicate the efforts made during the year with regard

to improvement in data and record management etc. Rule 40 provided for preparation of performance budget by every department or public authority.

39. How Rules 37, 38 and 39 of the Rules of 2010 did not have the mandate of the Act or did not supplement the Act was a question that deserved anxious consideration of the Government before en masse repeal of the Rules, which, however, obviously was not accorded.

40. Section 15 of the Act lays down the powers and functions of the Information Commission. Section 15(1) and 15(2) obliges and empowers the Commission to receive and inquire into a complaint from any person. Section 15(3) provides that the Commission while inquiring into any matter under that section shall have the same powers as are vested in a civil court while trying a suit under the Code of Civil Procedure in respect of matters like summoning and enforcing attendance of persons and compelling them to give evidence, requiring the discovery and inspection of documents and in particular in respect of 'any other matter which may be prescribed'. Section 16 of the Act provides for first appeal against the decision of the Public Information Officer to an officer senior in rank to the Public Information Officer and further for a second appeal against decision of such officer to the State Information Commission. The

powers of the Commission in appeal include power to impose any penalty provided under the Act. Section 17 lays down the penalties which can be imposed by the Commission at the time of deciding any complaint, appeal or reference if it is of the opinion that the Public Information Officer has, without any reasonable cause, refused to receive an application for information or has not furnished information within the time specified under section 7. Section 17(2) empowers the Commission to recommend disciplinary action against such Public Information Officer under the service rules applicable to him.

41. In context of sections 15 to 17, rules 20 to 36 comprised in Chapter VI of the Rules of 2010 laid down the procedure to be followed in appeals and inquiries in complaints by the Commission. Besides laying down the procedures, rules under Chapter VI inter alia prescribed the form for filing first appeal, information to be contained in and documents to be furnished with the second appeal and mode of service of notice by the Commission. Rule 36 dealt with the compliance of the orders of the Commission and inter alia provided that the public authority and/or an officer entrusted with any task by or under the order of the Commission shall be responsible for compliance of the order of the Commission inter alia towards recovery of penalty. Rule 36 (4 and 5) gave the Commission power of revision/review of its order imposing penalty and rule

36(6) gave the Commission power of disciplinary action or initiating criminal action against or making deduction from salary of a public authority or any of its officers in case of their default regarding deducting and crediting of the amount of penalty or compensation imposed by the Commission. Sub-rule 8 of rule 36 empowered the Commission to write to Minister Incharge of the public authority who is found to be in the habit of non-compliance.

42. Rule 31(3) provided that Commission shall be deemed to be a civil court and further empowered the Commission to take action and lodge complaint in terms of section 482 of the Code of Criminal Procedure when any offence as described in sections 175, 178, 179, 180 or 228 of the Ranbir Penal Code is committed in view or presence of the Commission. Rule 31(4) provided that proceedings before the Commission shall be deemed to be judicial proceedings within the meaning of section 193 and 228 and for the purpose of section 196 of the State Ranbir Penal Code and shall be deemed to be a civil court for the purpose of section 195 of Ranbir Penal Code and Chapter XXVI of the Code of Criminal Procedure. Rule 45 further empowered the Commission to lodge criminal complaint, and/or impose penalty and/or recommend disciplinary action against a public authority in case of non compliance with orders passed under sections 15 or 16 of the Act.

43. A bare look at Rules 20 to 36 comprised in Chapter VI of the Rules of 2010 and Rule 45 gives an impression that the powers given to the Commission under these rules in some areas traveled beyond the limits of and purpose envisaged under the Act.

44. For all that said and discussed above, we conclude and hold that the opinion rendered by respondent No. 2 in the 'memorandum' submitted to the State Cabinet was not wholly correct opinion. It was not correct to say that all the rules pointed out in the annexure to the 'memorandum' did not have mandate of the Act. Also it was out of the context and illogical to say that the Rules of 2010 were not modeled on the pattern of Central Information Commission (Regulation of Fee and Cost) Rules, 2005 and Central Information Commission (Appeal Procedure) Rules, 2005. We have rather found that majority of the rules comprised in the Rules of 2010 were within the limits of authority conferred under the Act and were indispensable for implementing and supplementing and to carry out the provisions of the Act. We wonder as to how the State Information Commission constituted under the Act is expected to function after the Government having divested itself even of the power to provide the Information Commission a working secretariat/Registry, necessary man power and monetary grants. We further wonder as to how the

ultimate object of setting out the regime of right to information to the people of the State can be achieved if the Commission is not aptly empowered within the ambit of the Act to ensure that directions issued by it are implemented. We, however, hasten to add that excessive empowerment, like power to initiate criminal action may not be required and may amount to excessive delegation of power. This aspect calls for consideration of the Government.

45. Impression discernible from the manner in which en masse repeal of the Rules of 2010 has been done would indicate that the Government has exercised its important delegated function with less sensitivity and has arbitrarily relied upon the 'memorandum' submitted by the respondent No. 2, which did not provide wholly correct information/opinion. The matter, however, in our considered view required in depth study and anxious consideration and not the inclusive repeal of all the important rules.

46. For aforementioned, we, while not issuing writ of certiorari or writ of mandamus as sought for by the petitioner, nonetheless, in the larger public interest, issue direction that the Government of the State of Jammu and Kashmir should have a re-look and accord reconsideration to the repeal of the Rules of 2010 and frame fresh rules so as to make various provisions of

the Act workable to achieve the very purpose envisaged in enacting of the Act.

(Janak Raj Kotwal) Judge

(Virender Singh) Judge

Jammu:
23.08.2014
Rakesh