

**OFFICE OF THE REGISTRAR GENERAL, GAUHATI HIGH COURT,
MAHATMA GANDHI ROAD, PANBAZAR, GUWAHATI.**

RTI APPEAL NO. –I.D. NO. 04/18


APPELLANT	:- Sri Anupam Goswami, resident of Chamber No-204, II nd Floor, Durga Chambers, 1333, D.B. Gupta Road, Karol Bagh, New Delhi-110005.
RESPONDENT	:- REGISTRAR(JUDICIAL) –Cum-PIO, GAUHATI HIGH COURT
DATE OF APPEAL	:- 30.07.2018
DATE OF HEARING	:- 10.08.2018
DATE OF ORDER	:- 30.08.2018

Factual Background:-

Being aggrieved by the response received from the respondent, Shri Anupam Goswami – appellant, preferred this appeal, which is docketed vide Regd. ID No. 04/18.

Before a discussion is directed towards the issue in question, a brief reference to the background of this appeal would be advantageous.

The Appellant had sought for information vide his RTI application dated 05/05/2018, regarding, whether Spouses or blood relatives of Judges of Gauhati High Court including Chief Justice are practicing independently in (1) Gauhati High Court, (2) Supreme Court of India, (3) any other High Court excluding Gauhati High Court, (4) in lower judiciary in states of Assam, Nagaland, Mizoram and Arunachal Pradesh, (5) in lower judiciary in any other state or Union Territory excluding States of Assam, Nagaland, Mizoram and Arunachal Pradesh, (6) working with a law firm owned by any foreign law firm having office in India, (7) working with a law firm owned by any Indian citizen having office in India, (8) working or pleading as advocate on panel before Gauhati High Court, Supreme Court of India or any High Court for any government (both central and state or its organisation or public sector units of both central and state), (9) working as law officer for central or state government and their affiliated organization including public sector undertakings, (10) practicing independently in any tribunal anywhere in India created by law of central or state government.



The said RTI application was registered vide **ID. No. 87/2018 dated 14/04/2018** (at **Exhibit-4**). Thereafter, the respondent, vide letter No. HC.XXXV. 1/2018/103/RTI dated 18/05/2018 (at **Exhibit-5**) replied the said RTI application as follows:-

"Reply to Query No.1 to 10 :- Separate data of spouses and relatives of Hon'ble Judges of Gauhati High Court, not being maintained, the same could not be provided.

Further, u/s 7(9) of the RTI Act, 2005, the Public Authority is not required to compile information, but to provide information, as it already exists."

Being aggrieved by the information received from the respondent in respect of his RTI application under reference, the appellant has filed this appeal.

Grounds of appeal:-

The appellant has cited following reason for appeal:-

- 1. The learned PIO has erred in his reply stating that no recorded information on the subject is available with the said office.**
- 2. The above mentioned statement of learned PIO is in complete contradiction of Memorandum of Procedures of appointment of High Court Judges (MoP) uploaded by department of Justice, Ministry of law and justice, Government of India on their website- http://doj.gov.in/sites/default/files/memohc_0_1.pdf.**
- 3. As per para 14 on page no-5 of MOP, the proposal for appointment of a judge of a High Court shall be initiated by the Chief Justice of the concerned High Court.**
- 4. The above mention contention proves that all the documents regarding proposal for appointment of High Court Judges start with collegium headed by Chief Justice of concerned High Court.**
- 5. The above mentioned documents are in custody of Chief Justice's Secretariat which is part of High Court (Registry) on Administrative side and they are covered by provisions of RTI Act 2005.**
- 6. Based on above mentioned facts the PIO has made false and misleading statement with malafide intention to deny us with required information.**



7. The information sought by us is sent by collegium headed by chief justice of concerned high court as per format provided in Annexure-1 (i) which is mentioned on page no 12 to 14 of MOP especially in para 13, 14, 15, 16 and 17 of said annexure of MoP.

8. The information which we have requested in our RTI application belongs to page no 12 to 14 of MOP especially in para 13, 14, 15, 16 and 17 of said annexure of MoP.

9. Even if the information is held in some other format as claimed by learned PIO then the PIO was duty bound to offer us with alternative of inspection of documents and making of copies of same as per section 29(i) of RTI Act-2005.

10. As per Section 19(5) of the RTI Act the onus to prove that said information or records does not exist in on PIO and here PIO has utterly failed in carry his obligations as imposed on him by RTI-ACT-2005".

The appellant, therefore, sought following relief:

1. The learned PIO be directed to get the required information from Chief Justice's Secretariat and to provide us the same as early as possible.
2. If there is any confusion on the part of PIO regarding format etc. then the learned PIO be directed to allow us to carry out inspection and making copies of same as per section 2(i) of RTI Act 2005 of documents available with chief justice's secretariat.
3. The learned PIO be directed to upload all the relevant information which is requested by us by our RTI-Application on website of Gauhati High Court in wider public interest.
4. Suitable and appropriate penalty be imposed on PIO and deemed PIOs as per provision of RTI-ACT-2005 for providing false and misleading information.

Submission:-

While admitting the appeal on 30.07.2018, the date for hearing was fixed on 10.08.2018, and the appellant was duly notified about the date, vide letter No. HC.XXXV-11/2018/171/RTI dtd. 30.07.2018. But the appellant never turned up.

Whereas the respondent has appeared and simply admitted having not made any endeavour to collect the record from the Secretariat of Hon'ble the Chief Justice.



Decision and reasons thereof:-

We have gone through the appeal and the documents enclosed therewith carefully. Also we have gone through the record pertaining to the giving of information by the respondent carefully. And also we have gone through the case laws:- **(1) Mr. R.H. Bansal (Appellant) Vs. Mr. M.P. Gupta (Respondent) Decision No. CIC/SG/A/2011/000123/11564 (2) Franky Monteiro (Appellant) Vs. Public Information Officer (Respondent) Appeal No. 29/SCIC/2016 (3) Kashinath J. Shetye (Petitioner) Vs. Public Information Officer and 4 Others (Respondents) Writ Petition No. 1 of 2009** of Bombay High Court, so referred by the appellant.

It has transpired from the record that the appellant has asked for the information pertaining to spouses or blood relatives of all Judges of High Court practicing as lawyer available up to 30.04.2018. But the PIO has replied that - ***Separate data of spouses and relatives of Hon'ble Judges of Gauhati High Court, not being maintained, the same could not be provided. Further, u/s 7(9) of the RTI Act, 2005, the Public Authority is not required to compile information, but to provide information, as it already exists.***

However, the MoP (Para No.-14), as enclosed by the appellant with the appeal memo, reveals that the proposal for appointment of a High Court Judge shall be initiated by the Chief Justice with the collegium headed by him, of the concerned High Court. So, all documents pertaining to appointment of High Court Judges remains in the custody of Secretariat of the Chief Justice. The said Secretariat is also a part of the Registry of the High Court and covered by the provisions of RTI Act 2005. It also appears from the format provided in Annexure-I (i), which is mentioned on page no 12 to 14 of MOP especially in para 13, 14, 15, 16 and 17 of said annexure of MoP, that the required information has to be sent invariably while recommending name of a person for filling up the vacancy of Judges of the High Courts. Thus there is no room for any doubt that the information, as asked for by the appellant, is not available in the Secretariat of the Hon'ble Chief Justice.

But, admittedly no endeavour was made by the respondent to collect the record from the Secretariat of the Chief Justice so as to furnish the information as asked for by the appellant. Being so, the reply, so furnished to the appellant, by the PIO appears to be not factually correct. The contention, so made by the appellant in his appeal memo, appears to be justified and backed by the case laws referred by him.




The basic object behind enacting the RTI Act 2005 is 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. This can be well deciphered from the preamble of the Act itself.

Keeping the above objectives in mind if we analyse the factual matrix of the appeal in hand then we will find that the reply so furnished to the appellant by the PIO is not based on facts. The Act cast an obligation upon the PIO to collect information and furnish the same to the applicant correctly. As contended the information, as sought for by the appellant, being maintained in the Secretariat of Hon'ble the Chief Justice, which is a part of the Registry. But no effort was made to collect the same. The respondent could not show that the requested information falls within the categories enumerated in section 8 & 9 of the Act and as provided in Rule 4(iii) of the Gauhati High Court (Right to information) Rules,2008. Mention to be made here that every citizen is entitled to have the information which the Parliament and State Legislature can have in view of proviso to Section 8(1)(j).

In the result, we find sufficient merit in this appeal and consequently the same stands allowed. The respondent is accordingly directed to collect the information, as asked for, by the appellant, from the Secretariat of Hon'ble the Chief Justice and to furnish the same to the appellant. We hope and trust that the respondent will discharge this obligation as required under the RTI Act.

Let this order be communicated to the appellant as well as the respondent and also be uploaded in the website of the Gauhati High Court.


Registrar General
cum-
Appellate Authority 28-08-18