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## **First Appeal under Right to Information 2005**

**To**

The First Appellate Authority (Under the RTI Act,2005)  
Shri Sanjay Parihar  
Registrar  
Supreme Court of India, New Delhi.

Date: 3rd July 2018

### **Sub: Appeal under Section 19(1) of the RTI Act, 2005**

Dear Madam / Sir,

I filed an application under the RTI Act 2005 on 8<sup>th</sup> May 2018 (copy of application attached-annexure 1) seeking the following information:

1. Was writ petition Pratap Singh Bajwa & Anr. vs. Chairman Rajya Sabha & Anr. (diary no. 17543/2018) listed on the 8<sup>th</sup> of May, before a Consitution Bench by way of an administrative order?
2. If yes, Who has passed the order above mentioned?
3. Kindly provide me a copy of the order and allow me to inspect the concerned file along with any file noting concerning the said order.

The PIO vide letter dated 6<sup>th</sup> June 2018 stated in reply that the notice for listing the stated matter is available on the website of the Supreme Court and provided the exact link of the same. Further, the PIO stated that copies of court records and inspection could only be provided under The Supreme Court rules, 2013, and hence denied the same.

I am aggrieved by the response of the PIO and consequently, I am filing a first appeal under section 19(1) of the RTI Act. The ground of the first appeal are-

1. I had sought information about and a copy of the administrative order vide which the aforementioned matter was listed on the 8<sup>th</sup> of May 2018 before a Constitution Bench. However, in his reply the PIO has directed me to the website where the notice regarding the listing of the matter is available. I had not sought information about or a copy of the notice. The notice is issued for the information of affected parties/public and conveys the order/decision regarding the listing of the matter. It is not the same as the order vide which it is decided to list a matter before a bench. Therefore, the PIO has provided incorrect information as instead of providing a copy of the order, he has provided a

copy of the notice.

2. a) The denial of information by citing the rules of the Supreme Court is not only a violation of the RTI Act but also a violation of the judgement of the Hon'ble Supreme Court in Writ Petition (Civil) No.194 OF 2012 Common Cause v. High Court of Allahbad wherein the court held:

*“As regards Rules 25 to 27 of the Allahabad High Court Rules which debar giving of information with regard to the matters pending adjudication, it is clarified that the same may be read consistent with Section 8 of the Act, more particularly sub-section (1) in Clause (J) thereof.*

*Wherever rules do not comply with the above observations, the same be revisited as our observations are based on mandate of the Act which must be complied with.”*

Further Section 22 of the RTI Act states

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

c) Secondly, as per order III rule 8(vi) of of the Supreme Court rules, the registrar enjoys full discretion in terms of deciding whether or not inspection and copies of court records will be provided. The relevant rule states:

*“8. In addition to the powers conferred by other rules, the Registrar shall have the following duties and powers subject to any general or special orders of the Chief Justice, namely:-*

*(vi) to grant leave to inspect and search the records of the Court and order the grant of copies of documents to parties to proceedings, without interfering or dispensing with any mandatory requirement of these rules;”*

This is inconsistent with the provisions of the RTI Act. Under the Act information can be denied only if it is exempt as per section 8 or 9 of the RTI Act. No other grounds or discretion can be invoked. Further, the exemptions are subject to the mandatory exception clauses as defined under the RTI Act i.e. proviso to section 8(1), section 8(2) and section 8(3). Therefore, the rules are inconsistent with the provisions of the RTI Act in so far as right to access records is concerned.

The Supreme Court in the aforementioned judgment had examined rules of the Allahbad High Court and directed that rules must comply with the mandate of the RTI Act in so far as access to information is concerned. Therefore, the reliance placed by the PIO on the SC rules to deny information is completely misconceived and is in violation of the RTI Act.

I request the first appellate authority to please direct the PIO to furnish the complete information as requested in the original application as soon as possible.

Thanking you,

Yours sincerely,

Prashant Bhushan

**Enclosures**

Annexure 1: Copy of the RTI application