

**ODISHA INFORMATION COMMISSION  
BHUBANESWAR**

**Present: Shri Tarun Kanti Mishra,  
State Chief Information Commissioner,**

**Shri Jagadananda,  
State Information Commissioner**

**Shri Pramod Kumar Mohanty,  
State Information Commissioner**

**Date:-24<sup>th</sup> May, 2013**

**Second Appeal No. 668/2012**

Himansu Sekhar Behera,  
S/o-Ram Hari Behera,  
At-Ganamalla Sahi Samili Balishai, Puri,  
PS-Puri Town, PO/Dist-Puri.....Appellant

**-Vrs-**

1. Public Information Officer,  
Office of the Tahasildar, Khurda
2. First Appellate Authority ,  
Office of the Tahasildar, Khurda.....Respondents

**Second Appeal No. 707/2012, 708/2012, 709/2012, 710/2012,**

**711/2012, 712/2012 & 713/2012**

Pradeepta Kumar Hota,  
S/o-Late Lokanath Hota,  
At/PS-Baseli Sahi, Gochhikar Lane,  
PO-Puri Town, Dist-Puri.....Appellant

**-Vrs-**

1. Public Information Officer,  
Office of the Tahasildar, Khurda
2. First Appellate Authority ,  
Office of the Tahasildar, Khurda.....Respondents

## Decision

1. Appellants Himansu Sekhar Behera and Pradeepta Kumar Hota are absent. Prafulla Kumar Panigrahi, PIO-cum-Head Clerk, office of the Tahasildar, Khurda is present.
2. The aforesaid appeals having been filed against the P.I.O. of the same Public Authority and involving similar facts and question of law have been heard analogously and this common judgement will dispose of all the appeals.
3. These appeals emanate from the orders dated 13.3.2012 of the First Appellate Authority as well as that of the P.I.O. dated 23.12.2011 of the establishment of Tahasildar, Khurda wherein it has been commonly held that the information as requested by the appellants vide their RTI applications dated 05.12.2011 cannot be provided to them under the RTI Act on the ground that there is existing provision for supply of certified copies of Khatians under the Orissa Records Manual, 1964.
4. Appellants Pradeepta Kumar Hota and Himanshu Sekhar Behera filed form-A applications before the P.I.O. of Khurda Tahasil on 05.12.2011 requesting him to supply certified copies in two sets of Sabik (No.1962 pre-settlement) Khatian of Mouza Sahajpur, Thana No.699, Bhubaneswar, Distrit Puri bearing Khata No.46, 58, 87, 26, 78, 24, 52 and several other Khatas. The P.I.O. rejected the applications stating that certified copies of the said documents are being issued under the relevant provision of Orissa Records Manual, 1964, but are not supplied under the provisions of RTI Act-a view which was concurred by the First Appellate Authority in the orders impugned in these Appeals.
5. The learned counsel appearing for the appellants submitted that right to information being guaranteed by Section-3 of RTI Act and certified copies of documents since can be provided under Section 2(j) of the Act, refusal to supply such copies by the P.I.O. and the First Appellate Authority is arbitrary and therefore the impugned orders cannot be sustained in law. It is further submitted that even though there are

provisions in Orissa Records Manual to obtain certified copies of Khatians, yet in view of the over-riding effect of the RTI Act envisaged under Section 22, certified copies of Khatians can also be obtained under the provisions of RTI Act.

6. In counter to the submissions made by the learned Counsel for the appellants, the P.I.O. submitted that the documents, of which copies have been sought for, can be accessed by any citizen in submitting an application and paying the fee prescribed under Orissa Records Manual. It cannot, therefore, be stated that those documents are "***held by or under the control***" of a Public Authority. Thus the provision of RTI Act is not applicable. The PIO further submitted that Orissa Records Manual is still operative even after the enactment of Right to Information Act, 2005 and the provisions of the Odisha Record Manual, so far it relates to providing copies of documents, not being inconsistent with the provisions of RTI Act, cannot be said to have been over-ridden by RTI Act by operation of Section-22 and therefore the submissions made by the learned counsel for the appellants are unacceptable.
7. Chapter-9 of Orissa Records Manual prescribes rules "for supply of information and copies relating to papers and documents in public offices and for inspection of such papers and documents". In that chapter Rules have been framed for applications for information and copies of documents kept in public offices. Rule-333 provides the following:-
  - "333. **Purposes for which applications to be entertained** – (1) applications may be received from the public for –
    - (a) Information respecting the contents of papers or documents or records and Registers of any consigning office or Court including those not actually deposited in the Record Room, whether such information be or be not required for the purpose of correctly describing such documents in applications for copies of the same ;
    - (b) Unstamped copies of papers and documents of which copies may, by law, be given on unstamped paper ;

(c) Stamped copies of papers, documents, records or registers. “

8. Pursuant to the aforesaid provision, a member of the public can apply for copies of any documents in the custody of public offices. The copies of Khatians or the Records of Right as have been sought for in the cases in hand could also be applied for under the aforesaid rule. Orissa Records Manual is the creature of a statute which is framed by the State Government pursuant to the power conferred on it by Section-3 of Destruction of Records Act, 1917. The aforesaid Act and the Manual are still in force.
  
9. The contention of the learned Counsel for the appellants that Right to Information Act, 2005 overrides the provisions in the Manual by virtue of Section-22, needs examination. In this context it may be stated that Destruction of Records Act, 1917 and the Orissa Records Manual, 1964 have been enacted much before the RTI Act came into force and they are treated as special law whereas RTI Act is a general law. The question therefore arises as to whether Section-22 of the Act overrides the Rules for supply of information and certified copies of documents and records prescribed by Orissa Records Manual. Hon'ble Apex Court in the case of Maharaja Pratap Singh Bahadur -Vrs- Thakur Man Mohan Dey (MANU/SC/0202/1966) have held that an earlier special law cannot be held to have been abrogated by mere implication. This view has also been reiterated by the Hon'ble Supreme Court in the case of Chandra Prakash Tiwari -Vrs- Shakuntala Shukla (AIR 2002 SC.2322).

In the case of R.S. Raghunath Vs. State of Karnataka (AIR-1992 SC.81) the Hon'ble Supreme Court held

***“the general Rule to be followed in case of conflict between two statutes is that the later abrogates the earlier one. In other words a prior special law would yield to a later general law, if either of the two following conditions are satisfied.***

***(i) the two are inconsistent with each other,***

***(ii) there is some express reference in the latter to the earlier enactment***

***If either of these two conditions are fulfilled, the latter law, even though general, would prevail”.***

10. By application of the aforesaid law on the subject, it is to be held that a special enactment or Rule like Orissa Records Manual cannot be held to be overridden by a later general enactment i.e. RTI Act simply because the later opens up with a non-obstante clause in absence of any clear inconsistency between the two legislations. Orissa Records Manual and the RTI Act prescribe provisions for supply of information and copies relating to papers and documents in public offices. In this connection it may further be mentioned that neither provision prohibits or forbids supply of information or grant of copies of documents or records. The difference is only in so far as the practice or payment of fees is concerned. There is, therefore, no inherent inconsistency between the two provisions. There being no inconsistency between both the laws, the earlier special law prescribing Rules and procedure for providing certified copies of documents to any member of the public cannot be said to have been over-ridden by Section-22 of RTI Act. Therefore the argument of the learned counsel for the appellant that Orissa Records Manual stands repealed or abrogated or over-ridden by operation of Section 22 of RTI Act is not the correct position of law and therefore not acceptable. In the premises of the aforesaid discussion, the Commission is of the opinion that the provisions of Orissa Records Manual prescribing Rules for supply of information and copies still holds good independent of the provisions of Right to Information Act and certified copies can also be obtained by resorting to the said Rules.
11. The next contention of the learned counsel is that although certified copies of documents and Khatians as has been in the instant case, can be obtained by resorting to provisions of Orissa Records Manual, yet a citizen pursuant to Section-3

of RTI Act, can as a matter of right, claim copies of such documents since “Right to Information” defined under Section 2(j) includes “taking of certified copies of documents or records”. We are unable to subscribe to the view advanced by the learned Counsel. The right to information conferred under Section-3 of the RTI Act is not an absolute right, but is subject to the provisions of the said Act. Though the right so conferred by Section-3 is a substantive provision always means the right to information accessible under the Act which “is held by or under the control of any public authority”. Thus the definition of “Right to Information” specifically qualifies the said right with the following words:

- (1) “accessible under the Act” and
- (2) “which is held by or under the control of any Public Authority”.

12. It therefore connotes that there is no right to information, firstly, where the information is not accessible, for example the information which are exempted from disclosure under Section-8 or 9 of the RTI Act and secondly, if an information is “not held by or under the control of any Public Authority”. The Hon’ble High Court of Delhi in the case of Registrar of Companies and others vs. Dharmendra Garg and another (W.P.(C) No.11271/2009) in their judgement dated 01.6.2012 in para-34 were pleased to hold-

“From the above, it appears that the expression “held by” or “under the control of any public authority”, in relation to “information”, means that information which is held by the public authority under its control to the exclusion of others. It cannot mean that information which the public authority has already “let go”, i.e. shared generally with the citizens, and also that information, in respect of which there is a statutory mechanism evolved, (independent of the RTI Act) which obliges the public authority to share the same with the citizenry by following the prescribed procedure, and upon fulfillment of the prescribed conditions. This is so, because in respect of such information, which the public authority is statutorily obliged to disseminate, it cannot be said that the public authority

“holds” or “controls” the same. There is no exclusivity in such holding or control. In fact, the control vests in the seeker of the information who has only to operate the statutorily prescribed mechanism to access the information. It is not this kind of information, which appears to fall within the meaning of the expression “right to information”, as the information in relation to which the “right to information” is specifically conferred by the RTI Act is that information which “*is held by or under the control of any public authority.*”

Again in para-39, the Hon’ble High Court held that-

“Therefore, if another statutory provision, created under any other law, vests the right to seek information and provides the mechanism for invoking the said right (which is also statutory, as in this case) that mechanism should be preserved and operated, and not destroyed merely because another general law created to empower the citizens to access information has subsequently been framed”.

13. It is thus apparent that a statutory mechanism, namely, Orissa Records Manual provides a right to a person to seek certified copies of documents independent of the RTI Act. The categories of documents have been classified for sharing them with the public upon application and on depositing the prescribed fee. A Public Authority is therefore statutorily obliged to furnish the certified copies of the documents like the ones under consideration and therefore it cannot be stated that public authority holds or controls the same. In such eventuality provisions of RTI Act is not applicable. A full bench of the Central Information Commission in the case of Dr. Ishan Ghosh vs. P.I.O., Eastern Railway, Office of the Chief Commercial Manager (Central Information Commission /AD/A 2011/110501 dated 05.10.2012) after following the decision of the Hon’ble High Court of Delhi (*supra*) took the similar view.
14. On a careful consideration of the facts and law involved in the appeals in totality, we hold that where there are statutory rules framed to provide information, inspection

and certified copies, recourse should be taken to access information and copies under those rules and in such circumstances, the provisions of RTI Act are not applicable. Therefore, the impugned orders of First Appellate Authority of the establishment of Khurda Tahasil challenged in these appeals do not appear to have suffered from any infirmity, illegality or impropriety. Therefore, we are not inclined to interfere with the said orders. The appellants may apply to obtain the certified copies of the desired documents after invoking provisions of Orissa Records Manual. All the appeals are accordingly disposed of.

**Pronounced in open proceedings**

Given under the hand and seal of the Commission this day, the 24<sup>th</sup> May, 2013.

State Chief Information Commissioner  
24/05/2013

State Information Commissioner (J)  
24/05/2013

State Information Commissioner (M)  
24/05/2013