

THE HIGH COURT OF MEGHALAYA

WP(C) No.49/2015

1. Ms. Belma Mawrie,
Appellate Authority under the
Right to Information Act, 2005 and also
Registrar General, High Court of Meghalaya,
Shillong.

2. Ms. Marlene Khongmen,
Public Information Officer under the
Right to Information Act, 2005 and also
Registrar, High Court of Meghalaya,
Shillong.

:::: Petitioners

-Vs-

1. Chief Information Commissioner (C.I.C.)
Meghalaya State Information Commission,
1st Floor, New Administrative Building,
Lower Lachumiere, Shillong-793001.

2. Shri. B. Bhattacharjee (Advocate),
Service to be effected at his Office at
High Court Bar Association, Shillong.

:::: Respondents.

BEFORE THE HON'BLE MR. JUSTICE T NANDAKUMAR SINGH

For the Petitioners : Mr. A.K. Singh, Sr.Adv,
Mr. A Pathania, Adv.

For the Respondents : Mr. H.S. Thangkhiew, Sr. Adv,
Mr. N Mozika, Adv for respt.No.1
Respondent No.2 in person

Date of hearing : **23.07.2015**

Date of Judgment & Order : **29.07.2015**

JUDGMENT AND ORDER

Heard Mr. A.K. Singh, learned senior counsel assisted by Mr. A. Pathania, learned counsel appearing for the petitioners, Mr. HS Thangkhiew, learned senior counsel assisted by Mr. N Mozika, learned counsel appearing for the respondent No.1 and respondent No.2 in person.

2. The respondent No.2 Shri. B. Bhattacharjee (Advocate) filed an application dated 07.08.2014 under the Right to Information Act, 2005 (for short 'the RTI Act, 2005') to the Public Information Officer (for short 'PIO') i.e. writ petitioner No.2 for furnishing the information with regard to one Shri. Aman Sinha, who had been conferred the status of designated Senior vide Memo No. HCM II/168/2014/2018 dated Shillong, the 31st July, 2014 by the High Court of Meghalaya. The said application dated 07.08.2014 was rejected by the PIO i.e. writ petitioner No.2 vide order dated 02.09.2014 and also the Appeal No.1 of 2014 to the appellate authority i.e. writ petitioner No.1 against the said order dated 02.09.2014 had been dismissed vide order dated 13.11.2014. The said order dated 02.09.2014 for dismissing the said application filed by the respondent No.2 and also the order dated 13.11.2014 for dismissing the Appeal No.1 of 2014 were passed on only two reasons that: (i) the applicant/respondent No.2 is not the "affected person" and; (ii) the information asked for by the applicant/respondent No.2 cannot be disclosed under Rule 5 of the High Court of Meghalaya (Right to Information) Rules, 2013 (for short 'the High Court of Meghalaya (RTI) Rules, 2013'). The "affected person" is mentioned in Rule 4 of the High Court of Meghalaya (RTI) Rules, 2013. The appeal against the order of the writ petitioner No.1 dated 13.11.2014 being Appeal No.2 of 2015 is pending before the State Chief Information Commissioner i.e. respondent No.1. A copy of the memo of Appeal No.2 of 2015 is also placed before this Court by the respondent No.2 and the same has been placed in the file of this writ petition. The questions fall for consideration in the present writ petition are:-

(i) Can the State Chief Information Commissioner i.e. respondent No.1 as an appellate authority under Section 19 of the RTI Act, 2005 decide the legality or otherwise of the High Court of Meghalaya (RTI) Rules, 2013? and;

(ii) if not, is the State Chief Information Commissioner i.e. respondent No.1 to decide the appeal i.e. Appeal No.2 of 2015 within the four corners circumscribed by the High Court of Meghalaya (RTI) Rules, 2013?;

(iii) in case, the above two questions are decided against the State Chief Information Commissioner i.e. respondent No.1, will the appeal i.e. Appeal No.2 of 2015 be liable to be dismissed?

3. This Court passed an order dated 26.03.2015 in the present writ petition relevant portion of which reads as follows:-

“26.03.2015

Mr. AK Singh, learned counsel for the petitioners further contended that under Section 30 of the Advocates Act, 1961, every Advocate shall be entitled as of right to practice throughout the territories to which the Act i.e. Advocates Act, 1961 extends (i) in all courts including the Supreme Court; (ii) before any tribunal or person legally authorized to take evidence and also that the respondent No.1 has all the trappings of the Tribunal and therefore, the right of the petitioners’ counsel (Advocate) cannot be denied by the respondent No.1 by passing the impugned order dated 18.03.2015. It is now well settled that the professional duty includes the counseling to client, legal opinions, drafting, affidavits, pleading and participating in Law Conference.

The Apex Court (Constitution Bench) in **Supreme Court Bar Association v. Union of India & Anr: (1998) 4 SCC 409** held:

“61. According to Section 30, every Advocate whose name is entered in the State roll of advocates shall be entitled, as of right, to practise throughout the territories to which the Act extends, in all courts including the Supreme Court of India. Section 33 provides that no person shall, on or after the appointed day, be entitled to practice in any court or before any authority or person unless he is enrolled as an advocate under the Act.”

The Apex Court in **Pravin C. Shah v. K.A. Mohd. Ali & Anr: (2001)8 SCC 650** held:

“16..... The right of the advocate to practise envelops a lot of acts to be performed by him in discharge of his professional duties. Apart from appearing in the

courts he can be consulted by his client, he can give his legal opinion whenever sought for, he can draft instruments, pleadings, affidavits or any other documents, he can participate in any conference involving legal discussions etc. Rule 11 has nothing to do with all the acts done by an advocate during his practice except his performance inside the court. Conduct in court is a matter concerning the court and hence the Bar Council cannot claim that what should happen inside the court could also be regulated by the Bar Council in exercise of its disciplinary powers. The right to practice, no doubt, is the genus of which the right to appear and conduct cases in the court may be a specie. But the right to appear and conduct cases in the court is a matter on which the court must have the major supervisory power. Hence the court cannot be divested of the control or supervision of the court merely because it may involve the right of an advocate.”

The respondent No.2 fairly submits at the Bar that he has no objection to representation of the writ petitioners by their counsel before the State Chief Information Commissioner, Meghalaya, Shillong. Keeping in view of the observations made by this Court in the order dated 26.03.2015 and also the fact that the parties are allowed to be represented by their counsel in the cases before the Central Information Commission, this Court is of the considered view that the State Chief Information Commissioner should have allowed the writ petitioners to be represented by their counsel in the Appeal No.2 of 2015.

4. The Chief Justice of the High Court of Meghalaya is the “competent authority” in the case of High Court of Meghalaya under Section 2(e)(iii) of the RTI Act, 2005. Request for information under the RTI Act, 2005 is to be made to whom and how to be made are provided under Section 6 of the RTI Act, 2005. Section 8 of the RTI Act, 2005 provides the information exempted from disclosure. The powers and functions of the Information Commission are more fully provided under Section 18 of the RTI Act, 2005 and also the appellate powers and functions of the State Information Commission are also provided under Section 19 of the RTI Act, 2005. Under Section 12 of the RTI Act, 2005,

the Central Information Commission is constituted. Under Section 15 of the RTI Act, 2005, the State Information Commission is constituted. Under Section 28 of the RTI Act, 2005, the competent authority may, by notification in the Official Gazette, make rules to carry out the provisions of this Act. For easy reference, Sections 2(e)(iii), 3, 6, 8, 12, 15, 18, 19 & 28 of the RTI Act, 2005 are quoted hereunder:-

“2. Definitions.— In this Act, unless the context otherwise requires,—

(e) “competent authority” means—

(iii) the Chief Justice of the High Court in the case of a High Court;

3. Right to Information.— Subject to the provisions of this Act, all citizens shall have the right to information.

6. Request for obtaining information.— (1) A person, who desires to obtain any information under this Act, shall make a request in writing or through electronic means in English or Hindi in the official language of the area in which the application is being made, accompanying such fee as may be prescribed, to—

(a) the Central Public Information Officer or State Public Information Officer, as the case may be, of the concerned public authority;

(b) the Central Assistant Public Information Officer or State Assistant Public Information Officer, as the case may be,

specifying the particulars of the information sought by him or her:

Provided that where such request cannot be made in writing, the Central Public Information Officer or State Public Information Officer, as the case may be, shall render all reasonable assistance to the person making the request orally to reduce the same in writing.

(2) An applicant making request for information shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him.

(3) Where an application is made to a public authority requesting for an information,—

(i) which is held by another public authority; or

(ii) the subject matter of which is more closely connected with the functions of another public authority,

the public authority, to which such application is made, shall transfer the application or such part of it as may be appropriate to that other public authority and inform the applicant immediately about such transfer:

Provided that the transfer of an application pursuant to this subsection shall be made as soon as practicable but in no case later than five days from the date of receipt of the application.

8. Exemption from disclosure of information.— (1) *Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,—*

(a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;

(b) information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;

(c) information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;

(d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;

(e) information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;

(f) information received in confidence from foreign government;

(g) information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;

(h) information which would impede the process of investigation or apprehension or prosecution of offenders;

(i) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers:

Provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the

decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over:

Provided further that those matters which come under the exemptions specified in this section shall not be disclosed;

(j) information which relates to personal information the disclosure of which has not relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:

Provided that the information, which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.

(2) Notwithstanding anything in the Official Secrets Act, 1923 (19 of 1923) nor any of the exemptions permissible in accordance with sub-section (1), a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests.

(3) Subject to the provisions of clauses (a), (c) and (i) of sub-section (1), any information relating to any occurrence, event or matter which has taken place, occurred or happened twenty years before the date on which any request is made under section 6 shall be provided to any person making a request under that section:

Provided that where any question arises as to the date from which the said period of twenty years has to be computed, the decision of the Central Government shall be final, subject to the usual appeals provided for in this Act.

12. Constitution of Central Information Commission.— (1) The Central Government shall, by notification in the Official Gazette, constitute a body to be known as the Central Information Commission to exercise the powers conferred on, and to perform the functions assigned to, it under this Act.

(2) The Central Information Commission shall consist of—

(a) the Chief Information Commissioner, and

(b) such number of Central Information Commissioners not exceeding ten as may be deemed necessary.

(3) The Chief Information Commissioner and Information Commissioners shall be appointed by the President on the recommendation of a committee consisting of—

(i) the Prime Minister, who shall be the Chairperson of the committee;

(ii) the Leader of Opposition in the Lok Sabha; and

(iii) a Union Cabinet Minister to be nominated by the Prime Minister.

Explanation.—For the purposes of removal of doubts it is hereby declared that where the Leader of Opposition in the House of the People has not been recognised as such, the Leader of the single largest group in opposition of the Government in the House of the People shall be deemed to be the Leader of the Opposition.

(4) The general superintendence, direction and management of the affairs of the Central Information Commission shall vest in the Chief Information Commissioner who shall be assisted by the Information Commissioners and may exercise all such powers and do all such acts and things which may be exercised or done by the Central Information Commission autonomously without being subjected to directions by any other authority under this Act.

(5) The Chief Information Commissioner and Information Commissioners shall be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance.

(6) The Chief Information Commissioner or an Information Commissioner shall not be a Member of Parliament or Member of the Legislature of any State or Union territory, as the case may be, or hold any other office of profit or connected with any political party or carrying on any business or pursuing any profession.

(7) The headquarters of the Central Information Commission shall be at Delhi and the Central Information Commission may, with the previous approval of the Central Government, establish offices at other places in India.

15. Constitution of State Information Commission.—*(1) Every State Government shall, by notification in the Official Gazette, constitute a body to be known as the(name of the State) Information Commission to exercise the powers conferred on, and to perform the functions assigned to, it under this Act.*

(2) The State Information Commission shall consist of—

(a) the State Chief Information Commissioner; and

(b) such number of State Information Commissioners, not exceeding ten, as may be deemed necessary.

(3) The State Chief Information Commissioner and the State Information Commissioners shall be appointed by the Governor on the recommendation of a committee consisting of—

(i) the Chief Minister, who shall be the Chairperson of the committee;

(ii) the Leader of Opposition in the Legislative Assembly; and

(iii) a Cabinet Minister to be nominated by the Chief Minister.

Explanation.—For the purposes of removal of doubts, it is hereby declared that where the Leader of Opposition in the Legislative Assembly has not been recognised as such, the Leader of the single largest group in opposition of the Government in the Legislative Assembly shall be deemed to be the Leader of the Opposition.

(4) The general superintendence, direction and management of the affairs of the State Information Commission shall vest in the State Chief Information Commissioner who shall be assisted by the State Information Commissioners and may exercise all such powers and do all such acts and things which may be exercised or done by the State Information Commission autonomously without being subjected to directions by any other authority under this Act.

(5) The State Chief Information Commissioner and the State Information Commissioners shall be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance.

(6) The State Chief Information Commissioner or a State Information Commissioner shall not be a Member of Parliament or Member of the Legislature of any State or Union territory, as the case may be, or hold any other office of profit or connected with any political party or carrying on any business or pursuing any profession.

(7) The headquarters of the State Information Commission shall be at such place in the State as the State Government may, by notification in the Official Gazette, specify and the State Information Commission may, with the previous approval of the State Government, establish offices at other places in the State.

18. Powers and functions of Information Commission.— (1) *Subject to the provisions of this Act, it shall be the duty of the Central Information Commission or State Information Commission as the case may be to receive and inquire into a complaint from any person,—*

(a) who has been unable to submit a request to a Central Public Information Officer, or State Public Information Officer as the case may be, either by reason that no such officer has been appointed under this Act, or because the Central Assistant Public Information Officer or State Assistant Public Information Officer, as the case may be, has refused to accept his or her application for information or appeal under this Act for forwarding the same to the Central Public Information Officer or State Public Information Officer or Senior Officer specified in sub-section (1) of section 19 or the Central Information Commission or the State Information Commission, as the case may be;

(b) who has been refused access to any information requested under this Act;

(c) who has not been given a response to a request for information or access to information within the time limits specified under this Act;

(d) who has been required to pay an amount of fee which he or she considers unreasonable;

(e) who believes that he or she has been given incomplete, misleading or false information under this Act; and

(f) in respect of any other matter relating to requesting or obtaining access to records under this Act.

(2) Where the Central Information Commission or State Information Commission, as the case may be, is satisfied that there are reasonable grounds to inquire into the matter, it may initiate an inquiry in respect thereof.

(3) The Central Information Commission or State Information Commission, as the case may be shall, while inquiring into any matter under this section, have the same powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of persons and compel them to give oral or written evidence on oath and to produce the documents or things;

(b) requiring the discovery and inspection of documents;

(c) receiving evidence on affidavit;

(d) requisitioning any public record or copies thereof from any court or office;

(e) issuing summons for examination of witnesses or documents; and

(f) any other matter which may be prescribed.

(4) Notwithstanding anything inconsistent contained in any other Act of Parliament, or the State Legislature, as the case may be, the Central Information Commission or the State Information Commission, as the case may be, may, during the inquiry of any complaint under this Act, examine any record to which this Act applies which is under the control of the public authority, and no such record may be withheld from it on any grounds.

19. Appeal.— *(1) Any person who, does not receive a decision within the time specified in sub-section (1) or clause (a) of sub-section (3) of section 7, or is aggrieved by a decision of the Central Public Information Officer or the State Public Information Officer, as the case may be, may within thirty days from the expiry of such period or from the receipt of such a decision prefer an appeal to such officer who is senior in rank to the Central Public Information Officer or the State Public Information Officer, as the case may be, in each public authority:*

Provided that such officer may admit the appeal after the expiry of the period of thirty days if he or she is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) Where an appeal is preferred against an order made by a Central Public Information Officer or a State Public Information Officer, as the case may be, under section 11 to disclose third party information, the appeal by the concerned third party shall be made within thirty days from the date of the order.

(3) A second appeal against the decision under sub-section (1) shall lie within ninety days from the date on which the decision should have been made or was actually received, with the Central Information Commission or the State Information Commission:

Provided that the Central Information Commission or the State Information Commission, as the case may be, may admit the appeal after the expiry of the period of ninety days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(4) If the decision of the Central Public Information Officer or State Public Information Officer, as the case may be, against which an appeal is preferred relates to information of a third party, the Central Information Commission or State Information Commission, as the case may be shall give a reasonable opportunity of being heard to that third party.

(5) In any appeal proceedings, the onus to prove that a denial of a request was justified shall be on the Central Public Information Officer or State Public Information Officer, as the case may be, who denied the request.

(6) An appeal under sub-section (1) or sub-section (2) shall be disposed of within thirty days of the receipt of the appeal or within such extended period not exceeding a total of forty-five days from the date of filing thereof, as the case may be, for reasons to be recorded in writing.

(7) The decision of the Central Information Commission or State Information Commission, as the case may be, shall be binding.

(8) In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to,—

(a) require the public authority to take any such steps as may be necessary to secure compliance with the provisions of this Act, including—

(i) by providing access to information, if so requested, in a particular form;

(ii) by appointing a Central Public Information Officer or State Public Information Officer, as the case may be;

(iii) by publishing certain information or categories of information;

(iv) by making necessary changes to its practices in relation to the maintenance, management and destruction of records;

(v) by enhancing the provision of training on the right to information for its officials;

(vi) by providing it with an annual report in compliance with clause (b) of sub-section (1) of section 4;

(b) require the public authority to compensate the complainant for any loss or other detriment suffered;

(c) impose any of the penalties provided under this Act;

(d) reject the application.

(9) The Central Information Commission or State Information Commission, as the case may be, shall give notice of its decision, including any right of appeal, to the complainant and the public authority.

(10) The Central Information Commission or State Information Commission, as the case may be, shall decide the appeal in accordance with such procedure as 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.”*

5. The Chief Justice of the High Court of Meghalaya being the competent authority under Section 2(e)(iii) in exercise of his rules making power under Section 28 of the RTI Act, 2005 framed the Rules called “The High Court of Meghalaya (Right to Information) Rules, 2013”. Rule 4 of the High Court of Meghalaya (RTI) Rules, 2013 more fully provides as to how the application for seeking information under the RTI Act, 2005 is to be considered and disposed of by the authorized person. Under Rule 2(d) of the High Court of Meghalaya (RTI)

Rules, 2013 “authorized person” means Public Information Officer(s) and Assistant Public Information Officer(s) designated as such by the Chief Justice of the High Court as enumerated in Appendix-I to the High Court of Meghalaya (RTI) Rules, 2013. Under Appendix-I to the High Court of Meghalaya (RTI) Rules, 2013, the Registrar General is the appellate authority against the order of the Public Information Officer(s) and the Registrar is the Public Information Officer(s). Under Rule 5 of the High Court of Meghalaya (RTI) Rules, 2013, any information specified under Section 8 of the RTI Act, 2005 shall not be disclosed and made available and in particular the information mentioned therein. For easy reference, Rules 2(d), 4 & 5 of the High Court of Meghalaya (RTI) Rules, 2013 are quoted hereunder:-

“2. Definitions: In this Rules unless the context otherwise requires

(d) “Authorized” person means Public Information Officer(s) and Assistant Public Information Officer(s) designated as such by the Chief Justice of the High Court as enumerated in Appendix-I.

4. Disposal of application by the authorized person. – (i) On receipt of application alongwith requisite fee, the authorized person shall enter the particulars in a register maintained as per Rule 10(i).

(ii) If the requested information does not fall within the jurisdiction of the authorized person, he/she shall order return of the application to the applicant in Form C as soon as practicable, preferably within 15(fifteen) days, and in any case not later than 30(thirty) days, from the date of receipt of the application, advising the applicant, wherever possible, about the authority concerned to whom the application should be made. The application fee deposited in such cases shall not be refunded.

(iii) If the requested information falls within the authorized persons jurisdiction but pertains to any one or more of the categories enumerated in Section 8 and 9 of the Act, the authorized person, on being so satisfied, will issue the rejection order in Form D as soon as practicable, preferably within 15 days and in any case not later than 30 days from the date of receipt of the application. The application fee deposited shall not be refunded.

(iv) *If the requested information falls within the authorized persons jurisdiction but not in one or more of the categories enumerated in Section 8 and 9 of the Act, the authorized person, on being so satisfied, shall supply the information to the applicant in Form E, falling within its jurisdiction. In case the information sought is partly beyond the jurisdiction of the authorized person or partly relates to the categories listed in Section 8 and 9 of the Act, the authorized person, shall supply only such information as is permissible under the Act and is within his/her own jurisdiction and reject the remaining part citing reasons therefore.*

(v) *In so far as decision(s), which are taken administratively or quasi judicially, information therefore, shall be available only to the affected persons.*

(vi) *The information shall be supplied as soon as practicable, preferably within 15 days and in any case not later than 30 days from the date of receipt of application. However, the date of the application/request shall be deemed to be the date of deposit of the entire fee or the balance fee or deficit amount of the fee to the authorized person as the case may be. Provided where the information sought for, concerns the life or liberty of a person, the decision/information, as the case may be, as contemplated in clause (i) to (iv) would be communicated/provided within forty-eight hours of the receipt of the request.*

(vii) *A proper acknowledgement shall be obtained by the authorized person from the applicant in token of receipt of information.*

5. Exemption from disclosure of information. – *Any information specified under Section 8 of the Act shall not be disclosed and made available and in particular the following information shall not be disclosed:*

(a) *That, which is not in the public domain or does not relate to juridical functions and duties of the Court and matters incidental and ancillary thereto.*

(b) *That, which has been expressly forbidden to be published by the Court or the disclosure whereof may constitute Contempt of Court; or any information which involves commercial confidence, trade secrets or intellectual property, the disclosure whereof, would harm the competitive position of a third party, unless the Chief Justice is satisfied that larger public interest warrants the disclosure of such information;*

(c) *That, which would impede the process of investigation or apprehension or prosecution of offenders; or information which relates to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Public Information Officer or the Assistant Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information.*

(d) *That, affecting the confidentiality of any examination*

conducted by the High Court of Meghalaya or administration of the affairs thereof. The question of confidentiality shall be decided by the Chief Justice whose decision shall be final.

(e) That can be obtained under the provisions of the High Court of Meghalaya Rules in case of the High Court and under Civil/Criminal Rules for the subordinate Courts. Such information may be obtained by adhering to the prescribed procedure and payment of fees prescribed in the High Court Rules and Civil/Criminal Rules as the case may be."

6. Under Section 16(2) of the Advocates Act, 1961 an Advocate may, with his consent, be designated as senior advocate if the Supreme Court or a High Court is of the opinion that by virtue of his ability [standing at the Bar or special knowledge or experience in law] he is deserving of such distinction. As such, the High Court or Supreme Court has to form its opinion as to the designation of an Advocate as Senior Advocate. The High Court of Meghalaya also framed the guidelines for designating an Advocate as Senior Advocate under the provisions of Section 16(2) of the Advocates Act, 1961. The High Court of Meghalaya after considering the knowledge, experience in law and standing at the Bar of one Shri. Aman Sinha had designated him as Senior Advocate vide Memo No. HCM II/168/2014/2018 dated 31.07.2014. The respondent No.2 Shri. B. Bhattacharjee (Advocate) filed an application dated 07.08.2014 to the PIO (writ petitioner No.1), High Court of Meghalaya, Shillong for furnishing information with regard to Shri. Aman Sinha. For easy reference, the said application dated 07.08.2014 is quoted hereunder:-

"To,

*The Public Information Officer,
High Court of Meghalaya,
Shillong.*

Dated, the 7th August, 2014

Sub:- Application under RTI Act, 2005.

Sir/Madam,

Kindly furnish me with the following information with regard to Shri. Aman Sinha who has been conferred the status of designated senior vide Memo No. HCM II/168/2014/2018 dated,

Shillong 31st July, 2014 by the High Court of Meghalaya.

1. Who proposed the name of Shri. Aman Sinha for designation as Senior Advocate.

2. The details of length of practice of Shri. Aman Sinha including the length of practice in the High Court of Meghalaya in terms of Clause 3 (b) of the **Guidelines for Designating as Advocate as Senior Advocate by High Court of Meghalaya under the provisions of Section 16 (2) of the Advocates Act, 1961.**

3. The list of reported cases which have been argued by Shri. Aman Sinha.

4. Whether the decision to designate Shri. Aman Sinha as Senior Advocate was an unanimous decision?

The above information may kindly be furnished to me at the earliest.

The requisite fee of Rs.10 (Ten) is enclosed herewith.

Thanking You,

Yours sincerely,
Sd/-
(Shri. B. Bhattacharjee)
Advocate
High Court Bar Association,
Shillong.
Ph.No. (M): 9863066546"

7. The writ petitioner No.2 after due consideration of the said application dated 07.08.2014 for furnishing the information mentioned therein and the effect of designating Shri.Aman Sinha as Senior Advocate to the interest of the respondent No.2 Shri. B. Bhattacharjee (Advocate), had come to the finding that the respondent No.2 Shri. B. Bhattacharjee (Advocate) is not the affected person as provided under Rule 4 of the High Court of Meghalaya (RTI) Rules, 2013. As such, the said application dated 07.08.2014 for the information with regard to Mr. Aman Sinha filed by the respondent No.2 Shri. B. Bhattacharjee (Advocate) was rejected vide order dated 02.09.2014. The said order dated 02.09.2014 reads as follows:-

**“HIGH COURT OF MEGHALAYA
SHILLONG**

No.HCM.II/126/2014/2603
Dated 2nd Sept, 2014

To,

Shri. B. Bhattacharjee, Advocate
High Court Bar Association,
Shillong.

Sir,

1. Please refer to your application I.D. No.5422 Dated 07.08.2014 addressed to the undersigned regarding supply of information with regard to Shri. Aman Sinha who has been conferred the status of designated senior vide Memo No. HCM.II/168/2014/2018 dated 31st July, 2014 by the High Court of Meghalaya.

2. High Court being a constitutional body is an independent organ of the State. You may refer to relevant provisions of the High Court Rules in this regard; particularly Rule 4(v) read with Form D (Rejection Order), whereunder the information asked for cannot be supplied.

Rule 4(v) read with Form D (Rejection Order) of the High Court of Meghalaya (Right to Information) Rules, 2013 states:- “In so far as decision(s), which are taken administratively or quasi judicially, information therefore, shall be available only to the affected persons”.

Yours faithfully,

Sd/-

Authorised person,

E-mail: highcourtmeghalaya@gmail.com

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Telephone No.03642225030”

8. The respondent No.2 Shri. B. Bhattacharjee (Advocate) filed the appeal being Appeal No.1 of 2014 under the RTI Act, 2005 against the said order of the writ petitioner No.2 dated 02.09.2014 before the appellate authority i.e. writ petitioner No.1 on amongst other grounds that:

(i) As per Section 3 of the RTI Act, 2005, the right to seek information is conferred to all the citizens and not limited to the affected persons only;

(ii) As per Section 6(2) of the RTI Act, 2005, the locus standi of an applicant cannot be a question for determination of right to seek information;

(iii) The provisions of Rule 4(v) of the High Court of Meghalaya (RTI) Rules, 2013 would not prevail over relevant Sections 3 and 6(2) of the RTI Act, 2005;

(iv) Section 28 of the RTI Act, 2005 specifically lays down that rules making power is confined to giving effect to the provision of the Act and not for bringing any contradiction;

(v) The information sought for under the said application dated 07.08.2014 does not fall within the restriction under Sections 8 and 9 of the RTI Act, 2005.

From the grounds taken in the appeal, it is crystal clear that the respondent No.2 is questioning the legality and otherwise of the High Court of Meghalaya (RTI) Rules, 2013. It is also crystal clear that unless and until Rule 4 of the High Court of Meghalaya (RTI) Rules, 2013 which mentions the “affected person” is held ultra vires and contradictory to Sections 3 and 6(2) of the RTI Act, 2005, the appeal No.1 of 2014 cannot be allowed. The appellate authority i.e. the writ petitioner No.1 also reiterated the same finding as that of the writ petitioner No.2 vide his order dated 13.11.2014 that the respondent No.2/applicant is not the affected person and the information sought for cannot be disclosed as the same is covered by Rule 5 of the High Court of Meghalaya (RTI) Rules, 2013. After such finding, the writ petitioner No.1 vide his order dated 13.11.2014 dismissed the Appeal No.1 of 2014. The relevant portion of the said order dated 13.11.2014 passed by the writ petitioner No.1 reads as follows:-

“..... As per Section 28(1) of the said RTI Act, 2005, the power to make rules to carry out the provisions of the Act has been conferred upon the Competent Authority and in this instant case, the Chief Justice of the High Court of Meghalaya being the

competent Authority has framed the said Rules of 2013 and the same has been duly notified.

Since the said Rules of 2013 have been framed by the competent Authority, the provisions of the same are applicable to any given case as far as applications seeking information under the RTI Act, 2005 are concerned.

The applicant in this case cannot be said to be an affected person in so far as the information regarding the conferment of Senior Advocate upon Shri. Aman Sinha by the High Court of Meghalaya is concerned. This is because of the fact that the provisions for conferment of Senior Advocate to any Advocate is provided under the “Guidelines for Designating an Advocate as Senior Advocate by High Court of Meghalaya under the provisions of the Section 16(2) of the Advocates Act, 1961” wherein it is provided that such designation as senior Advocate can be made only on the written proposal by:

(i) The Chief Justice of the High Court; or

(ii) Any sitting Judge of the High Court of Meghalaya; or

(iii) An Advocate General of the State of Meghalaya provided he himself is a senior Advocate; or

(iv) Three sitting Senior Advocates of the High Court of Meghalaya.

The Appellant has not been able to prove nor did he ever stated that his name was also considered for conferment of Senior Advocate at the relevant period when the name of Shri. Aman Sinha was considered and as such, he, that is, the appellant cannot be said to be an affected person in this respect.

The information sought for cannot be disclosed as same is covered by Rule 5 of the High Court of Meghalaya (Right to Information) Rules, 2013.

The Public Information Officer/Authorised Person has not committed any error while applying Rule 4(v) of the said “High Court of Meghalaya (Right to Information) Rules, 2013 in the case of the appellant herein as the Appellant has not been able to prove that he is an affected person. The subsequent rejection of the said application is therefore justified.

In view of the above, I find that the Appellant has not been able to make out a case for his appeal to be allowed and the same is accordingly rejected.

With the above, this matter is disposed of accordingly.

Sd/-
Shri. W. Diengdoh
Registrar General
Appellate Authority”

9. Rule 5 of the High Court of Meghalaya (RTI) Rules, 2013 clearly provides that any information more particularly under sub-rule (d) of Rule 5 shall not be disclosed. Rule 5 sub-rule (d) of the High Court of Meghalaya(RTI) Rules, 2013 reads as follows:-

“5. Exemption from disclosure of information.– Any information specified under Section 8 of the Act shall not be disclosed and made available and in particular the following information shall not be disclosed.

(d) That, affecting the confidentiality of any examination conducted by the High Court of Meghalaya or administration of the affairs thereof. The question of confidentiality shall be decided by the Chief Justice whose decision shall be final.”

Therefore, it is the finding of the writ petitioner No.1 that any information affecting the confidentiality of any examination conducted by the High Court of Meghalaya or administration of the affairs thereof shall not be disclosed. Designating of Shri.Amin Sinha as Senior Advocate by the High Court of Meghalaya is no doubt come within the confidentiality of administrative affairs of the High Court of Meghalaya.

10. The respondent No.2 Shri. B. Bhattacharjee (Advocate) again filed an appeal under Section 19(3) of the RTI Act, 2005 against the said order of the writ petitioner No.1 dated 13.11.2014 before the State Chief Information Commissioner, Meghalaya, Shillong i.e. respondent No.1 and the said appeal was registered as Appeal No.2 of 2015. As usual, the grounds amongst others taken in the said appeal are:-

(i) As per Section 3 of the RTI Act, 2005, the right to seek information is conferred to all the citizens and not limited to the affected person only. The rejection of the information by the authorities below to furnish the information sought for to the

applicant on the ground that the applicant is not an affected person, as such, is not in accordance with law and liable to be interfered with;

(ii) As per Section 6(2) of the RTI Act, 2005 the locus standi of an applicant cannot be a question for determination of right to seek information. The said provision of law specifically lays down that an applicant making request for information is not required to give any reason for requesting the information or any other personal detail except those that may be necessary for contacting him. The refusal on the part of the authorities below to furnish the necessary information, as such, is not tenable in law and liable to be interfered with;

(iii) The First Appellate Authority miserably failed to appreciate and apply the provision of Section 28 of the RTI Act, 2005 in its proper perspective and came to a wrong conclusion that the provision of Rule 4(v) of the High Court of Meghalaya (RTI) Rules, 2013 would prevail over relevant Sections 3 and 6(2) of the RTI Act, 2005. Section 28 of the RTI Act, 2005 specifically lays down that rules making power is confined to giving effect to the provision of the Act and not for bringing any contradiction;

(iv) The First Appellate Authority while rejecting the appeal has miserably failed to take into consideration the basic principles of law with regard to a Parent Act and Subordinate Legislation and as a result of which failed to give finding on this aspect though the same was specifically raised and pleaded before it. The impugned order of the PIO and the First Appellate Authority are, as such, not in conformity with law and need immediate interference;

(v) That the High Court of Meghalaya(RTI) Rules, 2013 has been framed in exercise of the powers under Sub-section (1) of Section 28 read with Section 2(e)(iii) of the RTI Act, 2005. The RTI Act, 2005 is an enactment by the Parliament and the provisions contained in the enactment must therefore prevail over an exercise in subordinate legislation if there be a conflict between the two;

(vi) That the finding made by the authorities below that the applicant is not an affected person goes against the very spirit, object and basic purpose of the RTI Act, 2005. The said Act is enacted by the Parliament to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities in order to promote transparency and accountability in the working of every public authority, the High Court of Meghalaya is a Public Authority as laid down under the provisions of the RTI Act, 2005 and as such, the impugned orders by the authorities below cannot stand and needs to be interfered with;

(vii) The information sought for in the present matter does not fall within the restriction contained under Sections 8 & 9 of the RTI Act, 2005.

11. From the grounds amongst others taken in the said Appeal No.2 of 2015 before the State Chief Information Commissioner, Meghalaya, Shillong, it is crystal clear that the appellant i.e. respondent No.2 is asking the State Chief Information Commissioner to decide the validity or otherwise of the High Court of Meghalaya (RTI) Rules, 2013. Unless and until Rules 4 and 5 of the High Court of Meghalaya (RTI) Rules, 2013 are held illegal/or contrary to the Parent Act i.e. RTI Act, 2005, the Appeal No.2 of 2015 cannot be allowed. In other words, the result of the appeal i.e. Appeal No.2 of 2015 solely based on the legality or otherwise of Rules 4 and 5 of the High Court of Meghalaya (RTI) Rules, 2013 or the High Court of Meghalaya (RTI) Rules, 2013. Now, the question is can the State Chief Information Commissioner, Shillong decide the validity or otherwise of the High Court of Meghalaya (RTI) Rules, 2013. We may recall the observations of the Apex Court (*Constitution Bench*) through **Justice S. Ratnavel Pandian (as then he was)** in **Kartar Singh v. State of Punjab: (1994) 3 SCC 569** that “*When Law ends, Tyranny begins; Legislation begins where Evil begins. The function of the Judiciary begins when the function of the*

Legislature ends, because the law is, what the judges say it is since the power to interpret the law vests in the judges.”

The State Chief Information Commissioner is a creature of the statute i.e. RTI Act, 2005 and it is constituted under Section 15 of the RTI Act, 2005. The powers and functions of the State Chief Information Commissioner are more-fully provided under Sections 18 and 19 of the RTI Act, 2005. Sections 18 and 19 of the RTI Act, 2005 had been quoted above in extenso. It is well settled that the creatures of the statute are to discharge powers and functions as provided in the statute itself. It is equally well settled that an authority which is a creature of a statute cannot decide whether the very statute of which he is a creature is a valid statute or not. It is also fairly well settled that the Rules framed by the High Court in exercise of its powers under Article 225 of the Constitution of India is a law made by the High Court. No doubt, the Rules framed by the Chief Justice of the High Court in exercise of his powers conferred by Sub-section (1) of Section 28 read with Section 2(e)(iii) of the RTI Act, 2005 is also a law made by the High Court. The Apex Court in ***Union of India v. Ram Kanwar & Ors: AIR 1962 SC 247*** held that the rules framed by the High Court of Punjab in the matter of Letters Patent for the High Court will certainly be a law made in respect of special cases covered by it. It will certainly be a special law within the meaning of Section 29(2) of the Limitation Act. Paras 8 & 9 of the *AIR* in ***Ram Kanwar's*** case (*Supra*) read as follows:-

“8. It is clear from the aforesaid provisions that while under Article 151 of the Limitation Act a period of 20 days is prescribed for preferring an appeal from an order of the High Court of Punjab in the exercise of its Original Jurisdiction, under rule 4 of High Court Rules for an appeal under clause 10 of the Letters Patent a period of limitation of 30 days is provided. If Article 151 applies, the Letters Patent appeal in the present case was clearly barred. But if rule 4 could be invoked, then the appeal was well within time. The combined effect of the provisions may be stated thus: Under clause 27 of the Letters Patent, the High Court of Judicature of Lahore has the power to make a rule prescribing the period of limitation in

respect of appeals from orders made by that Court in exercise of its Original Jurisdiction to a division bench of that High Court. Under clause 37 thereof, the provisions of the Letters Patent are subject to the legislative powers of the Governor-General in Legislative Council and, therefore, any rule made in exercise of a power conferred under the Letters Patent must necessarily be subject to the provisions of the Limitation Act which is a law made by the Legislative Council. Article 151 of the Limitation Act prescribes the period of limitation of 20 days for preferring an appeal against an order made by the High Court in exercise of its original jurisdiction, and if there is no other limitation on that section, rule 4 of the High Court Rules must give way to the said Article. But section 29(2) of the Limitation Act limits the scope of that section, for it says that where a special or local law prescribes for an appeal a period prescribed therefore in the said Schedule, the provisions of section 3 shall apply as if such period were prescribed therefore in that Schedule, that is, if there is a special or local law prescribing a period of limitation, it will be deemed to be the period of limitation prescribed by the First Schedule to the Limitation Act in respect of an appeal covered by that rule. To state it differently, if rule 4 is a special law, the Limitation Act itself must be deemed to prescribe the period of limitation mentioned under that rule for the class of cases covered by the said rule, and to that extent the rule derogates from Article 151 of the First Schedule to the Limitation Act. Article 151 must be read subject to the special law. In this view, the argument that clause 37 of the Letters Patent makes the rule made by the High Court subject to the Limitation Act and, therefore, that Article 151 shall prevail over rule 4 has no force. Briefly stated, the legal position is this : Under clause 27 of the Letters Patent, the High Court has power to make a rule prescribing the period of limitation for a Letters Patent appeal against an order of a single Judge made in exercise of the original jurisdiction of the High Court, and by reason of clause 37 thereof, the said rule is subject to the provisions of the Limitation Act; but the Limitation Act itself saves the operation of the said rule. With the result that rule 4 applies to such an appeal, whereas Article 151 of the Limitation Act will govern appeals not covered by rule 4 or appeals, from orders made by other High Courts in exercise of their original jurisdiction, if no rule similar to rule 4 is made by the said High Court or High Courts.

9. In the premises the only question to be decided is whether rule 4 is a special law within the meaning of section 29(2) of the Limitation Act. Rule 4 is made by the High Court in exercise of the legislative power conferred upon the said High Court under clause 27 of the Letters Patent. As the said rule is a law made in respect of special cases covered by it, it would certainly be a special law within the meaning of section 29(2) of the Limitation Act.”

12. The Gauhati High Court in the **State of Assam & Ors. v. Naresh Chandra Das & Anr: AIR 1983 Gau 24** held that:

“6. Article 225 of the Constitution confers the same powers and jurisdiction to the existing High Courts as they possessed immediately before the commencement of the Constitution. The power that was conferred on the High Courts by Section 108, Government of India Act, 1915 still subsists. It has not been affected in any manner whatsoever either by the Government of India Act, 1935 or by the Constitution of India. On the other hand, it has been kept alive and reaffirmed with greater vim and vigour. The High Courts enjoy the same unfettered power, as they had enjoyed under Section 108 of the Government of India Act, 1915, of making rules and providing whether an appeal has to be heard by one Judge or more Judges. Therefore, “the Rules” framed by the Gauhati High Court under Article 225 of the Constitution are special laws within the meaning of Section 29(2) of the Limitation Act. 1963.”

13. The Central Information Commission itself in **CIC/SM/C/2011/901285** between **Shri. C.J. Karira – Complainant v. PIO High Court of Madras – Respondent** clearly held that the Commission should not get into the question of the legal validity of the rules made by the Chief Justice of the High Court of Madras i.e. High Court Right to Information (Regulation of Fee and Cost) Rules, 2006 framed by the High Court of Madras as the said Rules framed by the Chief Justice of the High Court of Madras in exercise of the powers to make rules under Section 28 of the RTI Act, 2005 is not within the purview of the Commission. As stated above, the Commission is a creature of the statute and its powers had been clearly provided by the RTI Act, 2005 and the powers so conferred to the Commission do not include the power to question the validity of the rules made by the Chief Justice. Paras 12, 13, 14, 15, 16, 17, 18, 19 and 20 of the judgment in **Shri. C.J. Karira’s** case (*Supra*) read as follows:-

“12. We agree with Shri Jain that the Commission has jurisdiction (to the exclusion of the jurisdiction of a State Information Commission) on the High Courts in the country in respect of matters concerning the exercise of right to information by a citizen. In other words, the Commission is the second appellate authority in respect of all the High Courts and also it has jurisdiction to entertain complaints under section 18 in appropriate cases pertaining to the High Courts.

13. As already indicated above, the issue for consideration is about the jurisdiction of the Commission to entertain the complaint. A

careful consideration of the matter would indicate that the thrust of the complaint and the arguments of the complainant is about the validity of the exercise of legislative competence by the Hon'ble Chief Justice of the High Court of Madras in making the rules which are contended to be against the letter and spirit of the Act.

14. From a combined reading of sections 18 to 20 of the Act, it would be clear that the contents of the complaint do not fall in the ambit of section 18 or 19. There is no provision in the Act which empowers the Commission to entertain and examine the issue relating to the exercise of rule making power by the appropriate Government or the competent authority under the Act.

15. The purposes of section 25(5) and sections 18 to 20 are distinct. The purpose of section 25(5) is to give a recommendation specifying the steps to be taken by the public authority for promoting conformity with the provisions of the Act if it appears to the Commission that the practice of a public authority does not correspond with the Act. The purpose of sections 18 to 20 is to handle complaints and second appeals filed before the Commission as per provisions of the Act and the rules framed thereunder.

16. The recommendation made under section 25(5) of the Act in case no. CIC/WB/C/2010/900031, etc. relied upon by Shri Jain is distinguishable as in that case the Commission was concerned with the matter relating to the compliance of provisions of section 4 of the Act and not the validity of the rules framed under the Act. Any recommendation to take specified steps under section 25(5) of the Act will be made by the Commission on the administrative side only when it appears to the Commission that the practice of a public authority in relation to the exercise of its functions under the Act does not conform with the provisions of the Act.

17. In the light of above, the plea of Shri Jain to follow the above mentioned precedent and make a recommendation under section 25(5) cannot be accepted.

18. The Commission in its decision in case no.CIC/AT/A/2008/01137 dated 13.3.2009 mentioned above has held that the manner in which a competent authority, [under section 2(e)], exercises its powers to frame rules under section 28 is not within the purview of this Commission.

19. It is apparent from above that the Commission should not get into the question of the legal validity of the rules made and the question of competence of the rule making authority.

20. In the light of the above discussion and in the circumstances of the case, we are of the view that the Central Information Commission, while having the jurisdiction to entertain a second appeal under section 19 and a complaint under section 18 of the RTI Act, does not have the jurisdiction to entertain the complaint under reference by virtue of its contents."

14. The Apex Court in **West Bengal Electricity Regulatory Commission v. CESC Ltd.: (2002) 8 SCC 715** had discussed the powers and jurisdictions of the High Court sitting as an appellate court in exercise of the powers under a statute and held that the High Court sitting as an appellate court in exercise of power under a statute cannot exercise its writ jurisdiction for the purpose of declaring provision of that law invalid in absence of any separate challenge to that law by filing a writ petition. The validity or otherwise of a statute can be looked into by the High Court by exercising writ jurisdiction and not as an appellate authority under a statute. Paras 41, 42, 43, 44, 45, 46, 49 and 50 of the SCC in **West Bengal Electricity Regulatory Commission's** case (*Supra*) read as follows:-

“Vires of the Regulations

41. The High Court in the course of its judgments has held that the Commission by framing Regulations 25 and 31(4) has permitted indiscriminate representation of the consumers before it which is not contemplated under the Act. In the said view of that matter, it had directed the Commission to suitably amend these regulations to bring them in conformity with its judgment. There is also a threat to the Commission that if it fails to do so, it may have to face contempt of court proceedings.

42. The question for our consideration is whether the High Court sitting as an appellate court under Section 27 of the Act has the jurisdiction to go into the validity of the Regulations framed under the Act and if so, factually the Regulations as found by the High Court are contrary to the statute.

*43. The High Court while considering the validity of the Regulations came to the conclusion that the 1998 Act does not contemplate hearing of the consumers, and also that the Commission's Regulations have conferred an indiscriminate right of hearing on the consumers. We do not think that these findings of the High Court can be justified. While discussing the right of the consumer to be heard (*locus standi*), we have already held that the 1998 Act has both expressly and impliedly conferred such right of hearing on the consumers. Proceeding on that basis we now consider whether the Regulations framed by the Commission, in any manner, confer an indiscriminate right of hearing. The Commission in exercise of its power under Section 58 of the 1998 Act has framed the regulations keeping in mind the mandate of the Act. In Regulations 18, 19, 24, 25 and 31(4) the Commission has evolved a procedure by which it could restrict the number of representations as also the method to be followed in the proceedings before it which includes the*

restriction on hearing. Regulations 18 and 19 require the Commission to recognise such associations or other bodies of consumers which in its opinion, should be permitted to appear before the Commission. The said Regulations also empower the Commission to regulate the nature and extent of participation by such groups. Regulation 31(4)(ii) and (iii) also empower the Commission to control the proceedings before it. From the above Regulations, it is clear that the Commission has the necessary power to regulate the proceedings before it and the apprehension of the High Court that by granting such power the Commission may have to hear all the 17 lacs of consumers of Calcutta is wholly imaginary. That part, on the facts of the instant case there is no such allegation that the Commission has in fact given indiscriminate hearing to the consumers. As a matter of fact, the respondent Company which was the appellant before the High Court has not even raised this issue and the High Court has suo motu gone into this issue. On the basis of the provisions found in the Regulations framed by the Commission, we are of the opinion that there is no room for any indiscriminate hearing before the Commission. Therefore the finding of the High Court that the Regulations do leave room for such indiscriminate hearing is erroneous.

44. Having held on merits that the Regulations are not arbitrary and are in conformity with the provisions of the Act, we will now consider whether the High Court could have gone into this issue at all in an appeal filed by the respondent Company. First of all, we notice that the High Court has proceeded to declare the regulations contrary to the Act in a proceeding which was initiated before it in its appellate power under Section 27 of the Act. The appellate power of the High Court in the instant case is derived from the 1998 Act. The Regulations framed by the Commission are under the authority of subordinate legislation conferred on the Commission in Section 58 of the 1998 Act. The Regulations so framed have been placed before the West Bengal Legislature, therefore they have become a part of the statute. That being so, in our opinion the High Court sitting as an appellate court under the 1998 Act could not have gone into the validity of the said Regulations in exercise of its appellate power.

45. This Court in the case of **K.S. Venkataraman & Co. (P) Ltd. v. State of Madras: AIR 1966 SC 1089: (1966) 2 SCR 229** after discussing the judgment of the Calcutta High Court in the cases of (i) **Raleigh Investment Co. Ltd. v. Governor General in Council: ILR (1944) 1 Cal 34**, (ii) **United Motors (India) Ltd. v. State of Bombay: (1953) 55 Bom LR 246** and (iii) **M.S.M.M. Meyappa Chettiar v. ITO: (1964) 54 ITR 151 (Mad) held: (SCR pp. 251 H-252 A)**

“There is, therefore, weighty authority for the proposition that a tribunal, which is a creature of a statute, cannot question the vires of the provisions under which it functions.”

46. From the above decision, we hold that the High Court while exercising its statutory appellate power under Section 27 of the 1998 Act could not have gone into the validity of the Regulations which are part of the statute itself.

49. In the case of **Dhulabhai v. State of M.P.: AIR 1969 SC 78: (1968) 3 SCR 662** a Constitution Bench of this Court held: (SCR p.682 F-G)

“(3) Challenge to the provisions of the particular Act as ultra vires cannot be brought before Tribunals constituted under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the Tribunals.”

(emphasis supplied)

50. From the above observations of this Court in the said judgment extracted hereinabove, it is clear that even the High Court exercising its power of appeal under a particular statute cannot exercise the constitutional power under Article 226 or 227 of the Constitution. The position of course would be entirely different if the aggrieved party independently challenges the provision by way of a writ petition in the High Court invoking the High Court's constitutional authority to do so. Therefore we are of the considered opinion that the High Court sitting as an appellate court under a statute could not have exercised its writ jurisdiction for the purpose of declaring a provision of that law as invalid when there was no separate challenge by way of a writ petition. In the instant case we notice that as a matter of fact none of the parties had challenged the validity of the Regulations, therefore the question of the High Court's suo motu exercising the writ power in a statutory appeal did not arise. For the reasons stated above we hold that the High Court could not have gone into the question of validity of the Regulations while entertaining a statutory appeal under the 1998 Act. We also hold that the Commission had the necessary statutory power to frame the Regulations conferring the right of hearing on the consumers. We also hold that the Regulations have provided for a controlled procedure for such hearing and there is no room for an indiscriminate hearing. On facts, we hold in the instant case that the Commission has not given any indiscriminate hearing to the consumers.”

15. The Apex Court (Constitution Bench) in **PTC India Limited v. Central Electricity Regulatory Commission, through Secretary: (2010) 4 SCC 603** held that the Appellate Tribunal for Electricity in the appeals cannot question the validity of the regulations made under Section 178 of the Electricity Act, 2003. Para 92 (i), (ii), (iii), (iv), (v), (vi), (vii) and 93 of the SCC in **PTC India Limited** case (*Supra*) read as follows:-

“Summary of Our Findings

92. (i) In the hierarchy of regulatory powers and functions under the 2003 Act, Section 178, which deals with making of regulations

by the Central Commission, under the authority of subordinate legislation, is wider than Section 79(1) of the 2003 Act, which enumerates the regulatory functions of the Central Commission, in specified areas, to be discharged by Orders (decisions).

(ii) A regulation under Section 178, as a part of regulatory framework, intervenes and even overrides the existing contracts between the regulated entities inasmuch as it casts a statutory obligation on the regulated entities to align their existing and future contracts with the said regulations.

(iii) A regulation under Section 178 is made under the authority of delegated legislation and consequently its validity can be tested only in judicial review proceedings before the courts and not by way of appeal before the Appellate Tribunal for Electricity under Section 111 of the said Act.

(iv) Section 121 of the 2003 Act does not confer power of judicial review on the Appellate Tribunal. The words “orders”, “instructions” or “directions” in Section 121 do not confer power of judicial review in the Appellate Tribunal for Electricity. In this judgment, we do not wish to analyse the English authorities as we find from those authorities that in certain cases in England the power of judicial review is expressly conferred on the Tribunals constituted under the Act. In the present 2003 Act, the power of judicial review of the validity of the Regulations made under Section 178 is not conferred on the Appellate Tribunal for Electricity.

(v) If a dispute arises in adjudication on interpretation of a regulation made under Section 178, an appeal would certainly lie before the Appellate Tribunal under Section 111, however, no appeal to the Appellate Tribunal shall lie on the validity of a regulation made under Section 178.

(vi) Applying the principle of “generality versus enumeration”, it would be open to the Central Commission to make a regulation on any residuary item under Section 178(1) read with Section 178(2)(ze). Accordingly, we hold that the CERC was empowered to cap the trading margin under the authority of delegated legislation under Section 178 vide the impugned notification dated 23.1.2006.

(vii) Section 121, as amended by Electricity (Amendment) Act 57 of 2003, came into force with effect from 27.1.2004. Consequently, there is no merit in the contention advanced that the said section is not yet been brought into force.

Conclusion

93. For the aforesaid reasons, we answer the question raised in the reference as follows:

The Appellate Tribunal for Electricity has no jurisdiction to decide the validity of the Regulations framed by the Central Electricity Regulatory Commission under Section 178 of the Electricity Act, 2003. The validity of the Regulations may, however, be challenged by seeking judicial review under Article 226 of the Constitution of India.”

16. From the ratio decidendis of the cases discussed above, it is crystal clear that the State Chief Information Commissioner which is a creature of the statute i.e. RTI Act, 2005, in exercise of its jurisdiction as an appellate authority cannot question the validity of the rules framed under the same statute i.e. RTI Act, 2005 in an appeal i.e. Appeal No.2 of 2015 against the order passed by the First Appellate Authority. Therefore, the questions fall for consideration in the present writ petition are decided against the State Chief Information Commissioner, Meghalaya, Shillong. As the result of the Appeal No.2 of 2015 solely depends on the jurisdiction of the State Chief Information Commissioner to question the validity or otherwise of the High Court of Meghalaya (RTI) Rules, 2013, the Appeal No.2 of 2015 is devoid of merit inasmuch as (i) the State Chief Information Commissioner as an appellate authority under the RTI Act, 2005 has no jurisdiction to question the validity or otherwise of the High Court of Meghalaya (RTI) Rules, 2013 framed under the same statute i.e. RTI Act, 2005 and (ii) the application dated 07.08.2014 filed by the respondent No.2 cannot be entertained under Rules 4 and 5 of the High Court of Meghalaya (RTI) Rules, 2013.

17. In the result, the Appeal No.2 of 2015 is hereby quashed and the writ petition is hereby allowed.

JUDGE

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