



2026:KER:13231

W.P(C) No.3530/2024

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P.

FRIDAY, THE 13TH DAY OF FEBRUARY 2026 / 24TH MAGHA, 1947

WP(C) NO. 3530 OF 2024

PETITIONER/S:

NISHAD SHOBANAN,
AGED 38 YEARS
S/O. SHOBANAN E K, PULINGHANPILLY HOUSE,
PUTHENVELIKKARA P.O, MULAVANA, ERNAKULAM DISTRICT,
PIN - 683594

BY ADV SRI.T.U.SUJITH KUMAR

RESPONDENT/S:

- 1 THE UNION OF INDIA,
REPRESENTED BY SECRETARY TO GOVERNMENT, DEPARTMENT OF
PERSONNEL AND TRAINING, MINISTRY OF PERSONNEL, PUBLIC
GRIEVANCE AND PENSIONS, GOVERNMENT OF INDIA, NORTH
BLOCK, NEW DELHI, PIN - 110001
- 2 STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT, DEPARTMENT OF
GENERAL ADMINISTRATION (CO-ORDINATION), SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695001

BY ADV O.M.SHALINA, DEPUTY SOLICITOR GENERAL OF INDIA
SMT. DEVISHRI R., GOVT. PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
02.02.2026, THE COURT ON 13.02.2026 DELIVERED THE FOLLOWING:



MOHAMMED NIAS C.P., J.

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W.P(C) No.3530 of 2024
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Dated this the 13th day of February, 2026

JUDGMENT

The writ petitioner is challenging Rule 4(4) of the Kerala Right to Information (Regulation of Fee and Cost) Rules, 2006 (hereinafter the 'Kerala RTI Rules') to the extent it prescribes that the free supply of materials to persons below the poverty line shall be restricted to 20 pages only, as it is violative of the parent Act, the Right to Information Act, 2005 (hereinafter 'the RTI Act').

2. The petitioner, who is an RTI activist and an active member of Bodhi Vivaravakasa Samrakshana Sena, belongs to the below-the-poverty-line category and submitted an application under the RTI Act seeking information from the Co-operative Society Registrar regarding audit reports and other details of Puthenvelikkara Service Co-operative Bank and Elanthikkara Women Co-operative Sangham. In response, Ext. P2 letter dated 25.10.2023 was issued, directing the petitioner to pay Rs.30/- for copies under RTI. It is specified in the letter that, as per Rule



4(4) of the Kerala RTI Rules, no fee shall be charged from persons below the poverty line, provided that the free supply of material shall be restricted to 20 pages only. The petitioner submits that, under Rule 7(5) of the RTI Act, it is prescribed that no fee shall be charged from persons below the poverty line. Section 27 of the RTI Act deals with the rule-making power of the appropriate government, under which Section 27(2)(c) specifically empowers the government to make rules regarding the fee payable under subsections 1 and 5 of Section 7. Under this authority, Kerala RTI Rules, 2006, were enacted, and subsequently, through Ext. P3 notification amended in 2015, a proviso was inserted in Rule 4(4) stating that the free supply of materials under Rule 4(1)(a) to BPL persons shall be restricted to 20 pages only.

3. The petitioner further argues that delegated legislation must be consistent with the parent Act and must not exceed the powers granted under that Act. The rule-making authority must exercise its powers for the purpose for which they are granted. Provisions of delegated legislation will be ultra vires if they are contrary to the parent Act or exceed the authority granted by it. The petitioner states that Rule



4(4) supplants section 7(5) of the RTI Act and must be in accordance with that section. Relying on *General Officer Commanding-in-Chief and Anr v. Dr Subhash Chandra Yadav and Another* (1988 (2) SCC 351), the petitioner contends that a rule can only have the effect of a statutory provision if it conforms to the statute under which it is framed and falls within the scope and power of the rule-making authority.

4. Further, the petitioner refers to the *Additional District Magistrate (Rev.) Delhi Administration v. Sri Ram* (2000 (5) SCC 451), *State of T.N. and Another v. P. Krishnamurthy and Others* (2006 (4) SCC 517), and *St. John's Teachers Training Institute v. Regional Director, National Council for Teacher Education, and Another* (2003 (3) SCC 321), to support the principle that granting rule-making power by an Act does not enable the authority to create rules beyond the scope of the enabling Act or incompatible with it. Statutory bodies cannot enlarge the powers beyond the scope intended by the legislature, as held in *Sukhdev Singh and Others v. Bhagat Ram Sardar Singh Raghuvanshi and Another* (1975 (1) SCC 421).

5. In the counter-affidavit filed by the second respondent, the



State of Kerala states that the government introduced a proviso to Rule 4(4) through Ext. P3 amendment based on the Kerala State Information Commission's opinion that some applicants submit applications under Section 6(1) of the RTI to determine the availability of information and costs involved, then engage persons below the poverty line to evade paying fees. To prevent such misuse, the proviso was introduced. This misuse was also noted by the Division Bench of the Gujarat High Court in a judgment dated 24.09.2014 in LP Appeal No. 1102 of 2014. In **Shama Praveen v. NHRC** (Appeal No. CIC/OK/2006/00717) dated 18.04.2007, the CIC directed public authorities to provide information to BPL applicants free of cost, provided the authority was a genuine seeker of information and not a proxy. It is further added that other state governments have also restricted the benefits of free information supply to BPL applicants by imposing caps. It is further submitted that the proviso to a provision of a legislation cannot have the impact of nullifying the other provisions of the enactment, and the amendment is discernible from the Statement of Objects and Reasons.

6. In the counter affidavit filed on behalf of the 1st respondent,



Union of India (Department of Personnel and Training), it is stated that Section 7(5) of the RTI Act provides that no fee shall be charged from persons who are below the poverty line. Reference is also made to Section 27 of the Act, read with Section 2(a), which confers rule-making power upon the appropriate Government, namely the Central Government or the State Government, to frame rules for carrying out the provisions of the Act, including the prescription of fees under Sections 6 and 7. It is further contended that the challenge in the present writ petition pertains to Rule 4(4) of the Kerala RTI Rules, 2006, which is a rule framed by the State Government of Kerala, and that no substantive relief has been sought against the Union of India. Accordingly, the 1st respondent submits that it is not a necessary party to the writ petition and is liable to be deleted from the array of parties.

7. Heard Sri. T.U Sujith Kumar, learned counsel for the petitioner, Smt. Devi Shri R, learned Government Pleader, and Smt. O.M. Shalina, learned DSGI.

8. The writ petition raises a challenge to the proviso inserted to Rule 4(4) of the Kerala RTI Rules, 2006, which restricts the free supply of



information to persons belonging to the Below Poverty Line category to twenty pages. The petitioner contends that the said proviso is ultra vires the RTI Act, as well as the rule itself, and therefore liable to be struck down.

9. It is a settled principle of law that a rule-making authority has no inherent power to legislate and derives its authority solely from the statute under which such power is conferred. Consequently, delegated legislation must function strictly within the confines of the enabling Act. While examining the validity of subordinate legislation, the Court is required to consider the nature, object, and scheme of the parent statute, the scope of the delegation, and whether the rule or regulation conforms to the legislative intent. If a rule is directly inconsistent with an express provision of the statute, the task of the Court is straightforward. Where the inconsistency is alleged with reference to the object or scheme of the Act, the Court proceeds with caution; nevertheless, if established, such inconsistency renders the rule ultra vires.

10. The doctrine of ultra vires postulates that a rule-making



authority has no inherent legislative power and must strictly operate within the confines of the authority conferred by the parent statute. While examining the validity of subordinate legislation, the Court is required to consider the nature, object and scheme of the enabling Act, the extent of delegation, and whether the rule conforms to the legislative mandate. Where a rule is directly inconsistent with a mandatory provision of the statute, the task of the Court is neither complex nor discretionary. Section 7(5) of the RTI Act, 2005, in clear, categorical and imperative terms, mandates that “*no fee shall be charged from the persons who are below the poverty line*”. The provision is unqualified, admits of no exception, and leaves no discretion with either the rule-making authority or the information officer. This statutory mandate stands fully incorporated in Rule 4(4) of the Kerala RTI Rules, 2006, which exempts BPL applicants from payment of fee. Once the legislature has consciously granted a complete exemption, the delegate cannot, by inserting a proviso, dilute, restrict or neutralise that exemption. The proviso limiting free supply to twenty pages is therefore not a case of alleged inconsistency with the abstract object or scheme of



the Act, but one of direct conflict with an express and mandatory statutory command, rendering the rule vulnerable on the touchstone of ultra vires. It is well settled that conferment of rule-making power does not authorise the delegate to travel beyond the scope of the enabling Act, to supplant the statute, or to impose substantive conditions not contemplated by the legislature, as held in *Union of India v. S. Srinivasan* [(2012) 7 SCC 683], *Indian Express Newspapers (Bombay) Pvt. Ltd. v. Union of India* [(1985) 1 SCC 641], *General Officer Commanding-in-Chief v. Dr. Subhash Chandra Yadav* [(1988) 2 SCC 351], *Additional District Magistrate (Rev.) v. Siri Ram* [(2000) 5 SCC 451], *Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi* [(1975) 1 SCC 421], *Kunj Behari Lal Butail v. State of Himachal Pradesh* [(2000) 3 SCC 40] and *Mahalakshmi Sugar Mills Co. Ltd. v. Union of India* [(2009) 16 SCC 569]. Subordinate legislation, lacking the immunity of plenary legislation, must yield where it trenches upon a mandatory statutory provision, and any rule or proviso having such effect is liable to be declared ultra vires.

11. In *Kedarnath Jute Manufacturing Co. Ltd. v. Commercial Tax Officer* [AIR 1966 SC 12], the Supreme Court held that a proviso is



intended to except something out of the enactment or qualify what is enacted therein. In *S. Sundaram Pillai v. V.R. Pattabiraman* [(1985) 1 SCC 591], the Court explained that although, in exceptional circumstances, a proviso may acquire the colour of a substantive provision, it cannot be construed so as to destroy, nullify, or enlarge the scope of the main enactment, nor can words be read into the statute so as to alter its operative effect. A construction that preserves harmony between the proviso and the substantive provision must therefore prevail. A proviso normally does not travel beyond the main provision to which it is appended and cannot be interpreted as overriding or supplanting the principal enactment. These principles were reiterated in *Delhi Metro Rail Corporation Limited v. Tarun Pal Singh and Ors* (MANU/SC/1681/2017).

12. Applying these principles to the present case, Section 7(5) of the RTI Act, 2005, categorically provides that no fee shall be charged from persons who are below the poverty line. The language employed by Parliament is clear, absolute, and unqualified, and admits of no quantitative or conditional restriction. Section 27 of the Act empowers



the appropriate Government to make rules to carry out the provisions of the Act, including rules relating to the fee payable under Sections 7(1) and 7(5). However, the power under Section 27 is only to give effect to the statute and not to dilute, restrict, or defeat the substantive right conferred under Section 7(5). The rule-making power is thus supplemental and not substitutive in nature. The very purpose of the RTI Act, 2005, is to empower the citizens, promote transparency and accountability in the working of the Government, contain corruption, and make democracy work for the people in its real sense. Any interpretation of the provisions of the Act must, therefore, advance and not defeat these foundational objectives.

13. Rule 4(4) of the Kerala RTI Rules, 2006, in its substantive part, is in consonance with Section 7(5) of the Act inasmuch as it provides for exemption from payment of fee to persons below the poverty line. However, the proviso introduced by way of amendment restricts the free supply of information to twenty pages and mandates payment of a fee beyond that limit. The effect of the proviso is not merely to qualify or explain the rule, but to substantially curtail the



statutory exemption granted under Section 7(5) of the Act. The proviso thus operates to impose a financial burden on a category of persons whom the statute expressly and unconditionally exempts from payment of any fee.

14. Such a proviso, which runs contrary to the substantive part of the rule itself and directly conflicts with the parent statute, cannot be sustained. A proviso cannot be used to rewrite the rule or to introduce a substantive restriction that the legislature has consciously omitted. The rule-making authority, under the guise of preventing alleged misuse, cannot curtail a statutory right conferred by Parliament. Administrative convenience or apprehension of abuse cannot justify the dilution of a legislative mandate. As observed by the Telangana High Court in ***Busa Nikhil v. High Court for the State of Telangana & Ors.*** (WP No.19960/2023), Rules 3 and 4 of the Telangana High Court Right to Information Rules, 2005, insofar as they denied exemption from payment of fee to applicants belonging to the Below Poverty Line category, were found to be inconsistent with Section 7(5) of the Right to Information Act, 2005 and Rule 5 of the Right to Information Rules, 2012, and the proceedings



were thereafter closed as infructuous upon the Government initiating steps to amend the said Rules to bring them in conformity with the Central Act and Rules.

15. In view of the above discussion, I have no hesitation in holding that the proviso to Rule 4(4) of the Kerala Right to Information (Regulation of Fee and Cost) Rules, 2006, travels beyond the scope of the rule-making power under Section 27 of the Right to Information Act, 2005, is inconsistent with Section 7(5) of the Act, and also defeats the substantive provision of Rule 4(4) itself. The said proviso is therefore ultra vires the parent statute and is liable to be declared illegal and void. Accordingly, the proviso to Rule 4(4) of the Kerala Right to Information (Regulation of Fee and Cost) Rules, 2006, restricting free supply of information to persons below the poverty line to twenty pages, is struck down as ultra vires the Right to Information Act, 2005.

The writ petition is allowed.

SD/- MOHAMMED NIAS C.P.

JUDGE

okb/



APPENDIX OF WP(C) NO. 3530 OF 2024

PETITIONER EXHIBITS

- Exhibit-P1 A TRUE COPY OF THE CERTIFICATE DATED
26.10.2023 ISSUED BY THE PUTHENVELIKKARA
GRAMA PANCHAYAT.
- Exhibit-P2 A TRUE COPY OF THE LETTER DATED
25.10.2023.
- Exhibit-P3 A TRUE COPY OF THE GAZETTE NOTIFICATION OF
THE AMENDMENT DATED 17.01.2015.

RESPONDENT EXHIBITS

- EXHUIBIT R2(a) True copy of the recommendation of the
Kerala State Information Commission.